Financial Services Consumer Panel
AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

Telephone: 020 7066 9346
Email: enquiries@fs-cp.org.uk

Ms Lynda Blackwell

Financial Services Authority

25 The North Colonnade

Canary Wharf

London

E14 5HS

16 November 2010

Dear Ms Blackwell

Mortgage Market Review: Responsible Lending

This is the Financial Services Consumer Panel's response to the FSA's consultation paper into responsible lending in the mortgage market (FSA CP 10/16 ***). The Panel has already responded to questions 16 to 22 of the paper, though our answers now fall away as the conditions attached to them were not met.

You will recall that our response to the earlier questions raised serious reservations about the progress and adequacy of the Mortgage Market Review (MMR). While we fully support the principle of responsible lending in the mortgage market, and have supported some specific proposals such as those on arrears handling practices, our fundamental reservations with the MMR still hold and, indeed, have deepened since our earlier response. Our main concerns are with the following:

1) The scope of the FSA's economic analysis – we have written separately to you with our concerns about the extent of the FSA's analysis in this regard. Our key concern relates to the cost benefit analysis (CBA) in the Responsible Lending consultation. The CBA does not estimate the loss to creditworthy borrowers who cannot obtain a mortgage or who are obliged to accept a smaller mortgage as a result of the proposed income-expenditure affordability test (Annex 1 – Part 1, A1:21, paragraph 85). To move forward the FSA must provide a robust and credible CBA. This is not just a transitional issue; the affordability criteria being proposed may impose a continuing low limit on consumers who can adjust their discretionary expenditure if necessary and whom the lender regards as an acceptable risk. We have not been given an estimate of the size of this group, nor of the consumer distress arising, and it could be significant. The affordability test may therefore have a long-term impact on the choice of housing for certain sectors of the population. There is also a possibility that an over zealous application of the affordability test by lenders could depress confidence in the housing market as the economy continues to improve. It could also force some borrowers who are unable to remortgage because of the new affordability tests into selling their homes when they may not wish to do so, and indeed when market conditions prevail against them.

Our concern is that without clear evidence on the impact of the proposed changes – particularly the welfare loss likely to be suffered by creditworthy consumers who are penalised by the affordability tests – we do not have a clear estimate of the consequences of the MMR.

2) The interaction between the FSA's conduct proposals and the macro-prudential policies the Financial Policy Committee may adopt to deal with an emerging property bubble – we have been assured by the FSA that such considerations are being examined in conjunction with the Bank of England. However, we are still concerned about the costs and impact of overlapping regulations. A balance has to be found between the regulation of the prudential and conduct of business sides of the mortgage sector. We believe either the Bank or the FSA – and preferably the FSA as a consumer guardian - should take the lead in fully considering the extent to which the MMR's conduct of business proposals will interact with, or duplicate, the impact of measures taken by the prudential regulator, in particular the counter-cyclical macro-prudential interventions by the Financial Policy Committee.

3) Detail of the FSA's transitional arrangements – the FSA has yet to publish its plans in this regard. We made the point in our response to the earlier questions that our answers were conditional on adequate transitional arrangements being in place. We have yet to be convinced that the FSA will propose arrangements which adequately provide for consumers with historic mortgages that may now lie outside the developing 'responsible lending' criteria. In the absence of a clear central housing strategy, the Panel would also like to be reassured that the Government is well aware of the full human and social implications of the Review in this regard and that it is, indeed, considering what action it may need to take in light of a changing home-ownership population.

We are very keen to maintain an effective dialogue with the FSA over the MMR. But in the absence of satisfactory answers to the points above we do not feel that we are able to respond to the remaining detailed questions in the Responsible Lending consultation. As other stakeholders will be similarly hamstrung we believe the FSA should no longer proceed with its immediate plans for further consultations and final rules. Given the lack of any imminent recovery in the housing market there is no rush to implement the vast majority of the proposals which have potentially far reaching consequences. There is one exception to our approach in this regard: the FSA's proposals which deal with firms' arrears management practices. This is an area with significant risk of detriment and hardship for consumers, especially in the current economic climate. Strong and decisive action by the FSA on this front is required to remind firms of their duty to treat customers fairly and signal the FSA's commitment to identify and take action against firms who are non-compliant.

On the other substantive proposals the FSA should take more time to conduct the full economic analysis necessary to assess their impact; ensure the appropriate balance with potential macro-prudential interventions; and consider more fully what would constitute the most appropriate transitional arrangements. Once the FSA has taken the time to do this it will be able to re-consult on a more informed basis.

Yours sincerely

Adam Phillips
Chairman of the Financial Services Consumer Panel