Association of Mortgage Intermediaries' response to FCA CP19/14: Mortgage Customers: proposed changes to responsible lending rules and guidance

This response is submitted on behalf of the Association of Mortgage Intermediaries (AMI) and the Association of Finance Brokers (AFB). AMI is the trade association representing over 80% of UK mortgage intermediaries. AFB sits within AMI and represents second charge (formerly secured loan) brokers.

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. AMI members also provide access to associated protection products. AFB members also provide access to unsecured products.

Our members are authorised and regulated by the Financial Conduct Authority (FCA) to carry out mortgage, insurance mediation and consumer credit activities. Firms range from sole traders through to national firms and networks, with thousands of advisers.

Background

The FCA has set out that its purpose in making these changes was to deal with the "trapped borrower" issue and to reduce the time and cost of switching for all consumers. The responsible lending rules apply to lenders and the MMR tried to ensure that accountability for assessing affordability lay with the lender. However, in assessing suitability and making a recommendation any intermediary must make a preliminary assessment of affordability. This consultation does not consider the implications of the changes on intermediaries, nor does it reflect the combined impact of the other changes proposed in the simultaneous consultation CP19/17 on Mortgage Advice and Selling standards. AMI considers the separation of these two pieces of work unhelpful as the proposals do impact on each other. We request that the FCA considers both consultations together, not separated, as we feel that there are significant interdependencies.

Response

In the Mortgages Market Study the market was considered to be working well for the vast majority. On balance much better than most other markets. The trapped borrower is the one and probably only area which really merits attention as UK Asset Resolution has now repaid the government, but the price of that has been leaving hundreds of thousands of consumers with asset managers who do not offer cheaper loans. Those who pay every month and are not in arrears deserve better, but these FCA plans as drafted risk a further extended period of them paying more than they perhaps should.

Following the initial report from the FCA we anticipated that the discussed potential changes to the affordability rules might allow the industry to fashion some solutions to the trapped borrower issue. What we thought would be relaxations to the affordability rules for a discrete population has however translated into much wider changes. These mean that all lenders will have to have a very serious look at how they wish to transact all their remortgage business in the future.

These changes risk putting a solution for the trapped into further delay. Instead of perhaps 8 lenders and a handful of broker firms working in a small project, sponsored by the FCA, with the administrators to find solutions for those who can be helped, we now face all lenders having to make decisions on how to approach this element of the market. This will necessarily take much longer as all lenders will need to look at how they engineer their entire processes rather than hot-housing a project to convert a limed number of cases which have merit. By making the rule changes a whole of market solution the FCA has risked failing to solve the prisoner issue by over-engineering its rules.

The paper has not explained the justification for the FCA amending its long-held position that such reduced affordability tests were not possible given the requirements of the Mortgage Credit Directive. Despite AMI's repeated calls that they had interpreted this wrongly back in 2015, it would be helpful if they could share any new legal opinion. The risk for firms is that the FCA is still wrong and that challenge in the courts could see firms fall foul of European Law, which FCA might not have interpreted correctly.

One of our principal concerns, as the intermediary representative, is that whilst lenders can consolidate their product fees into a new loan, the lender will not be able to permit adding broker fees to the loan where they are applying the proposed simplified affordability remortgage. This risks skewing the market against intermediaries and creating imbalance as they can be consolidated on new loans, product transfers and remortgages not using the new reduced affordability rules.

AMI is concerned that in making these changes we have a more complex set of standards capable of being manipulated by lenders looking to lend without applying the rules brought in under MMR. We do not consider that the FCA will have the capacity to be able to supervise and police behaviour on term extensions and whether lenders are appropriately disapplying the rules. We fear that it may be too easy to replicate the market of 2004 to 2007.

The proposals appear to work well under current market conditions for most consumers on a reversion rate or coming off a long-term deal as they should be able to secure a cheaper loan. In a market where rates are rising it may be more difficult and in order to benefit from the reduced affordability tests then they may have to be allowed to revert to their SVR to move lender, as the FCA rules already allow product transfers under a version of this approach. However, the consumer would then have to be on the SVR for 12 months to prove affordability, which would be to their detriment. As lenders will have to keep the stricter affordability approach for new or additional borrowing this adds new layers of complexity. We are concerned that they will keep the existing MMR rules for times of rising rates or move to the new reduced rules, relying on extending the mortgage term to deliver the lending volumes they require.

These changes go to the heart of the market as more lenders look to retain their customers whilst a remortgage for many might still be the best option. We are concerned that this will give the largest lenders with current account dominance too much power in this market. Not only do we consider that these changes risk skewing the market in favour of lenders versus intermediaries, it could skew it in favour of the largest lenders. As these are remedies from a market competition study, we are concerned that these potential outcomes are themselves potentially anti-competitive.

Questions

Q1: Do you agree that our proposals should only apply to firms dealing with consumers that meet the conditions of 'eligible consumers'?

We broadly support the definition, but would request one minor alteration to allow any broker fee to also be added to the loan in addition to any product or arrangement fee. Not allowing this places the intermediary sector at a disadvantage in comparison to a lender transacting direct with the consumer. AMI firmly believes in there being a level playing field between market participants - and this change would continue that principle which was at the heart of MMR.

Q2: Do you agree that 'up-to-date with payments' should be decided by not being in payment shortfall, both at the time of application and over the previous 12 months?

We firmly support this requirement that the customer is both up to date with payments and there being no payment shortfall. We consider that in making any price comparison it must be evidenced that the rate used (or a higher rate) as the previous cost in the comparison has been paid for the prior 12 month period. Specifically, we would not support comparing the new rate with the "revert to SVR" unless that has been paid for the previous 12 month period.

