



Association of
Mortgage Intermediaries

Association of Mortgage Intermediaries' response to The Regulatory Framework for Approval of Financial Promotions Consultation

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

It is important that consumers can trust financial promotions, so that not only they are protected from harm but also to safeguard a firm's reputation and that of the wider industry. Consumers need to have confidence in financial products, including an appreciation of benefits and value, but this can easily be eroded through a negative experience. This can lead to apathy and a distrust in firms and products. A financial promotion may be the first interaction that a consumer has with a firm and the wider financial services industry. It is important that authorised firms who sign off promotions are not only regulated but deemed to have sufficient expertise and due diligence processes. This will help to ensure that consumers are not misled and lead to improved consumer outcomes.

AMI is supportive of this consultation and we agree that there is a need for change. It is also timely given the impact of the pandemic. Coronavirus has resulted in a shift to mass home working, and as a society we have turned online to carry out more day to day interactions and activities due to lockdown restrictions and social distancing rules. The impact of the coronavirus restrictions has affected the ability of mortgage and protection advisers to give face-to-face advice, yet the demand for mortgages and protection advice, and the promotion of such services, remains strong. Much of the demand for mortgages can be attributed to pent-up consumer demand following the general election and Brexit, a shift in consumer motivations (such as the desire for outdoor space) and the exemption of SDLT on properties up to £500,000 in value. Coronavirus has also made more consumers vulnerable and therefore susceptible to promotions that are unclear or misleading.

Our response

Do you agree that a gateway should be established enabling the FCA to assess the suitability of a firm before it is permitted to approve the financial promotions of unauthorised persons?

We agree that there is a need for a regulatory gateway, as the current regime is not fit for purpose. There needs to be tighter FCA control over financial services promotions, especially as the increase in the use of the Internet and social media as marketing channels means there are now more ways for unauthorised and authorised firms to promote products. The regulatory gateway approach is sensible because it encourages appropriate due diligence and control but also the correct culture and behaviour within authorised firms. Subsequently, this should influence the conduct of unauthorised firms and raise overall standards.

Mortgage and protection intermediary firms rely on lead generation as a valuable source of new business. There are reputable lead generation firms that adhere to FCA, Advertising Standards Agency and GDPR rules and therefore the chosen remedy must not have unintended consequences that deter credible and compliant firms from providing lead generation services.

However, we are aware that there has been an increase in contact by unauthorised lead generation firms who are reacting to demand and a change in consumer buying habits in the mortgage market. Mortgage and protection intermediary firms that purchase leads from these firms are accountable for the content of the lead generator's advert, where adverts are used on their behalf. Firms could inadvertently breach FCA principle six (customer's best interests) and seven (clear, fair and not misleading) if they are accepting leads without a full awareness and understanding of the origin and acquisition method. This consultation and the proposed remedy of a regulatory gateway will, in our view, result in clearer firm responsibility and accountability.

As a regulator that aims to be more data driven, it is important that the FCA is armed with the necessary knowledge to understand which firms are approving financial promotions. This will allow the FCA to move from a reactive to a more proactive approach and ensure that FCA Senior Management are equipped to make informed decisions on strategy and direction. This consultation makes a link between the need for change and the investigation into the collapse of London Capital & Finance and we are aware that since the launch of this consultation, the deadline for Dame Elizabeth Gloster's report has been extended to 23 November 2020. We would expect that the finalised report will be taken into consideration before a decision is made on the direction of this consultation, as any recommendations made in the report relating to supervisory approach are likely to be pertinent to this review.

It is important that the regulatory gateway applies to the approval of financial promotions on online platforms, such as Google (e.g. Google Ads) as well as social media sites because the development of the digital world has the potential to cause more severe consumer harm, with information shared rapidly. We agree with the FCA's comments in its 2019/20 perimeter report that 'it is important that online platform operators, like Google, bear clear legal liability for the financial promotions they pass on – at least to the same extent as traditional publishers of financial promotions'¹. The FCA has stated that last year it issued 578 alerts against firms or

¹ <https://www.fca.org.uk/publication/annual-reports/perimeter-report-2019-20.pdf>

individuals that it believed to be engaging in breaches of the perimeter and most of these involved breaches of the financial promotions restriction online². It is therefore clear that tighter controls are necessary and this should be an area of high priority.

