Association of Mortgage Intermediaries response to FSA discussion paper DP 09/3 - Mortgage Market Review

This response is submitted on behalf of the Association of Mortgage Intermediaries (AMI). AMI is the trade association representing over 75% 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 by the Financial Services Authority (FSA) to carry out mortgage and insurance mediation activities. Firms range from sole traders through to national firms and networks with thousands of advisers.

Executive Summary

- AMI members believe that all face-to-face or telephone based interviews should be "advised". Where firms wish to develop internet only, or totally scripted interviews then these could be "information only" non-advised.

- Whilst much attention is focussed in this discussion on the intermediary and the crucial role they play in assisting customers, we wish to ensure that those directly employed by lenders to provide advice are also subject to the same rules and requirements.

- AMI is pleased that FSA has taken into consideration AMI's views and has decided not to propose the introduction of adviser charging in the mortgage industry. We believe that procuration fees should remain as a remuneration option and it should be up to the customer and the mortgage intermediary to agree on how remuneration takes place.

- FSA has stated that it does not want to restrict higher LTV and LTI products at this stage. AMI does not support any recommendation from FSA that introduces any regulations limiting products with high LTV or LTI.

- FSA has not been persuaded that there is justification for higher qualification standards in the mortgage industry. AMI believes that the current qualifications within the mortgage industry are of a standard that achieves their objectives and meets the needs of the market.

- An affordability assessment will now be required to be carried out for all advised and non-advised sales. AMI believes that there should be no variation between the requirements for advised and non-advised sales when considering the affordability of the mortgage product.

- FSA has proposed to replace the existing 'whole of market', 'limited number of lenders' and 'single lender', with the terms 'independent' for whole of market and 'restricted' for limited number of lenders. The term 'information-only' will be applied for non-advised sales. AMI believes that, whilst these changes may not solve all of the problems associated with this issue, change is required. We believe that it is important that FSA allows varying types of business model to exist in the mortgage market, if supported by clear disclosure.

- FSA proposals will require that all income will need to be verified, which will have the effect of banning self certified mortgages. Fast-track, of a sort, can still take place but only after an income verification has been completed. AMI does not believe that FSA has fully appreciated the fundamental differences between fast track and self-certification mortgages in providing better customer outcomes when making these proposals.

- We do not believe that a robust cost benefit analysis (CBA) would show product regulation to be the most effective way to address the sale of mortgages with multiple high risk characteristics. Little consideration has been given to the effect this would have on those consumers already with these types of products. Many consumers who already have products with multiple high risk characteristics would be forced to remain on a high SVR as there would be little option for them to remortgage.

- Interest-only mortgages will still be available but it is proposed that the assessment of affordability will now always be based on whether the capital repayment option is affordable to the consumer. AMI does not believe that someone who has no intention of taking out a capital repayment mortgage should be assessed on the basis of whether they can afford such a mortgage. We support the need for clarity on how the loan will be repaid and that the customer fully appreciates the risks in such an approach.

- AMI is open to the concept of the proposed move towards oral disclosure, however, we are concerned about how FSA will require this to be evidenced. It is not clear how FSA would want mortgage intermediaries to demonstrate that oral disclosure has taken place.

- FSA intends to make lenders ultimately responsible for the affordability assessment. However, it also considers that a mortgage intermediary must first consider a borrower's ability to repay as a key part of the assessment of the suitability of a mortgage. We believe that mortgage intermediaries play an important role in assessing consumers' affordability. We consider that care must be taken to ensure the consumer retains some responsibility here and that we do not duplicate activity that could inadvertently make the intermediated advised process uncompetitive with other options.

- FSA states that mortgage intermediaries should retain a record of the customer's information for a minimum period of three years, whereas lenders are only required to retain a record for one year. There is no justification for this disparity of standards.

- FSA has proposed to limit levels of equity withdrawal available to consumers. AMI considers that such a limitation is an unreasonable constraint on individual choice and the re-introduction of such credit controls is outside the scope of FSA's authority. We do not believe that such powers are contained within the Regulated Activities Order (RAO) nor that FSMA grants FSA such powers.

- The proposal to promote renting as a positive alternative to home purchase through financial capability work is considered an unwelcome extension of FSA's scope. This implicit desire from FSA to limit the scale of a property owning democracy, that has existed in the UK for the last 50 years, requires deeper debate and consideration. We believe that this should be part of a more fundamental public debate through government.

- Further consideration needs to be given to the issues surrounding FSA's intention to bring buy to let (BTL) mortgages within its regulatory framework. AMI will be responding to the Treasury consultation

Introduction

We welcome the manner in which FSA has implemented this well thought out discussion process. FSA has fully engaged with AMI in the development of its thinking on the issues raised in this paper and we believe that this has been carried out over a suitable time-frame. We would fully support this approach continuing whilst developing the consultation and policy statement phases of this work.

