



Association of Mortgage Intermediaries' response to European Commission's call for evidence on the EU regulatory framework for financial services

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. Approximately 70% of all UK mortgage transactions are advised by intermediaries.

Our members are authorised and regulated 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.

Response

In the UK in April 2014 the FCA implemented its Mortgage Market Review (MMR), which introduced the value of advice and the need for consumers to obtain it as well as higher conduct standards for firms. The MMR effected many of the rules from the Mortgage Credit Directive (MCD) such as those around affordability, suitability and stress testing, and was a seismic, and overall positive, change to the mortgage market.

The remaining rules are being applied in the UK from 21 March 2016. The biggest single change to the UK is the integration of the first and second charge mortgage regimes. After years with second charge loans operating under the provisions of the Consumer Credit Act, we will now have a unitary regime for all loans on residential property secured by a charge over the land.

However for consumers, the remaining changes do not appear to add any real protections or benefits, and in some cases we will see consumer detriment.

Specific questions

Issue 3 – Investor and consumer protection

Please specify whether, and to what extent, the regulatory framework has had any major positive or negative impacts on investor and consumer protection and confidence.

All of our examples relate to the Mortgage Credit Directive. Our concerns fall into three areas:

1. Prescriptive rules not in consumers' best interests
2. Absence of rules likely to lead to consumer detriment
3. Regulatory burden resulting in lack of competition and consumer detriment

1. Rules too prescriptive

A significant proportion of advice on first and second charge mortgages in the UK is provided by telephone and via online portals providing a range of product solutions. The UK Mortgage Market Review set a fine line between what constitutes giving information and providing advice. In conversations between advisers and consumers, only limited information can be given before it becomes an advised process, which can start as early on as carrying out a consumer fact find. This is even more restricted for lenders who will almost always only be able to give advice, due to their restricted product range. A distinction will not usually be made to consumers when the process becomes advised as intermediaries will begin the conversation as if it is advice. In the UK we have found that good oral disclosure of key issues is preferable to tangible disclosure. The prescriptive rules on tangible disclosure mean that if a customer doesn't have or discloses an email address, the adviser will have to break the telephone call in order to send the required information by post. This will lead to a disjointed customer journey which cannot be in their best interests. Whilst appreciating the benefit of the consumer being informed of core facts about who they are dealing with and the basis of the "advice", we do not consider that this **tangible** disclosure before commencement of the process provides benefit that outweighs good oral disclosure.

2. Absence of rules

The lack of any rules relating to pipeline cases will broadly mean that if a mortgage offer has not been issued by 21 March 2016 the lender and customer will have to restart the application process. This will not only cause customer confusion and distress but it will have serious implications for customers who build their own property and those who purchase newly built properties where there are tight timescales. Any delays will impact self-build customers financially and there is the risk that new-build customers may lose the home they had planned to purchase.

The European Standardised Information Sheet requires intermediaries to explain how they are remunerated, including commission payments received. The FCA in transposing these rules has prescribed that only commission paid to the firm giving the advice should be disclosed, and it specifies that no payments made to third parties should be included. We cannot see how restricting full disclosure of commission payments is beneficial for consumers. The transparency of payments between parties and their impact on the consumer is becoming a focus for all areas of financial services in the UK following a Supreme Court ruling in November 2014 which deemed the non-disclosure of the amount of commissions made the intermediary's relationship with its customer unfair (Plevin v. Paragon). We are encouraging our members to fully disclose all payments in their initial disclosure, however this mis-match with the information in the ESIS will likely cause confusion for consumers. Whilst this is perhaps an unintended consequence of MCD, the lack of prescription in the rules has led to the UK regulator transposing this to the detriment of consumers.

3. Foreign currency mortgages

The onerous requirements imposed on lenders offering foreign currency mortgages to track currency fluctuations has already resulted in many UK based lenders announcing they will no longer offer these to customers. Only four lenders have confirmed they will continue to offer these mortgages from March next year. Four larger lenders have already decided to cease such lending. Not only are we starting to see less competition in this particular market but also potentially significant damage to consumers from the lack of availability of this product. This is particularly prevalent in Ireland, where individuals will reside in Northern Ireland but work in the Republic of Ireland, or vice versa, as well as in the oil and gas industry in Scotland and individuals in London employed by an overseas parent often with US Dollar earnings.

Whilst we understand that the requirements were introduced with the aim to protect consumers from the risk of fluctuations in currency, in reality the reaction from lenders is leading to more consumer detriment as many consumers will have little or even no choice in getting a mortgage, particularly if they fail to meet the limited number of lenders' criteria.

Please provide us with supporting relevant and verifiable empirical evidence for your example:

Except for the examples provided above, we are unable to provide further evidence as the MCD does not come into effect until 21 March 2016. These are however issues where consumer detriment is likely.

If you have suggestions to remedy the issue(s) raised in your example, please make them here:

We believe removing the requirement to give tangible disclosure before commencement of the advice process will aid the customer journey and we do not see it providing any additional benefit to the substantial oral disclosure that is already required.

Adding an allowance for pipeline cases would have mitigated potentially significant consumer detriment for new-build and self-build applications however we understand it is too late to do this.

Prescribing full disclosure of commission payments in the ESIS would enhance transparency, minimise confusion for consumers and would reflect recent court rulings.

With regard to foreign currency mortgages we would like the Commission to consider the ability for consumers to opt out of the protections afforded where they acknowledge they have been fully informed of the risks, but still wish to proceed.