Association of Mortgage Intermediaries' Response to HM Treasury's consultation - A new approach to financial regulation: transferring consumer credit regulation to the Financial Conduct Authority

This response is submitted on behalf of the Association of Mortgage Intermediaries (AMI). AMI is the trade association representing over 80% of UK mortgage intermediaries.

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. Our members also provide access to associated protection products.

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

AMI welcomes the opportunity to respond HM Treasury's consultation - A new approach to financial regulation: transferring consumer credit regulation to the Financial Conduct Authority. However, in doing so we must raise our concern at the two month consultation period. This has presented us with a limited period to consider the impacts and consequences of the transfer proposals on member firms.

As such, in light of the restricted timeframe given our response is only based on a limited consideration of all the factors.

The majority of first charge mortgage brokers will hold a consumer credit licence with categories C,D, E and H. However, the reason for holding these licence categories is to provide firms with legal certainty when undertaking their core mortgage brokering activity, not to allow the firm to provide additional CCA products or services.

To intermediate on FCA regulated first charge mortgages there is strictly no requirement to hold a consumer credit licence. However, to be able to adequately discuss a consumer's financial positions, to ensure the regulated mortgage contract is suitable, a broker will need to discuss the consumer's financial circumstances.

This may include a discussion about their credit commitments. This requires the firm to hold category E - Debt counselling on their CCL. As a result of the discussions it may follow that, having considered all the relevant circumstances, it is in the best interests of the consumer to consolidate some or all of their debts. To assist the client the firm would need to hold category D - Debt adjusting on their CCL.

In addition, the consumer may wish to raise additional funds. When considering their current circumstances it may be in their best interests to retain their existing mortgage and borrow an additional sum through a further advance with their existing lender or through a secured loan (second charge loan).The broker may need to introduce the client to a third party to discuss the secured loan option. To assist the firm would need to hold category C – Credit brokerage on their CCL.

A client's credit file can be an important factor in obtaining a preferential mortgage rate. However, sometimes during the mortgage transaction a concern may arise on a credit file which the consumer may want to check. They may ask the mortgage broker how they can obtain these details. To assist with this request the firm would need to hold category H - Credit information services on their CCL.

The majority of first charge mortgage brokers do not use these categories to provide additional products and services beyond their core FCA regulated mortgage activity.

Mortgage brokers are in effect subject to dual regulation for the provision of their intermediation services. Furthermore, the existing MCOB handbook and the new MMR provisions go beyond the relevant requirements in the CCA relating to these activities for mortgage brokers.

Furthermore, at a European level the EU Mortgage Directive makes no distinction between first and second charge mortgages. This is likely to mean the concept of referring a client to a second charge loan broker/lender would be removed, as they would all be mortgage brokers, therefore there would be no additional regulatory benefit from this consumer credit activity category.

Having considered all these factors we consider that the transfer of these consumer credit activities to FCA offers an excellent opportunity to undertake some regulatory tidying. We propose that where the firm is only undertaking activities relating to their core mortgage permission, and they hold that permission at the time of transfer or they are an AR of a principal firm that holds that permission, they should not be required to hold the interim permission or subsequent full authorisation relating to C,D, E and H.

If the firm does undertake to offer other products and services that relate to C, D,E and H (for example debt management services) then they would not be able to qualify for such an exemption.

If they wanted to offer other products and services relating to these categories after the April 2014 transfer date then they would need to go through the full authorisation process with FCA to obtain these or become ARs of a relevant principal firm.

Consultation questions

<u>Conduct requirements and rules</u>

1 What are your views on the Government's proposal to carry forward CCA conduct requirements which cannot be easily replicated in FCA rules? Do you

agree with the Government's intention to require the FCA to review these retained CCA provisions, with a view to moving to rules-based alternatives wherever possible?

There are certain aspects of the CCA that offer important consumer protections, such as section 75. We do not believe that good features of the CCA should be lost as a result of these regulatory changes.

Where it is not possible to replicate a CCA conduct requirement under the FCA then such requirements should be retained and their position should be reviewed at a later date to ensure they are still relevant and required.

2. How, if at all, do you think industry codes can complement FCA conduct regulation?

Generally we have found that industry codes have not worked well within the context of the FSA's handbook. However, they can sometime provide additional assistance to FOS's adjudication and decision making processes.

FCA's principles, rules and guidance should provide sufficient clarity to firms and sectors to allow them to operate within an appropriate manner. If industry codes do not match the required regulatory level and status then they are unlikely to provide additional support to firms. However, if they go beyond the regulatory standards, which have been set through a vigorous consultation process containing robust cost benefit analysis and impact statements, they may create artificial barriers to entry and impact on competition.

Authorisation

3. What are your views on the Government's proposals for the two tier authorisation regime? Is the scope of the limited permission regime right?

