



Association of Mortgage Intermediaries' response to HM Treasury financial services future regulatory framework review

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

In broad terms we are supportive of the current regulatory architecture and believe that the post crisis structures work well. There are some minor anomalies which we consider need addressing and these are set out in this paper. The FCA senior team is already aware of these thoughts from our responses to previous consultations and our dialogue. This pulls various strands of that thinking together.

There is currently a distinct lack of cross-party political agreement to deal with some of the pressing social issues. The government has not committed to long-term strategies on housing, welfare, long-term care and funding of retirement, we suspect because it does not feel it has a mandate and does not want set targets and potentially then to be seen to fail. This means that there is a lack of direction on a number of issues including intergenerational differences. These issues are too complex to be dealt with by the regulator alone and whilst we welcomed the FCA's recent discussion paper on this issue, we feel that it should be escalated to a full policy debate by Government to incorporate other factors, such as public policy, which are intrinsically linked.

The senior appointments within the financial services regulatory framework are too tightly controlled within the Treasury which has led to a succession of appointments of people who 'fit'. Appointments should be made by a public board and there should be greater independence to encourage a greater diversity of appointments and consequently thinking within the financial services' regulatory bodies. We have growing concerns over the micro-culture we are seeing within the FCA. The lack of diversity is potentially leading to "group-think" and even an increasing reservation to challenge internally. We do not see sufficient evidence of Board challenge to the strategy, structure, approach and prioritisation of issues and resources at the FCA.

The challenge of having a number of regulatory bodies, none of which is responsible for legislation, can currently be seen in the mortgage market. Mortgage intermediaries will soon be part of one of two different regulatory regimes, dependent upon whether they are a firm that is directly authorised by the

FCA, therefore included in the Senior Managers and Certification Regime (SMCR), or whether they act as an appointed representative of a directly authorised firm and so remain in the Approved Persons Regime. Each regime has different requirements of firms, some more onerous than others and some firms will be operating with advisers split between both regimes. This was highlighted following the initial consultations on rolling the SMCR out to FCA solo-regulated firms but, by that time, it was too late to change the legislation and as such, only additional legislation can change this.

At AMI we have been concerned by the number of regulatory changes affecting our industry over the past year and we do not feel that all organisations understand or assess the impact of these on firms, even when they emanate from one entity. A good example is the changes to legislation affecting the buy to let market: the rates of stamp duty were increased for second or additional properties; cuts to mortgage interest tax relief; and the PRA tightened the affordability testing underwriting rules. These were layered upon each other with no time to establish the effect of each change, the effects of which are still impacting the market.

We have seen a plethora of regulatory and legislative changes this year including the introduction of the Senior Managers and Certification Regime to all FCA solo-regulated firms. The speed and volume of papers issued from the FCA has been unhelpful and does nothing to help firms plan and develop for the betterment of their clients. Mortgage intermediary firms are often very small and do not have the ability to digest the number of papers streaming out from their regulator.

To exacerbate matters, it seems that these papers are often issued in silos and the two parts of the FCA, competition and supervision, do not appear to communicate with each other in an open way. Thus, we are presented with papers which seem at odds; whilst one extolls the virtues of technology and execution-only mortgage applications, suggesting that lenders could differentially price offerings to incentivise borrowers down the execution-only route without advice, another cautions firms that the outcomes for vulnerable (and potentially vulnerable) consumers need to be at least equal to that of other customers and that, with the prevalence of mental health problems in the UK, these consumers may require additional advice and time to reach their conclusions and make their choices.

We firmly believe that technology and advice should work together hand in hand and that technology should be used to enhance the advice process rather than negate it. We are concerned that in the drive to be seen as a fintech leader, areas of the financial regulatory framework are forging ahead with quick wins rather than considering how technological advances can be used for the benefit of all consumers to speed up processes, whilst enshrining the need for financial and protection advice.

We do not believe that the FCA as regulator and supervisor is the appropriate body to be in charge of promoting competition within the financial services industry. This responsibility would be more appropriately held by a different body to remove any conflict. We struggle with the FCA's interpretation of its brief with regards to the promotion of competition in the market. This can, as mentioned above, conflict with its mandate to promote the right outcomes for consumers and market participants.

The FCA is funded by its regulated firms to ensure its operational independence which we fully support. However, in the push for change, the FCA created the Sandbox initiative in which non-regulated firms who are not FCA fee payers are able to test their propositions in a safe environment. We do not believe that this is an appropriate use of fees and it should be funded differently. Potential new entrants should be at least partly liable for the cost of testing, the responsibility should not fall entirely to existing firms already operating in the industry.

The FCA seems to be working less in partnership with the industry as it promotes its competition agenda. As regulation has moved more to the EU the FCA has looked to focus upon other areas and

has been producing more philosophical papers rather than regulatory papers. This in turn has also led the FCA to embark on the recruitment of specialists with very limited industry experience and whilst the ideas that emanate are philosophically correct, they are distanced from the practical realities of the industry and the needs of both firms and consumers.

