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Michael Cornford
Mortgage and Credit Policy
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Our ref: sale/rent back

1 May 2009

Dear Mr Cornford

Regulating the Sale and Rent Back Market

This is the Financial Services Consumer Panel's response to the Treasury Consultation Paper on regulating the sale and rent back market.

The Panel strongly supports the proposals set out in this Consultation Paper for the regulation of the sale and rent back market by the FSA. We agree that sale and rent back is an area of significant consumer detriment that requires a swift and effective remedy. We have also written to the FSA to support the use of an interim regime pending the introduction of full regulation at a later date.

We have set out our answers to the specific, consumer focused questions posed in the consultation paper below.

Q1: Do you agree with the OFT's analysis of the sale and rent back market, as presented in Chapter 2 of the Paper?

Yes, we agree with this analysis.

Q2: Do you agree that the sale and rent back market does not currently work well for consumers?

Yes. The OFT evidence correctly identifies the risk to consumers posed by the current sale and rent back market, including the vulnerable nature of many consumers considering sale and rent back and their susceptibility to high pressure sales tactics.

Q4: Do you agree with the OFT that the existing regulatory framework is unlikely to provide appropriate consumer protection in the sale and rent back market?

We agree. The existing framework is too fragmented and will not provide the necessary level of consumer protection.

Q5: Do you agree with the OFT that self-regulation is unlikely to provide appropriate consumer protection in the sale and rent back market?

While we support the valuable work of trade bodies such as SHIP, we do not think that self regulation is a viable alternative to regulation by an independent regulator in the sale and rent back industry.

Q6: Do you agree with the OFT that FSA regulation would provide appropriate consumer protections in the sale and rent back market?

Yes. The FSA is already responsible for the regulation of mortgage and equity release products and will provide an appropriate level of protection for consumers in the sale and rent back market. We expect the FSA to adopt a robust approach to non-compliance in this area given the level of consumer detriment that has already been identified.

Q7: Does the proposed definition of a regulated sale and rent back agreement capture existing and potential sale and rent back models?

So far as we are aware, the proposed definition is appropriate.

Q8: Does the proposed definition of a regulated sale and rent back agreement exclude arrangements which are not sale and rent back agreements, for example equity release products?

We do not wish to suggest any changes to the definition, but the proposed FSA guidance on the “not by way of business” exemption will be important in clarifying FSA regulatory scope in what can be complex arrangements. We would like to see draft guidance prepared and published for consultation at an early stage.

Q9: Do you agree with the Government’s proposed approach to the situation where there is a gap between sale and taking up of occupancy?

We agree with the proposed approach.

Q10: Do you agree with the Government’s approach to intermediaries in relation to sale and rent back agreements?

Generally, yes. In this context regulation should capture those acting as intermediaries on behalf of consumers who are either considering entering into a sale and rent back agreement or considering investing in one directly. We do have concerns however about the position of accountants, solicitors and other professionals who are active participants in the sale and rent back market. We are aware that, generally, professional firms that undertake FSA regulated activities to a limited degree in the context of their overall business, are free to do so under the auspices of the relevant professional body. While we have no criticism of the effectiveness of regulation by professional bodies in the round, given the extraordinarily high level of risk and consumer detriment identified by the OFT in this particular area, we are not persuaded that professional firms should be exempted from direct authorisation by the FSA for sale and rent back activities in the same way as for other financial services.

Q11: Do you agree with the Government's approach to the regulation of third parties?

Yes, this is an important area for consumers who would otherwise be vulnerable to the actions of third parties with whom they have had no direct involvement. It is important that this potential loophole is removed.

Q12: Do you agree with the Government's approach to administering activities relating to sale and rent back activities?

Yes, we agree.

Q13: Do you agree with the Government's proposed approach to activities to be excluded from the regulatory regime for sale and rent back agreements

We agree.

Q14: Do you agree with the Government and the FSA's proposed approach to an interim regime for sale and rent back agreements?

We strongly support the proposed interim regime, which we believe is an essential consumer protection measure. We have responded separately and in detail to the FSA's Consultation Paper 09/6** on this subject

Q15: Do you agree with the proposed restrictions to those who may receive interim permission in relation to sale and rent back agreements?

Yes. The restrictions are an important part of the interim arrangements and should exclude less reputable businesses wishing to take advantage of the interim regime.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ade Pitt', with a long horizontal flourish extending to the right.

Acting Chairman
Financial Services Consumer Panel