We have received evidence from member firms of misleading adverts on Google, such as adverts for secured (second charge) loans with '99.7% approval rates'. The current process of reporting these to Google does not always result in swift remedial action, as some member firms have found instances where the adverts still appear in search engine results weeks after it has been reported. We understand that Google has introduced a 'business operations verification programme'³ which is a move in the right direction, however even the FCA has acknowledged that until more is understood about what this verification programme entails, no one knows exactly how this process will work⁴. We would expect the FCA to continue its engagement with Google to understand the process and ensure that the verification programme results in the correct outcomes.

It is important that, as suggested in the consultation, the new gateway 'will not apply to firms approving financial promotions of an unauthorised person within the same group or to the approval of authorised firms' own promotions for communication by unauthorised persons'. AMI would want clarification (as part of an FCA consultation) that this includes principal firms approving a financial promotion on behalf of an appointed representative (AR) firm. Many of the largest mortgage intermediary firms operate under the network model, so it is important that any changes do not hinder current processes (principal firms currently approve promotions on behalf of AR firms).

To understand the form of a regulatory gateway the FCA consultation will need to include details on specifics such as: how firms are deemed eligible to approve financial promotions (i.e. how suitable and competent is defined), how firms are assessed, how firms apply for consent (i.e. would this be through the FCA's Connect system and as a variation of permission) and SLA's on how long the approval process will take. This should also include a cost benefit analysis (CBA) as we note from the consultation that a new gateway would constitute an additional administrative burden on authorised firms.

We also feel that there needs to be greater clarity and prominence on who a consumer or individual notifies if they have concerns over misleading or inaccurate financial promotions. We are aware that in some instances a consumer or individual is, after notifying the FCA of a concern over a financial promotion, directed to the ASA. This can result in confusion and could deter someone from making a further notification if they feel the process is too difficult and burdensome.

² <https://www.fca.org.uk/publication/call-for-input/consumer-investments-market.pdf>

³ <https://support.google.com/adspolicy/answer/9703665#901>

⁴ <https://www.ftadviser.com/regulation/2020/09/25/fca-labels-google-s-scam-advert-efforts-deeply-frustrating/?page=1>

What are the risks and benefits of each of the two policy options put forward? Would there be any unintended consequences resulting from implementation?

Option one (restrict approval of the financial promotions of unauthorised firms through the imposition of requirements by the FCA):

Benefits

- Authorised firms would be required to take a proactive approach and decide whether to apply to the FCA to have the financial promotions approval requirement varied or cancelled.
- Greater degree of protection for authorised firms, as they will only be able to sign off promotions in which they can demonstrate expertise.
- It has the potential to improve the quality (substance and presentation) of financial promotions as these would be approved by firms with the relevant subject matter expertise.
- Authorised firms will have a clearer understanding of the FCA's requirements, which will be gained through the approval process. This should reduce the number of firms failing to undertake due diligence as firms will know exactly what their role and responsibility entails.
- It would result in an improved supervisory approach, as the FCA would know which firms hold the permission and can therefore act on market intelligence more quickly.

Risks

- FCA need adequate resources to supervise and enforce, otherwise the regulatory gateway will not achieve the desired aims. Currently the FCA appears to prioritise a competition approach over supervision and enforcement.
- The timescales need to be carefully considered, so that there is not a gap between when the rules come into effect (which could prevent a firm from approving a promotion) and when the authorised firm is able to apply and receive approval.
- Consideration would need to be given as to how consumers and firms (whether regulated or unregulated) would be able to check whether a firm could approve financial promotions. For example, would a restriction appear on the Financial Services Register if the firm has not applied for a financial promotion approval permission. If there is no way for this to be checked, a regulatory gateway would not meet its full potential.

Option two (specify the approval of financial promotions communicated by unauthorised persons as a 'regulated activity' under FSMA):

Benefits

- We do not feel that there are specific benefits that can be attributed to option two, above and beyond those achievable under option one.

Risks

- We agree with the comments made in the consultation that option two is a disproportionate way to address the government's concerns. Our concern is that

option two is more likely to result in compliant lead generation firms leaving the market given that the treatment of financial promotions approval will be fundamentally altered.

- Firms could be put under undue pressure to carry out the approval of financial promotions as it would form a regulated activity, whereas under option one the permission is explicit because it is requested by a firm.
- In addition, the same risks as identified in option one would also apply.

If the government was to proceed with one of the two policy options, which would be your preference and why?

Our preferred policy option is option one. This is because it encourages a firm to carefully consider whether it has the necessary skills and competence to approve financial promotions and requires a firm to explicitly request the permission. We would not want firms to be put under undue influence to approve a financial promotion because it becomes a regulated activity under the RAO, which could occur under option two.