Association of Mortgage Intermediaries' Response to FCA's Consultation Paper – CP13/14 Regulatory fees and levies: policy proposals for 2014/15

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 to FCA's CP13/14 - Regulatory fees and levies: policy proposals for 2014/15.

We are concerned that following various roadshow events the FCA has seen fit to produce revised proposals on fees which whilst welcome, appears a rushed response without proper consultation and consideration. Indeed the lack of discussion pre-consultation on the CCL fees and related aspects is at odds with the recent advances made on a range of issues with the new FCA. The lack of proper time to review such issues and the amendments does compromise the principles of good regulation. However we have responded within the confines of the limited time available in the spirit of working together.

Introduction

AMI's long held view is that, in relation to first charge mortgage broking, the existing CCL requirements represent a layer of duplication and a regulatory burden that is unnecessary. The recent changes in the MMR rules to be implemented in April 2014 and the changes that will be required following implementation of the EU Mortgage Credit Directive have only strengthened this view.

We accept that prior to FSA's mortgage regulation commencing in October 2004 such requirements may have been relevant. However, the MMR rule changes due in April 2014 enhance or revise the existing MCOB requirements meaning that the previous consumer protections given by OFT under the CCL will be superseded.

Technically under FCA's rules mortgage brokers do not need to hold a CCL to transact first charge mortgage business. However, the reality is that due to the discussions and fact finding activities that must be undertaken, OFT has been of the view that firms should hold a CCL.

OFT has always contended that the required CCL categories are C, D, E and H. OFT currently provides examples of categories typically applied for by particular types of business. The example most relevant to mortgage brokers is that given for IFA's. The OFT guidance states that:-

"An IFA typically sells bespoke financial products, on behalf of lenders, and may act as an appointed representative. Almost all appointed representatives need their own licence, for example, to use their own business premises or own trading style. An IFA and/or a mortgage broker may also need to be authorised by the Financial Conduct Authority before they can obtain a consumer credit licence.

The following sets out the categories typically applied for, including a summary of the guidance provided by OFT:

<u>Credit brokerage (C)</u>

If you introduce any individual to a third party so they can obtain credit then you need this category. An introduction does not depend upon the broker forwarding the application to the lender. It is also credit brokerage to introduce people to other credit brokers.

It is important to remember that an 'individual' under the Consumer Credit Act 1974 may be a sole trader or small partnership as well as a consumer.

Introducing people to lenders or other credit brokers for the purposes of obtaining a first charge mortgage is now generally regulated by the Financial Services Authority (FSA).

<u>Debt adjusting (D)</u>

Category D is normally required by businesses involved in challenging existing credit agreements or take over obligations to discharge debts.

You may offer to negotiate with creditors on someone's behalf - if you do, you may need this category. You may need this category if you will engage in any other similar activity concerned with the discharge of a debt.

<u>Debt counselling (E)</u>

It would be unusual for any business to adjust a client's debts without having counselled or advised them about it first. It is expected that both categories D and E are applied for in such circumstances.

You may need this category if you will discuss repayment of existing debts with your clients, for example, discussing paying off outstanding credit card balances.

Credit information services (H)

You will need this category if you will take steps to check the financial standing or credit ratings of clients, such as contacting the credit reference agencies for information on your clients' behalf. You may also need category H1 - 'Credit information services - including credit repair'.

It is a criminal offence to carry out credit repair services if your licence does not include category H1. Credit repair includes the altering of, or securing the omission of, information about an individual's financial standing and/or seeking to restrict the availability of such information, such that an agency stops holding it or does not provide it to another person."

http://www.oft.gov.uk/OFTwork/credit-licensing/do-you-need/examples/#.UsrHivRdVgl

Accordingly, mortgage brokers have accepted the need to adhere to the statutory requirements and hold the CCA licence. As this was relatively inexpensive until recently, and there was no onerous application, reporting or supervisory aspects it did not add significantly to firms' regulatory burden.

