Association of Mortgage Intermediaries

Association of Mortgage Intermediaries' response to Quarterly Consultation No 38 (CP22/26)

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.

Introduction

We have answered questions under section eight (clarificatory amendments to the Consumer Duty) that are relevant to AMI and its members.

More broadly, we are concerned the FCA is consulting on changes to its Consumer Duty rules seven months before the suite of rules come into force. The Consumer Duty implementation timeline is already challenging for firms alongside other regulatory work (such as the AR regime changes) and therefore we encourage the FCA to communicate finalised changes as result of this consultation as soon as possible.

Whilst AMI does not deem the proposed rule changes to have a significant impact on mortgage intermediary firms, any changes to the rules at this stage will require review by firms to assess impact. As a result, it would be helpful for the FCA to confirm whether it envisages any further Consumer Duty rule changes (in addition to those proposed in this consultation) ahead of 31 July 2023.

Questions

Q8.1: Do you have any comments on our proposed changes to confirm the application of the Consumer Duty in relation to firms approving or communicating financial promotions?

We agree with the proposed changes.

Q8.4: Do you have any comments on our proposal to clarify the 'closed product' Glossary definition in relation to the Consumer Duty?

We agree with the proposed changes.

Q8.7: Do you have any comments on our proposal to clarify the application of the Duty where an exemption applies in a sectoral sourcebook?

We agree with the proposed changes. However, we wanted to take this opportunity to highlight a potential conflict within the current made rules and to ask for clarification on the interaction between the proposed rule and guidance change at PRIN 3.2.8 and two of the existing rules

FCA Handbook PRIN 2A.3.13 and PRIN 2A.4.17 states that where a distributor distributes a product manufactured by a person to whom the rules in PRIN 2A.3 and PRIN 2A.4 do not apply (i.e. within our sector we have interpreted this as lenders that manufacture unregulated BTL products; however this is the area we are seeking clarification on) it must take all reasonable steps to comply with the products and services and price and value outcomes.

We therefore feel, based on the existing rules, that unregulated BTL products are captured under the price and value and products and services outcomes, from a distribution perspective. This will be relevant where the firm operates under a single entity, not splitting their "identity" to separate delivery.

We ask the FCA to confirm whether our above interpretation of PRIN 2A.3.13 and PRIN 2A.4.17 is correct, as we feel they are ambiguous and appear to conflict with the FCA's comments in PS22/9 that the Duty follows the position in MCOB (i.e. does not apply to unregulated buy-to-let contracts) and with the proposed guidance in PRIN 3.2.9 G. It is important mortgage intermediary firms, as distributors, have certainty over scope as they progress implementation of the FCA's Consumer Duty requirements.

FCA FG22/5 states under section 6.61 'a product or service may not have been approved in accordance with the obligations under the products and services outcome if it was developed by a firm outside the UK' and goes on to say that 'distributors must comply with the obligations on distributors under the rules for this outcome. They must for example, take all reasonable steps to understand the product or service and the target market it would serve in order to ensure it will be distributed appropriately'. There are similar comments under section 7.36, in respect of price and value. It is unclear whether these sections of the non-Handbook Guidance directly relate to rules PRIN 2A.3.13 and PRIN 2A.4.17, as we feel these two rules can be interpreted more widely than the guidance wording. We therefore ask the FCA for clarification.