Association of Mortgage Intermediaries' response to FCA call for input: The consumer investments market

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.

Response

We welcome the opportunity to respond to this call for input as, whilst mortgage intermediaries may not advise on the investment market, many of the questions asked in this paper and the areas considered are relevant to our sector, and any changes made could have a fundamental impact on our firms. We are concerned that there seems to be no recognition of this in the call for input.

This call for input states that it looks at areas where the consumer investment market is not working well for customers and seeks views on what changes can be made to improve protections and outcomes in this market. In reality, the call for input is far reaching, asking questions on the relationship between regulated advice and guidance, the Appointed Representatives Regime and the Compensation Scheme which affect other sectors of the market. It is important that if any changes are considered to these areas, there should be open engagement with other sectors before it is taken to formal consultation.

There seems to be a misconception both in this call for input and in the trade press that it is life distribution and investment intermediation firms who are affected by the recent increase in FSCS costs. However, this year, assuming the FSCS's recent projections are correct, the mortgage intermediary sector will have to pay more towards compensation for customers of the life and pensions sector than it will for customers of its own sector; this cannot be allowed to continue.

We were disappointed to read the comments made by Chris Woolard at a press conference on 24 September where he ruled out consideration of a product levy as part of plans to manage the rising costs at the FSCS. We do not feel that it was appropriate for such comments to be made whilst the call for input was open, and question whether this truly is an open and full call for input to scope the industry's opinion and collate feedback on potential remedies.

When the funding, structure and cost allocation of the FSCS was last reviewed, the industry was part of full and frank discussions with the regulator, with no areas considered to be ‘off the table’. Indeed, the process last time was an exemplar of good consultation with many meetings with multiple representatives present prior to the final policy statement. If changes to the FSCS are to be considered again, then the same approach should be taken.

As part of the last FSCS review, a product provider levy was introduced and was initially set at 25% with a view to being reviewed and potentially increased to 50% at a later date. We would like to see this change included for consideration as well as the potential of a product levy. An increase in provider levy would ensure that product providers more carefully control their distribution channels and make it more likely that they would quickly act against any advice firm where it was felt they were not acting appropriately, thus reducing the risk of harm to consumers. This may also increase the incidence of whistle blowing where poor competitor behaviour is seen.

We are concerned that this call for input is looking to review small parts of the FSCS; any changes could have far reaching effects across the financial services industry and full consultation is required. Changes to the FSCS should not be considered alone, it is important to look across the landscape at the cost of and prioritisation of FCA activity, FSCS, the impact of FOS and its decisions which can have wider implications for firms and a sector, PII cover and capital adequacy requirements and their relationships. Are all these elements still relevant and necessary? AMI would question whether all should be required. Currently in the mortgage sector, firms are seeing large PII premium and excess increases and many feel they are now paying for a policy, which is a regulatory requirement, that is not fit for purpose whilst essentially having to self-insure.

We would like to see clear labelling of products that sit outside the regulatory perimeter and are neither regulated by the Ombudsman nor the compensation scheme, with a commitment from FOS and FSCS that consumers who chose these products will not be entitled to compensation if they feel they have made a bad choice at a later date. Consumers should not expect to be compensated for every financial decision that they make if it was seen to be risky at the time, and the regulator, Ombudsman and Compensation Scheme should be clear in their responses in these situations. Fear of the Ombudsman’s retrospective interpretation of the rules and what it perceives to have been best market practice at the time is one of the things that acts as a barrier to innovation, particularly as it considers not just the facts but what might be fair and reasonable as well as whether a customer may have had reason to believe that they were being advised.

The FSCS paying out on claims where consumers have invested in a non-regulated investment may set a precedent that any regulated advice firm will be fully liable for decisions made by consumers both on a non-advised basis where they have facilitated the investment or where guidance has been provided. If FCA, FOS and FSCS are not able to provide categorical assurances that regulated firms would not be at risk of being held accountable for decisions made by consumers where they have not been fully advised, the guidance or simple advice market will likely be perceived to be too great a risk for good, regulated firms, and will be the domain of unregulated firms, presenting a greater risk to consumers.

