



Association of Mortgage Intermediaries' response to FCA CP19/17: Consultation on mortgage advice and selling standards

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 at its core three operational objectives:

- To secure an appropriate degree of protection for consumers
- To protect and enhance the integrity of the UK financial system
- To promote effective competition in the interests of consumers.

In delivering these, AMI believes that due consideration must be given to ensure that in promoting competition it does not obviate proper consumer protections. Following the financial crash in 2008, the Mortgage Market Review (MMR) introduced new rules in 2014 which followed a series of connected but distinct consultations that then produced an all-encompassing Policy Statement.

As part of this it is important to recall some of the content of the MMR paper and its rationale:

Interactive sales (page 152)

1.108 For some time we have had a concern about consumers' lack of understanding about the difference between advised and non-advised sales. **Our research shows that consumers do not recognise or even value the distinction and therefore may not appreciate the different regulatory standards applying between the two.**

In CP10/28, rather than move to an all-advised market, we proposed to maintain the distinction between advised and non-advised sales but to enhance sales standards in non-advised sales by extending an 'appropriateness test' across all sales, **so that all consumers could expect the same protection, irrespective of the sales process.**

1.113 We believe that in **all sales where there is spoken or other interactive dialogue** between the consumer and firm, the firm should assess whether the mortgage is appropriate for the consumer (i.e. advise the consumer). **This will cover all forms of interactive dialogue, whether face-to-face, telephone, social media, or online propositions with the facility for live chats or otherwise.**

Execution-only sales (page 153)

1.115 Our consistent view has been that consumers should have the freedom of choice and that not every consumer needs advice. But taking on a mortgage is one of the biggest financial decisions a consumer makes and the majority opt for help and support through the process. **We are also concerned that creating an execution-only sales channel could be exploited as a mechanism to circumvent our rules**

In deciding as part of its Mortgages Market Study that the market needed assistance by revising advice and selling standards, the FCA has made statements and assertions in CP19/17 at section 2.20 and from section 3.20 onwards. The paper states that it did not intend under MMR to infer that it should be more difficult to complete execution-only business. The sections quoted above from MMR do not align with this and it is AMI's view that the requirement to have lender management boards approve their execution-only approach was a very deliberate approach to make clear that this was not a "favoured" policy. CP19/17 ignores that there must have been, and were, very strong reasons why, in 2012, the FCA drafted this requirement for boards of lenders to carefully consider and approve the application, use and scale of execution-only.

In addition, in CP19/17 section 2.10 it states that the MMR guidance was written "before online transactions in financial services markets became widespread." However, it is clear from 1.113 above that it was very much part of the consideration.

We do not consider that this consultation has adequately explained why customers' understanding and needs have moved so much, so fast and that the risks detailed in 2012 have really gone away. Indeed, we have had benign interest rates, low repossessions and a passively competitive market as a backdrop which is unlikely to have displayed the issues addressed in MMR. We would welcome a more expansive explanation of the reasons for this reversal in any subsequent Policy Statement.

In the current market lenders have consistently not allowed intermediaries access to execution-only, nor have traditional brokers wanted access to this channel. Such intermediaries recognise that given the wide range of lenders and products available and in communicating with a consumer they will end up advising on the most suitable provider and product. Most lenders have found methods of mixing execution-only into their product transfer mix and have been pursuing this to the extent of over £70bn of transactions in 2018. Under MMR it was ruled that firms should not encourage consumers away from advice – so despite many firms adopting such practices – differential pricing and telling customers about follow-on products with a simple tick box or keyboard click completion – these rules are to be removed to validate the practices of lenders today. We have seen no evidence of supervisory assessment of this area. Nor do we consider it is likely that this area will be covered given the limited risks perceived in the retail mortgage market by the FCA and the significant other risks in the business plan.

The defence offered is that because the FCA is keeping the "interaction" rule, the changes to the execution-only rules will have limited impact. However, this is not an effective control over both lender and consumer behaviour. We do not consider that this provides adequate consumer protection as many will be induced to follow a cheaper price or quick process without any checks on suitability. The FCA is exercised about how poorly the GI markets are delivering transparency, but wants to change the mortgage market rules to replicate that market. Consumers will not be helped by being given details of all the products they are eligible for on a product transfer rather than the existing version of key highlights. Unless the FCA is prepared to supervise this standard, then it is a superfluous rule. This reduced menu of product is being used "en masse" daily and ignored as there is seen as limited consumer detriment.

Response

In broad terms, AMI is supportive of the aims of this consultation:

- tools that allow searching and filtering might not be advice
- permitting more interaction before advice is triggered
- ease the use of execution-only channels.

We are however concerned by any move to fully liberate execution-only; allow term extensions without advice and proper warnings; and formalising best broker practice on justifying their advice.

