



Association of Mortgage Intermediaries' response to Call for Evidence into the independence and accountability of UK regulators

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

Our members are regulated by the FCA as solo-regulated firms and therefore our response focuses solely on our views of the independence and accountability of the FCA.

To summarise, our comments mainly centre around:

- The breadth and depth of the FCA's remit.
- How well the FCA exercise and prioritise its objectives.
- Government intervention into policy and regulatory related matters.

Questions

1) Are UK regulators being given a clear job to do?

Generally, we feel the FCA has a clear role but are concerned it is distracted by a policy and competition agenda. There are early signs this is improving with a more assertive supervisory approach under Consumer Duty, although it will take time for this to feed through to noticeable enforcement action and related interventions which we consider should lead to changes to market behaviours.

The FCA is clouded by the volume of firms it regulates (around 50,000). AMI's view is that this could be better managed if the FCA focused more on supervision and enforcement rather than a policy and competition agenda. Many of these firms are consumer credit permission firms where the credit activity is not their primary reason to trade (such as businesses selling cars and "high street" point of sale credit) and therefore would benefit from being split out and regulated by a separate arm of the FCA, much like

how the Payment Systems Regulator (PSR) is a subsidiary of the FCA. This would allow a more focussed approach on those likely to cause significant harm to consumers.

The breadth and depth of the FCA's remit has grown in recent years. To illustrate, there around 69 initiatives in the most recent Regulatory Initiatives Grid ([November 2023](#)) where the FCA is the lead or joint lead organisation (no change from the May 2023 grid and an increase compared to previous years – circa 60 in May 2022 and circa 58 in November 2021). The FCA's remit has grown further given selling funeral plans and the marketing of cryptoasset are now regulated activities and will grow in the future once the wider cryptoasset regime is brought under regulation (which we understand will be a phased approach). Should Buy Now Pay Later become a regulated activity this will also expand FCA remit further.

Whilst not all FCA initiatives impact mortgage intermediary firms, we have witnessed policy changes that have either been published at similar times or where implementation periods overlap. For example, there was overlap between Consumer Duty and Appointed Representatives (AR) regime changes. These were significant projects for some mortgage intermediary firms and required resources spanning the same teams, which operationally proved challenging. The FCA needs to be better at phasing its work in related areas.

It is therefore important for Government to consider the impact of legislative changes on the FCA's remit and to recognise the cumulative impact of FCA initiatives on the different sectors within Financial Services.

2) Is the right balance being struck between the responsibilities of regulators and those of the Government, particularly where there are political or distributional trade-offs that need to be resolved?

No, we do not feel the right balance is being struck.

Whilst we recognise it was important for the Mortgage Charter¹ to be implemented promptly, we feel the FCA and firms directly impacted by the changes were not given sufficient time by Government to assess the implications. As a result, mortgage intermediaries' role was largely ignored despite around 84% of UK mortgages being distributed via an intermediary². While the Charter and its rules are voluntary, the increasing number of lender signatories makes it crucial for advisers to understand their role and has created ambiguities as to their obligations and responsibilities.

In our view, Government should have recognised the need for wider industry consultation yet found itself distracted by a political agenda and external influence from consumer lobbyists such as Martin Lewis (Money Saving Expert). Sudden panic emanated ostensibly over the cost-of-living crisis, which has yet to materially impact arrears numbers. More likely was a political intervention over higher mortgage interest rates, without fiscal intervention, that meant a sub-standard solution was evolved on extended offer to completion periods and the right to secure lower rates. This imposes serious burdens on advice and lenders. We would expect wider industry consultation should the Mortgage Charter be extended, with delegation by statute to the FCA.

¹ <https://www.gov.uk/government/publications/mortgage-charter/mortgage-charter>

² <http://www.imla.org.uk/resources/publications/imla-the-new-%60normal-prospects-for-2023-and-2024.pdf>

We also are concerned Government is intervening in policy related areas that should fall under the FCA's remit.

There are two elements of Government's Insurance Broker pledge³ that we wanted to highlight. Firstly, the commission cap where brokers commit to having a cap on any retained commission of no more than 15% of the total premium (for all brokerage work including any undertaken by parties on behalf of the broker) on multi-occupancy buildings which have or have not yet been remediated and secondly the comment that the pledge showcases 'insurance broking best practice'.