We wish to remind FSA of the two papers AMI submitted during the pre-consultation period; paper 1 The UK Mortgage Market – a comparative study reflecting US and European influences – August 2009 and paper 2 Better Regulation for the Mortgage Market - September 2009. We ask that FSA considers these papers alongside this submission.

The two key objects that FSA has given for the MMR are:

1. To have a mortgage market that is sustainable for all participants
2. To have a flexible market that works better for consumers

We believe that FSA analysis has driven it to make correct proposals in a number of key areas. The critical measure of success of any proposals should be whether the proposals will achieve the objectives.

It would seem to be logical that before the implementation of new rules FSA should review whether competent supervision and implementation of the current rules would have achieved the objectives set out in the MMR DP. This paper does not make clear whether appropriate supervision of the rules would have avoided the problems identified within it.

It is questionable whether the proposals made in the paper will address the problems identified in the mortgage market. The proposals could certainly result in a fundamental change to the way in which consumers buy and sell houses but this is not an objective of the MMR.

The vast majority of consumers have been well served by the mortgage market. AMI is concerned that the proposed changes, which will protect a small minority, will substantially impact on the choices of the vast majority of consumers.

Professor Gower stated in the Review of Investor Protection (1984), “Regulation in the interest of the [investor] should be no greater than is necessary to protect reasonable people from being made fools of”. FSA’s proposals shift the core principles of UK financial services regulation to protecting reasonable people from being made fools of *and* from making fools of themselves.

Although some issues of the MMR proposals may appear to be relatively simple, we believe that all the issues will need to be considered in a wider context, taking into account what the cumulative effect of these proposals will be on the UK mortgage industry.

AMI feels that FSA should further consider the role that the European Commission intends to play in the regulatory framework of residential mortgages in the UK. We would consider that it is important that FSA is mindful of the European Commission’s work that is already considering many of the areas covered in the MMR paper.

The overriding requirement of the European Commission is to develop a single market and to protect European consumers. It is important to be aware that European objectives may differ from those of UK government or FSA.

The UK financial services market is acknowledged as being one of the most advanced retail financial services markets of any EU member state. However, this does not mean that the Commission considers that the UK model is necessarily correct. Furthermore, there is the potential for UK rules being repealed to a reduced level prescribed in a maximum harmonisation directive.

In addition to this many of the proposals made in this paper appear to ignore a very important factor, the role of the customer in the process. Customers should be actively encouraged to share responsibility in this process as a driver to better decisions and outcomes.

<u>Main Issues of MMR</u>

A) Advice

AMI believes that all instances of either face-to-face or telephone based customer contact should be "advised", building on the perceptions of a client. If firms wish to develop internet only, or tightly scripted interviews, with material evidence (such as recordings) and substantial disclosure, then these would be "information only" non-advised. In light of consumer rights, we also believe that a formalised opt-out should be in place for the small number of consumers wishing to proceed without advice, but in a face-to-face capacity.

i) Increased adviser standards

Fundamentally, AMI believes that FSA's proposals to implement affordability assessments and an 'Approved Persons' regime are sufficient measures to ensure sales standards and protect consumers. We do not believe that further regulatory action, in addition to these proposals, is required or justified.

However, maintaining a competitive and level playing field of the sales process requirements for mortgage intermediaries and direct branch staff is critical. Equivalent standards will avoid the potential for consumer detriment.

As an example, AMI feels that it would be extremely challenging to provide an assessment of a consumer's affordability, at the level now proposed by FSA, on a non-advised basis. Therefore, if such a detailed examination of affordability is to be carried out during a non-advised sale, we consider that all sales should be on a fully advised basis.