We welcome the cooperation between FCA, FOS and FSCS to tackle phoenixing and to work together to prevent individuals who have caused harm from being able to continue working within the industry. This important work is vital to help reduce the incidences of harm to consumers. Whilst we understand the importance of not compromising any investigations, we are concerned that the work done by supervision and enforcement is often not published until many months or even years after the incidences occurred. Greater transparency where possible would ensure that lessons were learnt in a timely manner. Greater speed and efficiency should become a key objective, measured at FCA Board level.

This call for input has provided a strong focus on either negating or diluting the advice process in the form of 'guidance' or 'simple advice', to provide a watered-down service for people with less money to invest whereby any choice that they made would potentially not be protected. However, a large part of costs to an investment firm relate to the onboarding of a new customer and meeting the Know Your Customer Requirements. Advice firms are developing ways to digitise the gathering of the hard facts, which is saving time and is increasing their efficiency and allowing firms in some cases to reduce the costs of the process. This is the innovation that we feel the regulator should be encouraging – where customers get the same level of service, full advice and the recommendation of products that meet their needs with full protection.

This paper implies that there is a correlation between wealth and complexity which is not the case. It concentrates on investigating and promoting potentially unprotected guidance or simple solutions for consumers with less money to invest. In fact, there is an argument that for a less affluent consumer, the impact of making a poor investment decision, without advice, will have a more profound impact on their standard of living.

Questions

Q1: Have we prioritised the right issues and questions? Are there other things you think we should be looking at?

We would like to have seen better questioning as to how the players in the market regulate themselves with consideration of the good practices in other markets. In the mortgage market, lenders will remove advisers from panel quickly when they have done something wrong and also when the lender has not been used in a long time. This does not seem to happen in the investments sector.

There should perhaps be consideration of the different touch points in a consumer's life when investments and savings can and possibly should be considered. If one of the problems is that advisers make very little money from people with only small amounts to invest, is the distribution model correct or should we be looking at a different way to get advice to these consumers? Should they be encouraged to invest any additional money into their pensions or should it be assumed that this will already have been considered and discounted for good reason?

There has been no question asked about previous changes and the affects that they may have had on consumer investments: are RDR changes responsible for the reduced investment advice options for people with less funds?; have the changes to ISA limits and other taxation removed the annual 'nudge' for people to save in a simpler way?; have the changes in pensions and the move away from company pensions complicated the situation?

We have also been surprised by the omission of consideration of vulnerable consumers in this paper and can only assume that this is because the FCA requires firms to be embedding the fair treatment of vulnerable customers across their offering. However, as vulnerable customers may take longer to make a decision and may feel that they need more help to do so, whilst the cfi does include the need for solutions to be nuanced, we feel that more clarity should have been given to this area.

Q2: Are there other underlying issues which have an impact on the consumer experience in this market that you think we should consider? What are they and how do you think they affect consumers?

We are concerned by the assumption made in the call for input that consumers with less to invest do not need advice. The assumed correlation between wealth and complexity is incorrect. There is an argument that for a less affluent consumer, the impact of making a poor decision, without advice, will have a more profound impact on their standard of living and their ability to make good any losses.

As the FCA has recognised by its stated shift in focus of supervision to smaller firms, it can be small firms that cause a lot of consumer harm, often to less financially astute customers, as has been observed in the British Steel pensions crisis. We would have liked to have seen this considered in this call for input. We would ask that in any discussion or consultation papers an analysis of the types of firm and products sold that have led to FSCS losses be undertaken.

Q3: What role could or should 'just in time' consumer education play in helping consumers make more effective investment decisions?

We are concerned about the potential use of 'just in time education' as it may cause problems in the future with people not clearly understanding or remembering the reason that they made a particular decision.

Investment education taken over a period of time enables consumers to really understand their investments and to be clear on the reasons for their choices. One of the many benefits of advice is that the adviser is able to understand the consumer's financial position and test their priorities, then tailor their explanations to the customer's needs and ensure that the customer fully understands the reasons for any recommendations.

Q4: What more can we do to help the market offer a range of products and services that meet straightforward investment needs?