With regards the commission cap, under existing FCA regulatory requirements GI and protection brokers (as distributors) are required to assess their remuneration as part of fair value rules introduced by the FCA in 2021. Therefore, firms should have assessed the commission they receive on in-scope products, accompanied by clear documentation and rationale as to why they believe it delivers fair value to consumers. In April 2023 the FCA published a clear message to firms operating in the multi-occupancy buildings sector that there is evidence of significant shortcomings by some brokers in applying fair value rules to their remuneration practices⁴. This is clearly an area the FCA is already working on yet by Government intervening through the creation of a pledge, it feels both the work of regulated firms and the FCA is being undermined.

Secondly, the comment on showcasing 'insurance broking best practice' also concerns us. The Financial Ombudsman Service (FOS) will take industry best practice into consideration when adjudicating a complaint; therefore, although the agreement is voluntary, broker firms which haven't signed up to the pledge could see this used against them as part of a FOS decision. We have not seen the FCA comment/signpost to the pledge, which feels unbalanced.

Overall, both these examples give us concern that Government is intervening in policy matters that undermine the role of the FCA.

3) Are regulators appropriately independent of government? Is the right balance being struck between strategic and political input from government and preserving the operational independence of the regulators?

The FCA usually operates independently apart from where government is now intervening without proper parliamentary scrutiny. We therefore do not believe the right balance is being struck currently. Our comments to question two apply equally to this question.

In addition, we would also question the extent to which the politics of the long-term care funding crisis and the need for a market solution have interfered with regulators' ability to take effective enforcement action in the equity release market, following ongoing FCA findings of unbalanced promotions and poor advice practices. We would prefer to see more transparency, openness and collaboration between government, regulators and industry stakeholders around this complex issue – there is a need for broader solutions and working at cross purposes will only likely frustrate the objectives of all parties.

³ [Insurance Broker Pledge - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/insurance-broker-pledge)

⁴ <https://www.fca.org.uk/publication/policy/ps23-14.pdf>

4) Does the Government provide too much or too little guidance to regulators in making decisions, particularly in deciding between different objectives and priorities?

Our comments to question two apply equally to this question.

5) Are the roles and remits of different regulators sufficiently discrete, or is there overlap and duplication?

No comment.

6) How effectively do regulators co-operate with one another, and how could this be improved?

We believe the FCA and the PRA, where relevant, co-operate well with one another. A recent example is the consultation paper on Diversity and Inclusivity which was issued as a joint FCA and PRA initiative. In our view it is important for the two regulators to work together on this topic, given the cross-sector issues and challenges that the policy proposals are seeking to address.

7) Do the UK's regulators have the necessary skills, capabilities and expertise internally to perform the roles they have been given? If they do not, how could this be improved?

We believe the FCA is already equipped with adequate powers but it does not always make good use of these. Whilst its existing rules and guidance are sufficient, it is its inadequate supervision and enforcement that needs addressing, not layering of regulation through the creation of further rules.

Therefore, it is important that FCA supervisory teams are well resourced and equipped with the required skills, capabilities and expertise to supervise the size and scale of firms that fall within the regulated population and that the right balance is struck between the number of FCA staff in policy and competition divisions and those in supervisory roles.

We believe supervision could be improved by increasing 'feet on the ground' supervision. By this we mean FCA supervisors experiencing and appreciating the culture of a firm, its employees and senior management and gaining a deeper understanding of the application of its rules and guidance in live environments and how this influences and drives consumer outcomes. This insight is almost impossible to extract from data alone. An approach where data is the driver, which is a supervisory model that the FCA is moving towards, monitors firms based on outputs and not necessarily outcomes. 'Feet on the ground' supervision would show clear intent, acting as a deterrent to poorly behaving firms.

As a whole, the FCA is an organisation that embraces progressive thinking, is forward looking and is made up of staff that are passionate and determined to make a positive difference to the financial services industry. However, we are concerned that many individuals do not have direct experience in industry. Whilst we do not believe this should be made a pre-requisite for a role at the regulator as it is important the Financial Services (FS) industry attracts diverse talent and many roles benefit from transferable skills gained outside of the FS industry, there is an opportunity to ensure FCA departments have the right mixture of staff with and without industry experience. This will look different dependent on the department.