ii) Advised or non-advised

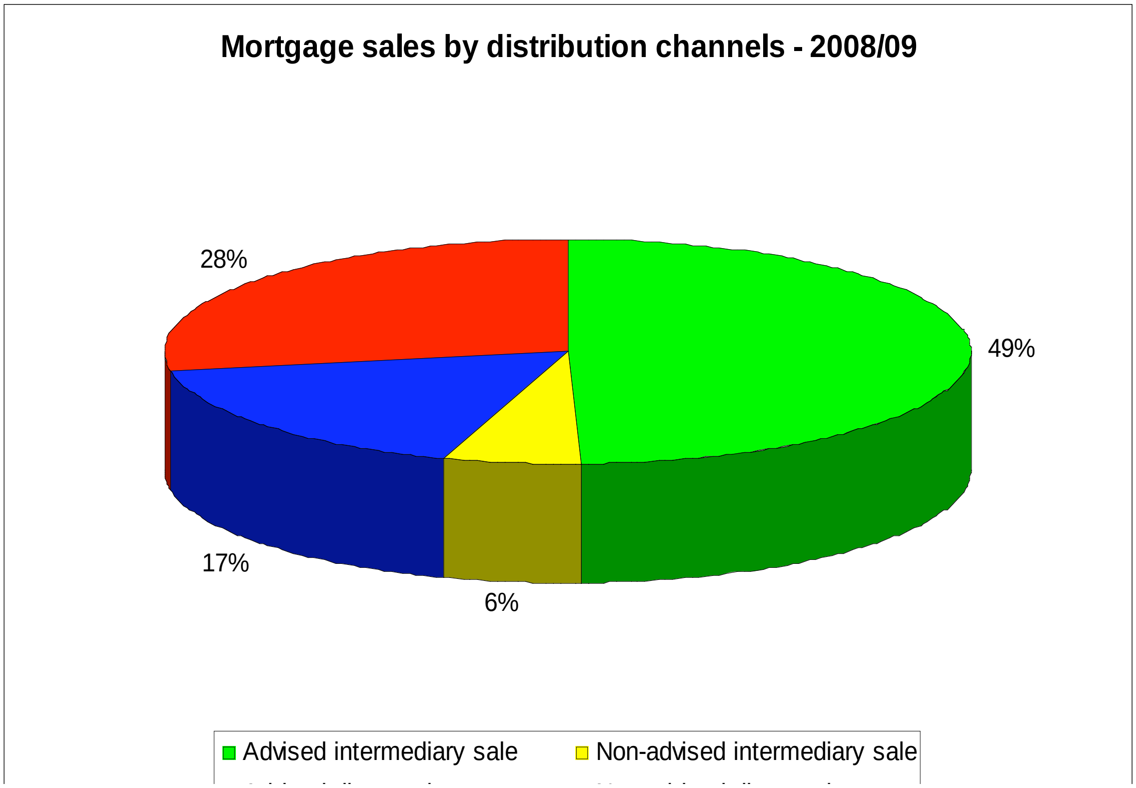
FSA's August 2009 PSD stated, "The vast majority (90%) of all mortgages sold by intermediaries were on an advised basis, but only 38% of the mortgages sold direct were on an advised basis". *(FSA mortgage PSD; FSA internal categorisation of regulated firms).*

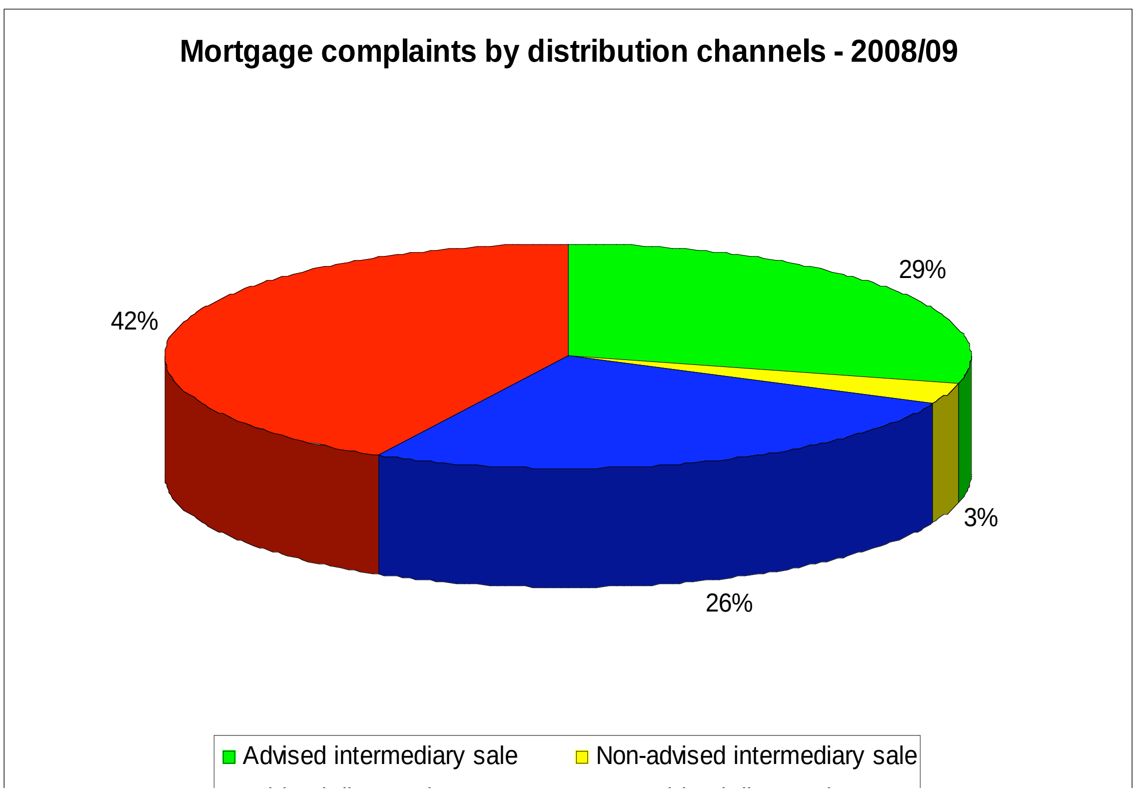
In order to limit consumer detriment, regardless of the status of the transaction, AMI believes that the requirement to assess affordability should be comparable, whether the sale is advised or non-advised. This would echo elements of the suitability requirements for certain insurance products under ICOBS which are required for both advised and non-advised sales.

