Association of Mortgage Intermediaries' response to FCA CP21/8 Regulated Fees and Levies: rates proposals for 2021/22

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 do not feel that the five weeks consultation period allowed on this occasion is adequate consideration for a consultation that proposes substantial changes. This shortened consultation means that we have not had the opportunity to fully consult our membership and give proper consideration to all elements. We therefore reserve the right to challenge the assumptions and proposals at a future date, directly or via other channels. Moreover, without the concurrent publication of the business plan, this fees consultation lacks transparency and the narrative required to account for the increases in and exceptionally the introduction of new costs.

It is important that the effect of increasing fees and levies on mortgage intermediary firms is considered as a whole. The cumulative effect of the changes in FCA periodic fees and application fees, the new levy on principal firms for ARs and IARs, increases to FOS levies and case fees, the large increase in FSCS levies and the substantial increases of PII premiums, new exclusions from cover and higher excesses will have a profound effect on firms' profitability and potentially their viability.

Through a multitude of business models, intermediary firms strive to provide fair value and good outcomes to their customers. This will not change, but it would be naïve to believe that the consumer proposition will not be affected by both the proposals in this consultation and by other increases in regulatory fees and levies. The impact to firms and therefore their customers will be masked by the current buoyant market that allows these costs to be absorbed. However, any future economic downturn may, in light of these changes, cause swift cost saving decisions to be made and the regulator should be mindful of any unintended consequences that may result. It is not inconceivable that current network models will be forced to change and that there will therefore be a large migration of firms from AR to DA. In proposing these changes, the regulator must consider whether it would be comfortable with such a significant change to the mortgage intermediary sector structure and its ability to manage and control such a migration.

The proposal within this consultation regarding the periodic fees of principal firms is not merely an alteration to the rates charged to principal firms but brings about the introduction of a new fee category (A22) and as such we fundamentally disagree with this proposal. This is a change to the process of how the FCA introduces new fee classes and how it makes changes to fees policy and should have been included in the fees and levies consultation paper that was published last November with a full cost benefit analysis. Failure to do so is, we believe, failure to follow due process on the FCA's part. Giving only five weeks consultation breaches the principles of good regulation. We object to this proposal and reserve our right to challenge this through other means once a Policy Statement is produced. More detail of our concerns is included in our answers below.

As part of the consultation into the revalorisation of authorisation application fees, the FCA noted that its proposals would increase the cost recovery rate from 33% of the total cost of authorisations to 67%, with the proposals for new transaction fees raising the total cost recovery to 82%. As these proposals will be largely implemented as proposed, with the exception of a fee for changes in control, it is extremely disappointing that this saving has not been passed on to existing fee payers in a commensurate reduction of periodic fees but has instead been consumed into the mass budget for ongoing regulatory activities. We regret that in presenting this year's annual funding requirement and ongoing regulatory activity budget the FCA has not transparently factored these cost transfers into the budget disclosure. It is another hidden increased levy on mortgage advice firms.

We welcome the FCA's proposals to maintain the minimum fee charges for smaller firms, but in keeping with previous years this has not applied to most mortgage advice firms who are obliged by poor legislative wording to also pay consumer credit fees for an authorisation under which they mostly gain no income. Whilst we recognise that the regulator has considered mortgage intermediary firms with regards the proposed increases in consumer credit application fees, by introducing a rate of £250 rather than the proposed £500, this is still a large increase to an application fee from which a firm will not derive any profit and as such we do not feel that the burden is proportionate to the benefits which result. Our concerns are mirrored with regards the periodic fee increases for the limited scope consumer credit permissions which firms are required to hold in order to advise on and transact non-regulated buy to let business.

We are pleased to see that mortgage intermediary firms are not seeing large increases in their FOS fees which we believe is indicative of a well-functioning sector. We remain of the opinion that the FOS levy should reflect a firm's overturn rates and that any move away from the polluter pays model is unfair on those who focus on the correct consumer outcomes and prevent cases from reaching FOS.

