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Questions and answers for OFT sale and rent back work

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## **1. What is 'sale and rent back'?**

Sale and rent back (also known as sale and lease back or mortgage rescue) arrangements involve individual homeowners selling their property at a discount in return for the option to remain in the home as a tenant. These arrangements may be taken up by consumers in financial difficulty facing possible repossession of their homes.

Sale and rent back is a relatively new sector which has grown quickly in the last couple of years.

## **2. Is the market working well for consumers?**

It is clear that many consumers have found the ability to rent back their own home extremely valuable, and that sale and rent back transactions can in principle benefit consumers, in some cases significantly. However, other consumers are persuaded to enter into sale and rent back when this is unlikely to be the best solution for them. In some cases, their decision may have been influenced by mistaken views about the value of their homes or the security of the rental agreement.

All consumers entering into sale and rent back transactions bear a high burden of risk, which they may be unaware of and unable to assess. These risks include:

- Sale and rent back landlords defaulting on the mortgage, leading to repossession by the lender and tenants losing their home. In some cases tenants also lost money that the landlord had retained as a deposit or pre-paid rent.
- Sale and rent back landlords suddenly and significantly increasing the rent, forcing the tenants to leave the home.
- People entering into sale and rent back on the basis that they would receive housing benefit, then discovering that they were not eligible.
- Exploitation of people in difficult situations, for example sale and rent back firms dropping the purchase price just before sellers were due in court for repossession hearings, or levying unexpected charges at a late stage in the process.

### **3. What are the main recommendations from the market study?**

Our main recommendation is that there should be statutory regulation of the sale and rent back sector by the Financial Services Authority (FSA). The details of regulation will be up to the FSA to determine but the OFT considers it should include:

- Transparency – there should be clear disclosure of the basis for the valuation for sale, how rent is to be set, and the security of tenure
- Advice – there should be a requirement to make consumers aware of sources of independent advice, and to allow time for advice to be taken
- Reducing the risks to consumers – either by ensuring that firms offer more secure forms of tenancy, or providing regulatory safeguards such as guaranteed access to compensation.

### **4. What else does the FSA regulate?**

The Financial Services Authority (FSA) already regulates a number of financial products including equity release products, which have strong similarities with sale and rent back products.

### **5. What other action does the report recommend?**

The OFT will investigate and take appropriate action where it has evidence that a firm is breaching existing regulations to the detriment of consumers. Existing regulations include Consumer Protection from Unfair Trading Regulations (CPRs), 2008. Some sale and rent back firms may be breaching CPRs by pressure selling or making misleading statements on the security of tenure. Some firms may be unaware that other regulations may apply to them, such as the Consumer Credit Act or the Estate Agency Act.

The OFT will also work with other enforcement agencies, notably local authority Trading Standards Services, to raise awareness of the issues we have identified in the sale and rent back sector and to encourage them to take appropriate action in local markets.

We also recommend that government should raise awareness of sale and rent back by including information about it in government programmes targeted at people experiencing financial difficulty over housing and suggest that those considering it should seek independent advice.

Finally, we recommend that DWP should provide greater clarity on the eligibility of sale and rent back tenants for housing benefit.

**6. Does the market study cover the UK?**

Yes

**7. What is the Government's reaction to your recommendation?**

The Government's response to the recommendations is expected shortly.

**8. How long will it take to put your recommendations into place?**

This is a matter for the Government. In the short term we recommend that efforts to increase consumer awareness should begin immediately. We will also begin work with the Trading Standards Agency to raise awareness of our concerns around the sale and rent back sector and to make sure that existing consumer protection regulations are being effectively enforced. We are already reviewing evidence that has come to light in the course of the market study and considering whether any of this evidence is strong enough to form the basis for enforcement action.

**9. What about voluntary codes of conduct?**

A number of self-regulation initiatives have been launched by trade associations in the sale and rent back sector. We believe that these play an important role in developing industry-led solutions to some of the problems experienced by sale and rent back consumers, and paving the way for statutory regulation. However, we do not believe the extent of coverage and the degree of discipline imposed by voluntary self-regulation is sufficient to address the problems in this sector. We are also concerned about the lack of redress and compensation. We believe that compulsory measures are needed to properly address the risks to consumers.

**10. What is the size of the industry?**

There is no comprehensive source of information on the industry so the number of firms operating is unknown. Based on anecdotal evidence we believe there might be upwards of 1,000 firms operating, together with an unknown number of non-professional landlords.

**11. How many homeowners have used sale and rent back?**

We estimate that around 50,000 homeowners have used sale and rent back to date.

**12. How many complaints have you received about the sector?**

We have had only a small number of complaints through Consumer Direct, though we are aware that other organisations, such as Citizen's Advice, have been fielding many more complaints and enquiries

**13. How much money does the industry generate?**

We do not know the turnover of the industry. But, to illustrate, if there were 20,000 transactions last year with an average value of £150,000, that would indicate turnover of around £3 billion.

However, we expect that turnover will be lower this year as sale and rent back firms feel the impact of the credit crunch.

**14. When was the market study launched?**

May 2008

**15. Why was the market study conducted?**

Stakeholders, including mortgage industry representatives, consumer groups, Peers and MPs had expressed concerns that some consumers entering into sale and rent back arrangements were making misinformed choices or being exploited.

The OFT agreed that there were factors which point to the potential for significant consumer detriment and so launched the study in response to concerns raised by these stakeholders.

## **16. What issues did the market study consider?**

This market study was designed to be a short study focused tightly on the sale and rent back product.

The OFT collected evidence on homeowners' experience of sale and rent back arrangements. In particular, the OFT considered whether it is likely that homeowners entering into such arrangements were making informed choices. The OFT took a detailed look at the characteristics of the sale and rent back product and, bearing in mind the circumstances in which these products are sold, considered whether existing consumer protection measures were sufficient and effective.

