Association of Mortgage Intermediaries

Association of Mortgage Intermediaries' response to the FCA's consultation for a Global Financial Innovation Network

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

We are concerned by the lack of transparency in this consultation, which does not cover important issues for consideration such as resources and costs. Feedback can therefore only be given on a limited basis. Aside from the FCA's legal requirement to publish cost benefit analysis (CBA) for certain changes to policy it is unusual for the FCA to publish any consultation paper without a cost benefit analysis or any reference to it. The regulator's approach to innovation directly opposes its approach to CBAs which are "about transparency and making sure we are using our powers appropriately" and that they are "an important part of the FCA's accountability framework". We are concerned by the departure from due process as following this consultation the FCA intends to publish next steps including a timeline for implementation, however we would expect to see further consultations which include a full CBA before any implementation, including how the costs will be allocated across the FCA income lines.

Despite the Davis enquiry and subsequent concerns raised by the statutory panels and Treasury Select Committee, we are seeing a dangerous focus on a communications strategy and public relations. This paper is the first consultation that has been publicly published on a global sandbox. However when the paper was issued the FCA referred to this as "following an initial consultation" in February 2018 to which 50 responses were received "and were positive about the idea of regulators collaborating on this topic". We request sight of this "initial consultation" given that this is not available on the FCA website and has not been made public to fee-paying firms. The FCA has only publicly referred to a global sandbox in its 2018/19 business plan published in April, in which it stated that "last month we invited stakeholders to share their views on what a global sandbox could look like; there is a lot of interest in the idea of cross-border testing and the benefits this could bring". It is concerning that the FCA is holding closed discussions with innovators, developing proposals with limited stakeholders and labelling these consultations. We expect the FCA to confirm the list of stakeholders involved in this working group (in particular the proportion of authorised and non-authorised firms), a list of the 50 'respondents', and the percentage that these firms contribute to FCA fees.

We ultimately see the opaque nature of this work as a failure of the FCA to apply it's legal responsibility to exercise its functions as transparently as possible.

Questions

Q1. Do you agree with the proposed Mission Statement for the GFIN?

We would not expect to see the Global Financial Innovation Network given an excessive amount of resources given the FCA's statutory remit and expectation to focus on relevant consumer and market issues. We do not see the work of the GFIN as a priority for the FCA as a predominantly domestically facing regulator.

The Financial Services and Markets Act 2000 (FSMA) sets out that "the matters to which the FCA may have regard in considering the effectiveness of competition in the market" include "the ease with which new entrants can enter the market" and "how far competition is encouraging innovation". We believe the FCA continues to misinterpret its remit as it inappropriately favours certain business models and provides them with focused regulatory support (paid for by authorised firms).

We believe therefore that this work should not be extended to the GFIN. Whilst we support the sharing of information between regulators and joint policy work, we fundamentally disagree with the concept of supporting 'innovative' firms by conducting cross-border trials. The regulator should not discourage innovation, but it should not be segmenting firms with new technological solutions, giving them specific feedback on their models which gives them a competitive advantage, and giving them easements from the rules. There should not be any deregulation where firms have less liability for the advice they provide.

Furthermore it is grossly unfair for the costs of these limited trials to be paid for by all authorised firms. We are disappointed that our concerns over the increasing funding costs of the regulator continues to be dismissed by each new idea that emerges to expand the regulator's remit.

A competitive market of course necessitates disruptors and whilst the legislation sets the need to consider new entrants, this does not mean that barriers to entry should be removed for a particular business model or selected applicants.

Q2. Do you agree with the three main proposed functions for the GFIN?

No. It should not be the regulator's role to spend resources assisting technology-based new market entrants by conducting trials. Often run by non-financial services experts, as commercial firms they will understandably argue that the regulatory rule book, capital requirements and need for adherence through the permissions process is cumbersome. But regulation has developed from the need to protect consumers (from hard learned lessons of the past) and enhance integrity of the financial system. A market led by virtual boutique systems, with no offices, staff or capital that can quickly evaporate cannot be in the best long-term interests of consumer. This might also be seen by some established participants as providing new entrants with an unfair competitive advantage. Reasoned stability based on decades of learning should not be sacrificed on the altar of innovation. Certain rules which need updating in light of technological developments or further guidance would of course be appropriate provided that this applies to all firms. There should not be any easements for firms who wish to bypass specific rules. A core tenet of our approach to regulation has been a level-playing field for all participants, which we consider should also be core to all work by the FCA.

