Association of Mortgage Intermediaries

Association of Mortgage Intermediaries' response to FCA Mission:
Our Approach to Enforcement

This response is submitted on behalf of the Association of Mortgage Intermediaries (AMI). AMI is the trade association representing over 80% of UK mortgage intermediaries.

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. Our members also provide access to associated protection products.

Our members are authorised and regulated by the Financial Conduct Authority (FCA) to carry out mortgage and insurance mediation activities. Firms range from sole traders through to national firms and networks, with thousands of advisers.

Whilst the FCA Mission papers are separated, our responses should be considered as a whole. This includes our responses to last year's Mission paper, the approaches to consumers, authorisations and competition, and the contemporaneous approach to supervision. We have kept our responses succinct, focusing on what we disagree with in the individual papers.

Response

Q1. Has this paper set out our approach to enforcement clearly? If not, what more could we do to explain or clarify our approach?

We reiterate our concerns that the purpose of these FCA approach papers appears to revolve around education rather than taking the opportunity to collaborate.

We do not agree that the FCA's approach is being applied in practice. There is currently not enough on-the-ground supervision or enforcement work being carried out to stop fraudulent activity, or to mitigate mis-selling claims that arise from the Financial Services Compensation Scheme (FSCS). The FCA should be concentrating on gathering more market intelligence and now diverting competition resources as they have now reviewed most of the main markets. Plenty of work is being publicised around fines for insider dealing, yet preventing individuals from being reauthorised when they have been responsible for harming consumers does not appear to be a sufficient priority. There is not enough action taken against firms and individuals that have caused consumer harm; complaints continue to escalate with the individuals responsible for mis-selling still operating in financial services without reprimand.

Over the last 18 months the number and value of home finance claims paid by FSCS has significantly increased. This has been attributed to the fraudulent activity of one particular firm, Fuel Investments. It is therefore difficult to believe the FCA's approach that "wrongdoers must be held to account and our rules and requirements must be obeyed" when in practice there has been no regulatory appetite to pursue those responsible for the £51m of compensation paid by firms so far.

The sheer volume of mis-selling complaints being upheld against one firm demonstrates a systemic issue in the firm's conduct and integrity. Yet despite the FCA possessing "powers and functions to take civil, criminal and/or disciplinary action" it has considered the serious misconduct of this one firm as not worth pursuing.

The paper states that "improved detection increases public confidence in the regulatory process. It sends the message that misconduct will be uncovered and dealt with. It makes sure that those who may be tempted to commit misconduct have a keener sense that they are likely to be caught." However by not taking any enforcement action against the individuals responsible for over 400 complaints, the FCA is sending the message that as long as a firm is no longer trading then there will be no consequence for fraudulent activity. The approved persons regime allocates additional responsibility at an individual level, so those with a significant influence or controlled function can be held to account. With such clear grounds for enforcement action to be taken, the FCA's assessment should have concluded that the misconduct also involved lack of fitness or integrity. It is concerning that with some of those responsible still active in the industry, the FCA deemed that they are now "low risk" to consumers, which ignores the impact of the harm caused by the historic misconduct still affecting the industry today.

Despite the commitment to "make our approach to enforcement more transparent", this does not extend to the enforcement work carried out. Whilst we recognise certain sensitivities around ongoing cases, aside from an annual historic report there is a reluctance to provide even generic information on casework. It is disappointing that this is only made available when responding to Freedom of Information requests, and even these are published months behind and in large untitled data uploads on the FCA website. These show that the FCA is able to give information on enforcement trends and the number of cases open and closed on a monthly basis, but this is not published regularly. They also show that even market-specific information can be provided, as information around open investigations into individuals under the Senior Management and Certification Regime has been published. We welcome transparency around the number of enforcement cases that have been opened in the mortgage intermediary sector over the last three years, the proportion that were closed with no action and closed with an outcome, as well as the current number of open investigations, and disclosure of the type of enforcement/reasons for opening these cases.