Association of Mortgage Intermediaries' response to FCA future Mission

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 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.

Introduction

We welcome the publication of this document and invitation to input into the debate on the FCA's role. We believe this is a positive first step to what we hope leads to more open and collaborative regulatory thinking. We would like to note that we believe there are many positive actions that the FCA has taken which are not addressed in our response, such as the consultation process during the Mortgage Market Review (MMR) and the latest pre-consultation paper discussions on the Financial Services Compensation Scheme (FSCS) structure and levies, and this is due to the nature of the questions asked and focus of the paper.

One of the FCA's focuses has quite rightly been on the culture in UK banking, recognising its significant role in the financial crisis and as a cause of many failings within firms. In the same way, we believe the culture within the regulator affects how it understands the industry, drives the actions that it does and does not take, and ultimately questions the effectiveness of its role. The FCA chief economist last October referred to 'good' culture within a firm involving a shared belief – and pride – in the importance of delivering value for clients, emphasis on long-term relationships with clients and business partners, and a habitual practice of acting with honesty, prudence and personal accountability within the company and with outside stakeholders. Many of the concerns that we raise in this document stem from what we would perceive as a lack of good culture within the FCA.

Another important issue is the need to convert words into actions. The FCA has in the past made statements and pledges which have not materialised. For example, in its December 2014 strategy it acknowledged the need to tackle inefficiency and remove duplication by making better use of the significant amounts of data it collects and by sharing resources within the organisation. However last year the FCA imposed further data requirements on firms relating to complaints so it could reduce its own administrative burden. Firms also continue to receive ad hoc requests for data already held by the FCA, thereby incurring avoidable additional expense.

We agree with most of the beliefs set out by the FCA in this Mission document, however our concerns are around how these are put into practice.

Key concerns

We believe the FCA culture is affected by a number of factors:

Skewed emphasis on provider relationships

As raised by the consumer lobby in the Mission conference, we support the view that providers have too much influence on the regulator. This stronghold has a fundamental impact on the work carried out by the regulator, not least the lack of intervention in the collapse of HBOS and the failure to effectively address Payment Protection Insurance (PPI) mis-selling and mis-handling of complaints.

It's been nearly three years since MMR and there is still an issue with borrowers being unfairly trapped in their existing mortgage. Throughout 2014 lenders were criticised for failing to implement the FCA's transitional arrangements and during this time we saw the regulator stopping short of enforcing its own rules, despite pressure from politicians, intermediaries and consumer groups. Lenders later started hiding behind the changes brought in by the Mortgage Credit Directive (MCD) but were denying borrowers' access to products or lower rates which would still have been allowed under the rules. Rather than apply any pressure on lenders to achieve good consumer outcomes, the regulator emerged by their side announcing an "improvement" in lenders' approaches. Our firms continue to experience borrowers being prevented from accessing more suitable products yet this issue continues to be ignored. The impact on mortgage prisoners will only worsen when interest rates rise, and by which time any action will be too late.

The mortgage market study seems to be heading in a direction which has been led primarily by lenders' responses. This has been evident in both the feedback statement and terms of reference. The competition team seems to see intermediation as detrimental for consumers as it layers cost into the process. It continues to ignore the complete picture when raising concerns around intermediaries using panels of lenders and its impact of consumer access to products. It does not appear to recognise that intermediaries give consumers a wider choice of products than lenders, who are essentially a panel of one. In addition, the FCA does not appear concerned by this shift in the mortgage market by lenders to encourage product transfers often without advice at the point of remortgage. The terms of the study omit this section of the market, with industry estimates putting the annual gross lending figure for product transfers between £80 billion and £100 billion. This is more than a third of the entire residential mortgage market and the FCA does not seem interested in reviewing this or mandating it to be recorded. The force for good from an intermediated market has not merited any positive comment.