We feel that there is a good range of products and services available currently. Whilst the regulator has a competition objective, this is to promote effective competition in the consumers interests; it is not the regulator's place to tell firms what products to develop. It should be up to firms, who, if there is effective competition in a market, will develop products to meet consumers' actual and potential needs and demands.

The distribution of products through advisers improves competition within a market to the benefit of consumers. Markets without intermediary distribution are often dominated by large brands whereas, through intermediaries, customers have the knowledge that they are choosing a product that is suitable for their needs and requirements and are less likely to feel that they need the safety net of choosing a product from a familiar brand.

Changes to the treatment of a product for taxation purposes can make a big difference to whether consumers with less savings feel there is incentive to invest. Following changes in taxation rules, basic rate taxpayers now see no benefit from investing in ISAs and so are less likely to do so. In addition, the change in the maximum amount that can be invested in each tax year may have changed the perception of less affluent investors. There used to be a big push to invest money at the end of the tax year – use it or lose it – but that seems to have disappeared since the limits have been raised.

An investment product may well be simple but an individuals' needs are rarely simple or straightforward. Does the individual have the knowledge and expertise to decide what their needs are, how they should prioritise those needs and how much should be allocated to satisfy them? The simpler the investment decision, the greater the risk that many will decide to invest when their actual needs would indicate an alternative action such as repaying debt, purchasing protection, depositing funds for an emergency or short-term income replacement etc.

Q5: Could clearer, consistent labelling of investment products help consumers make effective decisions? Please provide examples where this approach has/has not been successful.

Clearer, consistent labelling, potentially in the form of an FCA approved mark, could help anxious consumers to feel more comfortable with the products that they are selecting and could help mitigate some of the risks. It will not, however, do anything to change some people's opinions that they are complicated and that they don't understand them, or concerns over the warnings that investments could go down as well as up.

If labelling were used, there would need to be some form of oversight to ensure that it wasn't wrongly applied to a risky product to encourage more people to invest in it.

Q6: What are the potential risks and benefits of standardised labelling requirements for consumer investments?

We would welcome some form of FCA approved mark that could help to reassure consumers that, whilst a product is not without risk, it is approved for use by the regulator.

Q7: What are the barriers to firms providing simple investment products for consumers?

We believe that simple investment products already exist in the market. It is the aspects of simplicity that require clarification. Is it the tax wrapper, the core investment approach, the initial or on-going charging structure or the risk labelling that need to be "simple"? Are there barriers to disposal? Which of the components need to be simplified to enable mass market understanding and "investment" both financially and emotionally? Simple products and CAT standards have been tried before but failed. Might modern technology be capable of being applied to deliver such products in a way that the promoter takes responsibility, so giving the market and the consumer "comfort" and belief?

Q8: Do you think financial guidance can help consumers make effective investment decisions? Why?

AMI is a proponent of advice and the protections that it offers consumers. We are concerned by the regulator's drive for technological solutions to the detriment of advice. We do not agree that people should be offered financial guidance and believe it could lead to potential mis-selling claims in the future.

We disagree with the FCA's use of the term financial guidance. Many people use the terms advice and guidance interchangeably and this could lead to confusion. In fact, the Guidance in the FCA's Handbook is described as information and advice in FSMA 139A. We feel it would be more appropriate that where consumers are offered a service that allows them to self-select a product having been given information to help assess that choice, this should be called information, not guidance. There needs to be distinct lines drawn between the services, particularly where one benefits from ombudsman protection and the other does not.

We are concerned by the assertion that the needs of people who have less money to invest are more simple and that 'guidance' will help the customer make their own decision and they will therefore not benefit from the protection of having received advice. It is likely that people with less money to invest are less financially resilient and less financially capable so, on a very basic level, it seems perverse that the regulator could consider encouraging a model that leaves these consumers responsible for their own decisions and yet allows wealthier consumers the full protection of advice.

Both the Retail Distribution Review and the subsequent sandbox initiative have cost the regulator, and therefore the industry, a significant sum and yet not brought significant change to the sector, however regulator continues its quest to promote technology based, simplified advice options.

Q9: What are the barriers to firms providing financial guidance services?

