Association of Mortgage Intermediaries' response to FCA CP17/36 Reviewing the funding of the Financial Services Compensation Scheme (FSCS): feedback from CP16/42, final rules, and new proposals for consultation

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

With the majority of claims in the life and pensions intermediation class relating to mis-sold SIPPs, it is grossly unfair that mortgage firms as the primary writers of life insurance have been paying a disproportionate amount of investment advisers' invoices despite no connection between the two business lines. We are therefore pleased to see that the proposals have been revised to include moving pure protection intermediation from the Life and Pensions funding class to the General Insurance Distribution class. We support this proposal.

We strongly support the inclusion of provider contributions to the intermediary classes. Its reintroduction will mirror the existing regulatory landscape and hopefully focus all minds more clearly on their respective responsibilities and accountability.

We have previously asked that if debt management activities are now covered then this should only apply to agreements commencing after publication of the final rules, but we note that this was not addressed in the policy statement. Although there is some mention in the draft rules, we would like clarification that there will be no FSCS protection for debt management activity in respect of: claims against a firm relating to circumstances before 1 April 2018 and; claims against firms in default before 1 April 2018.

We also reiterate our request for clarification that mortgage brokers will not contribute to the new debt management class as they do not have "debts under management".

Questions

Q1. Do you have any views on our proposal to prevent personal investment firms (PIFs) from buying PII policies which exclude claims when the policyholder or a related party is insolvent?

We agree, as firms should not be double-paying for their liabilities. There has been a gradual shift over time from the FSCS as the last resort to now being the first point of redress rather than effective PII. We strongly support the need for intervention in order to reduce the size of the overall bill, i.e. to reduce the risk of unscrupulous firms advising on unregulated investments to junk their liabilities on the rest of the industry.

Q2. Do you have any views on the potential to require PIFs to hold additional capital in trust, for the purposes of contributing to any FSCS claims?

As PII exclusions will often relate to unregulated business lines, we agree with this proposal as a measure to reduce cases of mis-selling and the burden falling on the rest of the industry.

Whilst gathering more market intelligence is a step forward, it is important that a balanced package of solutions is implemented in order to tackle the main issues relating to the FSCS. Sufficient enforcement action also needs to be taken against firms and greater scrutiny of individuals applying for re-authorisation. It is important that individuals who are considered to have acted inappropriately are fully pursued at the time of closure or exit, in order to make any return to the industry more difficult.

Q3. Do you have any views on requiring PIFs to obtain a surety bond?

Where the firm cannot obtain run-off PI cover or does not leave capital in trust then this further option has our support.

Q4. Do you have any comments on our proposals to merge the Life and Pensions Intermediation funding class with the Investment Intermediation funding class?

We only agree with this proposal on the basis that the removal of pure protection intermediation from this class is implemented.

Q5. Do you agree with our proposal to move pure protection intermediation from the Life and Pensions Intermediation funding class to the General Insurance Distribution funding class?

We agree, as this ensures greater affinity amongst firms and the business they carry out.

Q6. Do you agree with our proposal to change the class thresholds for FCA product provider classes to represent 25% of the relevant intermediary claims funding class threshold? If not, what alternative would you suggest?

We strongly support the proposal for product providers to contribute to intermediary claims on the basis this reinforces their accountabilities and responsibilities in the distribution of their products. We however consider that the proposed provider contribution of 25% does not accurately reflect their responsibilities under the proposed structure, as we have set out below.

We are concerned that by eliminating provider-only classes and merging these with the intermediary classes, rather than just adding providers to the intermediary classes, this could give rise to intermediaries contributing to compensation costs of the failures of providers. This would be misinterpreting how the provider/distributor relationship works and is not how the regulatory landscape operates today. Whilst the FSCS only provides consumers protection where there has been a financial loss thereby excluding the mortgage debt itself, any claims against the advice given by a lender who had defaulted resulting in loss, for example, would fall into the remit of FSCS under the merged class. In addition there could be claims for excessive charging, poor administration leading to loss, or incorrect interest charging upon a firm in default.

The impact would be more acute in general insurance where any claims against providers are paid from the FCA funding classes; therefore the proposed changes would result in intermediaries paying a proportion of these claims. Furthermore, the example given under FEES 6.5.2-AB G(5) suggests that if claims in the PRA funding class, relating to provider failures, reach their limit, then providers are unable to contribute to the FCA funding class. These funding classes should be separated so that claims in the FCA intermediary class do not count towards the corresponding PRA limit or vice versa.

As a fundamental principle intermediaries, as distributors, should not be responsible for the failings of providers. Furthermore the provider responsibilities and accountabilities for distributors are in addition to those relating to their own. Accordingly we consider that the mechanism chosen to reduce the classes from 10 to 6, as well as restricting provider contributions by taking into account the PRA limits, is flawed as an approach. Provider contributions of 25% in this structure would not always be true and thereby insufficient given the risks that intermediaries would be exposed to. An alternative where the contribution is made without merging the classes is more appropriate and we consider that this should be at a level aligned to 33%, or a higher contribution of 50% under the current proposed structure where the classes are reduced to 6.

Q7. Do you have any comments on our proposal for how the retail pool will operate?

No comment.

Q8. Do you agree that we should increase the FSCS compensation limit for investment provision, investment intermediation, home finance intermediation claims and debt management claims from £50,000 to £85,000?

We understand the reasoning behind this proposal and agree accordingly.

Q9. If you do not agree with the proposal above, do you have an alternative proposal?

N/A.