Association of Mortgage Intermediaries' Response to FCA consultation paper CP13/7 - High-level proposals for an FCA regime for consumer credit

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 FCA's consultation paper CP13/7 - High-level proposals for a FCA regime for consumer credit. 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.

Consultation questions

Q1: Do you agree that our proposals strike the right balance between proportionality and strengthening consumer protection?

The FCA has vastly more power and resources to supervise firms than the OFT. Clearly these powers will be used to provide a higher degree of protection and confidence for consumers.

However, we believe that these powers should only be applied where it is appropriate. There should be discernible impact on the consumer or regulatory outcomes.

One area where HM Treasury and FCA could benefit from regulatory tidying within the transfer process is the CCA requirements that first charge mortgage brokers are subject to.

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 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.

Q2: Do you agree that we have included the right activities in the higher and lower risk regimes?

The existing 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 warrant the greatest resource.

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 the 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.

In defining some firms as lower risk FCA must carefully balance the regulatory requirements for firms against the need to ensure adequate consumer protection is in place. A firm with credit as a secondary activity and/or one operating on a not-for profit basis, does not necessarily mean that the consumer will receive a better experience or that the possibility of experiencing detriment is removed.

Additionally, we full believe that regulation should not be seen as a bottomless pot of resource. Consideration must be given to what types of firms warrant the most attention and resources applied appropriately on that basis. The principle behind the two tier authorisation system, that a one size fits all approach to regulation is not an appropriate method, should be at the heart of all regulatory processes.

Q3: Do you agree that our proposals minimise the impact on competition within the regulated consumer credit market?

Yes

Q4: Do you have any comments regarding our proposals for the interim permission regime?

The constricted timeframe given to this consultation process means that interim permission regime is now essential to manage authorisation of consumer credit activities. 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 time frame and process by which firms will progress through the interim permission to full authorisation.

First charge mortgage brokers will either already be authorised by FCA or be acting as an AR of a Principal firm.

If our proposal for 'regulatory tidying' is not taken up we would see little issue for directly authorised firms to obtain an variation of permission following the interim variation of permission period.

However, the issue for existing AR mortgage brokers and their Principal firms is much more complex. This is addressed in full in our response to question eight.

Q5: Do you agree that we should apply the Threshold Conditions as proposed?

The Threshold Conditions should be applied to all authorised firms and not to those firms already acting as an AR of a Principal firm.

Q6: Do you agree that it would be appropriate for the FCA to apply the approved persons regime activities as proposed?

Yes

Q7: Do you agree with our proposal not to apply a customer function to any consumer credit activity, particularly debt advice?

It is important to clarify that second charge brokers could become subject to such regime depending on the outcome of the European Mortgage directive and how this impacts on their regulation as part of MCOB.

Q8: Do you agree with our proposed approach to appointed representatives and multi-principal arrangements?

We agree that changes will need to be made to the appointed representatives (ARs) regime to ensure that a workable system exists.

We agree that many firms currently offer credit under their Consumer Credit Licences (CCL) and insurance as an AR of an FCA authorised firms. This business model would be unworkable if the firm was not able to act as an AR for their insurance sales whilst also being under an interim permission, and later fully authorised' for the sale of credit. The proposed amendments made by HM Treasury would appear to create a workable solution by allowing firms that are subject to the interim permission regime to be directly authorised for on part of their business but an AR for another.

However, this solution may not work so well in practice where the separation between those CCL and FCA functions are not so well defined.

As we have already stated, most mortgage brokers hold C,D,E and H categories to allow them to undertake their core FCA function of intermediating mortgage products. The CCL is not held to allow them to provide products and services in addition to this.

A mortgage brokers who act 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.

Firstly this would leave them subject to a higher regulatory responsibility that 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 these ARs would be either required to obtain full authorisation for the relevant Consumer Credit activities or be required to become AR to a firm authorised for the relevant Consumer Credit activities. Both scenarios could impact on the principal authorised firm for their mortgage permission. It may not want the regulatory uncertainty of having an AR firm that is part fully 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.

Q9: Do you agree with our proposed approach to self-employed agents?

No comment – our members are not active in this area

Q10: Do you agree with our approach to professional firms?

No comment – our members are not active in this area

Q11: Do you agree with our proposal to apply prudential standards to debt management firms only?

Yes

Q12: Are there any difficulties in collecting data on the size of debt contracts being negotiated and/or the amount of client money held (as the basis for our prudential standards)?

No comment

Q13: Are there other measures that would ensure our prudential regime for debt management firms targets the firms that pose the greatest risk to consumers?

No comment

Q14: Do you agree with our proposals that the new high-level conduct requirements should apply from 1 April 2014?

As stated above we are concerned what such changes will mean to existing ARs and their Principal firms. Further consideration needs to be given to AR firms that only hold a CCL to undertake their core FCA activity.

Q15: Do you agree with our proposed approach to financial promotions?

Overall it is logical that the FSMA financial promotions restrictions are applied under the new regime. We will be responding to the consultation which is due to be published in autumn 2013. However, it is important to state that appropriate time is given for firms to amend their financial to the new regimes requirements.

Q16: Are there provisions within industry codes that you think should be formally incorporated into FCA rules and guidance?

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.

Q17: Do you agree with the different standards that we propose to apply to different types of debt advice?

No comment

Q18: Do you agree with our proposed approach to applying client asset rules to debt management firms?

No comment

Q19: Do you have any comments regarding our proposed approach to peer-to-peer platforms?

No comment

Q20: Do you agree with our proposed approach to authorised firms which outsource the tracing of debtors to third party tracing agents?

No comment

Q21: Do you have any comments regarding our proposed approach to supervision and regulatory reporting?

We agree that it would be unreasonable to expect firms in an interim permission, which may not seek full authorisation and instead become ARs (or not proceed) to adhere to the full regulatory reporting regime. As such the proposed supervisory regime is appropriate for the interim permission.

Q22: Do you have any comments regarding our proposed approach to enforcement?

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 were appropriate if the Government repeals the criminal offences in the CCA and makes breaches of the requirements subject to FCA enforcement.

Q23: Do you have any comments regarding our proposed approach to complaints and redress?

We broadly agree with the proposals

Q24: Do you have any comments on our proposed approach to tackling financial crime?

This is a wide ranging and complex issue. AMI and its members will continue to support all initiatives in this area whether they are driven by the regulator or by industry.

Q25: Do you have any comments on our proposed interim permission fees?

We full support the retention of the distinction for sole traders having a lower fee to that of a firm. We welcome the relatively low upfront fee being levied for the interim permission. However, clearly the costs of the regime will need to be paid for at a later date.

Q26: Do you agree with our proposed approach for the FOS general levy for firms with an interim permission?

We support this position firms entering the interim permission may not seek full authorisation and instead become ARs (or not proceed). Firms should only be paying into the full Compulsory Jurisdiction levy once they are fully authorised.

Q27: Do you agree with our market failure analysis?

No comment

Q28: Do you agree with the costs and benefits identified?

No comment

Q29: Do you have any comments regarding our proposed approach to second charge lending?

We welcome the decision to delay further action until the EU Mortgage Directive is resolved. Applying unnecessary regulatory change prior to the directive being finalised would be unwarranted at this time as it would create a scenario of two sets of regulatory change within a relatively should period of time.

The current proposed time frames for the resolution of the mortgage directive should still result in the work on seconds being resolved well before the April 2016 full authorisation date.

Q30: Do you agree with our initial assessment of the impacts of our proposals on the protected groups? Are there any others we should consider?

No comment.

AMI

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