Association of Mortgage Intermediaries' response to CP20/11: Complaints against the Regulators

This response is submitted on behalf of the Association of Mortgage Intermediaries (AMI) and the Association of Finance Brokers (AFB). AMI is the trade association representing over 80% of UK mortgage intermediaries. AFB sits within AMI and represents second charge (formerly secured loan) brokers.

Intermediaries active in this market act on behalf of the consumer in selecting an appropriate lender and product to meet the individual consumer's mortgage requirements. AMI members also provide access to associated protection products. AFB members also provide access to unsecured products.

Our members are authorised and regulated by the Financial Conduct Authority (FCA) to carry out mortgage, insurance mediation and consumer credit activities. Firms range from sole traders through to national firms and networks, with thousands of advisers.

Background

The Complaints Commissioner has raised a number of concerns about staff numbers, management quality, the approach to complainants and the time taken to deal with complaints about the FCA and its operation. Many of these concerns have also been raised in previous Complaints Commissioner annual reports. This consultation does nothing to explain or address these fundamental issues. We are concerned that there are no measures on this and would welcome clarity on both any revised data and oversight being reported internally. We would also appreciate details of the actions the Board has asked for in order to allow them to have a focussed view on how successful the remediation proposed is operating. We would support clarity on any proposed Board oversight of this crucial area, which is a measure of management performance.

The FCA has previously outlined that it has implemented the Senior Managers Regime within the organisation. In commercial firms this means that both SM functions and Material Risk Takers can have their bonus terms impacted by poor outcomes. AMI considers it equitable that any compensation paid in a financial year should be deducted from any budgeted executive employee bonus pot thereby meaning firms are not paying for management failures. This would be tangible evidence of the application of the regime which currently appears little more than cosmetic.

Our response

Q1: Do you agree the language in Annex 2 is more accessible than the language of the current Scheme? Will the Scheme as proposed achieve the objectives set out in paragraph 3.3?

We agree that the language in Annex 2 is more accessible than the language used in the current Scheme. It is helpful that key words are highlighted in bold so that the definitions can be located more easily in the glossary. The overall changes made to the language and the way that information is displayed are positive and should help meet the objectives set out in paragraph 3.3.

It is also helpful that the proposed Scheme clarifies the relevant functions that can be investigated under the Scheme. However, we ask whether the maintenance of the Financial Services Register also includes the Directory. The extent of data that will be submitted to permit inclusion within the Directory is greater than the amount of data shown in the Financial Services Register and includes personal information, such as passport information or NI number. Therefore, the Directory should be within scope of the FCA's definition of relevant functions, as the failure to exercise appropriate control over information in and related to the Directory could cause distress, inconvenience, or financial loss to firms and individuals. We assume that it is the intention for the Directory to be included within the Financial Services Register definition as a relevant function but wanted to take this opportunity to seek clarification.

The addition of diagrams in sections one and seven adds clarity, especially around expectations and timeframes. Displaying the information in this way is more concise compared to how the information is displayed in the current Scheme and AMI feels this is a welcome addition. We agree that the new Scheme will allow complainants to work out how to access and use it more easily and quickly.

However, we do not think it is appropriate for the FCA to state that '[it] will not investigate a complaint under the Scheme if we reasonably consider…[the] complaint is vexatious'. Any assessment could only be made once the complaint has been investigated and assessed. Therefore we feel this could give the complaints team too much latitude to exclude some cases before proper review. The decision on whether an issue is vexatious must be independent. We understand the need for clarification on abusive and discriminatory complaints which should not be tolerated in any circumstances.

We also wanted to take this opportunity to suggest that the FCA provides a link to the corresponding Complaint Commissioner's report when it uploads its response to the FCA website. Currently the FCA notes the reference number in these documents but it is not clear how an individual can search and read the specifics of a case. A direct link to the relevant document on the Financial Regulators Complaints Commissioner website will make this more accessible.

Q2: Do you have any comments on our approach to ex-gratia compensatory payments for distress or inconvenience?

It is helpful that the FCA has clarified its policy on ex-gratia compensatory payments for distress or inconvenience, as it creates a clear set of principles, provides a benchmark, ensures a transparent service and helps to manage expectations.

However, we do not agree with the ex-gratia compensatory payment limits for distress or inconvenience, as to cap these at a maximum of £1,000 for 'very high level of distress or

inconvenience' is disproportionate and an unfair restriction. Those who suffer because of errors should receive fair justice.

We also feel that there is a lack of detail in the consultation, which is necessary to pass judgement on the proposals. It would be beneficial for the FCA to confirm whether the ex-gratia compensatory payment limits are to be increased annually, i.e. in line with inflation, and whether the amounts will be subject to periodic review and the frequency of such review. We also ask whether the Scheme will be subject to an annual or periodic consultation. Feedback on the operation of the Scheme should be a consistent element of the regulator's annual report.

AMI appreciates that the FCA must consider the compensation payment funding source when deciding ex-gratia payment limits. Nevertheless, there should be more of a level playing field between the accountability of fee paying firms when it comes to complaints (i.e. when complaints are reviewed and upheld by the Financial Ombudsman Scheme) compared to the accountability of the FCA on upheld or partially upheld complaints under the Scheme. By capping compensation levels at the amounts proposed creates a lower level of standards that does not mirror those faced by the industry.