The industry discussions leading up to the implementation of MCD led to what we thought was an appropriate and balanced approach by the FCA. However, following evident pressure from lenders, last year we saw two consultation papers where the regulator backtracked on its MCD rules by reducing disclosure requirements for lenders. During the MMR and its subsequent implementation, the concept of a level playing field for firms and the principle of a consistent consumer journey and protection lay at the heart of the rules. These recent changes removed protections which only benefited lenders to the detriment of consumers. It is concerning that the FCA allows lenders to change how they give advice in order to further their commercial interests.

Value for money

There continues to be poor control over resources, such as the £3.2 million wasted on unused software licences. Despite the Davis enquiry and subsequent concerns raised by the statutory panels and Treasury Select Committee, there is still an unnecessary focus on a communications strategy and public relations. The 'Live and Local' roadshows are an example of how firms are not getting value for money. Despite paying regulatory fees, firms are invited to attend these events to pay more to speak to a supervisor. With the changes made to the supervisory structure hardly any firms now have a dedicated supervisor, so firms will see this as their only opportunity to speak to the regulator. Perversely a firm who wants to launch a new technology based product or service receives direct support to help it meet its regulatory obligations.

At the same time the FCA has been reluctant to speak at certain industry events, thereby concentrating on their own paid-for roadshows. Furthermore, the regulator does not appear to understand that their audience is the principals of firms, as the ones who are authorised and are fee-payers, not individual advisers. The organisation of these events and invitees to many of its industry roundtables do not reflect this understanding.

We remain concerned that we see many firms exercise their corporate right to limited liability, but re-appear operating a very similar regulated business under another name with apparent impunity. Responsible firms find this difficult as they are paying for these "failures" if there has been poor advice or mis-selling. The FCA should be spending its resources on such fraudulent firms. The FCA does not take sufficient steps in identifying these cases early enough or taking appropriate enforcement action. The fact that this is happening shows that regulation is not effective, which may explain why the FCA is shying away from this issue. The regulator needs to stop being protective of its reputation and ensure those who led firms that end up with significant legitimate claims in FSCS do not practice in future.

The National Audit Office has previously set out the need for better accountability and co-ordination, but the FCA has continued to add cost to firms without enough accountability for its own failings. The Senior Persons regime will be extended to intermediaries and with the change in the supervisory structure, firms are becoming more responsible for their own supervision therefore we do not see how annual increases in fees can continue. AMI is of the view that the FCA should be tasked with reducing its annual budget or at worst its budget should be capped with any increases limited by the rate of consumer price inflation or less. Having such a cap in place would not just provide greater certainty for regulated firms but it would also help the FCA to be more efficient by encouraging it to prioritise its resources to meet its budget, rather than setting its budget based on its needs. Effective cost controls should be a driver to producing good outcomes in line with its core objectives. This would limit regulatory creep and ensure that the focus is on the areas of greatest consumer or systemic risk. Organisations without clear cost controls are rarely cost-effective in the way they operate. The FCA expects such focus and clarity in the firms it regulates and it should be no different. We consider that although their statutory duty is to the consumer, as it has to regulate with consensus, it must take into account a limitation on firms' abilities to pay.

Specific questions

Q1: Do youthink our definition of a well-functioning market is complete? What other characteristics do you think we should consider?

The Senior Persons regime should make it clear that lenders produce suitable products that perform as described, intermediary firms understand these products and advise on them appropriately. The respective firms and their principals are responsible for their own parts in that. We should avoid contagion and keep responsibility clearly apportioned. In the mortgage market however we have seen lenders take action against intermediaries where they believe the intermediaries have not met their regulatory obligations.

We would welcome clarification on the FCA's expectations around manufacturers controlling distributors, including whether it is appropriate for a manufacturer to deem the distributor as less than competent if they are approved themselves. There are also several references in the Mission to 'providers' but it is unclear whether this relates to product manufacturers as we would expect, or if a 'provider' of advice would cover both lender and intermediary.

We believe that the cost of regulation should be more focused on product manufacture rather than on its distribution as ultimately the responsibility for the product, including its costs and target market, lies with the manufacturer, as emphasised by the European Banking Authority guidelines on product oversight and governance.