MMR and the EU Mortgage Credit Directive

Our belief that the rules and guidance provided by FCA in the MMR already requires firms to consider credit commitments as part of the lending process - MCOB 11.6.10R, furthermore discussions about debt consolidation are covered by MCOB 4.7.6R.

In addition, the other credit brokering activity that a mortgage intermediary undertakes will be referring a client to a second charge broker (if a second charge loan is considered to be more appropriate than a remortgage or further advance). However, once the EU Mortgage Credit Directive is implemented our understanding is that first and second charge mortgages will come under the same regulation and will be considered as part of the same relevant market. As such the first charge mortgage broker would be able to consider second charge mortgages and should be able to refer to another authorised firm under their general mortgage authorisation.

Income from Consumer Credit activities

Mortgage brokers do not normally derive an income from holding category C, D, E and H licences. If asked to apportion the amount of income attributed to these activities most brokers would not consider that any income is generated from holding these categories. Most mortgage brokers would consider that the CCL was held to satisfy a legal obligation under the CCA. Whereas most other types of firms involved in such activities as Debt Counselling (E) and/or Debt Adjusting (D) would hold these categories to permit them to act in these areas to facilitate an income generating activity.

AMI considers that with the development of the new MCOB rules via MMR the CCL requirements do not offer any enhanced consumer protection over and above that provided in MMR.

We are concerned that in migrating to the new FCA CONC model, former OFT staff are advising that those advising on mortgages will have to continue holding the permission to cover the following categories:

- Credit brokering (C) = Straightforward
- Debt adjusting (D) = Complex
- Debt counselling (E) = Complex
- Providing credit information services (H) = Straightforward

We do not consider the work done by mortgage brokers when talking to customers about their existing committed debts meets the more complex definitions of Debt adjusting and Debt counselling, rather the work meets the activity set out in the limited permission category as defined in the consultation.

Furthermore unlike pure debt management firms, mortgage brokers would be unlikely to attribute any income to Debt adjusting and Debt counselling. Indeed, it is likely that many brokers will not attribute any income to their consumer credit permission therefore we contend that they should not be caught by any minimum annual fee.

The previous scope of any exemption for broker firms should be extended to all those activities relating to regulated mortgage activities. Firms that undertake other consumer credit activities alongside their mortgage business will still be required to hold a Consumer Credit permission. For example secured loans in the short term, arranging unsecured credit or undertaking primary debt management activity.

Our view is that mortgage brokers should not be required to enter the full FCA regime for consumer credit. We believe that such an exemption could be adopted from 1 April 2014. However, brokers would still be required to hold a CCL when referring on clients for a second charge loan as second charge will not become fully authorised until after the EU mortgage directive is implemented.

There would also be the issue of whether an interim regime rebate would be due for mortgage brokers should it be decided by FCA that they did not need to enter the interim regime. However, the number of first charge brokers who would not want to hold the ability to refer a client on for a second charge loan, for the sake of a £245 interim regime fee, may be marginal.

<u>Conclusion</u>

The requirements set out in sections 1.9 and 1.10 of the paper state that fees should not influence firms' behaviour nor interfere in the market or distort competition.

We have not had the opportunity to look at how we define where intermediated advice, where no consumer credit income is generated, should sit in the new land-scape versus those who undertake full debt servicing. We have yet to see FCA consult on what comprises debt administration, debt counselling or debt adjusting and how far a mortgage broker is involved in that activity in recommending consolidation into a mortgage or not. There has been no amendment to PERG to provided additional guidance to what is currently stated in the RAO for consumer credit. We believe that PERG must capture consumer credit to provide clarity for firms.

What has become clear is that many firms had held OFT based Consumer Credit Licences across a range of categories as they were simple and cheap to obtain, lasted for life and only recently had they been subject to a fee every five years. In the world of mortgages, firms held these to meet their legal requirements and they had not worried about the technicalities as the FCA principles and MCOB rules governed their activity. Moving to the new regime brings steeply different cost for activity that is very marginally captured.