Q3: Do you agree with our approach to defining a 'more affordable' mortgage, both where product or arrangement fees have been added to the mortgage and where they have not?

As referred to in Question 1, we consider that in addition to the product and arrangement fees this should also include any broker fee. It should align with whatever is the policy on arrangement fees.

Notwithstanding this, the principle of the approach set out in the consultation has our support.

Q4: What are your views on a definition of 'more affordable' that refers to both the interest rate during any incentivised deal period and the new lender's existing reversion rate at the time?

As a protection for consumers, this makes perfect sense and has our full support. There are risks in that this might prohibit some lenders from wanting to disapply the rules as they would worry about the impacts on their ability to write remortgage business in a rising interest rate environment. On balance we support coming out in favour of consumer protection as the changes proposed on CP19/17 risk a rise in execution only business which might not be in the consumers' best interests. The combined impacts of all the rule relaxations proposed in the two papers has not been fully assessed by FCA. AMI considers that the interdependencies here risk consumer harm.

Q5: Do you agree that we should allow lenders to extend the term of the mortgage when they undertake the modified assessment?

We consider that this is a significant variation to the contract and should only happen where the borrower has been taken through an advised process. Allowing this to happen without these protections places the consumer at some risk. Another significant risk is that any life, critical illness or income protection will have had a term to match the original contract. It is important that if the term is varied that this is "advised" and that a full discussion on the related "protection" issues are resolved.

Q6: Do you agree with our proposal to only allow lenders to use the modified affordability assessment if they have a policy allowing consumers to switch to a more affordable mortgage?

This seems on the face of it a sensible consumer protection. However, it is merely that the lender has a policy and will not mean that a lender will have the capacity or product available at the point when any consumer comes to the end of their deal. We are concerned that this is not a sufficient protection. If lenders have applied these relaxations to acquire business they should always offer terms no less than they are offering all new customers, to avoid a trapped borrower becoming trapped again.

Q7: Do you agree that we should allow lenders that choose to use the modified affordability assessment to disapply our income and expenditure rules (MCOB 11.6.5R to 11.6.15G)?

We agree.

Q8: Do you agree that we should require lenders to consider whether the consumer's income after retirement would be enough to enable them to meet their commitments under the contract?

Where the loan term is not being extended, we are not certain for the benefit of this particular test. If the existing lender has agreed that term and undertaken the checks then this should be sufficient to be consistent with this revised policy approach. The issue will be where there has been a term extension taking it into retirement and this is why we consider that all such term extensions should benefit from the protections of an advised sale. The co-dependence with CP19.17 is critical here.

Q9: Do you agree that we should allow lenders that choose to use the modified affordability assessment to disapply our interest rate stress test rules (MCOB 11.6.18R to 11.6.19G)?

We agree.

Q10: Do you agree that we should introduce guidance that, if considering future interest rate rises, lenders may wish to take into account the fact that the consumer is currently meeting payments at a higher rate than on the more affordable mortgage?

In order to make this workable from an intermediary perspective, being able to follow what each of multiple lenders are doing, by adopting differing stress approaches will over-complicate advice processes. Without doing full affordability with a stress rate we are struggling to identify how coherent this approach will be. This is leading us to wonder how practical these proposals are for application across the whole market. For trapped borrowers we remain supportive, but as a general solution, we are not convinced.

Q11: Do you agree that we should allow lenders that choose to use the modified assessment to disapply MCOB 11.6.40G to 11.6.48R and MCOB 11.6.50R to 11.6.52G as long as the consumer is not trying to increase the proportion of the loan on an interest-only basis?

We agree, where the consumer is not trying to increase the proportion **or amount** of the loan that is on an interest only basis.

Q12: Do you have views on whether the modified assessment should be available for home movers looking to switch to a new lender?

We consider that there are so many changes in costs when moving to a new property that this should go through the normal full affordability rules in MCOB. Any dilution of this, particularly when looking at this in the context of the relaxations in CP19.17, risks poor outcomes for consumers.

Q13: Do you agree that we should require inactive lenders and administrators acting for unregulated entities to contact their customers and make them aware that our rules mean they may be able to switch to a new mortgage product with a new lender?

We agree. However, we will need to take care not to create unreasonable expectations amongst trapped borrowers. Not all will have the capacity to benefit from the revised approach, so communications will either have to be carefully targeted or precisely worded. AMI is concerned that whilst broker firms will look to support trapped borrowers in doing so, where they cannot be helped, there is the risk of higher complaint levels and FOS referrals. This could impact their status with lenders if they pursue applications which fail or their PII cover if complaints rise. We would welcome confirmation of what protections the FCA can offer in the Policy Statement.

Q14: Do you agree that administrators and inactive lenders should only contact customers that have a residential mortgage, that is not a lifetime mortgage, and who are up-to-date with payments and on a reversion rate?

We are unclear on the exclusion of lifetime mortgages. There are a proportion of pre-crisis lifetime mortgages on high fixed rates who might benefit from review. We also need to consider those who may have been placed on a tracker rate that is not a reversion rate, where that rate is above say more than 4% over Base Rate?

Q15: Do you agree we should require lenders to give this disclosure?

We agree. However, we remain concerned about how far down the road the consumer is at this point and how well read or understood such disclosures are. This again emphasises the need for consumers to be in an advised process where the lender or intermediary has to take responsibility for their actions and the consumer benefits from the relevant protections. Whilst the content of the disclosure is appropriate this will be too late in the process for many to make informed decisions.

Q16: Do you agree we should require lenders to report data on use of the modified affordability assessment?

We consider this to be a sensible requirement.

Q17: Do you agree that we should amend SUP to state that, where lenders have sold a mortgage using the modified assessment, they are not required to report the affordability data required in PSD?

No comment.