



Association of Mortgage Intermediaries' response to FCA CP18/15
Claims management: how we propose to regulate claims management companies

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

Consumers can complain directly to firms, who are transparent about their complaints processes, and this can be done for free. We therefore believe the statement that a CMC will need to make (that a consumer does not have to use it to pursue a claim and that they can seek redress from the Financial Ombudsman Service for free) needs to be prominent in the proposed summary document issued pre-sale. We struggle to see that the services CMCs provide to consumers equate to the fees they charge, yet those who do choose to use them should be able to make a fully informed and unbiased decision.

There are vast improvements needed to this sector and applying the same standards to CMCs as to other regulated firms has the potential to achieve these. Our members continue to receive high proportions of spurious claims from CMCs who use aggressive marketing techniques on consumers and breach data protection law. This is particularly concerning as our firms have seen an increase in vulnerable consumers being targeted without any standard of care.

We agree with the proposed approach to apply the FCA principles, rules and guidance to CMCs. We would like to see these rigorously applied from the point of authorisation after a firm's temporary permission has lapsed (including emphasis on individuals' fitness and propriety), then via close supervision and through to enforcement. The regulatory focus and action that has been carried out in high cost credit is a good example of how the FCA has reformed a newly regulated sector.

Whilst in this paper the FCA has provided assurance to "be alert to" CMCs phoenixing, we repeat the concerns expressed in the Brady Review as our members often see CMCs reappear under a different trading name. We have previously expressed concerns around individuals in financial services who have acted inappropriately at a previous firm (which has since folded into the Financial Services Compensation Scheme leaving significant mis-selling claims) become re-authorised by the FCA under a different guise. Separately, we would like clarification of whether the scope of the FSCS will be extended to include CMCs and if so, the proposed structure.

We are also not currently seeing enough regulatory scrutiny around references from previous (active) employers. Whilst the Senior Managers & Certification Regime will introduce new requirements that should make conduct breaches transparent between authorised firms, the gap between firms' recruitment processes and the FCA's authorisation process will significantly widen if the regulator does not adopt an effective approach. We fear that unless the current FCA's approach to authorisations changes, there will continue to be a loophole where unscrupulous individuals can continue to operate, and we can see the claims management sector being no different.

We hope there will be an appropriate supervisory focus on the claims management sector. We have concerns around the FCA's whistleblowing procedures which has resulted in market intelligence being left unactioned. Where concerns are raised around the risks that a firm (CMC or otherwise) poses to consumers, these should be dealt with effectively. We feel there is a need to consider non-compliance with overarching principles, rather than concentrating on specific rule breaches. We would also like to see more enforcement appetite to pursue individuals who have been responsible for consumer harm.

Finally, whilst we hope the transfer of regulation will reduce consumer harm, we seek clarification of how firms falling outside of the FCA regulation will be addressed and how a level playing field will be ensured. Our members do not see any difference in how a firm carrying out claims management activity behaves, whether it is a solicitor or a CMC. We therefore look forward to seeing the revised memorandum of understanding with the Solicitors Regulation Authority, including a commitment to ongoing and open communications with sharing of intelligence to ensure that those firms falling outside of the FCA's remit still abide to the principle of pursuing legitimate claims, as well as providing high quality and good value services to consumers.