We are concerned that the complexity and costs of acquiring the new permission and the annual fees being considered risk destabilising this part of the advice market. The proposals as drafted are so costly that they risk firms not applying for the permission and avoiding discussing existing debt with consumers. This cannot be the intended or best outcome.

Accordingly AMI requests the opportunity to meet with the relevant teams at FCA to discuss these matters and arrive at more balanced conclusions.

Questions

Q1: Do you agree with our proposals for consumer credit application fees?

No.

In undertaking their current role it is acknowledged that mortgage brokers need to hold a CCL and pay the fee to migrate to the FCA interim permission, although we have questioned the interpretation of the new Regulatory Activities Order and are not wholly convinced by the regulators response. We consider that the RAO can be interpreted to provide the exemptions we suggest in this response.

The new FCA regime means that those authorised as mortgage intermediaries might need the interim permission to either undertake or refer both unsecured and second charge lending. We consider that the existing FCA principles, MCOB rules and guidance should avoid the need for holding the permission on debt counselling and debt adjusting areas.

Accordingly, whilst the interim regime is in place, the permission is "beneficial".

However once we reach a further point, (post directive implementation), decisions to lend, arrange debt restructuring or negotiate payment plans are not with the intermediary, unless they are specifically running a business in that sector and would therefore need the relevant permission.

It is intended that second charge lending and intermediation will be brought within the mortgage permission.

So we can see no case to require the Consumer Credit permission for brokers only involved in first or second charge where they only discuss or consolidate unsecured debt.

If this is not permitted by the RAO we consider it should only be the "limited permission" with the reduced application fee and the annual levy should be on three tariff levels, based on the apportioned annual income

- £0. Free
- £1 to £50k minimum fee
- In excess of £50k tariff as required

We would welcome the opportunity to discuss this further with FCA

Q2: Do you agree with our proposed charge of £3,500 per type of agreement submitted for a consumer credit validation order?

No comment

Q3: Do you agree with our proposed structure for periodic (annual) fees for consumer credit firms?

No**.**

In these proposals FCA has assumed that the consumer credit categories held by firms directly relate to the income streams of those firms' business models. However, under OFT, mortgage broker firms were required to hold a CCL with categories C,D,E and H (see IFA example[1]). These categories were held purely to meet a regulatory requirement, rather than as a reflection of any income stream attributed to the firms activities. Mortgage brokers obtain their income through their main mortgage activities and some from subsequent insurance activities. Mortgage brokers pay their regulatory fees through the A18 and A19 fee blocks based on their income. They do not act as debt management firms, so attribute no income from holding CCL categories D and E. We can see no case to require the Consumer Credit permission for brokers only involved in first or second charge where they only discuss or consolidate unsecured debt.

If this is not permitted by the RAO we consider it should only be the "limited permission" with the reduced application fee and the annual levy should be on three tariff levels, based on the apportioned annual income:-

- £0. Free
- £1 to £50k minimum fee
- In excess of £50k tariff as required

[1] http://www.oft.gov.uk/OFTwork/credit-licensing/do-you-need/examples/#.Uq88BPRdVgk

We would welcome the opportunity to discuss this further with FCA

Q4: Do you have any comments on our draft definitions of consumer credit income and proposals for reporting the data?

We agree with the proposed definition of consumer credit income. However, clarity should be given on how second charge will be treated post EU mortgage directive implementation. Will it be in C002 or A18? We would welcome clarity on this issue.

Q5: Do you have any comments on our proposed concessions on consumer credit fees for businesses with social objectives?

No comment

Q6: Do you have any comments on our proposed approach to the ombudsman service levy for consumer credit firms?

We support the proposal not to charge the FOS levy to firms under the interim regime. We agree that, once authorised, consumer credit firms should contribute to the FOS general levy as any authorised firm would.

Q7: Do you have any comments on our proposed approach to the Money Advice Service levy for consumer credit firms?

