



*Association of Mortgage Intermediaries' response to DCLG
Call for evidence: improving the home buying and selling process*

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.

Response

Approximately 70%¹ of new mortgages (excluding product transfers) are transacted through intermediaries, with the remaining 30% sold directly by lenders. Nearly all of these new mortgages (97%) are advised, whether that's by the broker or lender. The work carried out as part of the Mortgage Market Review introduced the value of advice and the need for consumers to obtain it. Where advice is provided, the protections afforded to consumers by the Financial Ombudsman Service and the Financial Services Compensation Scheme are tangible benefits.

Intermediaries give customers access to more products and therefore a greater choice, as lenders are only able to advise on their own products. The difference between advice from an intermediary and advice from a lender is the limitation in products, which in turn can affect the ability of the customer to obtain a mortgage and/or impact the cost of that loan. Intermediaries ensure that consumers can easily access the wider market place and their advice will ensure they locate better loan to value pricing points and loan to income affordability.

We are concerned with the opinion that commercial relationships between parties "obviously increase the costs to consumers and may hamper competition", in particular what evidence exists to substantiate this claim.

Intermediaries make the mortgage market competitive. If the majority of, or all, consumers obtain mortgage products (either advised or non-advised) directly from lenders, there is a higher chance that lenders will be less competitive. Even the former Deputy Chairman of Santander Group in evidence to the Treasury Select Committee in 2010 set out that the UK model with a high intermediary focus ensured that lenders delivered more competitive products than was the case in other jurisdictions.

¹ FCA Product Sales data October 2017

Questions

Estate agents

Q1. Should the industry do more to make customers aware of how to complain? If so, how?

Our members, like all FCA regulated firms, are subject to extensive rules regarding redress for consumers, which are enforced by the FCA. Specific requirements are in place in order to aid consumer awareness and to ensure effective complaints handling. Consumers also have access to the Financial Ombudsman Service (FOS), whose decisions are directly enforceable in court by statute.

The financial services industry has robust dispute resolution processes, with transparency to consumers the focus of how firms communicate. Ensuring such clarity for consumers who complain in other sectors is encouraged. History tells us however that voluntary industry schemes are always less effective, independent and balanced. The mortgage industry journey with the FOS has been broadly positive and works strongly in support of fair consumer outcomes.

Q2. Should the government take further action to enforce current transparency regulations regarding disclosure of referral fees? If so, what action should be taken?

Disclosure of fees is not only a requirement in financial services, but any firm that fails to fully disclose their earnings risks breaching the FCA principles of communicating information which is clear, fair and not misleading; acting with integrity; and paying due regard to the interests of customers and treating them fairly. Commercial relationships should be transparent to consumers in order to avoid any conflicts of interest. Consumer awareness is also important in order to be able to make an informed decision, which is particularly relevant in the context of *Plevin v Paragon*.

These standards should apply to firms across all sectors. It is possible that some firms are unaware of their obligations, such as under the Bribery Act, therefore we consider that the law and case law is adequate, but supervision and enforcement across the wider property transaction market may need tightening.

Q3. What would the impact be of banning referral fees?

AMI would prefer a requirement for clear and fair disclosure by all market participants to their customers of the source and amounts of money they are earning rather than the banning of such fees.

Q4. Should the government introduce more regulation for estate agents? If so, what sort of regulation would be appropriate?

The key to effective regulation is enforcement. Imposing extra requirements without dedicated resources to ensure appropriate supervision and compliance renders such efforts worthless. However this comes at a significant direct cost in terms of new resources and should require a clear cost benefit analysis based on a measure of existing detriment.

Conveyancing

Q5. What should industry do to help consumers make more informed decisions when selecting a conveyancer? How could government help facilitate this?

It is important that consumers should be able to choose their conveyancer. Some lenders offer 'free legals' as a feature of their mortgage products, which can be detrimental for consumers. It is an incentive for consumers to use a lender's chosen conveyancer, which raises the question of who the conveyancer is working for and whether conflicts of interest are appropriately managed.