Q2: Do you think our approach to consumer loss in well-functioning markets is appropriate?

Yes but in practice this approach is not always taken. For example, while the FCA has been clear that a customer's desire to consolidate debt is not sufficient justification on its own for the mortgage advice, its supervisory approach is close to crossing policy boundaries. Advisers should indeed have comprehensive conversations to be able to make recommendations in the customer's best interests, but these should not be political. The regulatory feedback from the targeted work on debt consolidation suggested that it is only appropriate for customers to consolidate debt if they have no other financial choice. However firms should not be expected to discourage those customers who prefer to consolidate debt even when there is clear affordability. Advising on a customer's lifestyle is a step too far and certainly outside our interpretation of the regulatory boundary.

Q3: Do you think we have got the balance right between individual due diligence and the regulator's role in enforcing market discipline?

The fact that a firm is regulated should not be the sole threshold for consumers to have confidence. Consumers may think that this is a sufficient safety net but will be unaware of the practical implications. As recognised by the FCA in its post-MMR thematic, it is a common behaviour that consumers will not always know if they are receiving advice. They will therefore be unaware of the loss of protection from the Financial Ombudsman Scheme (FOS) and the FSCS where they opt for an execution only approach. In order to minimise consumer detriment the regulator should be enforcing greater transparency for consumers in transactions where advice is not given.

Similar disclosures and clarity should be given to consumers when a regulated firm sells an unregulated product. While consumers are aware of the protections of regulation they do not directly see the cost. It is for this reason that AMI supports a move to product levies which could be made obvious to the purchasing consumer, so that they are aware of both the cost of the FSCS and other regulatory protections and clear when a product has that protection.

Q4: Do you think the distinction we make between wholesale and retail markets is right? If not, can you tell us why and what other factors you believe we should consider?

Yes although we would question how the regulator deals with these markets when things go wrong. We cover this elsewhere in our response.

Q5: Do you think the way we measure performance is meaningful? What other criteria do you think are central to measuring our effectiveness?

A base measure should be the number of firms that fold into the FSCS, the number of claims made and the amount of compensation paid. Whilst there should be an acceptance that firms will fail, the focus should be on the reasons why they fail and looking at those responsible, particularly if they reapply for authorisation or reappear in another regulated entity.

The cost of operating what should be a simpler regulatory model continues to escalate. In the last few years where AMI has asked for support from implementation teams on the phasing in of consumer credit regulation, the impact of MCD on adviser firms, on the underlying trends from the MMR thematic review and on specific consumer issues arising from remortgaging we were told that these cannot be resourced or were not a high enough priority. It took almost twelve months to find a resource to undertake the mortgage examination syllabus review which all in the industry agreed was long overdue, however this resource when delivered was external.

We consider that the regulator has misinterpreted their competition objective, taking this further than needed as set out in the legislation. The perspective that it was a standalone task which competes with the Competition and Markets Authority, not a key aspect to be considered in wider work, was and is a surprise. The belief that promoting technology is part of this objective has also been misguided. Resources have been apportioned to assisting creative projects when the regulator should be more focused on fraudulent firms harming consumers. The volume and scale of the market studies undertaken since the competition objective was incorporated appear disproportionate compared to the activity, when compared to the number of regulatory failures. It reinforces the concerns that the departments within the regulator are working in silos and there is a lack of planning and prioritising markets over a measured timeframe. The mortgage market is a prime example where the timing for the market study is not only poor for firms but likely to draw ineffective results with a recent succession of regulatory and legislative changes still being embedded. Furthermore it seemed illogical to decide to investigate a market that is highly competitive and ignore the real issues facing consumers today. There appears less energy on tracking down and bringing to justice all those involved in those firms that have failed in the last six years and occasioned huge calls via FSCS, than in promoting technology and competition.