There are concerns over the perception of consumers, that they may misunderstand the service offered and feel that they have received advice. This is something that has been reported in the mortgage market with customers who have used the execution-only route. The terms advice and guidance are often used interchangeably and any kind of interaction with a customer – be it human or digital – will potentially be perceived as an exchange of information which leads to the presumption that advice has been delivered to the customer. It is then up to the ombudsman's interpretation of whether the customer had good reason to believe that. Firms are also concerned that there is a risk that hindsight will be used or that the rules will be changed in the future.

Firms are reluctant to introduce technical solutions as it's difficult to assess where the liability sits. As these are long term products, the bill could be very high, particularly as 8% annual interest is applied to any awards made.

Firms will be very concerned that any decisions they make may be later be judged to have stepped into the regulatory perimeter. In addition, regulated firms have a duty of care to ensure that their customers, when they pick a product directly without receiving advice, have not picked something that is inappropriate to their needs as understood by the firm. This conundrum is a limitation on market development but is not of itself a bad thing as it protects consumers.

We are aware that the FSCS currently pays compensation to consumers who have invested money into unregulated self-invested personal pensions on the basis that they were advised to do so by a regulated firm. With this in mind, regulated firms will always be liable for any 'guidance' that they might offer to customers which would potentially present long-term financial risks for the firm. Unless this is altered, it will not make sense for any regulated firm to provide financial guidance or simple advice to consumers; whilst this could be cheaper for the consumer at the time of transaction, the risk to a firm of not undertaking a full fact-find process with full advice and recommendation is too great. Simple advice and financial guidance will therefore be the domain of unregulated firms which comes with a greater inherent risk for the consumer.

Whether it is product or advice or both that is regulated should be the starting point of input. The other way of addressing this is that if a firm is regulated then they have a duty of care that any product they manufacture is suitable for consumption. They can either be made responsible for distribution or it can be left to regulation to approve distributors who are given a similar duty of care over suitability. Any reduction in these protections leaves the consumer exposed to undue risk and less likely to engage.

Q10: Do you think straightforward financial advice can help consumers make effective investment decisions?

We agree that straightforward financial advice can help consumers to make effective investment decisions at the point of advice. However, this suggestion seems to have no regard to the fact that investments and people's needs change over time which is why they need to be reviewed on a regular basis. If the consumer does not feel able to do that themselves, then they will need to find someone who is able to help them.

As part of the FCA's competition initiative, it should look to encourage people to regularly review their products, as happens in the mortgage and general insurance sectors.

The complexities of modern life are driving more individuals towards the need for more holistic advice. With limited resources versus life expectancy the later life market is moving towards all those over 55 needing a full "MOT" before taking any individual decision. The advice model and conduct rule book construction may not be fit for 21st Century purpose. Limiting advice to single strands makes it cost effective but we need to accept that whilst effective it might lead to sub-optimal solutions. These could be satisfactory in isolation, but deemed unreasonable post fact by FCA supervision or FOS. There needs to be a clearer debate around this as part of any future consultations and whether safe harbour can be given to allow more advice which is satisfactory but sub-optimal to be "protected".

Q11: What are the barriers to firms providing simple advice models?

The changes to the allowable remuneration structure that were brought in with RDR have seen advice firms move away from advising consumers with small investments. The cost of meeting regulatory requirements, in particular the Know Your Customer Requirements, mean that to run a profitable business, the funds invested need to be of a certain size.

Firms are concerned about the risk of compensation claims, particularly when there could be a large number of customers that the firm has given very little support to. Will FOS see the obligations in the same way as the FCA? With investments being long term, any compensation payments charged with 8% interest soon add up and any such claims would put a firm out of business.

The systemic risk and the potential for FOS to retrospectively apply rules remains a real threat. This was why many banks and building societies backed away from maintaining or exploring a scale guided solution; the long tail risk was too great and neither the FCA nor FOS could give assurances.

Q12: Should the redress model for simple advice be any different to standard financial advice? If yes, please explain.

No. Despite our assertions in Question 10, we are concerned that adding more parameters will make it more complicated and more difficult for consumers to understand what they are entitled to. However, with no changes in place it is unlikely that any firm will want to have a proposition as the risks greatly outweigh the rewards. This is, in our opinion, not a valid reason for making any changes to the redress model.

