Association of
Mortgage Intermediaries

Association of Mortgage Intermediaries' response to FCA Call for Input: Open finance

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.

Response

We welcome the FCA's canvassing of opinion on this subject and are grateful for their attendance at our board meeting to allow our board members an opportunity to ask questions.

We believe that open finance will provide some welcome opportunities for consumers and also for the financial services industry. However, we are concerned by the seeming drive to force these developments forward rather than allow them to develop organically and in-line with consumer demands. The current focus of many innovators to use technology on a non-advised or execution only basis to limit their liability or sit outside the regulatory perimeter should be a cause for concern and force any balanced regulator to challenge such models.

We believe that mortgages, whilst to a degree transactional, should be set apart from other transactional financial services: current accounts; credit cards; general insurance products. A mortgage is potentially the largest loan that a consumer will take out in their lifetime and, unlike other products, provides no post-completion cooling off period and often charges a substantial financial penalty for any changes made. As such, it is vital that consumers are able to receive advice on these transactions.

"As consumers become responsible for more of their own financial decisions, advice becomes especially important."[1] The value of advice and the process to deliver advice for all consumers, particularly those who are vulnerable, should not be underestimated. Advisers consider not only a consumer's current position but take into account the potential impact of events in the future. A customer suffering from stress or anxiety could potentially benefit from a more flexible product, yet may not have the base knowledge to know that this is a possibility or to be able to research this themselves.

[1] Sheldon Mills, FCA Interim Director of Competition, in Open Finance: an opportunity for financial services, November 2019

Consequently, any initiative that could potentially drive mortgage borrowers away from advice is of great consternation to us. Our member firms proudly take full responsibility for the advice they provide and absorb the legacy liability that requires. We ask that FCA recognises this and does not promote competition by lowering standards, rather uses appropriate controls to allow firms of all types to develop on a level playing field.

Furthermore, mortgage brokers also advise on protection needs and are in a position to have discussions with and advise vulnerable customers who may have otherwise believed that they would not be eligible for cover. We are concerned that any move towards open finance and more tech-based solutions at the expense of advice could reduce the level of protection cover and could remove the review of that cover at pertinent moments, for example, at remortgage when consumers could amend their mortgage term. This could lead a borrower to believe that they have adequate protection cover when in fact there is a shortfall.

The FCA's recent work on mortgage switching has revealed that consumers who transact directly with a lender rather than through a mortgage adviser are less likely to remortgage at the end of their initial fixed period and less likely to switch products with their lender. Open finance's potential to remove a mortgage broker from the advice process could lead to a greater number of inert customers who believe they are proactive towards their mortgage as they can see its details on their smartphones, but who are less likely to actually act themselves.

It must also be recognised that any application that offers consumers the ability to automatically switch their mortgage product at the end of the incentive period by using their personal data could, under MCOB rules, constitute advice and the application provider, or the entity responsible for the advice, would then need to be a regulated entity with the correct permissions, allowing consumers the protection afforded by the ombudsman service.

Open finance will allow lenders to take additional factors into account when considering a customer's risk profile. This could be advantageous to some customers but to others it could be detrimental to their borrowing and will mean that customers are considered on an individual basis with fewer options to take advantage of 'group risk'. Decisions made could inadvertently impact vulnerable consumers, for example in areas such as differential and individual pricing which act to the advantage of some and the potential harm of many. The usage of consumer data can be complex and difficult to understand for all consumers, and potentially more so for those with vulnerabilities, particularly with cross correlation and the assessment of personal data in 'seemingly unrelated' risk and pricing decisions. It may also mean that lenders will be able to access far more information on a customer than they would ordinarily ask for. Additionally, automation of processes allows for any mistakes on a consumer's credit file or background data to have far reaching effects before the consumer has the possibility of appealing or rectifying them.

Questions

Q1: What action can we take to help ensure the potential of open banking is maximised, for instance to support the development of new open banking services?