Finally, we see resources being wasted in the production of certain Occasional Papers which opine in a fairly detached way on the issues that traverse our market. Asking lots of questions is not a solution – we need less fence sitting and more planned solutions.

Q6: Do you think the way we interpret our objective to protect and enhance the integrity of the UK financial system is appropriate? Are there other aspects you think we should include?

We agree that the FCA is taking all the necessary actions in its operational objectives, however where there is consumer detriment from unregulated activities we don't believe that this is being done effectively.

Q7: Do you think our intervention framework is the correct one?

We believe that a wider view needs to be taken, because it is not just about setting out a framework but how this is implemented in practice. In particular this centres on the staff carrying this out and the disciplines embedded within the organisation. While this paper is concerned about structure, our concern is around culture as a key driver for how the regulator is run. There is currently not enough on-the-ground supervision and enforcement work being carried out to stop fraudulent activity or to mitigate mis-selling claims that arise from the FSCS. The FCA should be concentrating on gathering more market intelligence. Plenty of work is being publicised around fines for insider dealing, yet preventing individuals from being reauthorised when they have been responsible for harming consumers does not appear to be a priority. There should not be a desire to protect a reputation but instead deal with the individuals causing these losses, even if it means admitting failure of regulation. Our interaction identifies that the FCA has many intelligent and motivated staff, but they lack industry knowledge and motivation to deal with poor firms. They appear content to write the report rather than deliver the change.

Q8: Where do you believe the boundary between broader policy and the FCA's regulatory responsibility lies?

As a core observer of market practice and behaviour, we consider that FCA should try to input and influence public policy. However this should be based on the outcomes of its activity, not by employing a large government affairs and public relations function and resource. This should be a natural extension of the activity of its Board and Exco team, not more people.

There needs to be joined up thinking among the regulatory bodies with a strategic overview of how the structures are working. We understand how the former Chancellor thought it wrong that banks should benefit from fines levied on their peers, so sequestered the funds for charitable benefit. If he had limited this to banks it would have been fair. By taking this from all authorised firms, the benefit of fee reductions to good firms from the fines on bad has been lost. The good firms have lost out in business to those who cheated and have to pay a second time for compensation with no fee reduction where the FCA has caught up with the bad firms.

We agree with stripping the banks of the benefits within that sector, but not the small advice firms that have bought into FSCS, with the concept that offset from the bad would reduce their bill. If firms cannot have their money back, then we need a new contract that is based on a fairer system so that the toxic products have paid towards their solution.

Q9: Is our understanding of the benefits and risk of price discrimination and cross subsidy correct? Is our approach to intervention the right one?

We agree that the understanding is broadly correct and we think there is the right balance within the mortgage market. The mortgage market study however seems to be concerned with product complexity. While mortgages have many features, the vast range of products matches the greatly differing and complex needs and circumstances of consumers. Because there is also often a choice of suitable products, prices are competitive. By delivering this wide range of products based on such variables as LTV, individual risk profile, employment characteristics or type of property, the rate can be varied according to risk meaning there is less cross-subsidisation.

Q10: Does increased individual responsibility increase the need and scope for a greater and more innovative regulatory response?

The delivery of the Senior Persons regime is a requirement to document and clarify roles and responsibilities making it easier to take action against individuals in firms. For those firms that behave responsibly, this does not add significant cost or risk. Therefore we do not see any need for a new response.

We consider that more use should be made of Evidential Provisions in areas where firms need to be encouraged to conform, such as MCOB 11.8.1 which sets out examples of how a lender will breach a Principle. As the burden of proof using Evidential Provisions is greater than Rules, they have a different impact on firms' behaviour. In addition the reluctance to provide guidance requires review as this is not helping good firms ensure that they deliver the best cost effective outcomes.

We disagree with the belief that it is the regulator's role to promote innovation. We believe the regulator should not discourage innovation, but it should not be segmenting firms with new technological solutions and giving them easements from the rules. We do not believe there should be any deregulation around firms having less liability for the advice they provide.

