Association of Mortgage Intermediaries' response to HMT Financial services regulation: measuring success – call for proposals

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 are supportive of this consultation, as it is important for HM Treasury (HMT) and other stakeholders to be able to monitor the regulators' performance. As we represent FCA regulated mortgage intermediary firms, our insight and comments are based on how we feel the changes should operate in respect of the FCA only.

In our opinion, the FCA has misunderstood its competition objective and has allowed itself to be pulled in many directions, placing undue focus on competition in markets rather than concentrating on how markets are working and the supervision of them.

Therefore, there is a danger that, without effective scrutiny, the new secondary international competitiveness and growth objective could disproportionately influence the FCA's primary objectives. It is crucial the FCA is required to demonstrate how it will ensure that this does not occur. We view the setting of suitable metrics by HMT as an important part of this.

There is also room for improvement from both industry and regulators on cost-benefit analyses, which we consider an important part of the regulatory consultation process. We were pleased to see the introduction of the cost-benefit analysis (CBA) panel under the Financial Services and Markets (FSM) Bill. However, there is an opportunity for the FCA to make its CBA more robust, which we explore in greater detail in our answers to the consultation questions below.

Overall, given the FCA is moving towards becoming a more data led regulator we would expect to see an increase in the volume of metrics published to industry.

Questions

Q: Do you agree with the government's approach to the exercise of the power of direction in Clause 37 of the FSM Bill?

We are supportive of the level of scrutiny provided under Clause 37.

We view the Treasury Select Committee (TSC) as an important part of the process. To date, we feel the committee has provided clear evidence of their ability to strongly and robustly review and challenge information published by the FCA. This is a mechanism that should remain and we would expect the TSC to be given the opportunity to review information published under Clause 37.

Where HMT directs the regulator to publish information, this should also be made publicly available (we accept that this would not be appropriate where this information is confidential or publishing it would be against the public interest). This is because stakeholders such as AMI and mortgage intermediaries as fee paying firms should by privy to such information and it is likely to prove useful to AMI when responding to FCA consultations, in discussions with FCA staff and holding the regulator to account.

The consultation states that 'in many cases, the government expects that, if it is reasonably practicable to gather and publish the information, the regulator will do so of its own accord. However, where required, HM Treasury will direct the regulator to publish the required information'. We question how HMT will monitor whether voluntary gathering and publication of information is happening by the FCA? We believe the FCA should be required to report to HMT periodically detailing when and what information was published. We would expect information published by the FCA under Clause 37 to also be made available on its website and for this to be drawn to stakeholders' attention through its daily e-mail update.

We also believe the FCA should be required to report on the number of times where HMT has invoked Clause 37; this could be reported on annually, once the Clause has come into effect. This will help relevant parties to assess whether Clause 37 is working as intended.

Section 2.11 of the consultation mentions that HMT will engage with industry, consumers, and Parliament as appropriate. HMT engagement with trade bodies is an important part of the process and we look forward to continuing our relationship and engagement, as this has proved useful for both parties.

Q: What are the key metrics that the FCA and the PRA should publish in relation to their new secondary growth and competitiveness objectives?

We believe the FCA should be required to publish the following metrics:

- **How the FCA has balanced the new secondary objective against primary objectives** – Clause 26 of the FSM Bill will require the regulators' annual reports to include an explanation of how, in their opinion, the regulators have complied with their duty to advance the new secondary competitiveness and growth objective. However, this also needs to demonstrate how the FCA has balanced the secondary objective against its primary objectives and ensured primary objectives remain its main focus. This could be achieved through quantitative data, as well as qualitative data such as case studies.

- **Information on how the FCA is balancing international competitiveness and growth versus adequate controls in the domestic market** – the FCA Regulatory Sandbox allows

firms to 'test' new products in a controlled environment. It is important that the addition of a new secondary international competitiveness and growth objective does not lead to a loosening of regulatory standards for new innovations, without adequate assessment of the wider risks.

For example, cryptoasset firms were allowed to operate within the Sandbox environment and only recently has the decision been made to capture cryptoasset firms under certain parts of regulation. We see a potential future risk with AI, which has to be carefully managed. Therefore it is important for the FCA to not become distracted by its new secondary objective and to ensure it keeps an eye on the 'bigger picture'.

Furthermore, 'competitiveness' as a principle should not be limited in scope to fostering innovation and expanding market choice for consumers. It should also encompass the need to create a level playing field between firms, so that incumbents aren't unfairly hindered from competing with tech-enabled startups and 'disruptive' business models.

In FCA consultations we have previously expressed our concern over the Sandbox approach. As this is free to new entrants and provides direct access to the FCA policy and supervision teams, it provides benefits that incumbent fee-paying firms can only enjoy if they apply and gain access through this process. We appreciate that this provides market intelligence to the FCA, but we remain concerned that as it is "free to use", incumbents are paying for start-up competitors to have free consultancy support.

- **Greater detail in FCA board minutes** – at present, it is difficult to draw any meaningful insights from the published FCA board minutes. We therefore feel greater detail is required. With more detail provided, FCA board minutes have the potential to become a useful qualitative metric and will help demonstrate to stakeholders how FCA senior management are discussing, applying and managing the new objective and balancing this against its primary objectives.

- **Percentage of consultations where a cost benefit analysis (CBA) has been undertaken** – cost benefit analyses are a core part of the regulatory consultation process. However, we feel these should be made more robust: the industry must get better at outlining the costs of change and the regulator at quantifying and justifying the benefits.

  CBA's should also be carried out on each new policy intervention, which we do not believe happens at present. Therefore, we feel it would be useful for the FCA to provide annually (for example as part of its annual report) the percentage of consultations where a cost benefit analysis has been undertaken.

- **Percentage of policy interventions that have had a post-implementation review** – we feel the FCA should be required to publish annually the percentage of policy interventions where there has been a post-implementation review carried out.

  We are concerned that the FCA does not always commit to this. There have been situations where we feel this activity - and published outputs - would have been beneficial to the FCA, the relevant financial services sectors impacted by policy changes and future market entrants and/or investors.

  For example, our current understanding is that the FCA has no plans to carry out a post-implementation review of the changes made to the Appointed Representatives (AR) regime. The policy changes have had a significant impact on some of our member firms and has had significant investment from the FCA, chiefly due to the creation of a dedicated AR regime team within the FCA which is being funded through an annual levy on firms with ARs.

  By publishing the percentage of policy interventions that have had a post-implementation review, this places an increased accountability on the FCA to consider on a case-by-case basis

if such a review is warranted. It should also allow more effective scrutiny by HMT and the wider industry, particularly where HMT wants to assess how the FCA is meeting and managing the new secondary objective.