Association of Mortgage Intermediaries' response to HMT Senior Managers & Certification Regime: A Call for Evidence

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

AMI is grateful to have the opportunity to respond to this Call for Evidence. We would be grateful for our comments in this section to be considered alongside our responses to the set questions.

We would draw attention to the tonal difference between the FCA/PRA discussion paper and the HMT call for evidence. The call for evidence appears to suggest that significant reforms could be considered following the submission of these reviews, whilst the FCA/PRA paper is targeted more at incremental improvements.

We would reiterate that the implementation of SM&CR was very resource-intensive for firms and we have concerns that the industry may not be prepared to repeat the process for extensive changes that may not add much value. Even if a new regime were simpler, we still believe its implementation would place undue burden on firms at a time of considerable regulatory change.

In the main we feel SM&CR works well as-is, with improvements required centred on enforcement (to ensure fairness for compliant firms), and the need for better administrative efficiency. These are documented in our response to the FCA/PRA DP.

Questions

1. Has the SM&CR effectively delivered against its core objectives? For example, making it easier to hold individuals to account; or improving governance, behaviour and culture within firms.

Yes, for the most part. Though there are a number of areas of improvement such as administrative delays and duplication of work. The SM&CR has provided clear role boundaries and responsibilities which allows many senior managers to be comfortable with and knowledgeable about what is required from them.

It is difficult to comment on the approach to holding individuals to account, as we have very few examples to review. We can see that the number of investigations opened by the FCA is an astonishingly low 120 cases for what is a substantially sized industry. The number of investigations opened since 2016 where the individual was a Senior Manager involving non-financial misconduct is four, it would be short-sighted to view these low figures as a direct result of the success of SM&CR, the data suggests that the SM&CR regime lacks the necessary enforcement to fully deliver on it intended outcomes.

Whilst we appreciate that SM&CR is at its core designed to be a preventative regime, we would expect that five years later we would have a number of enforcement cases studies to review. The lack of case studies deprives firms of valuable lessons and the length of time between incidents and the related published enforced outcomes does not suggest that this is an area of priority for the FCA/PRA.

2. Do these core objectives remain the right aims for the UK?

Yes, the core aims are still relevant and to be strived for. The improvement of conduct for betterment of firms, individuals and consumers has, in our view, led to an increased confidence in financial services.

3. Has the regime remained true to its original objectives or has the scope or use of the regime shifted over time?

Yes, for the most part. The scope of the regime has altered slightly since the implementation of SM&CR in 2016, not only in the related development and changes to the AR regime but in the focus on non-financial misconduct handling.

In our view an area of concern would be the lack of outcomes in terms of enforcement, prior to the implementation of SM&CR the prospect of enforcement did promote accountability, however the subsequent lack of public enforcement announcements since implementation do not instill confidence nor are they an effective deterrent.

The general consensus is that SM&CR has helped good firms to clarify and hold themselves to account, but hasn't stopped bad firms from flouting rules with apparent impunity.

4. The government would be interested in respondents' reflections on their experience of the SM&CR, now that it has been in place for some years.

The general consensus is that SM&CR was resource intensive to implement and there are still aspects that require attention, such as the administrative delays. But on the whole, it has

proved to be successful in improving the conduct of both firms and individuals. Firms in the mortgage advice sector have implemented and operated under the regime without any particular concerns or difficulties, apert from issues with the FCA authorisations unit which has consistently failed to meet expected timescale for processing applications and continues to have both IT issues and 'black holes' that some applications appear to drop into.

5. What impact does the SM&CR have on the UK's international competitiveness? Are there options for reform that could improve the UK's competitiveness?