At all times the regulatory framework should apply proportionality to the intervention that it is considering. The Mortgages Market Study is a prime example where the original interventions proposed were not in keeping with “a market that works well in many respects”. The working groups formed to consider the implementation of the Mortgages Market Study have proven effective. Bringing to the surface a number of alternate views in a discussion (not a written consultation) to help distil and calibrate thinking. The FCA should continue to utilise the knowledge of senior figures within the industry to augment its thinking.

We were deeply concerned by the minutes of the FCA board meeting on 28th February 2019¹ discussing the proposed increase to the FOS award limit. Feedback from the consultation highlighting the potential adverse impact on the ability of private investment firms, including mortgage advice firms, to obtain the professional indemnity insurance (PII) in the future was discussed:

“The Board discussed the proposal. While noting the risks and uncertainties around the effect on the supply of advice, it accepted the Executive’s view that it could result in a more focused market with a smaller professional group providing affordable advice”.

That the FCA’s board feels that it is appropriate to make such a pronouncement on the future viability of firms and therefore people’s livelihoods is wrong and indicates that the FCA board is too distant from industry to give the regulator clarity of business and purpose. This distance was remarked upon by Nicky Morgan, Chair of the Treasury Committee, when questioning of Andrew Bailey over the Woodford equity income fund asked, “Does anybody at the FCA actually read the newspapers and listen to what’s going on in the industry?” The regulator has become inward facing and seems overly concerned with its reputation focussing too much time on researching mentions of the FCA on the internet and not enough time surveying the industry that it regulates.

We have observed that there has been a shift in culture within the FCA. It now seems to regard itself as a consumer champion and does not feel that it should be answerable to the firms that pay the fees to enable the FCA to be run as an independent regulatory body. More recently, AMI has felt that whilst the FCA issues consultations, this is sometimes done to tick a box and firm decisions have already been taken within the organisation regarding policies, regardless of feedback received from consultations. Two recent examples stand out:

- Following the publication of the Mortgages Market Study interim report in May 2018 to which the FCA had requested feedback and comments from firms by 31st July. The report was contentious within the mortgage industry as there was an overwhelming focus on the price of products taken, rather than the suitability and other factors. The report set out four remedies to problems that the FCA had outlined, for which the FCA had set up working groups, the first of which was arranged for 9th July, more than two full weeks before the deadline for feedback on the paper.
- The FCA published a consultation paper ‘Increasing the award limit for the Financial Ombudsman Service’ in October 2018 proposing to increase the award limit from £150,000 to £350,000 from 1st April 2019. The policy statement was released in March 2019, with the following statement, which indicates that the consultation was a consultation in name only and the change to the award limit would have happened regardless of firms’ responses:

¹ <https://www.fca.org.uk/publication/minutes/fca-board-28-february-2019.pdf>

“We recognise that this is a reasonably short implementation period. However, in October 2018 we published our Consultation Paper CP18/31 which consulted on increasing the award limit on 1 April 2019. This was so the change could come into force at the same time as the extension of the ombudsman service to larger small and medium-sized enterprises, which we considered a logical approach. Therefore, firms should already have been aware that a change to the limit may occur on 1 April 2019. This Policy Statement serves as confirmation of the change.”²

In fact, most of the respondents (excepting SMEs and consumer groups) were against such large changes to the FOS limit; in spite of the objections the changes were implemented as consulted upon.

The supervision and enforcement teams can appear slow to act and, in AMI’s experience, are reactive rather than proactive, waiting for firms to report activity rather than taking the initiative to investigate things that seem wrong. AMI has previously been told that the FCA needs to be aware of two examples of something before it will investigate. The recent reduction of whistleblowing is likely because the FCA is not seen to act upon information received and feedback loops appear limited.

Incidences of individuals who having been assessed by a firm as unfit and subject to panel removal setting themselves up a directly authorised firm with no references sought from the previous firm by the FCA remain too common and a concern to AMI and our members. We would welcome the regulator taking a stronger stance to ensure that this practice ceases.

Finally, the financial services regulators need to be seen to take action against individuals who, by their recklessness, cause harm to consumers. The FCA should be seen to hold individuals to account. In 2017 it was reported that 70% of claims to the Financial Services Compensation Scheme, totalling £10.5 million, stemmed from the actions of one firm and consequently an emergency levy was raised from existing firms. There has, to our knowledge, been no action taken against the directors of this firm, one of whom has continued his career within the financial services industry. This cannot continue and measures need to be taken to prevent this to maintain the integrity of the financial services sector. There has been recognition of the need for better communication between the FSCS and FCA, but we have yet to see tangible evidence of this working to effect.

² <https://www.fca.org.uk/publications/policy-statements/ps19-8-increasing-award-limit-financial-ombudsman-service>