We have also seen in recent months low service levels because some conveyancers have struggled to cope with the volume of business received from the lender, but the service levels have not been transparent or communicated upfront. This in turn can harm consumers when there is a risk of losing their deposit or incurring financial penalties, or not being able to move when they want to. Through no fault of their own, the consumer could be disadvantaged due to significant delays, which is ultimately the responsibility of the lender.

A product that instead offers sufficient cashback to cover legal costs would still act as an incentive yet it gives consumers choice and allows them to be able to make an informed decision to select a conveyancer that is independent of the lender.

We consider that the need for independence is most required in new build transactions where the title will be new. On resale purchases this may also be required depending on the responses to enquiries. A simple remortgage might be capable of being undertaken by the same party.

Q6. What improvements can be made to the process of property searches in order to speed up home buying and selling?

This is outside our area of expertise.

Q7. Would there be an advantage to encouraging buyers and sellers to use the same conveyancing provider? If so, how could it work, without creating conflict of interest problems?

There will always be a risk of receiving truly independent advice due to the inherent conflicts of interest that exist. This was one of the failures behind the punitive ground rent clauses in leasehold contracts. But see our response to Question 5.

Harnessing digital technology

Q8. How would a predominantly digital conveyancing process affect home buyers and sellers?

Conveyancing is the area of the buying and selling process in which most delays are experienced, and therefore has the greatest scope for efficiencies to be made. We support the work being carried out with Land Registry to digitise more data. We agree that increasing its availability will not only speed up the conveyancing process but greater transparency for consumers will increase confidence in the buying and selling process.

Q9. What should the government do to accelerate the development of e-conveyancing?

There are many ways in which the conveyancing process can be improved using existing technology, yet many conveyancers/solicitors have chosen not to adopt it. Many will still communicate predominantly by post for example, let alone offer consumers the ability to track their case online. Publication by firms of the number of days taken from instruction received to completion of transaction might encourage competition on more than price.

Q10. Are there any particular public sector datasets which you think should be released as open data in order to drive innovation in the home buying and selling process?

This is outside our area of expertise.

Q11. How could other parts of the home buying and selling process be improved through better use of digital technology?

This is outside our area of expertise.

Mortgages and the requirements of lenders

Q12. What more could be done to encourage borrowers to seek a Decision in Principle from their preferred lender before they start house hunting?

Intermediaries play a key role in a housing transaction in that they work for the borrower and they will help them understand the process, often guiding them through wider areas of the transaction. We encourage borrowers to speak to a broker before they start house hunting because they will be advised in the initial discussions how much they are likely to be able to borrow. This is based on intermediary knowledge of different lenders' affordability requirements as well as lenders' eligibility criteria. This is effectively a decision in principle, but without the hard credit search that many lenders will carry out.

By looking at one more than just one lender's offering (i.e. when a consumer goes direct to a lender), intermediaries have access to a better range of product solutions which are more likely to fit the broad range of consumer needs. Consumers may think they know what product they want, but advisers will fully assess their needs and circumstances before considering a suitable product and challenge any consumer preconceptions. The consumer may also 'prefer' a lender but will not know whether they offer a suitable product for their needs, whether they meet the lender's criteria, or whether they could borrow more with a different lender. Engagement with intermediaries is therefore key, particularly for more complex borrowers who may have difficulty in obtaining a mortgage from their high street bank. Encouraging borrowers to approach lenders direct, only to then be rejected, will delay the buying process and lead to borrowers losing confidence.

Q13. What other improvements could be made to the process of applying for and obtaining a mortgage?

We refer to our answer under Question 12.

Informing consumers

Q14. How do we ensure buyers and sellers are able to access good guidance on buying and selling homes?

Ensuring that good guidance is given at an early point in the transaction is key. Estate agents are often the first professionals that buyers and sellers will come into contact with during this process. To ensure that information is more widely available, all professionals in the housing transaction (including brokers) should be encouraged to signpost consumers to a common source of information. This may be the Money Advice Service (MAS) or an alternative standardised guide. In either case the information needs to be comprehensive, accurate and kept up to date. We do not believe it would be appropriate to signpost to the MAS website in its current form.