We appreciate that the intent behind a more comprehensive overhaul would be to boost the UK's international competitiveness as a financial centre. However, we would argue the UK's strong reputation as a centre of excellence for financial services is built on trust in its robust standards of conduct as part of its regulatory framework. We fail to see how the SM&CR regime could be simplified or substantially reworked (as the call for evidence suggests could be an option) without concomitant slackening of standards and accountability in the financial sector. Furthermore, the gaps in enforcement of SM&CR mean that in practice rogue actors are unlikely to be deterred by the presence of the regime. On the flipside, if the deficiencies in SM&CR could be addressed (particularly around administrative delays and enforcement), this may make the UK more attractive to high-calibre international firms who know their commitment to best practice and good conduct will be rewarded in a market that operates a level playing field.

There are no issues within the market we represent that we are aware of.

6. Are there examples of other regimes that the government could learn from?

No comment.

7. How does the level of detail, sanctions and time devoted to the UK's SMCR regime compare with that in other significant financial centres?

No comment.

8. Are there specific areas of the SM&CR that respondents have concerns about or which they believe are perceived as a deterrent to firms or individuals locating in the UK? If so, what potential solutions should be considered to address these? Respondents should provide as much detail as possible to help build the fullest picture of any issues.

No comment.

9. Is the current scope of the SM&CR correct to achieve the aims of the regime? Are there opportunities to remove certain low risk activities or firms from its scope?

We agree that the current scope of SM&CR is for the most part both practical and appropriate.

The regime has a scaling mechanism so that Limited scope, Core and Enhanced firms have different roles and accountabilities. It was one of the few regulatory interventions where the FCA genuinely tried to be proportionate.

In regards to the specific question regarding low-risk firms, there is a lack of clarity on the definition and criteria of a low-risk firm, due to this we would refrain from commenting.

10. Are there "lessons learned" that government should consider as part of any future decisions on potential changes to the scope of the regime to ensure a smooth rollout to firms or parts of the financial services sector?

In our view, the SM&CR plays a valuable role and has, for the most part, worked well. Maintaining the 'status quo' could be easier for firms than a root and branch reform, even if the changes aim to simplify. The implementation of SM&CR was very resource intensive and we have concerns that making extensive changes to the regime at this stage is unlikely to add sufficient value. Any further changes will need to be justified, in terms of benefits and costs.

We have debated the potential expansion of scope to cover the AR regime given the FCA's focus on the network model through the AR regime changes. We feel that this expansion would be unnecessary as APER covers this sufficiently. The recently enhanced requirements in the FCA's AR rules have also strengthened the regime (particularly as it takes concepts seen within SM&CR). Additionally, AR firms are unlikely to have the capabilities/knowledge/resources to understand and apply the SM&CR – this is one reason why they become an AR vs. DA.

By bringing AR firms into SM&CR we think this would cloud the accountability of the principal firm and dilute their ability to execute proper systems and controls.

11. Any other comments the government or regulators would benefit from receiving?

One view remains that the disparity that exists between the DA regime under SMCR and the Authorised Persons regime within the AR model is a difference that needs debate. Might the AR regime review have been unnecessary if SMCR had been fully embedded? Indeed, much of the new AR requirements match the fit and proper and financial soundness tests in SMCR.

We are aware an HMT call for evidence on the scope, benefits and risks of the AR regime in December 2021 discussed the option of extending SM&CR to ARs – we would be keen to hear the government's response to this and question why there has been such a significant delay in providing a response.

Whilst we were concerned about the cost of implementation in the first instance, now it is embedded we are not sure that the recurring costs are in any way damaging. Further change cost will need to be justified.

The accountabilities in the conduct rules and the fit and proper tests required seem sensible good practice and we are not sure we would want to lose them. The FCA Directory and Listings were also a benefit.

The biggest problems have occurred because the FCA authorisation team have been unable to meet their SLA's in managing applications, leading to tensions and delay.

From a trade body perspective, our view is that the clarity that the SMF roles deliver within firms has enhanced accountability and improves internal debate and decision making.

There is a degree of bureaucracy around the governance matrix, statements of responsibility and handover certification that might benefit from simplification. But again, now these are well established it may be less onerous for firms to maintain the status quo than adopt a new 'simplified' regime.