To illustrate, the combination of FOS case fees (applicable from the 26th complaint) and the £355,000 FOS award limit may act as an increased deterrent for a firm to prevent complaints from crystallising and encourage firms to subsequently make positive changes to processes and procedures. However, we believe that under both the current and the new Scheme the FCA do not face the same degree of disincentives.

To ensure greater parity, any compensation paid out by the FCA should be deducted from the Executive bonus pot. This would create tangible evidence of the application of this scheme and also help to improve senior management engagement, oversight and control. It is, in our view, a fair solution as we do not feel fee paying firms should be penalised through increased fees where they are not liable and have played no part in a complainant's loss. In no circumstances should fee paying firms have to pay for FCA management failures and they should be protected from regulatory fee increases that are a result of an increase to compensatory claim amounts.

The proposal document states that the FCA 'may decide that the levels of compensatory payments need to be reduced in light of how the cumulative impact of payments may affect the fees levied on the financial services industry and effectively on consumers'. AMI asks the FCA to elaborate on this point, as it is not clear at what point the FCA may decide to reduce compensatory payments. For example, will the bandings be re-assessed annually or at any point in the year once the levels of compensatory payments have exceeded a set amount. This proposal also goes against the objective of the Scheme of 'more complainants having realistic expectations of what the Scheme can do for them'. Firms and consumers need reassurance that if the FCA is deemed responsible and an award is made for an ex-gratia compensatory payment, that this is fair and proportionate. This part of the proposal creates uncertainty, which is not what consumers and firms should face if they have a valid complaint and have suffered distress or inconvenience and/or financial loss.

We note that the FCA reviewed all complaints concluded by the Commissioner and the FCA between 1 January 2017–31 December 2019 to determine the impact of the banding and upper limit of ex-gratia payments. We would be grateful for clarification as to whether the nine payments for amounts greater than £1,000 and the three payments for amounts greater than £10,000 were for distress or inconvenience payments, or financial loss. Our concern is that if these were in relation to distress or inconvenience, under the proposed new Scheme

complainants may not receive equivalent ex-gratia payments as they would be capped at the 'level 3' band limit of £1,000.

We note that the FCA may decide to make an ex-gratia payment over £1,000 for distress or inconvenience but that this would only be in 'exceptional circumstances'. AMI believes that this goes against the objective of the Scheme of 'complainants having realistic expectations of what the Scheme can do for them' and that 'exceptional circumstances' should be defined in the glossary, if the limit is retained.

Q3: Do you have any comments on our approach to ex-gratia compensatory payments in respect of financial loss?

AMI is concerned that a cap of £10,000 in respect of financial loss will exclude consumers and firms from equitable compensation, given that between 1 January 2017 and 31 December 2019 there were three payments made for amounts greater than £10,000. It would be useful if the FCA could provide details of the exact amounts paid on these three payments as this ensures transparency.

There is not enough detailed analysis provided in the consultation as to how the FCA arrived at the decision to cap at £10,000, when previous payments were made in excess of this amount. We appreciate that complaints data is based on past events and it is not necessarily an indicator of future complaints and ex-gratia payments, as this cannot be quantified, but this part of the consultation ought to be subject to further review.

As per our previous suggestion, all ex-gratia compensatory payments in respect of financial loss should come from the Executive bonus pot.

We note that the FCA may decide to make an ex-gratia payment over £10,000 for financial loss but that this would only be in 'exceptional circumstances'. AMI feels that 'exceptional circumstances' should be defined in the glossary, if the limit is retained.

Q4: Do you agree with our proposals for implementing the new Scheme?

The consultation was launched with 8 weeks for responses to be submitted and then subsequently extended following political pressure. This led to public notification of the extension close to the original deadline date, at a time when many respondents would have already submitted their response.

Unusually the original consultation timeframe breached the limits of "good consultation" which our regulators are known for and this shows a lack of judgement. The consultation period should have been 12 weeks from the outset. We note that one justification for the consultation timeframe was because the 'consultation largely reflects the existing practice of the current complaints scheme[1]' but whilst the FCA are aware of payment bandings on the current scheme, this detail was not included publicly in the old Scheme. It is therefore reasonable to expect a 12-week consultation period to give stakeholders sufficient time to respond to what is, in their eyes, 'new' information.

We support the calls for the consultation to be suspended and there not to be a Policy Statement until the findings of three ongoing independent investigations, namely into the HBOS Reading scandal, London Capital & Finance and Connaught, are published. It is only

[1] https://www.fca.org.uk/publication/correspondence/bank-of-england-fca-letter-tsc-cp20-11-complaints-against-regulators.pdf

once we have seen these and the FCA Board and Treasury has had an opportunity to review the findings that this consultation has merit.

We are concerned that there are no measures on the performance of the Complaints team and would welcome clarity on both any revised data and oversight being reported internally. We would also appreciate details of the actions the Board has asked for in order to allow them to have a focussed view on how successful the remediation proposed is operating. We would support clarity on any proposed Board oversight of this crucial area, which is a measure of management performance. The feedback statement should also provide detail of what information is being provided to the Board and the frequency of such information.

We agree with the proposals to implement the new Scheme as soon as practicable but only once all the consultation feedback and the investigation results have been carefully assessed and considered. If significant changes are made to the proposals following this and other feedback, we would expect the Scheme to be subject to a further consultation.

As proposed, the old Scheme should have a cut-off date with the new Scheme taking effect from that date so that complainants have clarity over which Scheme their complaint will be handled under.

Q5: What impact do you think our proposals in this consultation paper will have on persons who share protected characteristics?

No comment.