Q3. What aspects/areas of regulation pose the biggest challenge when it comes to innovating?

We are disappointed that the focus of this paper is aimed at innovative companies, who will of course be supportive of dedicated regulatory support, rather than those who fund the regulator's work, most of whom only have access to the limited support provided by the FCA contact centre.

Q4. Do you see any reasons why this initiative may be counterproductive to the outcomes it is seeking to achieve?

We believe the inclusion of conducting trials with specific firms is anti-competitive and providing one-to-one support does not propel the industry towards innovation, only those specific firms. This desired outcome could however be achieved simply by the sharing of information and experience amongst regulators.

Q5. Do you believe the issue of developing a best practice for regulators when assessing financial innovation should be a priority for the network? If not, what other priorities should the network first address?

We agree that assessing the merits of financial innovation in the interests of consumers should be a priority, particularly in the context of vulnerability. We are concerned that whilst the FCA's plan for how it will work (as set out in its approach to consumers) includes a focus on vulnerable and excluded consumers, this has been set out as a separate workstream to how it will regulate for the future. Innovation should not be siloed from consumer outcomes and a key determinant of the success of innovative models is how consumers can continue to be safeguarded. We would like to see a recognition of how technology can deal with vulnerable consumers and its risks.

Q6. Do you agree with the approach to involve global standard setting bodies as part of the GFIN? How else would you like to see these organisations involved?

We are concerned that the proposed structure of the GFIN suggests a significant resource to be available yet there is no indicative cost of how it will be funded. The structure seems unnecessarily complex for what the network is trying to achieve; an undefined number of siloed self-governing working groups with an added steering group does not indicate an efficient approach.

Q7. What kind of outcomes from the policy work and regulatory trials would your organisation benefit from?

Shared experiences of emerging technologies should not just focus on the benefits but also the risks to consumers and to market integrity. Tackling the evolving risks of financial crime would benefit financial services as a whole and we would want to see output from the GFIN with tangible benefits for authorised firms.

A level of consistency amongst regulators would be a positive but potentially difficult outcome given the different jurisdictions, but perhaps more important to try and maintain following the UK's departure from the European Union.

Running closed TechSprint events where specific firms are given commercial advantages and output is not fully shared is not an appropriate use of regulatory resources.

Q8. Would the cross-border trials be of interest to your organisation? If so, could you provide any potential example use cases?

We do not believe conducting these trials are within a regulatory remit, therefore should not be one of the functions of the GFIN.

Q9. Do you agree with the proposed approach to managing the application process for cross-border trials?

No. It is deeply concerning that such a detailed approach has been proposed without any reference to costs. There is no justification for authorised firms to be paying for these cross-border trials, which may or may not end up in a firm becoming authorised.

The benefit to the industry is questionable when individual firms will be given “sufficient information about the merits of the product or service and how it benefited consumers or the wider financial services market” yet there is no commitment to publish any wider information as it will only “depend on the circumstances”.

For the FCA to listen to and support technology firms wanting more regulatory guidance and hand-holding through their propositions, but to take a distant approach to most regulated firms is ultimately anti-competitive. For firms to have one-to-one regulatory engagement in the Regulatory Sandbox and Advice Units while less and less fee-paying firms are afforded this privilege is not the intention of its statutory remit. This should therefore not be extended to the GFIN. It is a significant advantage for businesses to not need to spend resources, either internally or externally, to acquire regulatory knowledge. This is exacerbated by the standard approach from the FCA call centre who routinely refer firms to the rules for them to make their own interpretation. Cross-subsidisation of the costs of running these “free” initiatives against fee-paying firms is inappropriate. It would be fairer if the costs were recovered from the firms who wish to use it.

Q10. [For regulators] Do you anticipate any challenges with the proposed approach to managing the application process, or conducting cross-border trials?

N/A