FOS complaints data, showing the percentage of complaints received during 2008/09 by financial sectors, demonstrates that over twice as many complaints are made against banks as made against mortgage intermediaries

<u>Complaints about mortgages*</u>	
Banks	58%
Mortgage intermediaries	24%
Building societies	10%
Other *(including IFAs)*	8%

(source FOS complaints data)
*total complaints)


Mortgage sales by distribution channels - 2008/09
28%
49%
17%
6%
Advised intermediary sale
Non-advised intermediary sale


Mortgage complaints by distribution channels - 2008/09
42%
29%
3%
26%
Advised intermediary sale
Non-advised intermediary sale

By comparing FSA mortgage PSD on mortgage sales distribution channels with FOS complaints data we are able to clearly see that direct sale routes have a disproportionately higher level of complaints than intermediary routes. Direct routes accounted for 68% of the 7,602 mortgage complaints that FOS received in 2008/09. However, direct sales only accounted for 45% of mortgage sales.

Currently a consumer taking out a mortgage on a non-advised basis is deemed equivalent to an execution-only sale. Whilst some consumers may be in a position where mortgage advice would not be necessary, the percentage of direct sales that are non-advised is 62%, compared with 10% of non-advised intermediary sales. It could be argued that the non-advised sales figure is too high to assume that all those consumers who take out mortgages on a non-advised basis in the direct-sale environment, were fully aware of the product's risks and features. Therefore, we believe that non-advised sales should have the same requirements to assess the affordability and appropriateness, of that product for the consumer, as is required for an advised sale.

iii) Who should assess affordability and who should be accountable?

AMI accepts that in order to appropriately ascertain the suitability of a mortgage product an adviser would also need to assess a borrower's affordability.

We do not believe that a mortgage can be arranged without the adviser making a preliminary assessment of affordability. However, this must be considered against the backdrop of the information available to an adviser, with the lack of access to the range of information available to lenders making a complete assessment extremely difficult.

Furthermore, research shows that mortgage intermediaries are the preferred contact for borrowers and are also the best placed to obtain information about a consumer's income and expenditure, including gathering the supporting documentary evidence. However, this would not include access to credit data, and relies on an element of honesty from the client.

Given that FSA's powers do not allow it to require equivalent access to the information that lenders benefit from, AMI would not expect more than the proposed preliminary assessment.

Ultimately the decision to advance funds remains with the lender. Regardless of what the mortgage intermediary and consumer have agreed to be a suitable recommendation, the lender will always want to use its underwriting department to consider the application before releasing the funds. Given that mortgage intermediaries do not have the same level of access to information as lenders, and that it is the lender's funds that are at risk, it would seem difficult to envisage a scenario where the lender was not ultimately responsible for assessing affordability.

Furthermore, it is the lender that sets and manages its credit policies, so it is the lender that determines the type of business that it operates, subject to FSA agreement and supervision.

iv) Assessment of free disposable income

AMI believes that FSA's proposal to base lending on the consumers' free disposable income (the amount of money available for mortgage servicing that is calculated as gross income minus expenditure) seems sensible in theory and is current practice in the market, be that at an intermediary level or under a lender's criteria.

However, establishing a consumer's actual expenditure is often more difficult than establishing their actual income. Consumers must be recognised as 'humans' rather than 'econs'. Whilst 'econs' would accurately understand the full extent and range of their expenditure, 'humans' do not. For example, inertia towards cancelling an underused gym-membership, or an underestimation of the cost of a holiday are entirely normal. Further individual perceptions of discretionary and fixed expenditure differ by person. As such, in some cases not even the most detailed investigation will give an exact expenditure figure. FSA has considered the notion of rational borrowers' behaviour within this paper however, this must be considered not just within the remit of borrowers using mortgages as a means to obtain a given product or goods but also within the context of the means of obtaining the finance.

