Consultation Paper (CP 19/17) on mortgage advice and selling standards

Response by the Intermediary Mortgage Lenders Association

July 2019

IMLA

IMLA is the representative trade body for mortgage lenders who lend wholly or predominantly through intermediaries. Our 42 members include banks, building societies and specialist lenders, including 19 of the top 20 UK mortgage lenders responsible for almost £230bn of annual lending. IMLA provides a unique, democratic forum where intermediary lenders can work together with industry, regulators and government on initiatives to support a stable and inclusive mortgage market. We welcome this opportunity to comment on the proposals set out in CP 19/17.

Summary of our views:

- **At the time of publication of the Mortgage Market Review, the vast majority of sales were conducted on an interactive basis – whether face-to-face with an adviser or via telephone/skype link. The received wisdom, therefore, was that the vast majority of sales would continue be advised, and there was an understanding within the industry that this was the regulator's preferred outcome.**
- **In practical terms, lenders have found it very difficult to go down the execution-only route, given the circumstances which may lead to consumers needing to interact with them: in the absence of very clear definitions, many have taken the view that any interaction may amount to giving "advice" – and consumers have therefore been re-directed to that route.**
- **We now understand that the FCA's position with regard to sales channels is neutral: it is not the case that the FCA does not favour the execution-only channel. This is important for firms wishing to invest in EO, since they are likely to want reassurance that they will be able to achieve sufficient volumes to make such investment commercially viable.**
- **We are concerned, however, that the balance could tip from the current position, where the vast majority of sales are advised, to a significant number being transacted on an execution-only (EO) basis. Whilst EO may be entirely appropriate for some consumers, there will be many who need professional advice in order to help them to ask the relevant questions about their circumstances and plans and acquire suitable products. The increasing use of technology and availability of information about mortgage products may enable more consumers to do their own research and select products, but it is by no means clear that the majority of consumers will be able to navigate the various options in a way which gives them the right result. This is likely to be particularly true of first-time buyers.**
- **Pricing execution-only sales differently from advised sales will inevitably lead more consumers to opt for the execution-only route. This may well lead to the unintended consequence of encouraging those who would benefit from advice opting not to have it – and to subsequent dissatisfaction with products and future complaints about mis-selling. It will be important**

that consumers who opt for the EO route are entirely clear about what protections they may be losing, and make an informed decision.

Answers to the specific questions set out in the consultation paper are below.

Q1: Do you agree with the proposed changes to our Perimeter Guidance to show that a tool allowing a consumer to search and filter based on objective factors is not necessarily giving advice?

Yes – given the FCA's position that not all sales need to be given with interactive communication with the consumer, and that some consumers would prefer not to receive advice, this clarification will be important.

Q2: Do you agree that we should more closely align our Perimeter Guidance on mortgage advice with the Perimeter Guidance on advising on investments?

We have no strong views on this.

Q3: Do you agree with the way we have characterised the types of tools that already exist or could be developed in the mortgage market?

Yes – but it will be important to ensure that any definitions or guidance provided by the FCA are future-proofed so that they can accommodate future changes in technology.

Q4: Do you agree that we should permit more interaction with customers before firms are required to give advice?

In principle, yes, but there must be clear definitions of what is generic information and what is "advice". If this is left to interpretation it will encourage challenge and give rise to potential claims of mis-selling in the future.

Q5: Do you agree with the examples of interactions that should not trigger the need to give advice?

Further clarity and more worked examples would be helpful.

Q6: Do you agree that we should remove the prescriptive detail on firms' execution-only policies?

There must be sufficient information for consumers to understand clearly what benefits and protections they will lose if they opt for execution-only.

Q7: Do you agree that we should give guidance to clarify that MCOB 4.8A.5R does not prevent a firm marketing their execution-only channel or pricing advised and execution-only sales differently?

This may well lead consumers whose decisions may be largely price-driven to seek execution-only channels which appear to be cheaper at the outset but which may prove to be more expensive or less suitable in the long-term. There is an increased risk that consumers who opt not to receive advice may subsequently be dis-satisfied with the product which they buy – and want to challenge the sale on the grounds that the product is unsuitable.

Q8: Do you agree that we should change the process for using the internal rate switch exception so the list need only be re-sent if new products are added or interest rates or fees change in a way likely to be material to the customer's decision?

This seems sensible.

Q9: Do you agree that in cases where the customer approaches their existing lender to ask whether they can match an offer from a competitor, the firm need only present the relevant product to use the internal switch exception?

Yes.

Q10: Do you agree that we should allow the execution-only disclosure to be given and recorded by audio or video?

Yes.

Q11: Do you agree that we should allow the disclosure and positive election to be in separate documents or recordings?

Yes.

Q12: Do you agree that we should require advisers, if they do not recommend the cheapest suitable mortgage, to explain why they have not recommended a cheaper mortgage?

Yes: the voluntary Mortgage Code required that where advice was given, a "reasons why" letter should be provided setting out why the particular product had been recommended. It was a matter of regret that the Financial Services Authority saw fit not to include that requirement within the MCOB rules which superseded the Mortgage Code in October 2004. From an internal compliance perspective, advisers may still be required to justify why they have not selected the cheapest product – but this may not always be communicated to consumers. MCOB 4.7A.6 sets out 9 "non-exhaustive factors" which the adviser should consider when assessing whether a mortgage is suitable for the consumer: the effect of these means that price will not always be the primary factor, and it is important that the adviser should explain this.

Q13: Do you agree that we should make these minor amendments?

Yes.

Q14: Do you agree with our initial assessments of the impacts of our proposals on the protected groups? Are there any others we should consider?

Yes. We have no suggestions regarding other groups which should be considered.