Q11: Would a Duty of Care help ensure that financial markets function well?

We understand why this question is being asked but the issue is around which firms lack the moral compass to be able to understand their existing legal and ethical responsibilities. Intermediaries understand that they have a duty of care to customers. If providers do not understand this from legislation, the FCA rules and principles of treating customers fairly, integrity etc., then the problem lies with their culture and not understanding their responsibilities to customers. We don't believe that gold-plating a duty of care into the FCA rules will change this. It is particularly inappropriate to consider this in light of the requirements under the Senior Persons regime. Duty of care is an overarching legal obligation and there has been the understanding that firms need to be aware of both their regulatory and legislative responsibilities. It would not be efficient to now start transposing some aspects of law into regulation.

Q12: Is our approach to offering consumers greater protection for more complex products the right one?

In theory we agree but it depends what protection means. Although the Mission refers to communicating the limits of FSCS protection to consumers, we do not think this goes far enough. With activity relating to mis-selling of unregulated and risky products, it should be clearer to consumers if they will not be protected by the FSCS. Higher fees for risky products or where Professional Indemnity Insurance (PII) excludes them means that the firm should be deterred from poor behaviour.

Where fraud has occurred the FCA should be identifying these cases earlier and taking enforcement action. Directors of these companies reappear in other firms, often passing FCA authorisation again despite previous mis-conduct. As proposed in the FCA's consultation on reviewing the FSCS, we agree that the FCA should be collecting more data on the types of investment product being sold to be able to identify high risk firms.

Q13: Is our regulatory distinction between consumers with greater and lesser capability appropriate?

Yes.

Q14: Is our approach to redress schemes for issues outside our regulatory perimeter the right one? Would more specific criteria help firms and consumers?

The FCA should be mindful that consumers will ultimately only feel they're protected if they get their money back, so they will be satisfied if they win and not if they lose. We do not view PPI redress as an example of a successful redress scheme considering the length of time it has taken and the continued reluctance by the regulator to make decisions as we still await the final rules in respect of Plevin to be confirmed (and we are concerned that over £400,000 has already been spent on a PPI deadline campaign before the issue of this policy statement).

We believe the regulator needs to be more assertive in taking the right actions in the interests of consumers rather than withholding because of potential legal ramifications.

It needs to be clear for both firms and consumers which products and which advice is regulated, and what compensation is available in each circumstance. Regulated firms cannot continue to pay for the poor behaviour relating to unregulated advice or products. The gradual shift over time of the FSCS being the first point of redress rather than effective PII is evidence of more firms either setting out with the intention of failing or it being too easy to exercise limited liability but remain in the industry.

Q15: What more can we do to ensure consumers using redress schemes feel they are receiving the appropriate level of personal attention?

No comment.

Q16: Is our approach to giving vulnerable consumers greater levels of protection the right one?

We are fully supportive of giving vulnerable consumers greater protection and believe the Occasional Paper is useful guidance for firms. This paper merited higher status. However there remains an issue for firms identifying when a customer becomes vulnerable if they were previously not vulnerable. This issue is more acute in a non-advised sale, where such customers are not being given adequate information or protection, and risks poor outcomes.

Q17: Is our approach to the effectiveness of disclosure based on the right assumption?

Disclosure is mainly about relevance. MCD was clear around ESIS that if a firm is going to rely on a specific term or condition then it needs to be expressly disclosed to the customer. This is clear cut and we believe this approach should be taken more widely.

We agree that the effectiveness of disclosure links to how it is done, particularly how a firm chooses to deliver this. We believe that nudges can be more engaging and we support encouraging consumers to shop around, as the FCA has mandated in the general insurance and annuity markets. This is currently lacking in the mortgage market and we believe that the FCA should be taking this into account as part of its market study.

Q18: Given the evidence, is it appropriate for us to take a more ‘interventionist’ approach where conventional disclosure steps prove ineffective?