AMI believes that both open banking and open finance should be allowed to develop organically as only then will they truly develop in-line with consumer and market needs. The consideration needs to be consumer led rather than led by regulation as this could lead to ineffective development with solutions built for compliance rather than consumer needs. Interaction with experts from across the industry should continue. It should be remembered that current rules, controls and guidance have been implemented for a reason and the regulator should be wary of complaints that these rules inhibit development, ensuring that all developments are undertaken with the best interests of consumers at heart. The desire to innovate should not be at the cost of protection. Continued support via Sandbox will enable the market to continue to innovate. AMI remains, however, concerned that the Sandbox initiative is funded entirely by fee payers; there should also be an element of financial commitment from the applicants as they will be the greatest beneficiaries.

Q2: We are interested in your views on what open banking teaches us about the potential development of open finance.

The regulator needs to ensure that regulation remains proportionate and continues to protect consumers though periods of change. It needs to be forward thinking and cover potential developments, but these should not be forced. Regulation should not be relaxed to speed up innovation as this could cause consumer harm and lead to inefficient development. Instead the market should develop organically and therefore in alignment with consumer needs.

Q3: Do you agree with our definition of open finance?

We agree.

Q4: Do you agree with our assessment of the potential benefits of open finance? Are there others?

We agree. Open finance could be the catalyst to moving away from the siloed approach that has to date been taken towards consumers' finances towards a more consumer centric approach. Applications will be developed that allow consumers to see all their finances in one place and it would be logical therefore for consumers to be able to discuss these within one holistic process. This could affect providers, intermediaries and the regulator alike who may all need to adapt their approaches and move away from a siloed way of thinking to a more consumer centric view.

Q5: What can we do to maximise these benefits (given the considerations set out in paragraphs 3.12 to 3.17)?

We believe that consumer demand should be the catalyst for open finance. Whilst we understand the importance that the government has put on the development of digital technologies, we do not believe that the conduct regulator is the correct body to maximise the benefits of open finance. The process should not be forced, the regulator should instead play a more supportive role and it should be left to the industry and new entrants to innovate. It could be supportive by a more fundamental review of its rule book which is "product structured" to a "financial lives" approach.

Q6: Is there a natural sequence by which open finance would or should develop by sector?

As answered elsewhere, open finance should be allowed to develop organically. As highlighted in the paper, open banking has developed in ways that were not anticipated and also has developed less in areas where more extensive change was expected. The recent pandemic has highlighted that where there is a need for change and the consumer demand requires it, then developments will move apace.

It is important to ringfence the need for advice in the mortgage sector, particularly now, when debt consolidation is likely to be more prevalent and lenders' criteria is changing on a daily basis. The regulator should be wary of categorising mortgages with general insurance and other transactional items. The regulator needs to ensure that open finance mortgage solutions adhere to the advice rules and do not steer people to particular routes or products.

Many argue that to get traction, the consumer has to feel value for giving access to their data. Commentators have identified the mortgage as an area where the consumer could feel that value. As the mortgage is such a key value transaction, it should not be used as the "incentive" but given protected status.

Q7: Do you agree with our assessment of the potential risks arising from open finance? Are there others?

We are concerned that open finance may exacerbate consumer inertia as there is a possibility that having access to all financial information in one place on a smart device will make people feel that they are more in contact with their finances than they are in reality.

There is also possibility that open finance could lead to two, or even three tier pricing and that customers who complete transactions using open finance may not be offered as advantageous a rate as those who contact the lender directly.

The move to open finance could bring increased disadvantages for vulnerable customers. Vulnerabilities may be more difficult to recognise in automated transactions. In addition to this, there is a risk that consumers who do not want to or are unable to use automated processes are marginalised and then see increased charges as less used manual processes regarded to be more expensive. Consumers with thin credit files could also be marginalised by a move to open finance. The Intergenerational Differences feedback statement pointed to thin credit files issues as a particular material challenge for some Baby Boomers as, following the death of a partner, they may find themselves having to reengage with financial services, despite having had no engagement, or active credit history, for decades[2] These cases will potentially require a greater level of time and resources due to drivers of vulnerability.

