

21 February 2011

Ms Lynda Blackwell  
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Financial Services Authority  
25 The North Colonnade  
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Dear Ms Blackwell

## **Mortgage Market Review: Distribution and Disclosure**

We welcome many aspects of the proposals set out in the consultation paper and would like to begin by stating our general agreement with the approach taken by the FSA in relation to this area of the market. We have taken the approach of only commenting on the issues within the document where we have specific knowledge and evidence.

The high proportion of intermediated mortgages in the UK mortgage market, particularly in relation to credit-impaired sales, justifies the increased intervention proposed within this sector.

We very much support the lender being responsible for assessing affordability in every case. However, we would be concerned about intermediaries not being required to undertake a specific affordability assessment in relation to the borrower. It is envisaged that the lender will use the intermediary to obtain information on the consumer's income and expenditure and to gather supporting documents to enable the check of affordability to be taken out. If the intermediary retains a responsibility to check affordability, then they are more likely to pay greater attention to the evidence gathered and in ensuring its accuracy and reliability.

We accept that a minority of borrowers will not want product advice, as they will already have identified the product they want. However, the FSA's own research has shown that often consumers believe they are receiving advice, when they are not. If the option to get a mortgage without advice is to be retained, steps must be taken which make it clear when a consumer is receiving a non-advised sale and the reason why this is the case should be recorded and retained by the seller. Due to the confusion among consumers with regard to advised and information-only sales, and the prevalent assumption that all sales are advised, we agree that the same basic sales standards should apply to both advised and non-advised sales and that the appropriateness test should be used in every sale.

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We understand the pragmatic reasons for wishing to replace the 'most suitable' rule with a 'client's best interests' rule but we are concerned that this should not represent a dilution of consumer protection.

We agree that there should be common professional standards across the mortgage market and that all sellers of mortgages and mortgage intermediaries should have the same obligations in terms of Training and Competence and should also be subject to the Approved Persons regime. There should no longer be a distinction between non-advised firms and firms offering advice in terms of professional standards and qualifications. We are concerned that only consumer-facing sellers will be subject to these greater professional standards and believe there is a case for those dealing with related activities to be subject to these standards, as their conduct can be equally detrimental to consumers; for example, where they are involved in arrears handling.

We are concerned about the roll-up of fees and charges into a mortgage disguising the actual cost of such fees and charges. We are able to see that in some situations (eg for first-time buyers), consumers may value being able to roll up fees and charges, even though this may lead to a higher cost in the long term. The key is that the total cost of rolling up fees and charges must be made clear to the consumer when they are taking the decision about whether or not to take this option. Therefore we support the proposal to give consumers two Key Facts Illustrations (KFIs) at the same time, which would enable the consumer to compare the overall cost of the mortgage with the fees rolled-up and the overall cost of the mortgage where the fees are paid separately. To avoid confusion, and to enable the consumer to make an informed choice, it will be essential that it is communicated to the consumer why they are being given two KFIs and the difference between them. We agree that fees and charges should only be rolled up with the consumer's informed consent and that automatic roll-up is not treating consumers fairly.

We support the proposal that record-keeping requirements should be extended to all mortgage sales. It is important that in future firms keep a record of the products presented to the consumer, including the two KFI's provided to the consumer in respect of any loan where fees are rolled up into the loan, as well as the consumer's decision and any positive choice by the consumer to roll up fees into the loan.

Consumer engagement is also an important issue, particularly in order to reduce the likelihood of consumers making unrealistic decisions about their ability to maintain the repayments on a mortgage. However, borrowers are likely to be more cautious in terms of their mortgage applications where they believe that the mortgage lender will check their application thoroughly. Thus we consider that the level of rigour exercised by sellers/lenders is likely to influence significantly the approach of borrowers to purchasing decisions.

Reliance on disclosure to achieve the FSA's regulatory aims has not had the desired effect and we agree that strengthened responsible lending requirements and sales standards are likely to be a more effective approach. Nonetheless, there remains a role for disclosure to play in the mortgage market.

We agree with the two-pronged approach of having service disclosure in both a durable medium and orally. We are concerned that this will be limited to firms who have spoken interaction with consumers. It is proposed that internet-only transactions will have 'other requirements' to display these messages 'clearly and prominently' on 'a webpage that all consumers must access' but we are concerned that this will not have the same impact as oral disclosure of key messages. We are concerned that this may give rise to the potential for these key messages not to be effectively communicated to consumers, which may be a particular issue as the level of internet-only sales increases.

While the differences in terms of sales standards may have been removed from 'advised' and 'non-advised' sales, we still consider 'information-only' to be a more understandable term for the consumer than 'non-advised'.

We remain concerned about issues around service labels. In relation to the 'independent label', we strongly believe that the fee option must be retained. The power for commission to distort sales advice to consumers causes us considerable unease and we believe that there remains a case for commission to be restricted in certain situations (eg credit-impaired mortgages). We consider that for an intermediary to be termed 'independent' the option to pay a fee for advice rather than it being paid for by commission must be retained. The discussion paper (DP) is said not to have found 'significant evidence of commission-bias in the mortgage market'. However, the DP also makes clear that this is in a context of a market where consumers could easily get out of bad product choices by switching. This is no longer the case.

In our view, advisers are only truly independent if they do not work on commission. The adviser must disclose any commission they are due to receive for the product to the consumer. If a firm is to use the label independent, it must offer an unbiased and unrestricted service. If it is not considering deals that are only available directly from the lender, the firm must make that clear to the borrower from the outset. We strongly support the requirement that firms covering the whole market must inform consumers when they consider there may be a better deal available that they do not offer and we would support this being extended to 'restricted' services also in the future.

We agree with the proposals regarding the reiteration of scope when the firm puts the product forward.

In relation to product disclosure, we support the retention of the KFI, as a useful record of the purchase, although it has not been effective in terms of encouraging consumers to compare different products. We believe there is a case for oral disclosure of key elements of the product to the consumer, given the evidence that consumers remember and rely more on what they are told in discussions. It may not result in consumers comparing different products, but, as the consultation paper indicates, information at this stage enables the consumer to understand what they are buying. We do not support the changes to the trigger points for KFIs.

We believe that it is appropriate for the consumer to have a written record of each product that they may be interested in, rather than only once they have expressed a preference for a particular product. In situations where problems subsequently arise, it may be a valuable source in terms of understanding the sales process. If the trigger points are to be revised to require a firm to provide a KFI to a consumer if they ask for one, then there must be an obligation on firms to inform consumers clearly and prominently of their right to ask for one.

We believe that post-sale suitability letters can provide a useful record of the advice given to the consumer, particularly if there are subsequent difficulties. They may also act to improve the quality of advice. They may not change borrowing behaviour on the part of consumers, but these other benefits are sufficient for us to consider that this should be introduced as a compulsory measure. We do not agree with the proposal not to make these compulsory.

We strongly support the collection of additional data in order to enable the FSA to monitor regulatory requirements in terms of affordability. We also agree that it is important for data to be collected to gather better evidence for policy making and supervision, including enabling arrears and repossession matters to be traced back to the original mortgage transaction and also to any subsequent re-mortgages. We have identified the lack of available data as an issue in relation to tracking any particular difficulties suffered by those who have bought their home under right-to-buy. We believe that the collection of data on fees and charges is essential and await the FSA's proposals in this regard.

We would welcome the opportunity to discuss any of the issues raised in this consultation response further.

Yours sincerely

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