## **17. Who did the OFT consult with during this market study?**

The OFT contacted the following trade bodies:

- For the sale and rent back industry:
  - The Property Buyers Association (PROBAS)
  - The National Landlords Association (NLA)
  - The Rent Back Charter Association (RCA)
- For mortgage lenders, the Council of Mortgage Lenders (CML)
- For the equity release industry, Safe Home Income Plans (SHIP)

The OFT also contacted a number of providers of sale and rent back arrangements.

The OFT received assistance from Citizens' Advice, Shelter, and National Debtline. The market research firm engaged by the OFT also contacted consumers who have used sale and rent back schemes. The OFT worked closely with other government departments, including the FSA, throughout the study.

**18. What are the typical circumstances in which homeowners sell through sale and rent back?**

Sale and rent back consumers are typically, though not always, in financial difficulty. Many are in arrears with their mortgage and may have other creditors such as loan companies, credit card providers or utility companies. Some are in imminent danger of repossession.

Properties that are the subject of sale and rent back are generally small houses or flats, seldom valued at more than £200,000.

For sale and rent back to be feasible, the consumer must have a sufficient portion of equity in the home.

Not all consumers entering into sale and rent back are in financial difficulty. Some want to release the equity in their home for other reasons (such as relationship breakdown) but to remain living in it for the time being. Others want to facilitate relocation, or 'chain breaking'.

Nonetheless, sale and rent back websites and adverts suggest that financial difficulty and repossession in particular are major drivers in this market.

**19. How does this market study fit in with the recent Government announcement on social mortgage rescue schemes?**

The recent government announcement of increased funding for social mortgage rescue schemes will help up to 6,000 families to avoid repossession. This assistance is aimed at families who would otherwise be eligible for homelessness assistance. Local authorities will gauge how likely a family is to become homeless, then registered social landlords such as Housing Associations will buy properties from eligible homeowners and rent them back to them. For more details contact the Department for Communities and Local Government.

We expect this initiative to help a number of the most vulnerable homeowners, who might otherwise consider sale and rent back. However we do not expect social mortgage rescue schemes to crowd private sale and rent back providers out of the market.

**20. Did your market study cover the scheme run by the Scottish Executive?**

We considered the extent to which this and similar schemes might crowd out private sale and rent back operators but the details of such schemes were not within the remit of our market study. The issue of scheme costs is a matter for the Scottish Executive.

**21. What are the possible outcomes of a market study?**

Possible outcomes of a market study include: giving the market a clean bill of health, publishing information to help consumers, encouraging firms to take voluntary action, encouraging a consumer code of practice, making recommendations to the Government or sector regulators (such as the FSA), investigation and enforcement action against companies suspected of breaching consumer or competition law, or a market investigation reference to the Competition Commission.

In this case the outcome has been a number of recommendations to Government.

**22. Is information submitted for the market study confidential?**

The Enterprise Act 2002 and the Data Protection Act 1998 restrict the ability of the OFT to disclose information received in the course of its work, including information submitted in response to a market study.

Under the Enterprise Act 2002, there is a general prohibition against disclosure of information relating to the private affairs of an individual or any commercial information relating to a business which, if published, would or might, in the OFT's opinion, significantly harm the individual's interests or legitimate business interests. Such information can only be disclosed in limited circumstances.

The Data Protection Act 1998 applies to information which constitutes personal data (broadly, data relating to an identifiable living individual, for example, a consumer's name and address). The OFT must process such data in accordance with that Act which would typically require the consent of the consumer to such publication.

The OFT is also subject to the Freedom of Information Act 2000 (FOIA). However, FOIA cannot be used to disclose information which is not disclosed under the Enterprise Act 2002. Data Protection Act principles apply to requests for personal data which will typically be exempt from FOIA.

**23. What is the legal basis for the market study?**

Market studies are carried out under section 5 of the Enterprise Act 2002. This enables the OFT to study markets and identify whether there are problems which should be addressed.

**24. I am concerned about sale and rent back arrangements - who can I contact?**

The OFT is unable to provide advice or resolve individual complaints for consumers. Consumers who are concerned about whether sale and rent back is the right product for them should seek independent advice from an organisation such as the local [Citizens Advice Bureau](#). Consumers who are concerned that they have been unfairly treated by a company offering sale and rent back can contact Consumer Direct on 08454 04 05 06 (or see the [Consumer Direct website](#)).

**25. How is sale and rent back different from equity release schemes such as lifetime mortgages and home reversion?**

Lifetime mortgages and home reversions are the two main types of equity release scheme currently regulated by the FSA. Both are aimed at older consumers.

Lifetime mortgages allow a consumer to take out a mortgage loan secured on their home which is repaid usually through the sale of the house when the homeowner dies or moves out of it (perhaps to a care home). The consumer therefore continues to own and occupy their home subject to a lifetime mortgage.

In a home reversion plan, a consumer sells all or part of their home to a provider in return for a payment, usually at a discount to the market value of the house. The consumer also has the right to live in the house for the rest of their life, until they move into a care home, or for a period of at least twenty years, usually in return for a very low rent.

Equity release schemes share some similarities with sale and rent back arrangements as they allow a consumer to get cash from the value of their home without having to move out of it. However, under sale and rent back schemes, the seller may not have long term security since the rental agreement is typically an assured shorthold tenancy which has a fixed minimum term (typically 6 or 12 months). Lifetime mortgage and home reversion schemes are regulated by the FSA while sale and rent back arrangements fall outside the scope of the FSA's jurisdiction. Equity release schemes are generally available to homeowners over a certain age (typically 50).