In its Annual Plan 2020/21, the Competition and Markets Authority highlighted that there has been, "significant growth of new and rapidly-emerging forms of consumer detriment, caused in part by the increasing digitalisation of the economy, which requires more rapid intervention, and probably new types of intervention."[3] We have concerns about the capacity of the regulator to both effectively supervise and act as rapidly as required to intervene at the first signs of harm. We particularly consider that whilst in a Covid-restricted environment, the FCA and PSR has limited supervisory capability as firm visits are near impossible. Accordingly, market developments should be constrained to avoid the risk of consumer detriment.

The rapid development of open finance could increase the risk of harm to consumers through scams and cloned firms. The Intergenerational Differences feedback statement also highlighted that baby boomers are increasingly vulnerable to scams distributed via email, text and the internet at a time in which they are making significant decisions about pension drawdown and retirement income. The move to open finance will open up new opportunities to firms looking to defraud unwitting, digitally inexperienced consumers.

The potential of a new firm to enter the market with a proposition whose conception has been largely funded in the FCA's Sandbox by existing, fee-paying firms, to rapidly grow these products and its consumer base and then leave the market, dissolving the company and leaving good firms to pick up the bill for compensation to consumers through the FSCS levies is a real and significant concern for our members. We recognise the difficulty in policing the perimeter faced by the FCA and therefore would ask it to progress initiatives with care to avoid foreseeable risks.

Q8: Do you consider that the current regulatory framework would be adequate to capture these risks?

We believe there should be a requirement that any firm accessing and/or processing a customer's financial data should be regulated by the FCA. This will remove any ambiguity around the edges of the

[2] FS20/12 Intergenerational differences: summary of responses and next steps
[3] Annual Plan 2020/21, Competition and Markets Authority

perimeter as to what is allowed and will ensure that consumers are covered by the Financial Ombudsman Service. FCA needs to ensure that new entrants have adequate capital resources and PII cover. The regulation of third party providers (TPPs) would allow consumers some recourse and also one place to go to make a complaint; the complaints path should be interoperable and cohesive to ensure that consumers do not have to raise complaints about different parts of the process with different ombudsmen.

We note and agree with the comments from Charles Randell in June that FCA rules, "tend to assume a consumer journey which is no longer typical – if it ever was. A journey where the consumer receives product information, diligently reads risk warnings and other key information, and rationally assesses their decision. Today people take many important financial decisions in a few minutes or less after using a search engine or comparison site to identify a product and scrolling rapidly down reams of information on a mobile phone without reading it. The microscopic print of the warnings on television advertisements or posters on the tube for doubtful products are the best illustrations of how ineffective and out of date some of our regulation has become." [4] The regulator needs to consider whether protections for consumers who make rapid decisions on products on an application should be increased. This would help all consumers at times of distraction but would be particularly beneficial to vulnerable consumers and would help negate any impulse buying or other related financial transactions. The increased use of stronger risk disclosures and cooling off periods for "at a distance" transactions might be an appropriate control.

Q9: What barriers do established firms face in providing access to customer data and what barriers do TPPs face in accessing that data today?

No comment.

Q10: Do you think the right incentives exist for open finance to develop, or would FCA rules, or any other changes be necessary?

We believe that open finance should develop in response to consumer needs rather than being artificially forced to develop. We do not believe that the rules should be changed to facilitate this nor that firms should be incentivised to do it. If the changes are right for the consumer, then the demand will exist and firms will want to move into that market. FCA rules have been developed to enhance consumer protection and so should remain throughout the development of open finance. If changes are required at a later date, these should be dealt with in the usual way by consultation. We fully support moves to make simple interactions possible, however it is critical that rules surrounding "interaction triggers" remain as core consumer protections.

Q11: Do you have views on the feasibility of different types of firms opening up access to customer data to third parties?

