Association of
Mortgage Intermediaries

Association of Mortgage Intermediaries' response to HM Treasury's Financial Services Future Regulatory Framework Review: Proposals for Reform

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.

Our view

We welcome the opportunity to respond to this review. We have responded to the previous calls in this series and have decided not to repeat our previous comments. On this occasion we are responding based on the likely impacts on the mortgage advice sector and chosen not to respond more widely. We have also focussed our response on the impacts of change on the Financial Conduct Authority (FCA) and how it has and intends to regulate the mortgage and protection sectors. We have been critical of the focus of FCA activity and a lack of proportionality in how it has addressed issues of consumer harm. They have lacked specific focus on the creators of detriment and we consider that the new executive team have yet to evidence sufficient appreciation of the granularity of how different market segments operate to enjoy our confidence. Their current approach still appears to be the proscription of more principles and rules rather than getting to grips with the real issues and performance in markets through adequate supervision.

We share the concerns stated by many long standing FCA employees as they resign, because they are disillusioned with the direction of travel. There are real dangers that we are losing the benefit of the remaining quality regulatory staff who have an extensive and useful corporate memory. Much is made of the need to migrate to being a data led regulator – which we could be minded to support – but we are not being presented with sufficient information on how this will work to improve regulatory outcomes. It is clear that data should enhance FCA work – not replace workers – as they are needed to understand and interpret the data. More important will be a cadre of skilled supervisors able to take the data, interpret and apply it to limit damage being caused by markets and within that, firms.

We are yet to be presented with any tangible evidence that the transformation programme, new rules on consumer duty or activity linked to the appointed representative regime will prevent any of the issues which led to the FCA failures to adequately address their duty to the market and public in the LC&F, Connaught, Woodford or Greensill affairs. We have yet to see any significant application of sanction under the Senior Managers and Certification Regime by the FCA to know whether this has any attributes which will mitigate the FCA's apparent concerns over market and firm behaviour. With this backdrop we cannot have the confidence to support significant changes to rules and guidance and increases in regulatory fees imposed on firms which ultimately consumers will have to pay.

Questions

1. Do you agree with the government's approach to add new growth and international competitiveness secondary objectives for the PRA and the FCA?

There is evidence that in pursuing their existing competition objective and agenda in the last few years, the FCA lost sight of its need to adequately supervise firms. The raft of regulatory failures, London Capital and Finance, Connaught, Woodford, Greensill Capital, British Steel pensions and others occurred at a point when significant resources were focussed on what were seen as key market interventions applying their newly created competition teams. Whilst these competition reviews may have engineered some structural change, regulated firms still have to make similar or more profit to maintain capital and pay shareholders, therefore it is a little like squeezing a balloon. The work did little more than reduce prices and limit profitability, rather than remove bad actors from firms or markets.

Whilst the eyes of very many in the FCA were focussed on "marque" major competition projects, supervision and enforcement were significantly under-resourced with executive attention elsewhere. As an example, the mortgages market study commenced in December 2016, with an interim report in May 2108 and a Final Report with recommendations in March 2019. This 28 month activity absorbed significant FCA and industry resource in both data capture and responding to the call for evidence and interim report. The final recommendations have made no tangible difference to the sector.

We are concerned that by adding this secondary objective it should not get in the way of what is required in the FCA becoming much better in authorising the right firms and supervising them appropriately. Making new rules will not effect any change – only better supervision and control over markets and firms will. This expanded objective, whilst correct, risks giving the FCA further rationale to continue "managing" and measuring via data rather than having feet on the ground understanding the markets and firms it supervises and gaining market knowledge of the firms creating real and emerging risks.

2. Do you agree that the regulatory principle for sustainable growth should be updated to reference climate change and a net zero economy?

This is a sensible addition to the approach.

3. Do you agree that the proposed power for HM Treasury to require the regulators to review their rules offers an appropriate mechanism to review rules when necessary?

We agree. It is important however that the FCA continues to adhere to the principles of good regulation. They should continue to afford sufficient time for proper consultation, effective and accurate cost benefit analysis and adequate time for proper implementation.

