

Financial Services Consumer Panel

AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

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Dear Ms Blackwell

Mortgage Market Review: Distribution & Disclosure

This is the Financial Services Consumer Panel response to the FSA's consultation paper on Distribution and Disclosure in the Mortgage Market (FSA CP 10/28 ***). Overall we are generally supportive of the FSA's proposals in this regard although there are several issues where we have concerns.

Although not specifically covered in the consultation we would like to highlight that we still believe all those advising on, arranging or entering into mortgage business should be required to be approved persons. In June 2010 the FSA announced that it would be extending its approved persons' regime to include anyone who advises on or sells mortgages. However, in December last the FSA announced that it was delaying implementing this regime for such individuals until 2012/2013. The FSA's motivation for announcing this delay appears to evolve from the amount of resource required to facilitate the extension of the Approved Persons regime in this manner and how this is likely to prove too much of a strain at a time when the revised regulatory structure is being embedded. While we acknowledge the importance of making sure the new regulatory architecture is embedded appropriately and effectively, we would urge the FSA to bring forward the extension of the regime in line with its original intention.

We also consider it important that the FSA is clear and consistent in the terminology it uses in both its proposals and the rules themselves. In several places in the consultation it is not completely clear whether the FSA is talking about intermediaries, providers or a combination of both. All affected parties need to be fully aware of their responsibilities so using the most appropriate language is imperative.

Otherwise we agree with the distribution proposals to:

- Require intermediaries to assess appropriateness in every sale via a stronger appropriateness test, but remove any requirement for them to assess affordability; and
- Strengthen the levels of professionalism of those operating in the mortgage industry by requiring that all those selling mortgages hold a mortgage qualification.

On disclosure, we agree with the shift towards a policy that focuses on early disclosure of key pieces of information and moves away from over prescribing the shape and form of that information. However, we still believe there is a need for a suitability letter.

Q1: Do you agree that we should continue to allow consumers to get a mortgage without advice? If not, what other options should we consider and how would these result in better outcomes for consumers?

In our response to the initial Mortgage Market Review (MMR) Discussion Paper (DP09/3) we acknowledged the fact that there are some consumers who are sufficiently knowledgeable to use intermediaries to provide information on products that are available and then make their own choices. We continue to believe it is the case that such consumers should be able to take out a mortgage without advice.

Q2: Do you agree with removing from sellers any requirement to assess affordability?

We agree that intermediaries should be required to establish appropriateness during the sales process but that the lender must be the one which decides whether to advance the loan and is ultimately accountable for the assessment of affordability.

Q3: Can you see any risks from us adopting this approach?

The main risk we foresee is one of confusion, for lenders, intermediaries and consumers. The wording in the consultation is inconsistent – citing intermediaries in some instances and sellers in others when it would appear that the FSA is referring to the same groups. If the FSA proposes to remove the specific requirement of intermediaries on affordability but still require intermediaries to consider the customer's eligibility for a particular product as part of the more general appropriateness check this may well differ very little from current practice. The FSA itself notes that “most lenders will continue to use intermediaries to obtain information about a consumer's income and spending, and to help gather all the supporting documentary evidence the lender needs to check affordability.” The Panel feels greater clarity is required to help all parties understand their respective roles and responsibilities.

Q4: Do you agree with our proposed approach to ensuring appropriateness is assessed in every sale? If not, in what circumstances do you believe the checks should be waived and how could we prevent this being used as a mechanism to circumvent our requirements?

The Panel agrees with the proposed approach.

Q5: Do you agree with our proposal for a 'client's best interest rule' and removing the obligation for a recommended mortgage to be the 'most suitable' product?

We do not believe that the current requirement for advisers to recommend the 'most suitable' product is overly onerous. In our view the proposed 'client's best interest' substitute is a watered down version which potentially allows the adviser too much room to suggest inappropriate products. Rather than replacing the current rule we believe better policing of the existing requirement would be more appropriate.

Q6: Do you agree with our approach to applying common professional standards across the mortgage market?

We agree with the intention to apply common professional standards across the mortgage market but, given that Qualification and Credit Framework (QCF) Level 3 should not be a particularly difficult standard to reach, feel that Level 4 should be the longer-term goal. The latter is equivalent to the standard required of investment advisers under the Retail Distribution Review.

We also believe that in terms of the time required to attain Level 3 30 months from implementation is too long. It is our view that new sellers should be expected to reach this level at the outset with a much shorter period allowed for existing professionals to attain the required standard.

Q7: Do you agree with our proposals to include these three elements as part of the new appropriateness test?

The Panel agrees that the seller should be required to assess whether or not it is appropriate for a consumer to borrow into retirement. Similarly, where the consumer may be remortgaging and seeking a further advance we agree that it should be a required part of the appropriateness test to explore whether the consumer would be able to take such an advance with their existing lender. Where an advance is being taken as part of debt consolidation we believe the appropriateness test should be extended to consider whether or not the consumer is acting in his or her best interests by accessing funds in this manner, specifically whether the costs associated with the consolidated debt are less than those of the existing loan(s).

With regards to the rolling up of fees into the loan we strongly believe all charges and costs should be clearly explained to consumers to enable them to understand the total cost and also be able to compare policies. Whether or not it is appropriate for individual consumers should be a required part of the appropriateness test.

Q8: Do you agree with our proposal to improve the disclosure of the impact of the roll-up of fees through the provision of a second KFI?

We believe consumers should be allowed to roll up fees if it is appropriate and the strengthening of disclosure in this regard would be helpful.

