



Association of
Mortgage Intermediaries

*Association of Mortgage Intermediaries' response to FCA/PRA CP2320
Diversity and inclusion in the financial sector – working together to drive
change*

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 pleased to have the opportunity to respond to this consultation. We would be grateful for our comments in this section to be considered alongside our responses to the set questions.

We are broadly supportive of the proposals set out in the consultation paper as we understand and agree that D&I should be considered a regulatory issue both for the protection of consumers and for the continued development of the UK financial system. D&I is associated with improved financial results, increased innovation and creativity, and being seen as a more attractive employer¹, helping to build resilient firms which are the foundation of a strong economy.

Our main areas of concern regarding this long-term project are that firms may struggle to implement the required changes in the proposed timeline due to the cost and time resourcing issues. Larger firms that are subject to the full suite of proposals will have recently undertaken significant work for Consumer Duty, are still doing so and were doing so during a turbulent time for the mortgage market.

¹ <https://workinginmortgages.org.uk/wp-content/uploads/2022/09/Final-Viewpoint-DI-Report.pdf>
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Additionally we have concerns that the proposals fall short of achieving significant change in the area of D&I. If firms are collecting the D&I data for the first time, they may not have the tools or expertise to properly analyse the information collected. The process then becomes simply data collection rather than a vehicle for driving change. It may be that this is in the pipeline, with data gathering as viewed as step one. But without a clear understanding of the 'vision' for the how firms will be expected to use the data or how it will be assessed by the FCA, firms may be more likely to approach this as a 'tick box' exercise. We would therefore welcome additional guidance for firms on what best practice looks like when assessing the D&I information.

Questions

Q1: To what extent do you agree that our proposals should apply on a solo entity basis?

We agree.

Q2: To what extent do you agree with our proposed proportionality framework?

Somewhat; we agree that a proportional approach is the best way forward to reduce impact on firms whilst still encouraging progress but we are unsure if the current proposals are the most efficient means to drive change.

We are supportive of the decision to exclude Limited Scope SMCR firms from the majority of the proposals.

We have concerns that firms over 251 employees in the mortgage sector are already subject to a number of data reporting requirements as part of SM&CR and Consumer Duty and the D&I proposals will be an additional burden on available resources. Moreover, Consumer Duty has only recently been implemented and remains a major project, it would have been beneficial to provide firms with a period of respite, prior to the roll out of another major project.

We acknowledge that this D&I CP covers financial services as a whole rather than just the mortgage sector which is our focus however, we have concerns that the entire Appointed Representative (AR) regime has been overlooked in terms of the D&I proposals.

The AR regime accounts for thousands of people within the mortgage sector that will not form part of the data reporting, leading to an inaccurate view of many of the mandatory demographic characteristics. Anecdotally we are aware that if people are facing discrimination or a hostile work environment, they are likely to start their own company. Therefore, by not including the AR firms in the data reporting will provide an incomplete data set. However, if they are to be included, we consider this would require full separate consultation as they have not been captured here.

We attended the FCA D&I Webinar and were informed that the D&I project was always intended to be implemented in phases. We would welcome the opportunity to work with the FCA in the future on the best way to incorporate ARs into the D&I project and how we can jointly educate best practice in this complex area.

Q3: Are there any divergences between our proposed regulatory framework and that of the PRA that would create practical challenges in implementation?

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No comment.

Q4: To what extent do you agree with our definitions of the terms specified?

We agree.

Q5: To what extent do you agree with our proposals to expand the coverage of non-financial misconduct in FIT, COCON and COND?

We agree. We support the decision to provide additional guidance to firms on incorporating non-financial misconduct into regulatory references.

We are supportive of a strengthened stance from the FCA that non-financial misconduct is misconduct and should bear the same weight rather than be considered an additional principle. Clearer guidance on non-financial misconduct and the related decisive and appropriate action will promote a healthy firm culture which as stated in the CP is vital to improving D&I.