If changes were to be made to the redress model for simple advice then we suggest that it should take the form of a product levy.

Q13: What do you think are the main causes of unsuitable financial advice e.g. weak competition, complex products, etc?

Weak fact finding, inappropriate risk assessment, lack of clarity of the customer's objectives and inadequate explanation of the product or solution to the customer before they complete are the main causes of unsuitable advice. Advisers need to empathise with the customer and see each customer as an individual rather than seeing advice as a transaction and the customer as a commodity. Whilst relevant in the investment sector, this is also the case across other advice sectors and has been recognised by the regulator in recent supervision work.

We are concerned that the FCA's current direction of travel towards 'straightforward' advice and financial guidance does not take account of the drivers of bad advice and risks increasing the incidence of product push. Bad advice is where people start with a product, not with aims, which has been recognised in pension work where an outcomes-based approach using pathways can be seen.

Q14: How can we target and prevent unsuitable advice without imposing additional requirements on firms which provide suitable advice?

The requirements already exist, the important thing is to make sure that firms understand them and are following them correctly. Correct implementation of the Senior Managers and Certification Regime should help.

If the FCA felt able to be more transparent about the problems that it finds during its supervisory visits earlier on (per lifetime mortgage market) rather than relying on firms' understanding of veiled hints, there would be more clarity of what it acceptable and what is not at an earlier stage. We understand the requirement to not jeopardise any investigations, however, the current approach requires firms to read between the lines to understand the true meanings of FCA publications.

Communication from the FCA comes in a number of forms, it can be difficult for firms to keep up with it or even in some instances to find it as it can be dropped onto the website as an update which is not flagged, and often does not appear in regulatory round up. When webpages are updated, there is often no indication of the change made. It is very difficult for small firms to keep completely up-to-date at the same time as running a business and advising their customers.

We welcome the work that is being done to prevent advisers from phoenixing in the industry, this needs to continue as a priority. It is important that the FCA continues to work with FOS and FSCS to ensure that those who have caused harm to consumers are not able to continue to do so in a different guise.

Q15: What role do you think there is for direct sales in a well-functioning consumer investment market?

We are strong proponents of the benefits of taking advice and the protection that this affords a consumer.

If products are sold directly on a non-advised basis, it should be made very clear to the consumer that they could lose their savings and that they will not be covered by the ombudsman. However, in a vertically integrated firm, we consider that they should be responsible as they should not be able to hide behind the cloak of non-advised/execution only. They make the product and should ensure that it is appropriate for the customer.

We would like more clarification on the requirements of a regulated firm's duty of care in respect of a customer that buys a product directly using a non-advised route. Do they need to ensure that the customer understands the product that they are taking and should the process differ if the customer has vulnerabilities?

We believe that products offered via direct to consumer platforms should clearly inform consumers, throughout the process, that they can switch to an advised route at any time should they require additional guidance or clarification. This should be mandatory for any non-advised or guided solution. We consider the interaction trigger to be a robust and necessary boundary to define the gap between execution-only and where firms become responsible for advice. Tree-walking structures are appropriate and the firms designing and delivering these must take responsibility for the results that emanate.

Q16: What protections are necessary for consumers buying direct?

This has been answered above.

Q17: What safeguarding requirements should apply to those who distribute products to consumers through online platforms?

No further comment.

Q18: Are there any products or investment decisions which bring greater or specific risks of harm when consumers buy them directly?

No direct comment from an investment perspective, but where a mortgage product is "rolled over" after an incentive period this has risks as the new terms may not be obvious.

Q19: How can we better ensure that those who have the financial resources to accept higher investment risk can do so if they choose, but in a way that ensures they understand the risk they are taking?

Promote advice.

Q20: How can we and the industry help consumers understand the benefits of diversifying their investments?

Promote advice.

Q21: Would more investments benefit from 'prospectus-like' disclosure, and/or the disciplines involved in this? If so, in what circumstances?

No comment.

Q22: Should more investments be subject to continuing disclosure requirements after they are issued, and what liabilities should be attached to these disclosures?