Q9: Do you agree with our proposal to require firms to present consumers with a choice of rolling-up the fees and charges, and to record the decision made?

We believe fees should not be rolled up without consumers' prior consent and agree that consumers should be presented with the appropriate choice and have the implications of their decision clearly explained to them. This should then be recorded in a durable medium.

Any loopholes which allow potentially detrimental practice should also be closed. The possibility is there, for instance, for an unscrupulous seller to keep the fees separate from the mortgage but mandate their payment at the end of the mortgage term by which time they will have been subject to years of interest.

Q10: Do you agree or have any other suggestions about how to improve consumer awareness of the impact of rolling-up fees and charges?

We agree that it is important for consumers to be aware of the different options and the various implications of their choice. The suggested means of doing this are helpful.

Q11: Do you have any views on other ways in which we could promote consumer engagement?

The FSA needs to recognise it has a role in communicating to consumers separate to that of CFEB but our main concern would be that there needs to be a co-ordinated approach between the two. Where different organisations are working independently there is always the possibility for gaps or overlaps to develop. By addressing issues in a co-ordinated way we would hope these could be kept to a minimum.

Q12: Do you think that these distribution proposals will impact any groups with protected characteristics (e.g. race, religion, age, disability)?

We do not have any specific evidence which relates to any group being impacted more or less than others in this regard. However, we would expect the FSA to ensure that all potential implications have been addressed, particularly where aspects of equality and diversity are involved.

Q13: Do you agree that it is appropriate to focus our service disclosure on these key messages? Do you agree that this is the correct approach for communicating these messages to consumers?

The Panel has consistently made the point that consumers are often overloaded with information when purchasing financial products. Therefore, the FSA's proposal to focus on key messages in this manner is to be welcomed. Requiring firms to provide information on scope and remuneration in a durable medium, with the additional requirement for firms which have spoken interaction with consumers to orally disclose the scope of their service, we believe is appropriate.

Q14: (i) Do you agree with our application of the ‘independent’ and ‘restricted’ labels to the mortgage market?

The Panel agrees that limiting the descriptions of advice, to bring them in line with the RDR labels of ‘independent’ and ‘restricted’, will offer a clearer understanding of what services are being provided.

(ii) Do you agree that we should require ‘independent’ firms to disclose whether they consider direct-only deals?

We do not feel that the FSA’s proposal to require ‘independent’ firms to disclose whether or not they consider direct-only deals goes far enough. In our view an ‘independent’ intermediary would only be acting in the customer’s best interests by being required to indicate that, as well as not being able to offer a direct-only deal such a deal might be available elsewhere which was better than the one the intermediary was able to source.

(iii) Do you agree that we do not need to retain a fee option as part of our requirements for the label of ‘independent’?

We do not agree with this proposal. With regards to remuneration of an ‘independent’ intermediary the Panel does not believe there is sufficient evidence to prove that commission bias does not exist. Therefore, we believe that a fee option should still be available to consumers so that they can establish clearly whether or not they are getting a fair service.

Q15: Do you agree that firms should reiterate their scope at the point that they put the product(s) forward?

We agree there should be a requirement to reiterate scope of service at the point the firm puts their product forward.

Q16: (i) Do you agree that we make these changes to the trigger points for the pre-application KFI?

We agree with the proposed changes.

(ii) Do you agree that we should have a requirement to make firms tell consumers that they can request a KFI for any product they offer?

We agree with this requirement.

(iii) Do you agree that we should require firms to provide the consumer with a record, rather than a KFI, where they recommend a direct-only deal?

We do not believe that this requirement goes far enough. In the original MMR Discussion Paper (DP09/3) the FSA proposed the introduction of suitability letters. Our response to

that paper supported the reintroduction of these letters, which were a helpful and well received component of the earlier Mortgage Code Compliance Board's regime. The FSA argues in this consultation paper against the reintroduction of suitability letters, principally because of the volume of disclosure the consumer receives as part of the mortgage process. While we are of the same view with regards to the potential effectiveness of disclosure and the danger of mandating too much, we believe that a suitability letter would be a more effective tool than some of the other information requirements. Certainly a record as proposed would not be as valuable to a consumer as a summary letter of their needs and circumstances with an accompanying explanation of why a particular recommendation had been made.

Q17: Do you think that these disclosure proposals will impact any groups with protected characteristics (e.g. race, religion, age, disability)?

We do not have any specific evidence which relates to any group being impacted more or less than any others in this regard. However, we would expect the FSA to ensure that all potential implications have been addressed, particularly where aspects of equality and diversity are involved.

Q18: Do you have any comments on the most appropriate way to read these proposals across to equity release?

In general our replies to the questions above can apply equally to the market for equity release, although we would expect that those advising on equity release products should also attain the appropriate qualification module. Given the potential vulnerability of some equity release customers we also believe there should be a requirement for all sales to be advised.

Q19: Do you have any comments on the most appropriate way to read these proposals across to Home Purchase Plans?

We see no obvious reason why these proposals and our responses above should not apply equally to the Home Purchase Plans market.

Q20: Do you have any comments on the cost-benefit analysis?

The cost-benefit analysis usefully provides a summary of the one-off and annual compliance costs. It would help if these costs were put on a comparable basis - expressed, for example, in present value terms - and set in context, so that their impact on the industry (and indirectly on consumers) could be more easily gauged.

Q21: Do you have any comments on the compatibility statement?

We have no particular comments to make in this regard.

Q22: Do you have any comments on the draft rules?

We have no particular comments to make in this regard.

Yours sincerely

Adam Phillips
Chair of the Financial Services Consumer Panel