AMI believes that the FSCS funding model needs a radical overhaul. It is not sustainable to levy large amounts for the retail pool levy at short notice upon firms who have no direct responsibility for or influence upon the areas in which the consumer harm is caused. We understand that the fee levy limits for each class are set to ensure that each class can tolerate the inevitable firm failure that will arise from this limit being reached, however, whether this has been extrapolated out over a number of years to understand the cumulative effect that this will have on firms in each class is less clear, and we would welcome clarification on this.

The funding of the compensation scheme needs a new approach. As a minimum, Treasury must allow FCA to retain all financial penalties to reduce the amount good firms are being asked to pay. The simplest solution to ensuring a more durable funding mechanism to compensate consumers would be a new product levy paid for by all consumers. This could follow the example set in the travel industry with ABTA and ATOL which is seen, not as a tax on customers but as welcome insurance protection.

We believe that the cost to the consumer would be circa 0.01% of their loan, which could be blended into the interest rate of the product taken by the consumer and collected by the product provider. Similarly a fractional percentage of invested assets could be levied annually to provide consumer protection as delivered in the travel industry. This would also make it clear to consumers which products or services have "protection" and which do not. This would eliminate the uncertainty currently facing firms who know that a levy may be announced later in the year resulting in additional, higher invoices to compensate customers who have experienced harm in other sectors, unrelated to our own.

Questions

Q1. Do you have any comments on the proposed FCA 2021/22 minimum fees and variable periodic fee rates for authorised firms?

The proposal within this consultation regarding the periodic fees of principal firms is not merely an alteration to the rates charged to principal firms but brings about the introduction of a new fee category and as such we fundamentally disagree with this proposal. This is a change to the process of how the FCA introduces new fee classes and changes to fees policy and should have been included in the fees and levies consultation paper that was published last November. The creation of a new fees category involves the creation of new rules and should therefore have included a full cost benefit analysis to understand the likely impacts of the policies and whether the proposed intervention is proportionate to the harm that the FCA is concerned about[1]. Failure to do so is, we believe, failure to follow due process on the FCA's part. Giving only five weeks consultation breaches the principles of good regulation as the tariff will be applied to numbers of ARs and IARs on a date prior to giving proper notice for firms to amend their structure. Consultation in November would have afforded firms the time to consider their business models and remove any ARs or IARs where their inclusion on the Register in light of these changes was not considered good value. We object to this proposal and reserve our right to challenge this through other means once a Policy Statement is produced.

It is important that the effect of increasing fees and levies on mortgage intermediary firms is considered as a whole. Whilst the operations of the Financial Conduct Authority, Financial Ombudsman Service and Financial Services Compensation Scheme are quite rightly separate entities independent from one another, when considering the apportionment of regulatory fees and levies, it is important to take a holistic view of the three to understand the full effect of increasing costs on existing firms. When viewed in isolation, it may not seem a large change to increase the levy to case fee ratio at FOS due to the more complicated cases coming from the life and pensions sectors. Likewise, the increase in application fees to reflect inflation or the increase in periodic fees for consumer credit firms may seem a logical step. However, the cumulative effect of all the changes in FCA periodic fees and application fees, the new levy on principal firms for their ARs, increases to FOS levies and case fees, and the large increase in FSCS levies will have a profound effect on firms' profitability and potentially their viability.

In addition, the prior raising of the FOS compensation limit has impacted firms by the increasing of PII premiums, new exclusions from cover and higher excesses. This additional cost must also be factored into the cost of regulation that must be paid by all consumers.

Through a multitude of business models, intermediary firms strive to provide fair value and good outcomes to their customers. This will not change, but it would be naïve to believe that the consumer proposition will not be affected by both the proposals in this consultation and by other increases in regulatory fees and levies. The impact to firms and therefore their customers will be masked by the current buoyant market that allows these costs to be absorbed. However any future economic downturn

[1] How we analyse the costs and benefits of our policies, FCA, July 2018.

may, in light of these changes, cause swift cost saving decisions to be made and the regulator should be mindful of any unintended consequences that may result. It is not inconceivable that current network models will be forced to change and that there will therefore be a large migration of firms from AR to DA. In proposing these changes, the regulator must consider whether it would be comfortable with such a significant change to the mortgage intermediary sector structure and its ability to manage and control such a migration.