No comment.

Q23: What do you think about how the current high net worth and self-certified sophisticated investor exemptions are working in practice and the level they are set at?

It would seem sensible to increase the levels in line with inflation.

Q24: Firms: Have you relied on the exemptions recently to communicate promotions? Why did you do so? Consumers: Have you categorised yourself recently as high net worth or sophisticated? Why did you do so and what was your experience?

No comment.

Q25: What more can we do to help consumers understand the high net worth and sophisticated investor exemptions and what they mean for them in practice?

No comment.

Q26: How can we make it easier for people to understand the risks of investment and the level of regulatory protection afforded to them when they invest?

A form of badging of FCA "recognised" products could promote those which are protected and those not.

Q27: What can be done to help consumers to better understand the circumstances in which they will be able to claim on the FSCS?

Per Q26.

Q28: What more can we do to ensure that when people lose money because of an act or omission of a regulated firm, they are appropriately compensated?

We feel that there are good options for redress for customers of regulated firms through the Financial Ombudsman Service, and also through the claims process within firms themselves.

We are, however, concerned about the backlog of cases at the Ombudsman and the amount of time that it can take for a decision to be made. More should be done to ensure that whilst claims need to be thoroughly investigated, a decision is reached in good time to allow the firm and the customer to move on. We remain concerned that the Chief Ombudsman will not tell the Treasury Select Committee or ourselves how many cases are currently "in transit" in the Service. They should routinely publish how many compliant cases they have in various time slots based on the elapsed time since received (not since allocated to a case handler): 0 to 6 months; 6 to 12 months; 12 to 18 months; 18 to 24 months; and over 2 years.

Whilst concerned about the current cost being applied via the FSCS, it is an appropriate safety net.

Q29: What more can we do to ensure that compensation is paid for fairly by those that cause the loss?

We would like to see greater responsibility taken by product manufacturers for the distribution of their products and the way that they are sold and believe that product providers should pay a larger contribution to the FSCS intermediation classes. We would suggest that a 50:50 split between product providers and advice firms would be appropriate. This would help to ensure that product providers would be quick to take action against any advice firms that they felt were not acting appropriately which would be beneficial for consumers and thus increase the advice sector's ability to self-cleanse.

The FOS's proposals to change its funding structure from an 85:15 fees to levy ratio to a 50:50 ratio will see the good firms paying more to subsidise poorly performing firms. This cannot be in the best interest of good firms or consumers. We believe that high users should pay disproportionately more as a deterrent. This is contrary to the principle that the polluter should pay a fairer proportion of the costs. We have previously suggested that firms with high overturn rates should pay more and this should be considered again.

The Financial Services Compensation Scheme fulfils an important need and we welcomed its review in 2016 and the open discussions that AMI and other bodies were able to play a part in. We still believe that a product levy would be a sensible route to take to ensure that the fees paid by the good firms towards the damage caused by the bad are kept in check. It should be remembered that these costs are ultimately paid by a firm's customers. A product levy would then allow products to be denoted as protected.

This financial year, mortgage intermediaries will have paid a greater amount to the FSCS for compensation for the mis-selling by pensions and investment firms than for mis-selling within their own sector. Whilst we understand the need for the safety net of a supplementary levy on firms within the retail pool, this must be a one off, and must not be allowed to continue unchecked.

Ultimately, the FCA is the gatekeeper to consumer protection schemes and the important work undertaken by supervision and enforcement within the FCA is able to directly reduce the consumer compensation costs funded by good firms.

We agree with the concept of making the polluter pay but recognise that it can be difficult to build the metrics to support this. We would suggest that firms' complaint volumes and uphold rates; FOS complaint volumes and uphold rates; excess capital; and product cancellation rates could all be used.

Q30: What do you think should be done to help ensure that the 'polluter pays' for unsuitable advice?

This has been answered above.

Q31: What do you consider to be the right balance of approaches to ensure we provide an appropriate level of protection to consumers?

There are a number of parts to this that need to be considered that are inter-related:

- firms' capital adequacy requirements;
- the requirement to hold professional indemnity insurance that covers current and past business;
- payment of FOS levy and case fees where appropriate;
- payment of FSCS levy.