Whilst theoretically, we would agree with FSA's view that the majority of information provided by the consumer can be checked, the cost and benefit of this activity is not clear. Some information will be much more difficult to check than others. Obtaining data to check all expenditure information would lead to substantial extra costs within the industry. We are sure that FSA would need to be extremely confident in the rigorousness of its CBA on such a high level of scrutiny to avoid subsequent legal challenge. It would be disproportionate to consider such measures across the whole of the market, given the inherent variations in risk posed by borrowers.

Often prospective borrowers are prepared to sacrifice some forms of expenditure, such as holidays, to afford a new mortgage. It is also apparent that someone's free disposable income will change over time. For some consumers, such as those undertaking professional qualifications, material increases in their disposable income in a relatively short period of time are common. Others may experience redundancy, illness or divorce which radically alter their level of free disposable income. It is questionable how all these variables can be considered under a prescribed format. The assessment of expenditure should be based on committed expenditure. Discretionary spending should not be required to form part of the calculation, but will usually be discussed when discussing the budget with the client.

Many lenders are incorporating new systems and procedures to move away from the timely and costly process of reviewing actual paper documents (i.e. pay slips or accounts) when considering affordability. FSA would not want to propose that firms revert to the more costly, less technologically advanced methods of affordability assessment. Any increase in cost will inevitably end up being passed on to the consumer and would make the CBA for any proposed changes far more challenging. It would be inappropriate if proposals increased the costs to all mortgage borrowers, especially given that many borrowers will already be able to demonstrate that they have low LTV and a good repayment history with their current lenders. Not all consumers will require such a detailed assessment to deem that the mortgage will be affordable. However, under the proposals they will still be assessed as if their affordability was in doubt and, as such bear that cost of that assessment.

v) Consumers borrowing capacity

AMI believes that this is too rigid and does not allow advisers/lenders to take account of individuals' actual needs and circumstances. The consumer borrowing capacity plus any saving that the consumer has will end up being the key instrument to dictating the purchase prices of properties in the UK, as no one will be able to borrow more than that amount. Given differing appetites for risk by different lenders, this is a level of product regulation that would strip much competition from the market, to the direct detriment of consumers. It is more important that customers really understand the impact of an increase in rates and the effect this will have on their mortgage commitments.

The DP proposes a stress test to take account of increases in interest rates. It suggests a figure of the current standard variable rate of the lender plus a 2% margin. There is no justification for use of an arbitrary figure of 2% which in some circumstances would be inappropriately small, and others inappropriately large. FSA should consider the historic use of stress testing figures in other financial services sectors, such as the use of LAUTRO rates in the investment markets. It has been previously shown that the use of such simplistic set figures has not resulted in enhanced consumer protection.

We believe that there is industry-wide consensus that a more sophisticated approach is appropriate. Any calculation will need to be able to adapt to changing market conditions. We would not want to see such a system failing in the same way that the investment projection tables did when the rates presented were no longer realistic. We believe that any margin figure should take account of factors such as the BofE base rate at the time. Anything less than this would appear to be too simplistic to cope with likely changes to market condition over the term of the mortgage product. However rather than look at the full term of the product, consideration of costs over a more predictable period, say five years, may be sensible.

When considering the implementation of such a model FSA should demonstrate what the effect would have been on the mortgage market if it had been applied over the last decade. FSA should show what the effect on consumer borrowing would have been and whether it would have had a positive effect on repossession figures. If it would not have had a positive effect over the last decade, it is questionable what good such a proposal would do.

vi) Affordability assessed on a capital repayment basis

AMI strongly disagrees with all affordability being considered on a basis of capital repayment. Current market practice often results in lenders in effect making assessments on a basis of capital repayment, and thus not offering to advance more funds to a consumer who opts for an alternative repayment strategy. However, reducing flexibility and innovation for lenders would not benefit consumers.

Some consumers may opt for an interest-only mortgage with an alternative repayment strategy as they are aware of further funds being available to them to pay off their mortgage at a later date; it could be that a consumer is expecting substantial pay rises (as per many younger professionals), or that the consumer is entering a period of credit-repair. It cannot be appropriate to assume that everyone should be able to afford a capital repayment mortgage if they are not going to take one out, and the additional detriment caused to young professionals or those taking responsibility for their own situations through credit-repair arrangements is tangible. This requirement does not allow for consumers' who may only want to live in a property for a short period of time and therefore will not benefit from any substantial capital reduction by having a capital repayment mortgage.

