

**GOVERNMENT RESPONSE TO
OFFICE OF FAIR TRADING (OFT)
SALE AND RENT BACK MARKET
STUDY**

Response to
recommendations aimed at
Government contained in
the OFT report "Sale and
Rent Back"

22 OCTOBER 2008

GOVERNMENT RESPONSE TO RECOMMENDATIONS IN THE OFFICE OF FAIR TRADING MARKET STUDY ON SALE AND RENT BACK

Introduction

1. The Government thanks the Office of Fair Trading (OFT) for its very helpful market study of the sale and rent back (SRB) market. The report is timely given the current economic climate.
2. SRB offers some homeowners the option of selling their property at discounted rates in exchange for tenancy arrangements.
3. Budget 2008 announced that the OFT would lead a study on the SRB market this year, focusing on consumers' experiences of these arrangements, and consider options, where appropriate, to strengthen consumer protections. This report has now been published.
4. The OFT has kept Government closely informed as its work has progressed and recommendations developed. We are grateful to the OFT for its willingness to work in this way as it has enabled the Government to respond quickly to an issue which is of great concern to many individuals and organisations.
5. The OFT's market study has found that the potential for severe consumer detriment in connection with SRB is unlikely to be adequately addressed through existing consumer protection, broader Government initiatives, or voluntary self-regulation of SRB.
6. In coming to its conclusions, the OFT considered the existing legislation that has some application to SRB products, including the Consumer Protection from Unfair Trading Regulations (CPRs). The CPRs will address some of the conduct which has been identified as a concern in this sector, such as pressure selling and misleading statements on the security of tenure. The OFT has said that it will investigate and take appropriate action under the CPRs regime where it has evidence that a firm is breaching these regulations to the detriment of consumers. However, the OFT believes that the CPRs are not sufficient to prevent potentially severe consumer detriment and there is a case for further action on the part of Government.
7. The remainder of this response looks in turn at each of the OFT's recommendations and provides a joint Government response.

The OFT's recommendations and the Government response

A. Compulsory regulation as the primary means of addressing the detriment in the market

OFT's Recommendation: The sale and rent back sector should be

ElenaDel73 regulated by the Financial Services Authority (FSA) and the regulations should cover transparency, advice and reducing the risks to consumers

Government response – carry out a full consultation and impact assessment

8. HMT will undertake a consultation on improving the regulatory framework by bringing sale and rent back arrangements within the scope of FSA regulation. This consultation will be informed by the OFT's market study report and the views of all interested stakeholders. A full impact assessment will be prepared in the light of responses to the consultation. The Government will take final decisions on the basis of this consultation.

B. Increasing consumer awareness of the risks around sale and rent back, particularly in the short-term before regulation comes into place

OFT's Recommendation: In the short term, Government programmes targeted at people experiencing financial difficulty over housing should include efforts to raise awareness of sale and rent back, with the key message being that it is a risky product and that those considering it should seek independent advice.

Government response – agreed

9. OFT has rightly highlighted the need to raise consumer awareness about the risks around SRB and we recognise the scope for further initiatives here. Given the concerns about SRB amongst consumer organisations, certain actions have already been taken in recent months to raise consumer awareness. For example, various initiatives have already been undertaken by the Department for Communities and Local Government (CLG), including:

- an advice leaflet, '*Are you worried about your mortgage? Get advice now*¹', has been produced with the National Homelessness Advice Service (NHAS), including advice to households about the dangers of signing up to schemes that appear too good to be true. The leaflet was disseminated in August to all 354 English housing authorities, 402 Citizens Advice Bureaux offices, Courts and MPs representing English constituencies. The leaflet is also published on the NHAS website and stakeholder sites provide links to it.
- CLG raised the issue of SRB and the risks surrounding the product at its Regional Summits for local authorities (LAs). Here CLG recognised that SRB may have a place in LAs' advice work, but with appropriate caveats.
- In April and May, CLG wrote to all English LAs, following the misleading use of its corporate logo by one SRB company, in order to clarify that CLG was not endorsing this company or its product.

¹ http://www.nhas.org.uk/publications_events.htm

- CLG is continuing to work with stakeholders to reinforce advice to households in difficulty that they should first talk to their lender, and seek free independent advice if they are still worried.

10. The FSA currently includes messages on the potential risks involved with SRB in the information it produces for consumers facing difficulties paying their mortgage. This material is available on its 'moneymadeclear' website and in the printed guide sent by mortgage lenders to all customers who fall into arrears. The free guide is also available to consumers direct from the FSA. The FSA regularly reviews all its consumer information to ensure it remains current and relevant.

11. The Ministry of Justice will also make information about SRB available later this year to those facing court possession, through changes to customer webpages on possession claims.

12. We also welcome the OFT's proposal that it will work with the SRB industry, LA Trading Standards, and other stakeholders to raise awareness of the implications for SRB firms of the Consumer Protection Regulations, the Consumer Credit Act and the Estate Agency Act. In order to ensure that information provision is appropriate and effective, the joint Better Regulation Executive and National Consumer Council report "*Warning: too much information can harm*", November 2007, will form the back drop to how the OFT takes this work forward with stakeholders.

13. In taking forward awareness-raising activities on SRB, we would ask the OFT and other stakeholders to consider how best to work with the devolved administrations in order to achieve the best outcomes for consumers.

C. Eligibility of sale and rent back consumers for housing benefit

OFT's Recommendation: The Department for Work and Pensions (DWP) should provide greater clarity on the eligibility of sale and rent back tenants for Housing Benefit.

Government response – agreed

14. DWP currently provides guidance to LAs on eligibility for Housing Benefit. This guidance is also available on the DWP website. LAs take decisions on a case by case basis, based on the law, case law and taking account of DWP's guidance. In the light of OFT's findings that, because LAs are required to exercise a great deal of judgment in assessing individual cases, uncertainty can sometimes be created, DWP will consider how best to draw together existing guidance for the benefit of consumer bodies which will be made available for their information.

The Government remains committed to ensuring that all consumers get a fair deal, value for money, safe and high quality products, and greater choice. We would therefore like to thank the OFT, once again, for its valuable contribution on the SRB market.