There would be merit in discussing whether, when the UK leaves the European Union at the end of the year, there is still a requirement for all of these components and particularly whether firms should be required both to hold a certain level of capital and have professional indemnity insurance (PII). We would be keen to take part in any such discussions.

Mortgage intermediary firms have seen the costs of PII cover and the excesses on their policies rise substantially in the past year due, in part, to the activity of claims management companies (CMCs) who are looking to replace PPI claims with another revenue stream. Within the mortgage advice sector, CMCs have generated a large number of data subject access requests (DSARs) for firms which need to be declared to a PII insurer. As firms are required to pay an excess charge for each DSAR received, the costs can quickly escalate and firms could be in a difficult financial position.

With the exit of a major player in the PII market, obtaining this insurance has become a challenge for a number of firms this year. They are beholden to the insurers as without appropriate cover firms are in breach of regulations and must close, which could lead to potential harm or at least disruption, for their customers.

FCA needs to understand the potentially unintended effects that its communications can have on firms. The words chosen in speeches and other communication can be both be picked up by PII providers as areas to be more cautious on covering, and also by claims management companies as areas to focus on, which can lead to large numbers of data subject access requests and large cost to firms who have followed both rules and guidance applicable at the time.

There is potential for a different type of PII policy to be used, written on a 'claims occurring' basis. Advisers could purchase an annual policy which would run for the life of all the business written in one year. This would then cover the advice given if the customer were to make a complaint either through FOS or through the FSCS at a future date. Whilst the cost of the premium would be greater, it would potentially reduce advisers paying much higher premiums at a later date due to the perceived change in risk of a product. It would also negate the need for FSCS fees and would ensure that a consumer would benefit from the full amount of redress if the firm dissolved.

We would not be averse to higher capital adequacy requirements for firms. The recent difficulties for firms obtaining PII cover have seen many firms' policy excesses increase, and firms in essence having to self-insure, whilst requiring the PII cover in order to adhere to FCA's rules.

Q32: Do you have any views on how the AR regime is working in practice?

We have supported the move to the SM&CR. It is disappointing that the FCA is continuing to allow the advice sector to be regulated under two different regimes and seemingly has not attempted to transition the Appointed Representative Regime into the Senior Managers and Certification Regime. We had hoped to see this proposal once the original oversight had been recognised.

Post SM&CR implementation, there is now a 2-tier authorisation system in place. Appointed Representative applications continue to go through the FCA and be subject to its approval, whilst directly authorised (DA) firms have been able to develop their own certification approaches and processes. Our network members see examples where they turn down applicants (or the FCA turns down applicants), who are then approved by a DA firm to perform a similar role. This poses a significant risk that poor quality individuals will still operate inside the perimeter via DA firms with substandard onboarding processes.

We believe that the system of networks/appointed representatives as well as directly authorised firms is beneficial for the advice sector. Having a large number of small advisory firms within the industry having a choice of how they bring themselves to market is good for competition and consumer choice. Networks enable small firms to commence trading with compliance, operational and management support to operate across the country and to benefit from the economies of scale afforded to larger firms. Recently this has protected large numbers of small firms in our sector from large increases in professional indemnity insurance increases and has also enabled them to benefit from recent technological changes.

AMI would welcome transparency on the issues that you have encountered with regards the AR regime and whether you feel these could be mitigated by a move to the Senior Managers and Certification Regime.

Q33: How can people be better protected from scams?

No comment.

Q34: What do you think are the most suitable and proportionate remedies to further tackle scams and other online investment harms?

No comment.

Q35: What opportunities do you think can emerge for the consumer investment market from innovation?

No comment.

Q36: What do you think are the main risks of innovation for consumers?

No comment.

Q37: What are the barriers to innovation and effective competition in this market?

No comment.

Q38: What more can we do to facilitate effective competition and encourage firms to develop innovative products and services which help consumers to invest?

The regulator should not need to help facilitate these. The growth should be organic and in response to consumer demand.

Q39: Have there been initiatives to promote innovation and competition in other countries that may be relevant for the UK?

No comment.