Furthermore, interest-only may be the best option for some credit repair scenarios, regardless of whether the capital repayment option was affordable or not. Whilst we understand FSA's concerns surrounding interest-only mortgages, and in particular those borrowers without repayment strategies in place, we do not believe that FSA should propose to create an inflexible regulatory policy, when interest-only mortgages are so clearly an appropriate mortgage method for many consumers' individual circumstances. To restrict interest-only mortgages may protect a small minority of consumers but it is also likely to lead to significant consumer detriment for other groups including some extremely vulnerable groups. Therefore, we would want to see clear justification from FSA to substantiate this proposal.

vii) Rental v Mortgage

There are currently no requirements under MCOB to consider renting when providing mortgage advice. AMI would not support any proposals to include an assessment of whether renting would be a more suitable option.

Considering rental as an alternative to obtaining a mortgage would lead to impractical comparison problems for advisers and lenders. When considering the cost of borrowing a set amount, the costs of doing so will be equal wherever the consumer lives in the UK. However, geographically, rental prices are radically different across the UK. The mortgage market includes groups already living in rented accommodation, in parental homes and those already owning property, either mortgaged or unencumbered; any situation that refused a client a remortgage on the basis of renting being more appropriate would be perverse and any situation where differing applications were provided to remortgages verses purchases would result in an unworkable two-tier assessment structure.

Further social questions arise, when considering the implicit ‘cost’ of the surety of tenure offered by a mortgage. Under an Assured Shorthold Tenancy a consumer tends to benefit from only one year’s stability; what value is placed on this, and does this differ between a single-borrower against a family with small children?

viii) Customer information record keeping

It is unclear why FSA is proposing to apply uneven regulatory standards for record keeping requirements. The DP states that mortgage intermediaries will be required to retain a record of the consumer’s information for a minimum period of three years, whereas lenders are only required to retain this record for one year. AMI believes that, if these proposals are intentional, there is no justification for this disparity of standards and would want to see evidence of why FSA believes that these differing standards are necessary, especially as on most complaints the key reason to refer to records are around lender issues.

We would expect that most businesses would want to retain documentation for more that one year, given the potential for future complaints or reviews and the new focus that FSA intends to apply on affordability assessments.

B) Remuneration

i) Adviser charging or procuration fees

AMI has long campaigned for flexible remuneration methods for the benefit of consumers. There is no evidence of market failure from current remuneration practices in the mortgage market and AMI therefore supports FSA in not introducing alternative charging models into the mortgage industry. The evidence shows that the current options work to consumers' benefit.

AMI's research also shows that a majority of mortgage intermediaries charge fees, but only to a minority of their customers. There remains consumer resistance to the paying of broker fees. It has already been established that consumers are generally happy with remuneration coming from the product provider.

ii) Adding fees and charges to mortgage loan

Product fees are often added to the loan and have been increasing in size in recent years, with large product fees often being paid to secure a lower rate of interest. AMI believes that consumers should be aware of the fees and charges that are associated with their mortgage, rather than merely focusing on the interest rate of the product on offer. Whilst there are concerns about consumers paying interest on fees, if those fees are added to the loan, for many consumers they may consider this a valid economic option given their current financial position. Furthermore, fees which are paid upfront may be at risk if the mortgage is later declined, however those that are added to the mortgage will only be charged if the mortgage completes. AMI does not believe that there should be a restriction on fees being added to the loan but consumers should be aware of the implications of doing so.

On a practical level, the outcome for a consumer with finite savings will be the same whether they add a fee to a mortgage, or pay a fee directly, and then borrow an equivalent amount more to compensate for a reduced deposit. However, in adding a fee to a loan, a consumer withdrawing from a contract prior to completion often benefits from not losing a fee paid, and has benefited from additional interest on those funds in their own savings account.

In the remortgage market, the mandatory payment of fees could result in many consumers – particularly the vulnerable (those with limited or no savings) being unable to remortgage and benefit from a reduced interest rate, or the security of a fixed interest rate. Current market practice would be to consider the fee and interest-rate combination against the existing cost of borrowing. The ability to fully consider the true costs over the correct time periods is an essential part of the process and is a clear demonstration of the value of advice.

In addition we believe that expert advice is more likely to achieve a better understanding of a mortgage product's true costs than increased disclosure.