We agree that the perception that non-financial misconduct is not taken seriously can lead to staff feeling reluctant to raise concerns and would suggest that in addition to the proposed D&I project, the FCA considers reviewing the current whistleblowing processes to ensure employee confidence once the decision to speak up has been made. Whilst larger firms have capacity to provide independent processes for whistleblowing and investigation, those in smaller firms suffering discrimination or harassment would benefit from better “third party support”. The FCA should consider whether their policies and processes provide sufficient encouragement, safety and support. We welcome any additional guidance the FCA can offer on how non-financial misconduct sits within the fit & proper test for employees and senior personnel. We are supportive of the reiteration that non-financial misconduct in a person’s private or personal life is also relevant.

We agree with the sentiments that there is a risk to public confidence when individuals have committed non-financial misconduct but remain working in the industry but we would expand on that to say that the confidence of their peers is also impacted; positive company culture can’t thrive within a firm that allows non-financial misconduct to go unchecked.

AMI supports the proposal to work with other regulators to ensure a consistent approach.

We welcome the proposal to provide additional guidance on the types of behaviour that would fall within the expanded scope of COCON and what would not fall within scope. This is important as firms with HR and compliance functions are likely to question how the proposed COCON and FIT changes will interact with existing regulatory and legal requirements.

We support the proposal to include guidance examples of misconduct and serious misconduct so firms can confidently take appropriate steps.

We support the expansion of the Suitability Threshold Condition in COND to cover offenses relating to demographic characteristics and tribunal or court findings.

Q6: To what extent do you agree with our proposals on data reporting for firms with 250 or fewer employees, excluding Limited Scope SM&CR firms?

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We agree as it will not be too onerous to report employee numbers to the RegData platform.

Q7: To what extent do you agree with our proposals on D&I strategies?

We fully agree. A more consistent approach across financial services will ensure that transparency and accountability are easily assessed and analysed by both regulators and stakeholders.

AMI supports the high-level framework proposed. We agree that the board should be responsible for the maintenance and oversight of the D&I strategy. We support the decision to defer the review period frequency to the board for flexibility.

We agree that D&I strategy should be easily and freely available to ensure stakeholder engagement and scrutiny; we note that the CP states “Making the strategy freely available on the firm’s website is likely to satisfy this requirement.” We would welcome confirmation that hosting the D&I strategy on the firm’s website would be sufficient.

Q8: To what extent do you agree with our proposals on targets?

Diversity targets are beneficial in providing firms with a direction and timeline to work toward as well as a means of assessment, though we would note that on their own targets and enforced change will do little to drive D&I. We are broadly supportive of the target proposals are part of the wider D&I project.

We support the proposal to have firms set their own targets, though we have concerns that some firms may set targets that are not particularly stretching.

The decision to have firms voluntarily set inclusion targets in addition to diversity targets will be key to fostering better company culture and the development of new D&I champions. Rigid targets handed down from the regulators would likely create resistance and resentment from those that have not yet got on board with D&I. We would suggest that in the future it may be worth reviewing the voluntary aspect of the targets whilst still giving firms the freedom to set their own targets.

We support the proposal that firms should utilise available data on local and national diversity profiles in order to better reflect the demographics of the wider population. It would be helpful for the FCA to signpost to where this information can be found.

We support the proposal to defer to firms’ preferences regarding when the targets should be reviewed and updated for greater flexibility.

We support that proposal to make D&I targets publicly available and for firms to report on their progress annually.

Q9: To what extent do you agree with the date of first submission and reporting frequency?

As stated in our answer to Q2, the financial services sector has only recently implemented Consumer Duty which proved for many firms to require significant resources and is ongoing. Very little respite has been granted before the D&I project CP, which will likely also require significant resources, often utilising the same individuals within a business. Under Consumer

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Duty there is a lot of data for large firms to collect and it is not yet fully embedded therefore the timeline could be a cause for concern.

We appreciate that the FCA has granted clemency in the form of the 'comply or explain' stance for the first data return.