We agree however in practice the FCA has not always done this. Regulatory action was not taken early enough with Keydata, as the products should have been withdrawn earlier. The FCA required firms to give disclosures but did not go far enough as it did not understand the product itself.

Q19: Do you think our approach to deciding when to intervene will help make FCA decisions more predictable?

We agree in theory but again this hasn’t worked in practice so far.

Q20: Are there any other factors we ought to consider when deciding whether to intervene?

This has been covered elsewhere in our response.

Q21: What more do you think we could do to improve our communication about our interventions?

This has been covered elsewhere in our response.

Q22: Is there anything else in addition to the points set out above that it would be helpful for us to communicate when consulting on new proposals?

We would welcome better communication of consultations, some of which are communicated with us directly but others are buried in the publications page of the FCA website.

We also hope to engage in a proper consultation process, as in the last few years we have seen many consultations in name only. MMR was a comprehensive and listening process which worked very well. We consider the current FSCS review to have operated well to date. The annual consultations on FCA fees for example feel less open.

Q23: Do you think it is our role to encourage innovation?

No and the FCA should consider realigning its priorities. The regulator should not be spending resources on initiatives to assist technology-based new market entrants. Many new firms are arguing that the regulatory rule book, capital requirements and the need for adherence through the permissions process is acting as a barrier to entry and slowing their ability to innovate. But this is caused in part by the time it takes to understand and adhere to complex rulebooks and the need to deliver complex reporting to the regulator. These start-ups, often run by non-financial services experts, have a different view of the world. The rules have developed from the need to protect consumers (from hard learned lessons of the past) and enhance integrity of the financial system. Certain rules which need updating in light of technological developments, such as methods of written communication, would of course be appropriate provided that this applies to all firms. There should not be any easements for firms who wish to bypass specific rules.

It is worrying that the FCA listens to technology firms wanting more regulatory guidance and hand-holding through their propositions, yet it takes a distant approach to most regulated firms. For these firms to have one-to-one regulatory engagement in the Sandbox while less and less fee-paying firms are afforded this privilege is unhelpful. It is a significant advantage for businesses to not need to spend resources, either internally or externally, to acquire regulatory knowledge. We would welcome confirmation of how many FCA staff are allocated to promoting innovation. Two thirds of firms who made Sandbox applications in the first cohort have not been deemed suitable for testing, therefore not needing to pay any initial fees if currently unauthorised. We do not consider this cross-subsidisation to be appropriate. It would be fairer if the cost of the Sandbox was recovered from the firms who wish to use it.

Changing rules to fit new business models could result in artificial intelligence being employed to interpret the rule book, potentially making many policy based compliance experts redundant. Also by allowing straight-through flow of product sales, the need to accumulate complex reports may be obviated. This will work really well for start-ups with no legacy or back-book. However for complex multi-product firms with legacy systems this may prove impossible, creating a real edge for new firms. A market led by virtual boutique systems, with no offices, staff or capital that can quickly evaporate cannot be in the best long-term interests of consumers. Reasoned stability based on decades of learning should not be sacrificed on the altar of innovation.

Q24: Do you think our approach to firm failure is appropriate?

A key factor that needs to be considered is how a firm has failed. If it is because a firm can no longer afford to continue trading, this can be a normal feature of the market unless there is volume suggesting a systemic cause, such as the level of regulatory fees. But where a firm fails and leaves a number of complaints and claims against it, the firm should not be allowed back into the sector. The FCA should recognise and be concerned about the difference in a firm that fails financially and one that leaves liabilities, as the latter suggests a problem with the advice or product. While hundreds of millions in compensation is being paid out we have not seen FCA taking sufficient enforcement action against firms, not seen individuals struggling to become authorised again, nor loss of statements of professional standing by the professional bodies, a key positive development of the Retail Distribution Review.

Q25: Do you think more formal discussions with firms about lessons learned will help improve regulatory outcomes?