C) Product Regulation

i) LTV and LTI restrictions

AMI does not believe that FSA should employ regulations limiting products with high LTV or LTI. As FSA acknowledges in this discussion paper, there is not sufficient evidence to justify that such products have led to substantial consumer detriment. Such a ban would have grave consumer consequences as it will limit future product innovation. We would agree with the views expressed in *The Turner Review*, *(March 2009)* that *"product regulation would stifle innovation, which in a competitive market has beneficial effects, and that the regulator is less well placed than the market to judge whether products deliver customer value".*

It would also further restrict first time buyers entering the market. FSA appears to be in agreement with this view, *Lesley Titcomb, sector leader, retail intermediaries and mortgages at the Financial Services Authority, speaking at the Treasury Select Committee Meeting stated "Putting a superficial cap on LTVs is not a true test of affordability and would alienate a lot of first-time buyers from the market".*

In addition we understand that the consumer lobby also supports the flexibility that the absence of LTV/LTI creates.

ii) Self-certification and Fast track

FSA proposals will require that all income will need to be verified, which will have the effect of banning self certified mortgages. The majority of these mortgages have already been removed from the mortgage market by lenders due to the current market conditions.

It is proposed that fast-track lending can still take place but only after an income verification has been completed. AMI does not believe that FSA has fully appreciated the fundamental differences between fast track and self-certified mortgages in providing better customer outcomes when making these proposals. It appears that the data, which FSA used in its MMR paper to justify the ban, does not make a distinction between the fast track and self-certification mortgages. FSA appears to have considered that the data only represents self-certification mortgages. It would seem that the percentage of sales that were on a true self-certification basis has been considerably overestimated.

We believe that lower risk applications play an important role within the mortgage industry. FSA needs to consider that there are some consumers that do not require the same level of checks as others. Should the pure self-certification mortgage be abolished by FSA, this does not mean that lower risk applications/fast track should be included within this ban.

FSA acknowledges the importance of proportionate regulation. AMI therefore proposes that individual lenders adopt appropriate processes for given risks, and their appetite. There is no consumer benefit in all lenders seeking full income verification for a low loan-to-value remortgage for a client with a high credit score. It is clear that lenders should make their own assessment of risk, and should seek to verify sufficient information to manage that risk effectively. This should not be a prescribed regulatory requirement.

iii) Second charge loans

AMI is separately responding to HM Treasury's consultation on the proposal to include second charge lending within the regulatory scope of the FSA. However, AMI believes the proposals are a positive decision and in July AMI's sister organisation, AFB, publically supported the approach of regulation of all secured lending falling under the same regulator. This was predominantly driven by the work that is currently being carried out by the European Commission (the Commission), where there is no division between first and second charge lending. We therefore support a single UK regulator covering both first charge and second charge lending. This is not a criticism of the regulation provided under the OFT.

HM Treasury is currently consulting on the scope of FSA's remit being increased to include second charge lending. Its proposal states that the exact details of FSA's regime will be for FSA to determine. These proposals do not, however, clarify how second charge lending will be regulated under FSA.

Furthermore, once FSA has taken over the regulation of second charge lending it is not clear where this will fall within its regulatory framework. Does FSA intend to include second charge lending within MCOB or under a separate conduct of business rule book? The current proposals do not provide any guidance on how FSA actually intends to regulate these loans. AMI strongly cautions over the differences between first and second charge lending, in particular the role of fees within the advice process, and would welcome the opportunity to discuss these issues in detail with the FSA separately.

We are particularly concerned about the cumulative effect of FSA's proposals to ban the rolling up of fees into loans, particularly when this is applied to second charge lending. Second charge borrowing is fundamentality different to that of a first charge borrowing transaction, as the consumer will not have access to savings or be obtaining funds from the sale of a property. Any requirement to pay fees upfront would only lead to high levels of other borrowing being required by consumers, to offset the costs of those fees.

iv) Equity release

FSA's proposal to limit the amount of equity that an individual can withdraw from their home exceeds FSA's regulatory remit and does not demonstrate any consumer benefit.

FSA says in the MMR paper that "by (2007) home purchase equity withdrawal replaced home purchase as the main purpose of mortgage borrowing" and that "39% of all mortgages sold in 2007 were advanced for this purpose". It would seem that FSA's figure of 39% was calculated on the basis of the Bank of England's (BofE) figures of £42bn for housing equity withdrawal and £108bn for net lending in 2007. Therefore, it would appear that FSA's justification for limiting equity withdrawal is based on out of date figures from a single year. We would expect a more detailed analysis to be made before such conclusions are reached. We would at least expect FSA to consider figures over a three year period in addition to those considered in the DP.