The justifications listed within this consultation paper for the creation of a new fees category for principal firms seem to be related to general insurance and investment management with the additional suggestion that ARs are being used in a more diverse range of business models and sectors, including asset management and wholesale activities. It is stated that approximately half of all principals have just one AR. This is not a model that we recognise in the mortgage intermediary sector where approximately half of all mortgage brokers are appointed representatives, with many belonging to large, well-established networks. The FCA's Perimeter Report 2019/20 suggests that FCA has previously acted to address issues found with appointed representatives. We would appreciate further information on: how the regulator has acted to address the 'issues' (we are not aware of any particular action having been needed or taken in our sector); and why the FCA believes that the action it has taken has not been enough. We are concerned that the introduction of a new fee class indicates not that the FCA intends to undertake a piece of work to address the issues that it has found with the principal firm/AR model but that it feels that additional work will be required in perpetuity.

Figures from FOS and FSCS suggest that there are not large issues with fraud or mis-selling in the mortgage intermediary sector and we have neither been notified of nor suspected any specific concerns of consumer harm. Our mortgage lender partners do not indicate a preference for business model types, nor find fraud or related issues to more prevalent in DA or AR businesses. Yet, we estimate that levies from mortgage intermediary principal firms will contribute more than 20% of the total to be raised from this new category. The FCA has not demonstrated to us that the proposed rules advance its operational objectives, having regard to the principle that a burden or restriction which is imposed should be proportionate to the benefits which are expected to result, as set out in FSMA. We are concerned that mortgage intermediary firms will be expected to shoulder the cost burden for action taken to remedy concerns in other sectors and we would appreciate more precise detail on the FCA's plans within our sector to allay these concerns.

AMI is a firm believer that there should be a level playing field for all and that this is vital for the sustainability of a competitive market that works in the consumer's interests. The introduction of a levy for principal firms for their appointed representatives removes that level playing field when compared to the directly authorised entity.

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 and has also enabled them to benefit from recent technological changes.

Mortgage and protection firms rely on lead generation as a valuable source of new business. Good firms use the IAR approach to assist in tracking business sources and as a way of formally recognising a relationship when looking for good, appropriate lead generation. However, the proposals to charge firms for each appointed representative and introducer appointed representative will discourage this behaviour and seems to us to run contrary to recent proposed changes to the approval of financial promotions rules.

The FCA should be mindful that increasing the barriers to entry to a well-functioning market could result in fewer mortgage advice firms and consequently fewer people taking mortgage advice at a time when the need, due to the effects of Covid-19, has never been greater, with the likely reduction in the sales of protection policies that such a move would cause, to the detriment of consumers and UK society. The introduction of the new levy on principal firms, coupled with the introduction of application fees for controlled functions, has substantial cost implications for networks with ramifications for both their appointed representative firms and consequently, consumers.

We welcome the FCA's proposals to maintain the minimum fee charges for smaller firms, but in keeping with previous years this does not apply to most mortgage advice firms who will be affected by the periodic fee increases for the limited scope consumer credit permissions which firms are required to hold in order to advise on and transact non-regulated buy to let business. We believe that the FCA should amend the framework so that if a firm has no eligible income then there is no fee, and accordingly a firm's mortgage fee would cover this consumer credit permission. Whilst we note that the consultation states that FCA will be conducting a wider review of its fees structure as part of the transformation programme, without guaranteed dates and more information this will be of little comfort to our members. We hope that the publication of the FCA's business plan in July will give more granularity to the transformation programme agenda and information on the cost savings that are expected from this programme as, to date, little information has been shared. Whilst we have seen one initial presentation, the promised follow-up has not as yet materialised. As a sector that funds 5% of FCA costs the close contact pre Covid has not continued.

Q2: Do you have any comments on the proposed FCA 2021/22 minimum fees and periodic fee rates for fee payers other than authorised firms?