The reduction in supervision but an increase in fees plus a string of bad communication decisions have been detrimental to engaging effectively with firms. The FCA defends that only the large firms need direct supervision because of the larger impact they have on the market, but in practice this means only a handful of firms have a specific contact within the FCA.

The rest of the firms have to contact the call centre which routinely provides contradictory or incorrect responses. But the FCA thought it was appropriate to focus on conducting 'roadshows' where firms have to pay to speak to a supervisor. This communication strategy seems to be purely money-making. The targeted work the FCA carried out on debt consolidation was not communicated more widely to firms, with responsibility passed onto trade bodies to do this initially, worsened by a refusal to talk about this at industry events. Although a workshop inviting firms was finally held some six months later, it still did not reach a wide enough audience with the FCA being scared of providing guidance.

There does not appear to be recognition of the wider impact of limited regulatory remedial work. It is of course important that the regulator ensures that firms understand their responsibilities and have the right processes in place. However when only certain firms are targeted as part of this exercise, such as the focus on networks following the post-MMR advice thematic, and there are not adequate measures taken in respect of other firms it harms the industry. It leads to advisers moving to firms which are under less scrutiny, so while the regulator believes they are eradicating these problems, the bad behaviour simply shifts between firms.

It is undoubted that explaining lessons learned will help firms improve outcomes, but we remain concerned that those that engage with FCA and trade bodies continue to raise their standards, but others lag a long way behind.

Q26: Do you think that private warnings are consistent with our desire to be more transparent?

Using private warnings is appropriate if the firm fully cooperates and does not exit the enforcement process too early or temporarily. Where someone voluntarily withdraws their permission and then re-emerges, there has to be a degree of discomfort around that process not being seen all the way through, particularly where there is a likelihood of detriment and claims.

We then see firms who have cooperated with the regulator all the way through and still get a public warning, notably one firm who was trying to provide redress for consumers when other firms had abandoned their PPI liability. This does not send a positive message to the industry for firms who are trying to do the right thing. It instead seems that the FCA is focusing on managing their PR. We understand the need to publish such actions but a choice is still being made in what is issued to the press and what is quietly published on the website.

Additional questions

The following questions were later raised in the FCA's interim statement:

How can we better communicate the choices we make?

We have covered this elsewhere in our response.

Who should be included in our definition of a vulnerable consumer? What should more protection look like? Are there vulnerable consumers in the wholesale space? If so, who?

This question seems contrary to the approach that the FCA has adopted so far. There cannot be an exhaustive list of characteristics or circumstances that make a consumer vulnerable. Firms should be able to decide when this would apply and there is already guidance with examples to help. We think it would be dangerous to set out a prescriptive definition.

In which circumstances are prescriptive rules or higher level principles more appropriate?

It should already be clear to firms that the principles are overarching and should apply to everything that firms do and rules cover specific circumstances. We do not believe any changes need to be made.

How can we best engage with 56,000 firms taking into account their different requirements and needs?

There is not an expectation that FCA can police 56,000 firms. The regulator should not just focus on large firms, but also those with a greater systemic risk.

The current supervisory framework issue is not suitable as there are only a few firms with any regulatory contact, with all other firms only being captured under thematic reviews. The former structure with four categories worked well and this was clear to firms. When FCA took over regulation for consumer credit, a fifth category should have simply been added. The FCA should not look to engage with all types of firms on the same level. Small mortgage intermediaries, whose primary business is giving regulated advice, should not be equated to small firms with a consumer credit permission that is seldom used e.g. a car dealership.

However on a simple analysis the following seem to apply. A budget of circa £503m across 56,000 firms gives an average spend of £8,982 per firm. If we think that an average FCA employee has a fully absorbed cost of £150k and works for 46 weeks then each firm (average) should have allocated to it 13.3 man days of activity each year. Even if only half of the FCA budget is spent on people, then each firm could expect 6 man days each on average. As we continually hear that the FCA cannot regulate all these firms, we are struggling to understand the value for money message having undertaken such a simple calculation. We consider that sight has been lost on the important regulatory and supervisory issues.