Association of Mortgage Intermediaries

Association of Mortgage Intermediaries' response to FCA CP18/3: Consultation on SME access to the Financial Ombudsman Service

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

As the trade body representing intermediaries in the consumer mortgage market we are responding in relation to their interests as providers of advice, not as trading entities who might wish to bring claims against other firms. We do not consider this to be within our scope.

We are surprised that feedback to a discussion paper from November 2015 is only now being communicated and without transparency behind the delay. We also have general concerns about the consultative process and engagement with industry. Whilst our stance in the last two years may not have changed, given that consultations are expected to be based on current industry opinion, we question the method and appropriateness of using dated responses to form these proposals. There doesn't appear to be an appreciation of the impact of these proposals nor a recognition of the fundamental shift in the regulatory approach. We are disappointed that with such a widening of scope since the initial discussion paper it has been considered as having limited impact, implied by the lack of use of the FCA's "star process" applied to consultations.

Whilst this paper has been communicated as extending the scope of SME access to the Ombudsman, we are disappointed that the equally significant proposal to extend complainants eligible to claim from the Financial Services Compensation Scheme has been buried in the cost benefit analysis (with draft rules lacking). We disagree with allowing these businesses to claim from FSCS for the same reasons we have set out in this response.

Questions

Q1. Do you agree with our proposed changes to the definition of an eligible complainant? Are the proposed size thresholds broadly correct or would different thresholds or criteria be more appropriate?

We do not believe it is appropriate for the definition of eligible complainants to be extended to include small businesses. The current micro-enterprise definition already covers most relevant firms. These proposals eradicate the clear distinction between firms who are likely to suffer information asymmetry and those who should be able to exercise reasonable commercial care or employ appropriate professional assistance.

References to "consumers' access to redress" are misused as the proposals relate to businesses. The proposals fundamentally change the current regulatory approach to SMEs and consumers, blurring the boundaries between the two. The paper refers to the FCA's objective to secure an appropriate level of protection for consumers, but this has never been intended to include businesses.

Extending the definition so widely to give a significant number of businesses access to the same redress provided to consumers should be considered outside of the FCA's remit. Whilst the FCA believes it has identified "harm" for some small businesses, linking this to its legislative objectives is tenuous with the regulator's role misunderstood. The belief that it is the regulator's responsibility to "reduce the harm to smaller business customers" by "improving outcomes for these customers" is misguided.

We also consider that these proposals risk widening the role of the Ombudsman to a degree which is inconsistent with their more general purpose. The complexity of the issues likely to be raised will be inconsistent with the backgrounds, knowledge and training of the case handlers, adjudicators and ombudsmen employed. This is likely to have further cost implications for their service which our members do not feel able to support.

Q2: Do you agree that all 3 tests (employees, turnover and balance sheet) would need to be met for the Ombudsman to consider an SME a small business?

We do not agree that businesses with an annual turnover of up to £6.5m, an annual balance of up to £5m and with up to 50 employees should be classed as consumers. There is a significant gap between these businesses and micro-enterprises who have a turnover or balance sheet of up to £2m and up to 10 employees. We do not agree with the justifications that have been made that it is the regulator's duty to treat small businesses in the same way as consumers.

No consideration has been given around potential issues with the legal profession, processes or structure if a business of this size cannot access professional assistance. Instead an inappropriate solution has been proposed, perhaps seen as an "easy option", however the wider perspective of the FCA and Ombudsman's roles has not been adequately considered and explained.

Q3: Do you agree with our proposal to make guarantors eligible complainants?

We consider the current regulatory approach to consumers to be appropriate. Those acting for business or professional reasons should not be afforded the same protections as consumers. We do not understand the regulatory u-turn nor why the FCA is going out of its way to protect individuals who are not consumers but have given a guarantee or security for the liability of a business. We are disappointed in the loss of regulatory focus.

Q4: Do you agree that the changes introducing small businesses as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding acts or omissions of the firm which occur from 1 December 2018? If not, what transitional period do you consider appropriate?

We do not agree that these changes are within the regulator's scope.

We always consider that any regulatory changes should only apply to matters going forward and not back-dated.

Q5: Do you agree that the changes introducing guarantors as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding guarantees or security given on or after 1 December 2018?

We do not agree that these changes are within the regulator's scope.

We always consider that any regulatory changes should only apply to matters going forward and not back-dated.

Q6: Do you agree with our cost benefit analysis? Are there other costs or benefits we ought to have considered?

As set out in our response to DP15/7, we do not support an increase of costs to all participants. This would not be proportionate given that many firms, such as our members, primarily deal with consumers and micro-enterprises. The cost benefit analysis states that the Ombudsman's unit cost for resolving a complaint exceeds the case fee therefore the difference would be covered by the levy, which would increase up to £0.78m per year.

It is however not clear to which industry fee blocks this additional cost will be apportioned. The draft rules also omit any detail on the funding. We are disappointed that incomplete proposals have been put forward. Developing solutions in piecemeal is less than satisfactory as it is usually only with the entire picture that solutions can be properly assessed and are workable and effective.

Q7: Do you have any views on how access to redress might be improved for SMEs without the need for changes to legislation, including but not limited to the areas where we have powers to make changes?

This has been covered elsewhere.

Q8: Without legislative change, do you think the Ombudsman might be an appropriate body to consider a greater share of complex or higher value complaints from SMEs than is implied in our proposals for consultation in Chapter 3? What changes would be needed to make this effective? What risks might this introduce?

The Ombudsman was set up with a £100,000 limit, raised to £150,000 in 2012, to cater for cases that could be dealt with speedily and by using dispute resolution techniques to gain agreement. It was always considered that higher value disputes of those with complex arguments should still be the subject of legal remedy. We therefore object to any increase in the current limit as we consider this level to still be appropriate.

We also do not believe it is fair for different award limits to apply to different complainants; it adds too much complexity to what should be a simple resolution. It also runs counter to the policy position adopted by the FCA in the FSCS discussions on consistent compensation limits.