We support FCA's proposal that firms in the interim regime do not contribute to the MAS levy and that once these consumer credit firms are authorised, the smaller firms can benefit from the £10 minimum fee.

Q8: Do you have any comments on our proposal to create a new fee-block for firms holding client money or assets or both?

No comment

Q9: Do you have any comments on our redrafted definitions of income for fee-blocks A13, A14, A18 and A19?

We have no objection to having the three intermediary fee-blocks on the same income tariff base, providing that recovery would still be based on the AFR.

We agree that making this change could improve the consistency of data reporting and address some of the inconstancies (and understating of income) that can result from the current differences between the fee blocks. It may also help firms that report across the different intermediary fee blocks.

Q10: Do you agree with our proposed annual maintenance charge for approved reporting mechanisms (ARMs)?

No comment.

Q11: Do you agree with our proposal to require application fees to be paid by credit or debit card?

We fully support the proposal to allow payments to be made by credit or debit card.

Q12: Do you agree with our proposal to calculate the first year's periodic fee of a newly authorized firm on a monthly pro-rata basis?

We support the proposal to move from a quarterly pro-rata regime to a monthly pro-rata regime. We believe this will be fairer and more equitable to all firms.

Q13: Do you agree with our proposed technical clarifications to the FCA fees manual?

No comment.

Q14: Do you agree with our proposed amendment to the FCA financial penalty scheme?

No comment.

Q15: Do you agree that we should use the three component approach, evenly allocated, of using consumer-usage data, the five Money Advice Service outcomes and a levy based on our own allocation for 2013/14 to allocate money advice costs to fee-blocks? If not, please give your reasons and suggest an alternative.

We support FCA's view that MAS should not be funded directly in the same way as FCA's own costs are apportioned to firms.

Apportioning costs in relation to consumer usage and outcomes will always require a subjective view to be taken. This is because there may be underlying reasons which have led to a problem or issue materialising at a certain point in time or life event.

This is not to say that the costs should be related to the cause of any issue but that certain financial transactions will illuminate issues which may have previously remained dormant or supressed. Furthermore, other life events may impact on the outcomes of consumers.

It is important that MAS does not ignore the impact of other sectors and firms, which are not caught by FCA's regime, when considering the actual reasons behind the consumer contacting MAS.

Overall we support the mixed three component approach taken by FCA in relation to MAS funding. However, we are still of the view that the third Annual Funding Requirement (AFR) component is not a good method for providing a fair and transparent reflection of MAS's costs but we accept the reasons why MAS feels the need to include this component at this stage.

We support the proposal to retain minimum fee at £10 and the decision not to charge any MAS levy to Consumer Credit firms in the interim regime.

Q16: Do you agree with how the consumer-usage data has been mapped to Money Advice Service fee blocks? If not, please give your reasons and suggest an alternative.

We agree that the reasons for consumer contact may be more complex than the simplified approach adopted. Furthermore the reasons for contacting MAS about some of these issues may not directly relate back to the activities of those firms in the A18 fee block. However, having being part of the earlier discussion with MAS we accept that in using this method to allocate costs it is very difficult to construct a concise and unique set of categories without there being a need to bundle certain consumer usage together.

MAS usage may be driven by their focus in their advertising campaigns. We, like the Treasury Select Committee, remain unconvinced why MAS is advertising in the regulated advice space so generating demand in complex areas. Accordingly whilst we accept the principle of applying input and output data there needs to be more control exercised over the Service focussing on "soft areas" to meet their volume and engagement targets which will also skew the charging.

We have not suggested an alternative method of mapping the consumer usage data to the MAS fee blocks.

Q17: Do you agree with how the consumer outcomes have been mapped to Money Advice Service fee-blocks? If not, please give your reasons and suggest an alternative.

We broadly agree with the allocation of outcomes.

Q18: Do you agree that the debt advice costs should take account of both total lending and write off levels, on a 50% basis for each, and mapped to A1 and A2 feeblocks? If not, please give your reasons and suggest an alternative.

No comment.

AMI
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