No comment.

Q3: Do you have any comments on our proposals to avoid double payment of fees by UK data reporting service providers (DRSPs) which have been set up by former incoming DRSPs base in the EEA?

No comment.

Q4: Do you have any comments on our proposal to reclassify the application fee for peer-to-peer lending from moderately complex to complex?

No comment.

Q5: Do you agree with our proposed application fees for authorisation?

As part of the consultation into the revalorisation of authorisation application fees, the FCA noted that its proposals would increase the cost recovery rate from 33% of the total cost of authorisations to 67%, with the proposals for new transaction fees raising the total cost recovery to 82%. As these proposals will be largely implemented as proposed, with the exception of a fee for changes in control, it is extremely disappointing that this saving has not been passed on to existing fee payers in a commensurate reduction of periodic fees but has instead been consumed into the mass budget for ongoing regulatory activities. We regret that in presenting this year's annual funding requirement and ongoing regulatory activity budget the FCA has not transparently factored these cost transfers into the budget disclosure. It is another hidden increased levy on mortgage advice firms.

Whilst we understand that the FCA has to undertake additional work as part of the application process for control functions, we do not feel that firms should be charged for this. The lack of inclusion of appointed representatives in the Senior Managers and Certification Regime was an oversight during the drafting of the legislation rather than by design and firms should not pay for that mistake. AMI has repeatedly called for legislation to be amended so that the appointed representatives are included in SM&CR, rather than being subject to the approved persons regime. If this were the case, then principal firms would be responsible for assessing the current approved persons as fit and proper, rather than the applications being assessed by the FCA. The role of a controlled function within an appointed representative does not correspond to the role of a senior manager function under the SM&CR and should not be considered as such for application fees. A principal firm will also have to pay for SMR applications under the new proposals. It is not appropriate for a charge for controlled function applications to be levied in addition. Instead, the regulator should prioritise the inclusion of appointed representatives in the Senior Managers and Certification Regime so that principal firms are able to assess these applications themselves.

Whilst we recognise that the regulator has considered mortgage intermediary firms with regards the proposed increases in consumer credit application fees, by introducing a rate of £250 rather than the proposed £500, this is still a large increase to an application fee from which a firm will not derive any profit and as such we do not feel that the burden is proportionate to the benefits which result. We believe that the FCA should amend the framework so that if a firm expects to have no eligible income then there is no fee, and accordingly a firm's mortgage permission application fee would cover this consumer credit permission.

Q6: Do you have any comments on our proposals for variable periodic fees?

No comment.

Q7: Do you have any comments on the proposed method of calculating the tariff rates for firms in each fee-block towards the CJ levy and our proposals for how the overall CJ levy should be apportioned?

We are pleased that mortgage intermediary firms are not seeing large increases in their FOS fees which we believe is indicative of a well-functioning sector. We remain of the opinion that the FOS levy should reflect a firm's overturn rates and that any move away from the polluter pays model is unfair on those who focus on the correct consumer outcomes and prevent cases from reaching FOS. A risk-based funding model would ensure that those who use the service excessively, contribute more. Moves to increase the levy to case fee ratio undermine the polluter pays principal. In recent years, mortgage intermediary firms have seen large increases in FCA fees, FOS fees through the increase in the levy to fund the complicated cases which sit largely within the investment and pensions sectors and FSCS fees (particularly with the retail pool levy) largely due to poor behaviour in other sectors whilst procuration fees from lenders have remained static.

Q8: Do you have any comments on the proposed 2021/22 rates for the MaPS money guidance levy?

We support this proposal.

Q9: Do you have any comments on the proposed 2021/22 rates for the MaPS debt advice levy?

No comment.

Q10: Do you have any comments on the proposed 2021/22 rates for the MaPS pensions guidance levy?

No comment.

Q11: Do you have any comments on the proposed 2021/22 rates for the Devolved Authorities debt advice levy?

No comment.

Q12: Do you have any comments on the proposed 2021/22 illegal money lending (IML) levy rates?

No comment.