We also agree with the sentiments from the FCA D&I webinar that many large firms are likely to be already collecting this information during hiring and employee surveys. We feel that this messaging could be used in future comms from the FCA to reassure firms that they are likely doing much of the proposed work.

Q10: To what extent do you agree with the list of demographic characteristics we propose to include in our regulatory return?

We agree with age, sex/gender, ethnicity, religion and sexual orientation as mandatory demographic characteristics. We appreciate that the disclosure of any of these may be uncomfortable for employees but we feel that disability/ long term health conditions specifically may be very uncomfortable - many people do not feel comfortable discussing their health with their employer especially if the disability/ long term health condition is a fairly recent development. Likewise, there is a certain reticence amongst some people to label themselves as disabled due to historic negative societal attitudes and discrimination.

Additionally, many people may have concerns that the disclosure of a disability/ long term health conditions may open them up to added scrutiny from their employer. We appreciate that this is simply more evidence as to why this should be a mandatory reporting characteristic, we just wanted to call attention to the difficult position this may place staff in.

We agree with the voluntary characteristics.

As previously stated, we agree that it is reasonable in the first year to allow firms to submit the data with gaps provided that there is rationale.

We support the proposal to have a single data return for dual reg firms and approve of the utilisation of the RegData platform for the ease of firm.

We support the proposal to have the FCA produce a regular aggregated disclosure report to review progress as it is likely to have many valuable insights.

Q11: To what extent do you agree that reporting should be mandatory for some demographic characteristics and voluntary for others?

Somewhat, we agree that making all the characteristics mandatory would be extremely onerous for the firms that are not currently collecting the voluntary characteristics. We agree that making all the characteristics mandatory would make the data collection costly and burdensome.

We agree with this proportionate approach and support the decision to revisit this in the future with a view to considering making the reporting mandatory following a separate consultation.

Q12: Do you think reporting should instead be mandatory for all demographic characteristics?

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We agree with the importance of the demographic characteristics and can see the benefit in them being mandatory, however we feel that a phased approach of increasing the number of mandatory reports over a number of years would reduce the burden on firms whilst still promoting growth and progress in this area.

Q13: To what extent do you agree with the list of inclusion questions we propose to include in our regulatory return?

We agree with the proposed inclusion questions, though the usual concern remains: if the firm culture is such that non-financial misconduct exists then it stands to reason the staff will not feel comfortable answering the inclusion questions honestly.

Q14: To what extent do you agree with our proposals on disclosure?

We agree.

Q15: To what extent do you agree that disclosure should be mandatory for some demographic characteristics and voluntary for others?

We agree, and as previous stated in question 11 this could be revisited in the future if there is reason to believe mandatory reporting and disclosure will be beneficial.

Q16: Do you think disclosure should instead be mandatory for all demographic characteristics?

We do not believe that there is sufficient evidence to suggest that there is significant value in making all demographic characteristics disclosure mandatory and as previously stated in Q11 & Q15, this could be revisited in the future if there is reason to believe mandatory reporting and disclosure will be beneficial.

Q17: To what extent do you agree that a lack of D&I should be treated as a non-financial risk and addressed accordingly through a firm's governance structures?

We agree that a lack of D&I should be considered a risk and in addition to being a concern for employees. We would also be concerned about firms with poor D&I track records interacting with customers who may face discrimination or poor service.

Q18: Do you have any comments on the cost benefit analysis?

We acknowledge that producing a cost benefit analysis for the wide variety of firms in the financial sector would be difficult and it is likely that a good number of firms already have some groundwork in place on D&I.

There are still concerns regarding the total cost of the proposals, given that the mortgage industry has experienced turbulence in recent years. Many firms may not feel in a position to

divert funds to these proposals at this time, which could exacerbate resistance to the progress we are trying to achieve.

The figures provided show the average cost to a small firm to be £5800 one-off costs and £3200 for ongoing annual costs. These are significant figures for small firms, particularly in the current economic environment, and we are concerned that for many small firms the costs are unsustainable. We therefore would welcome clarity from the FCA on what the next steps would be for a small firm that is not in a stable enough position to afford these changes.