It is a fundamental of the current market that intermediaries provide both choice of provider and product through an advised process which delivers positive consumer recommendations. The fact that brokers will be unable to consolidate their fees on some remortgage business is also a retrograde step. These proposals risk restricting consumer access to choice and advice as consumers are offered limited options by single providers with the promise of speed and simplicity which will be a false economy. The lack of protections for consumers under this approach should be better explained and more explicit than currently if the proposals are adopted. There is a clear risk that consumers will be driven to execution only offerings to get the best price, rather than have the benefit of advice to deliver a more appropriate product. There is also the risk that life insurance, critical illness, income protection and other insurances will not be properly introduced and discussed under an Execution Only route. This cannot be seen as a positive outcome overall.

The proposal to require brokers to justify why they may not have selected the cheapest mortgage available looks straightforward on the face of it. It remains dependent on how much data and criteria are input to any sourcing system and agreement with the consumer how relevant these are in relation to price. This risks creating a complex paper chase without more detailed guidance from the FCA about what the core baseline for an assessment might be.

It appears that justification for all this is coming from fears that firms do not want to set up filtering based on objective criteria. These are such as loan amount, property value, term, interest rate type and fees. As these have existed for years through base line affordability checks with PCWs, lenders and many brokers – instead of just telling firms the rules allow this we have proposals for significant relaxations of rules being justified by irrational fear.

The FCA paper from April 2019, “Buying a Mortgage without advice”, set out clearly the issues consumers face in transacting on an execution-only basis. The proposals here do not address the problems consumers have in being too committed to the transaction at point of disclosure, not understanding what protections they are losing and many failing to read and understand the documentation provided.

These new proposals are all hung on data that said that 30% of consumers could have got a cheaper deal. However, two thirds of those were justified by the firm either not having the lender on panel or the deal only being available direct or through limited distribution. There are no proposals to change these rules and give the broker and consumer more access – just rule changes to limit consumer access to advice and give priority to fintech based solutions who do not want to give advice or carry full accountability. Lenders should tread carefully in allowing them licence to sell their products – as it will be advice that is given in most cases and liability will stay in the regulatory perimeter.

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.

The initial MMS work excluded the second charge market from direct scope. These proposals by their nature are to be applied to advice and conduct in that area, but we cannot identify any impact assessment of that. Following the Dear CEO letter to second charge lenders and the continuing FCA supervisory work in this aspect of the market we would welcome guidance in any resulting policy statement.

This paper makes no attempt to consider the implications of the changes these proposals will have on lender behaviour or to intermediary processes. It does not reflect the combined impact of the other changes proposed in the simultaneous consultation CP19/14 on Changes to Responsible Lending rules. AMI considers the separation of these two pieces of work as unhelpful as the proposals do significantly impact on each other.

We remain concerned that all evidence in this and the supporting papers relates to the purchase and remortgage market, with no acknowledgment of the scale and significance of the product transfer market and the extent that this is operated on an execution only basis.

Finally, there are no questions on the cost benefit analysis. This sets out the clear FCA agenda to automate the customer mortgage journey at any price. It also sets out in paragraph 43 that only 13% of intermediary advised sales are “dominated” not the headline 30% cited in the rest of the paper. Paragraph 54 of the CBA is also directly at odds with paragraph 1.115 of MMR.

Conclusion

AMI is genuinely concerned about the move to make it easier to undertake execution-only business. The permission to allow lower priced execution-only products is at odds with the policy direction on General Insurance. The direct promotion of a simpler execution-only process is also counter to the perceived and evidenced benefits of advice. The focus on price in these documents without a simultaneous assessment of suitability displays a lack of depth in this approach which risks the wrong conclusions. AMI feels that the clarifications on what is advice and what is permitted guidance and support is helpful, as is the reiteration of how and when the “interaction” rule comes into play. Consumers currently benefit significantly from the advice provided in the intermediary channel supported by the flexibility of easy access to a wide choice of lenders and products. We do not feel that the case to shut this off on a purely price led argument has been made.

The proposals to require brokers to evidence why they have not recommended the cheapest product is fraught with difficulty and needs much tighter definition by the FCA if this is not to result in a bureaucratic nightmare for intermediates. This will take whole of market advice into a new level of cost, not seen at all in the direct channel. This creation of an unlevel playing field across the market could be construed as an anti-competitive market intervention by the FCA.

We are concerned that fewer consumers will have proper conversations about the benefits of protection policies. We do feel that the risk of consumers chasing cheaper deals via execution only, so avoiding advice has not been adequately assessed with the risk of escalating complaints in subsequent years as consumers realise their mistakes. Finally we would welcome sight of the PRA risk assessment of lender loan books with higher proportions of execution-only mortgages which do not have the benefit of background protection and insurance policies.