We firmly believe that any firm wishing to open-up access customers' financial data should be regulated to allow consumers full ombudsman protections.

Q12: What costs would be involved in doing so? We are interested in views on the desirability and feasibility of developing APIs?

No comment.

Q13: Do you have views on how the market may develop if some but not all firms opened up to third party access?

We believe that firms will allow access to their customers' data if they feel that it would be beneficial to their business and where there is consumer demand and appropriate clear and simple customer

[4] A financial system to support the recovery, virtual roundtable of bank chairs hosted by UK Finance, 16 June 2020.

authorisation for them to do so. We feel it should be a firm's choice whether or not to open up their data. We do recognise, however, that this approach could be detrimental to any small new entrants wishing to enter the market, but balanced disclosure on both the risks and benefits must be explicit.

Q14: What functions and common standards are needed to support open finance? How should they be delivered?

As open finance has the potential to allow customers to manage their household bills through one single platform, it would seem sensible that there should be cross-industry discussions to develop a framework of common terminology and standards.

It's important however that the FCA acts as an independent regulator and acts in the best interests of both consumers and the markets that it regulates.

Q15: What role could BEIS' Smart Data Function best play to ensure interoperability and cohesion?

We agree that it is good practice to look at other markets and right that some technology operators will want to span markets and potentially develop applications that provide a view of all household expenditure and renewal dates, including mortgage and associated protection products. Smart data function should be independent of the government. It should work with the regulator but not supersede the regulator and allow TPPs to be regulated elsewhere nor sit outside the perimeter. The TPPs should be required to contribute to the funding, work should not be funded solely by the firms that hold the data.

Whilst some synergies can be drawn between industries, and data and collaboration may help to avoid duplication of work, fundamentally utility and telecoms markets are very different from mortgage markets, with mortgages being one of the largest transactions a borrower make in their lifetime and often only being changeable every 2-5 years without penalties rather than annually. The need for consumers to receive advice must be enshrined and the importance of the perimeter of the advice regulations also needs to be very clear so that at no point, are consumers being swayed to selecting particular products or lenders due to complicated algorithms using their data.

Consideration should be given to cross sector regulation and enforcement to ensure that consumers are protected and where enforcement action is taken against a firm by one regulator, the firm should not be able to phoenix across to another sector as has been seen with some Claims Management Companies. The FCA and the SRA have worked well together in these instances to act in unison and we would need to see the same commitment from regulators in open finance and with smart data to ensure that one firm does not cause a lot of harm across multiple sectors.

Q16: To what extent should the standards and infrastructure developed by the OBIE be leveraged to support open finance?

It would seem sensible use the standards and infrastructure developed by the OBIE to support open finance. It's important to recognise any lessons learnt from open banking and to use and build on this knowledge.

Q17: Do you agree that GDPR alone may not provide a sufficient framework for the development of open finance?

No comment.

Q18: If so, what other rights and protections are needed? Is the open banking framework the right starting point?

No comment.

Q19: What are the specific ethical issues we need to consider as part of open finance?

No comment.

Q20: Do you have views on whether the draft principles for open finance will achieve our aim of an effective and interoperable ecosystem?

No comment.

Q21: How should these set of principles be developed? Do you have views on the role the FCA should play?

It's important that the regulator is forward looking rather than insular and plans for the future and we fully support the regulator's consultation in this area. The importance of firms being captured within the regulatory perimeter and taking full responsibility for their policies and actions is core to a well-developed market which works cost effectively for all consumers and can be effectively supervised.

Q22: Do you have views on whether any elements of the FCA's regulatory framework may constrain the development of open finance? Please provide specific examples.

The regulatory framework has been developed over a number of years. It would seem a rash approach to start changing the framework to accommodate issues that may potentially arise unless a benefit to consumer can be proved. A balance needs to be found between proportionate regulation and development. Protections for consumers should not be eased simply to allow cheaper developments for firms. All standard consultation procedures would need to apply.