Better information at point of sale

Q15. Should sellers be required to provide more information before they market their property? If so, what information should be provided?

We agree that completing a property information form only after an offer has been accepted unnecessarily delays the process. Given that sellers are required to disclose this information in any case, this should be completed and provided in advance.

There should be more information made available upfront to prospective buyers in respect of leasehold properties, which should include the length of the lease, whether there are any onerous covenants, details of ground rents etc. If sellers find there are any issues when trying to obtain this information, they should be encouraged to seek legal advice at this stage, which will prevent delays later in the process.

Whilst disclosing information earlier will improve timescales, the enforcement of providing accurate information needs to be greatly improved. The process in which an innocent party (e.g. the buyer) can claim damages from a breach of contract (e.g. failure by a seller to disclose disputes) will always incur costs, which may be disproportionate to the claim. In this event it is unlikely the buyer will proceed with a claim, leaving the seller not being held accountable. An important benefit of the Financial Ombudsman Scheme is that consumers can access an alternative dispute resolution scheme for free.

Q16. Should sellers of leasehold homes be encouraged to engage with their freeholder before marketing their home for sale? If so, in what ways should they engage?

This would be difficult in many circumstances. The leaseholder may be unable to identify or locate the freeholder, which can be even more difficult when there are multiple freeholders. Minimum information should be available and updated in respect of freeholders; if leaseholders are unable to track their freeholder, they are not able to buy the freehold.

Sharing information about each other and increasing commitment

Q17. How can government increase commitment to a sale between buyers and sellers? Would development of standard agreements help?

If any financial penalties are introduced, care needs to be taken to ensure that buyers and sellers are not unfairly punished due to a change in circumstances out of their control. Otherwise there is a risk of losing confidence in the market.

Q18. How should we best tackle gazumping?

This is not an issue that we have seen since before 2008. We are as likely to see gazundering in a declining market, which is a similar problem where the agreements only become binding on exchange of contracts, but the application for the penalties for non-completion may not be open to all consumers.

Q19. What other steps could be taken to increase confidence in the housing chain?

This has been answered elsewhere.

Buying a leasehold property

Q20. Should managing agents / freeholders be required to respond to enquiries within a fixed time period? If so, how could this be done?

Whilst this would be beneficial in theory, we would refer to our answer under Question 16.

Q21. Should maximum fees be set for the services and information provided by managing agents / freeholder to home buyers and sellers? If so, how could this be done?

No comment.

Q22. Should the government introduce standard mandatory forms for collecting information about leasehold?

Yes and this should include information about the freehold.

Buying a new build property

Q23. What can be done to improve the customer experience of buying a new build home?

The steps that consumers should take in respect of their mortgage application apply to purchasing any property, however with the shortened timescales of a new build it is even more crucial in order to ensure a smooth process and to avoid losing the property. Developers should therefore be insisting that buyers receive advice from an intermediary before allowing them to reserve. Our members find that where this is not a pre-requisite there are higher cancellation rates, as any issues in being able to achieve a valid mortgage offer are discovered later in the process. These can include a consumer having a poor credit history, insufficient deposit for new build mortgage lender criteria, insufficient affordability, or exceeding their exchange of contracts deadline because of multiple mortgage application failures.

Q24. What more can be done to help buyers of new build homes quickly secure a mortgage offer?

If consumers receive advice from an intermediary before reserving a new build property, there should be no issues in quickly securing a mortgage offer. Some firms are able to facilitate an offer within 24 hours, with many offers being made within two weeks. Delays in the new build market are instead predominantly caused by incorrectly priced units, developers holding out for the highest prices, and survey availability. The issues we see are not as a result of the offer delaying matters, but the availability of conveyancing resource to deliver the required information flows within four weeks.

Any additional points

Q25. What else should the government be doing to help improve the home buying and selling process, and reduce the cost for consumers?

This has been answered elsewhere.