4. Do you agree with the proposed approach to resolve the interaction between the regulators' responsibilities under FSMA and the government's overseas arrangements and agreements?

No comment.

5 Do you agree that these measures require the regulators to provide the necessary information to Parliament on an appropriate statutory basis to conduct its scrutiny?

We agree, however it might prove beneficial prior to the Treasury Select Committee (TSC) interactions with the Chair and Chief Executive of the FCA that the TSC have a private session with the Panel Chairs (industry and consumer) to assist in ensuring adequate parliamentary oversight and scrutiny.

6. Do you agree with the proposals to strengthen the role of the panels in providing important and diverse stakeholder input into the development of policy and regulation?

We would prefer to see the panels be given more power to provide guidance to the FCA, in particular that the Panel Chairs be given more powers to invoke "wider implications" type reviews where they feel that their input is not being adequately considered. This could be by way of presentation of challenge via the FCA Chair and Board. Whilst it may be considered that this already exists, a more formalised policy would give comfort of greater accountability. Our perception is that the Board does not provide sufficient challenge or guidance to the FCA executive team. In reviewing the minutes of FCA Board meetings there often appears ready acceptance of management assurances without sufficient probing, review and monitoring.

7. Do you agree that the proposed requirement for regulators to publish and maintain frameworks for CBA provides improved transparency for stakeholders?

AMI has long been of the view that the FCA has not applied the CBA principle in a detailed or proportionate way. Their approach is too broad and often reflects the market as a whole not the impact on segments within the market. They often do not quantify the benefits of their proposals. We consider that the costs to firms are under-played and the benefits over played. Accordingly, we hope that the requirements being proposed are adhered to both in spirit and fact by the FCA in future CBA's. There is no evidence that the FCA has ever stopped pursuing a path because the CBA does not align. Current evidence is not positive as the recent consultation CP21.34 Improving the Appointed Representative regime has no question to respond to on the CBA. In both that CP and CP21/26 Consumer Duty, the industry is convinced that the likely costs of implementation as consulted are significantly underestimated. In addition, the quantification of the benefits lack precision.

8. Should the role of the new CBA Panel be to provide pre-publication comment on CBA, or to provide review of CBA post-publication?

As part of the creation of this new group they should be given discretion to select, based on them being advised in advance of consultation, whether they feel they need to become involved pre or post consultation. A further step, to improve learning would be for them to apply a quarterly review of one CBA after implementation to assess how accurate these were and apply learnings.

9. Do you agree that the proposed requirement for regulators to publish and maintain frameworks for how the regulators review their rules provides improved transparency to stakeholders?

We agree. However, there is an additional area not addressed adequately. Following supervisory or enforcement activity there is now a more limited right of recourse or appeal for firms. Predominantly firms or trade bodies can only judicially review for breach of process, not challenge of fact. Recent changes to speed the ability of FCA to act to limit markets or firms where they perceive consumer harm, reduces the ability to review and effectively gives expanded power to individuals within the FCA. We are concerned that this risks an abuse of power or removes the right to natural justice.

The role of the Complaints Commissioner will become more important under these conditions. We think it would be beneficial if the commissioner role could be strengthened to allow a wider scope, a wider ability to proscribe action or penalty and the need for the Board to acknowledge and monitor remediation against adverse findings. We would appreciate if HM Treasury could consider this further.

10. Do you agree with the government's proposal to establish a new Designated Activities Regime to regulate certain activities outside the RAO?

No comment.

11. Do you agree with the government's proposal for HM Treasury to have the ability to apply "have regards" and to place obligations on the regulators to make rules in relation to specific areas of regulation?

We support this change.

We would also support a specific additional intervention – FCA should also have a requirement to have regards to financial inclusion as part of its regulatory remit. We are concerned that under aspects like Consumer Duty and Fair Value, cross subsidy within product sets will be driven out and those who generate limited revenue will not have access to important products and services. The most vulnerable need not only to be protected but also give access. FCA should have to report to Parliament annually to report progress on financial inclusion and raise areas where they feel they need wider intervention.