Questions

Q1: Do you agree with the proposed changes to our Perimeter Guidance to show that a tool allowing a consumer to search and filter based on objective factors is not necessarily giving advice?

We welcome the FCA giving guidance which helps firms understand the rules. We agree that if the customer has the ability to input the facts to a search tool without having to ask questions, that is to say not become interactive, then this is not giving advice. We consider, as MMR set out, that where the consumer needs help to establish the answers to interest type, term, amount, LTV etc. then this is not execution-only.

The extent of the objective factors that are permitted is an important boundary that will define the opportunity in this market. The more that Help boxes and “Bots” have to be used moves this to advice. Where the objective factors lead to more than one solution, and there is interaction to assist the consumer in selecting, we hope the FCA sees this as advised. Where the consumer self-selects from a list we hope that the limitations on regulatory protections are clear, fair and not misleading with due prominence.

We are aware that consumers have commenced an online process with one mortgage firm that has resulted in excess of £7bn of completions, a proportion of which has completed entirely on-line. This indicates that it can be done, but in this case these all are advised sales, which we consider to be the best approach for the consumer.

AMI favours tools where the consumer can commence an on-line journey, but with firms who allow jumping off points to advice where the consumer considers it necessary. Fully on-line execution-only processes risk consumers being shoe-horned into solutions which are sub-optimal and misunderstood. As part of this consultation we should be ensuring that all firms take full regulatory responsibility for their processes, as they will still be operating within the regulatory perimeter.

Q2: Do you agree that we should more closely align our Perimeter Guidance on mortgage advice with the Perimeter Guidance on advising on investments?

We do not consider that the boundaries are the same between the five key potentially advised products areas:

- Pensions in Drawdown
- Investments and Pension accumulation
- Mortgages
- Protection
- General Insurance

The characteristics of clients purchasing a mortgage and a property compared to purchasing an investment are fundamentally different in the British psyche and is an emotional need. In using the term “consumer” this puts mortgage clients in with mobile phone contract and utility purchases which avoids the issues set out in MMR which rationalised the need for a distinct approach in MCOB.

We do not think these should be aligned and indeed this paper makes a distinction between the allowance to differentially price execution-only mortgages, which does not match recent policy intent on General Insurance. Accordingly, we do not see the need for alignment.

Q3: Do you agree with the way we have characterised the types of tools that already exist or could be developed in the mortgage market?

No comment.

Q4: Do you agree that we should permit more interaction with customers before firms are required to give advice?

We agree with the examples cited, however we do not consider that this is a change. Sensible intermediary firms already apply these approaches in practice. It has been overreliance on safety first risk and compliance “experts” in some organisations which has limited some firms’ ability to interact sensibly. We agree with the examples as this has always been the case.

The issue is not that consumers get caught by the interactive element – it is that they do not know the core requirements to meet the EO rules – know the product details to execute – so have to ask for help which is therefore advice.

Q5: Do you agree with the examples of interactions that should not trigger the need to give advice?

We agree.

Q6: Do you agree that we should remove the prescriptive detail on firms’ execution-only policies?

This was a fundamental cornerstone of the MMR and we do not consider the FCA has made a case for its removal. Please note the points made in our preamble to the questions.

Q7: Do you agree that we should give guidance to clarify that MCOB 4.8A.5R does not prevent a firm marketing their execution-only channel or pricing advised and execution-only sales differently?

We fundamentally disagree.

MCOB 4.8A.5R states that firms should not encourage a customer to opt out of receiving advice on a regulated mortgage contract. Pricing execution-only differently from an advised sale must, by way of human nature, go firmly against this rule. We are concerned that an advice gap as seen in the investment advice market could open up and clients who would meet the definition of vulnerable through a number of characteristics would choose price over advice. We consider it possible to provide further clarification or guidance around the fact that firms should be able to deliver an execution-only channel but that it should not be price led or actively promoted. Our concern is that consumers will be driven to Execution Only to get the best price without understanding the benefits foregone. This rule was put in place to ensure that firms did not actively encourage consumers away from advice, which was seen as a benefit. If the FCA is now of the view that this is not the case they must present their argument more clearly. This paper does not do so.

The value of advice has been set out by AMI and others regularly over the last fifteen years since mortgage regulation. Recently Legal & General updated their research to produce the report in this link. <https://www.legalandgeneralgroup.com/media/17204/04062019-voa-pr-final.pdf>. We consider this to be a robust counter to this move to execution-only.

There is also the risk that life insurance, critical illness, income protection and other insurances will not be properly introduced and discussed under an Execution Only route. This cannot be seen as a positive outcome overall.

As stated in our introduction, we consider that the proposed changes to the remortgage affordability rules, allowing firms to promote their execution-only process, differentially pricing products to encourage consumers away from advice and restricting where intermediaries can charge fees are changes as significant as MMR.