We believe this would help ensure a more balanced and informed view when developing policy. This is important as the FCA grows; over the last year the FCA staff headcount has grown from around 4,000 colleagues to around 5,000⁵ and will likely increasingly include roles that are highly specialised or niche, such as cryptoasset. We expect FCA headcount to rise further during 2024-2025.

Many senior people within the FCA leave the organisation with a view to attain a role in industry or consultancy. This has the potential to cause conflict of interest issues, particularly as we understand

⁵ [Transcript of Annual Public Meeting 2022 \(fca.org.uk\)](https://www.fca.org.uk/publications/annual-public-meeting/2022)

there are no contractual limitations. The FCA's 2020/21 annual report refers to the Mutually Agreed Resignation Scheme (MARS)¹¹ which ran in 2020/21 and gave eligible colleagues the opportunity to resign from the FCA with a severance payment. In 2020/21 85 colleagues took up the opportunity to leave, with many of these at managerial level. We are concerned that the FCA may not have considered conflicts of interest as part of this scheme, with the annual report focusing solely on the benefits. The use and application of this scheme should be reviewed, with consideration given to limiting where individuals could move to when leaving the FCA.

In some sectors the FCA is asking for firms to whistle blow more on poor practices. It is therefore imperative that teams have the capacity and capability to deal with any responses.

We also feel the FCA should improve its cross-departmental communications and engagement, to perform its role more effectively. For example, we do not feel the FCA always considers the AR and network structure, a common business model used in the mortgage intermediary industry, when drafting policy despite the organisation itself having a dedicated AR regime department. This was apparent in the recent FCA consultation on Diversity and Inclusivity.

Another example we've seen where cross-departmental communication could have been better is handling of regulatory returns (specifically REP-CRIM and FIN-074) being sent in error to out-of-scope firms – this was particularly hampered by poor communication with the FCA Supervision Hub, the first port of call for firms with regulatory queries. We felt staff within the Hub were not fully briefed on how to respond to such queries, as conflicting information was provided to firms.

8) Who should hold the regulators accountable for their performance against their objectives? What is the appropriate role of Parliament in performing this scrutiny role?

We believe the current structure works well and the FCA should continue to be accountable to Treasury and Parliament. The Treasury Select Committee (TSC) plays an important role in challenging and scrutinising the FCA on its objectives and wider topics and issues as they arise.

It is important for the FCA Board to be appointed by the Treasury, as this ensures a degree of impartiality.

9) How should the Government and the regulators themselves facilitate appropriate scrutiny and accountability of regulators? Are regulators sufficiently transparent about their own performance?

We believe the FCA has improved in this regard. For example, the FCA is publishing more data (such as Appointed Representatives and authorisations operating services metrics data) which we find useful as a trade body.

One area where there is room for improvement is the FCA Practitioner Panels. We believe the panel Chairs should be elevated to full Board status to ensure their voice is heard and opinions are considered at FCA C-suite level. Currently we feel the FCA Panels are seen as a tick-box exercise and have insufficient power to properly hold the executive to account. It might be that the panel Chairs should have direct access to the Treasury Select Committee to provide augmented information, perhaps in confidence.

10) What mechanisms and metrics could be used to hold regulators accountable on a regular and ongoing basis and to judge whether a regulator is performing well?

We believe the existing mechanisms and metrics to hold the FCA to account should remain but there is room for the following improvements:

- FCA board minutes often lack detail, making it difficult to identify key decisions and board justification. We therefore feel these minutes should be more detailed to allow readers to clearly distinguish agreed action. They are a useful tool to hold the FCA to account.

- Changes made to the Appointed Representatives (AR) regime in 2022 mean principal firms with ARs must notify the FCA of a new AR 30 days before the appointment. However, the FCA's authorisations operating services metrics⁶ do not include a statutory deadline for the FCA to process a complete notification for AR status. We believe this discrepancy should be addressed by creating a statutory FCA deadline for these approvals. This should help keep the FCA accountable and allow stakeholders to judge its performance in this area.

11) Do any of the UK's international comparators address the above questions particularly well? What lessons, if any, can the UK learn from other jurisdictions on these matters?

No comment.

⁶ [FCA Authorisations operating service metrics 2023/24 Q2](#)