The consumer credit regime captures a broad range of activities. In order that resources are applied in the most appropriate manner consideration should be given to which activities and firms warrant the greatest resources being applied to them.

FCA has moved towards this process within its new C1, C2, C3 and C4 classification of firms. It is appropriate that similar rationale is applied to consumer credit activities. However, given that consumer credit firms may not currently fit within the FCA classification system the proposed two tier system would seem an appropriate interim measure.

The limited permission (tier 2) must carefully balance the regulatory requirements for firms against the need to ensure adequate consumer protection is in place. Where a firm is selling credit as a secondary activity or a firm is operating on a not-for profit basis it does not necessarily follow that the consumer will receive a better experience or that the possibility of experiencing detriment is removed.

We fully believe that regulation should not be seen as a bottomless pot of resource. Consideration must be given to what types of firms require the most attention. The principle behind the two tier authorisation system, that a one size fits all approach is not appropriate, should be at the heart of all regulatory processes.

4. What are your views on the proposed changes to the appointed representatives regime?

The example given in HM Treasury's paper is that a firm providing car credit may want to remain an AR for their insurance sales but become authorised for their credit sales. HM Treasury has proposed changes to allow for a workable system where this could happen. However, this solution may not work so well in practice where the separation between the CCA activity and FCA activity are not so clearly defined. For example, most mortgage brokers hold C,D,E and H categories on their CCL to allow them to be compliant when undertaking their core mortgage activities. The CCL is not generally held to allow them to provide additional or alternative products and services.

A mortgage broker who acts as an AR of a Principal firm operating as a network would be left in the position of being an AR for their mortgage but entering the interim permission regime due to their legal obligation to hold a CCL when discussing clients debts.

Firstly this would leave them subject to a higher regulatory responsibility than they currently hold as an AR as they would be directly subject to PRIN, SYSC and GEN. Whereas these are currently applied to the Principal firm not the AR, it is the Principal who then takes regulatory responsibility for the ARs.

Secondly, once under the interim permission regime these ARs would be either required to obtain full authorisation for the relevant Consumer Credit activities or be required to become AR of a Principal firm authorised for the relevant consumer credit activities. Both scenarios could impact on the principal authorised firm for their mortgage permission as It may not want the regulatory uncertainty of having an AR firm that is a part authorised firm or who is also the AR of another network for an authorisation that is a requirement to undertake the primary mortgage activity.

Thirdly, it is unclear how networks would then control those AR/Part authorised firms that hold authorisations for C,D,E and H, activities. The network would not have full control over the business model being operated. Whereas some AR/part authorised firms may hold the authorisation merely as a technical facilitation to operate as a mortgage broker, others may then extend further to offer a suite of product and services permissible under the C,D,E and H consumer credit categories.

5. What are your views on the proposed approach for dealing with those currently covered by group licences?

No comment – Our members are not covered by group licences

<u>Scope of regulation</u>

6. What are your views on the Government's proposals for scope of regulation, including changes in respect of credit intermediation, tracing agents and credit reference agencies?

We support the proposal to bring together credit brokering and credit intermediation. This will provide better clarity to consumers, industry and the regulator.

Our members do not act as tracing agents or credit reference agencies so we have not commented further.

7. Are there any exemptions that are to be carried forward that should be reconsidered?

No comment

8. What are your views on the proposed new activity to capture the activities of peer to peer platforms?

No comment.

9 Do consultation respondents have any data on the activity of lead generators in the debt management sector? What detriment is being cause by these firms? And what are your views on a suitable regulatory response?

No comment

Enforcement and redress

10 What are your views on the Government's proposal to repeal many of the criminal offences in the CCA and make breaches of these requirements, once in rules, subject to the FCA's enforcement toolkit?

Moving consumer credit activities out of primary legislation and into the rulebook of an independent regulator is a form of de-regulation. However, for the FCA to meet its core objectives it will clearly need to be able to supervise firms undertaking consumer credit activities in an appropriate manner. FCA's enforcement toolkit has been substantially enhanced from that of the FSA's. We would consider that the new FCA has sufficient resource to take action where appropriate if the Government repeals the criminal offences in the CCA and makes breaches of the requirements subject to FCA enforcement

Interim permissions

11. What are your views on the proposed interim permissions regime?

The constricted timeframe given to this consultation process means that interim permission regime is now essential. The debate about whether an alternative

process would have yielded a better outcome of consumers, industry and the regulator is largely now irrelevant

Greater clarity needs to be given to the timeframe and process by which firms will progress through the interim permission to full authorisation.

We do have some concerns about what will happen to firms once they have entered the interim permission regime and how firms that wish to proceed as ARs will manage this transition. Great clarity on the how existing AR mortgage brokers and their Principals will be treated in this process would be welcomed.

12 If you are operating a peer to peer platform and do not hold an OFT licence, what are your views on the transitional arrangements for peer to peer platforms?

No comment

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