These proposed changes risk creating an unlevel playing field, skewing the market in favour of the larger lender players or those fintechs who can operate purely on-line. If adopted it should only be introduced with enhanced rules on advising consumers of the different protections between advised and execution-only sales. AMI considers these as having potential to put more consumers at risk of not receiving the best product and may be anti-competitive in their own right.

Q8: Do you agree that we should change the process for using the internal rate switch exception so the list need only be re-sent if new products are added or interest rates or fees change in a way likely to be material to the customer's decision?

We agree.

Q9: Do you agree that in cases where the customer approaches their existing lender to ask whether they can match an offer from a competitor, the firm need only present the relevant product to use the internal switch exception?

This has to be channelling the consumer to a specific product and so advice. It might be that the other firm has a limited, but relatively attractive product set and/or their own lender has another better product or rate they can offer. They should be encouraged to do so.

Q10: Do you agree that we should allow the execution-only disclosure to be given and recorded by audio or video?

We are concerned that consumers do not understand when they are not being given advice and do not understand the regulatory differences between advised and non-advised sales (e.g. the protections that they are consequently giving up). We are not convinced by the EO disclosures being put on a website which the customer may or may not read/watch/listen to. Even if they do, the firm has no way of verifying the client's understanding.

These should be positioned as prominent 'warnings' and the customer asked to confirm that they understand that the firm will not assess the suitability of the advice and that they understand that consequently they have no right of referral to the Ombudsman/FSCS for advice related issues in the future.

Q11: Do you agree that we should allow the disclosure and positive election to be in separate documents or recordings?

No. In keeping with our previous comments and those set out in the FCA publication in April 2019, *Buying A Mortgage Without Advice*, this proposal will not assist in ensuring that consumers have made the right decision for the right reason or fully understood the implications of the protections they have foregone. Only with a comprehensive and cohesive chain of events can there be any certainty of understanding.

Q12: Do you agree that we should require advisers, if they do not recommend the cheapest suitable mortgage, to explain why they have not recommended a cheaper mortgage?

We agree with the principle and, as acknowledged, the vast majority of brokers already do this.

The task remains dependent on how much data and criteria are input to any sourcing system and agreement with the consumer how relevant these are in relation to price. In any risk assessment some factors will carry more weight than others. This risks creating a complex paper chase without more detailed guidance from the FCA about what the core baseline for an assessment might be.

However, we do not think it would be a good idea to have an FCA prescribed amount of information put into a sourcing system or a dictated set of parameters that a broker must adhere to. The least amount of information generates the greatest number of products returned. This then enables a broker to deselect rather than to totally miss a product that might be more suitable or indeed cheaper. Firms help desks and compliance support often get calls from brokers who advise that particular products are not showing and this might be because they have a particular box ticked that needs to be amended or deselected. Lenders sometimes struggle to get their new innovations and products to source correctly and efficiently. An example of this most recently is Retirement Interest Only products where there is no end term, yet the sourcing systems have to have a term entered.

We have guidance via the MCD in the ESIS on how we should discuss relative costs which the UK market has never fully endorsed. We feel that in keeping with the definitions of cheapest set out in CP19.14, this paper may need to adopt a similar approach if this proposal is to enter regulation. Is this to be measured on the basis of initial payment, initial payment plus fees, total cost of the loans over any incentive period or total cost over the total term or total cost of the loans as we have to disclose on protection products?

Accordingly, the proposal is fraught with difficulty and needs discussion with the market if this is not to result in a bureaucratic nightmare for intermediaries. This will take whole of market advice into a new level of cost, not seen at all in the direct channel.

We are concerned that something that is best practice is again codified into a rule to the detriment of the intermediary market only, with the subsequent risk that a zealous supervisor in a thematic study in some years times extrapolates this to a tenuous degree. We are also concerned on the impact with PI cover, CMC DSAR enquiries and complaints as well as GDPR policies as to what record keeping is required - will the FCA dictate in order to ensure consistency?

Q13: Do you agree that we should make these minor amendments?

We agree

Q14: Do you agree with our initial assessments of the impacts of our proposals on the protected groups? Are there any others we should consider?

We are concerned that as the FCA has stated in its Financial Lives survey and other publications, consumers can move in and out of situations of vulnerability. This paper appears to take no account of the issues consumers may face in the developing world of mortgages. In 2007 the average age of the first-time borrower was 28 with a 25-year mortgage term. Today that is 34 with a 35 or 40-year mortgage term. The need for advice on shortening term, making over-payments and re-aligning protection products has never been stronger. This move to encourage on-line facilitation risks increasing the number of vulnerable mortgage consumers who do not benefit from the protections of advice.