The 2008 BofE revised house equity withdrawal figure was negative at minus £7.8bn, with net lending at £40bn. Therefore, it could be said that the market had adjusted itself without the need for regulatory intervention by FSA. *(Bank of England Housing Equity Withdrawal (HEW) Q1 2009).*

Consumer borrowing directly related to the value of the property is certainly desirable for some and is beneficial to many. The removal or restriction of this option could be to the detriment of these consumers. Whilst homeowners will still require sufficient income to pay off increased loans, for some this increase may be the most suitable option for their circumstances. For example, if the funds are used for major repairs or additions that lead to the increased value of the property. Older homeowners, especially those in retirement, may also see additional benefits in having the option of increasing income through the various equity release schemes available to the over-sixties.

Housing accounts for around 40% of total household assets and differs from other assets in that it is used as well as owned. In AMI's paper, "The UK Mortgage Market – a comparative study reflecting US and European influences 2009", we discussed how Benito explores the complex relationships between house prices and consumer spending in two key papers. The first argues that the linkages are more subtle and less stable than is often assumed. The second argues that, although mortgage equity withdrawal may be used for consumption, it really plays the role of a financial buffer. The equity within a property might be drawn down when temporary adverse shocks have been experienced, given that many homeowners have little cash but relatively large amounts of housing equity.

Others, such as the BofE, say that even if access to credit is taken into account, consumption growth depends on changes in housing wealth, income. employment, interest rates and how much consumption and net financial wealth differ from their long-run or 'core' values.

v) Buy-to-let (BTL)

We acknowledge that HM Treasury is also consulting to increase the scope of FSA's remit to include some elements of BTL lending.

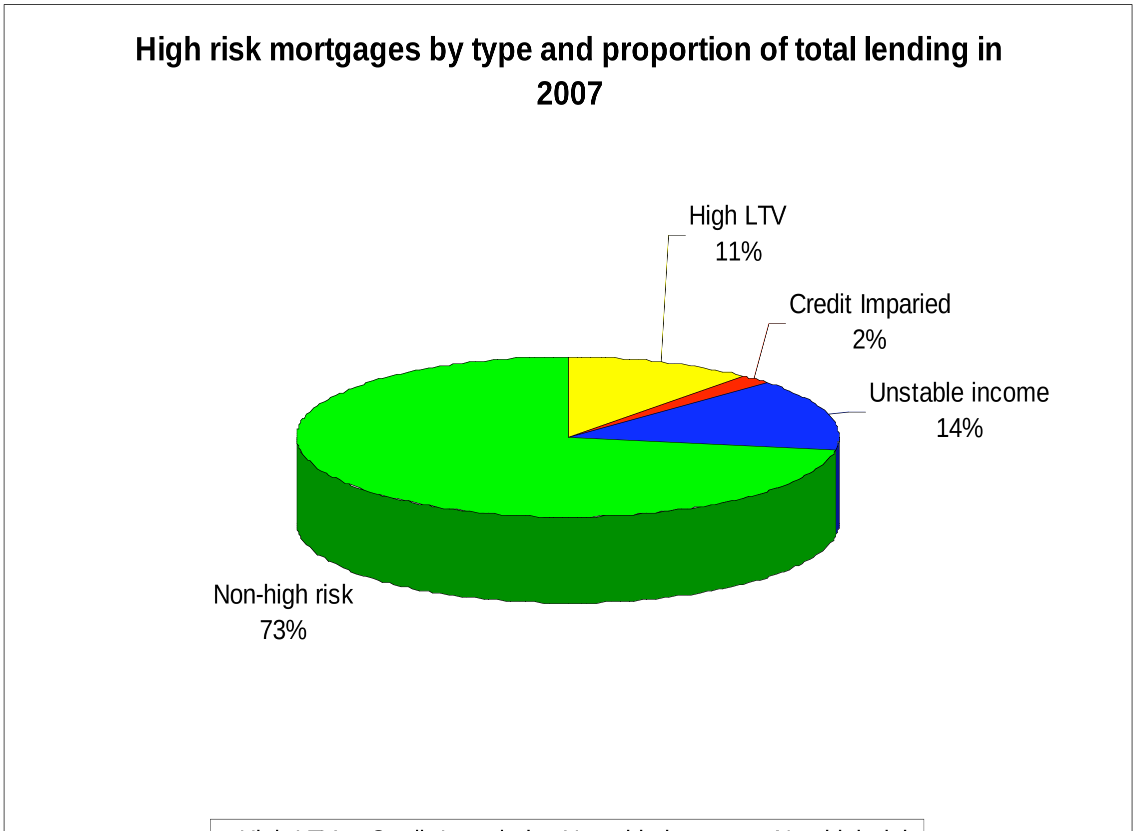
With the limited ability of first-time buyers to secure mortgages, there remains a need for a robust BTL sector. Any steps which reduce the openness of the market, its competition or the availability of funds could have a detrimental effect on consumers.

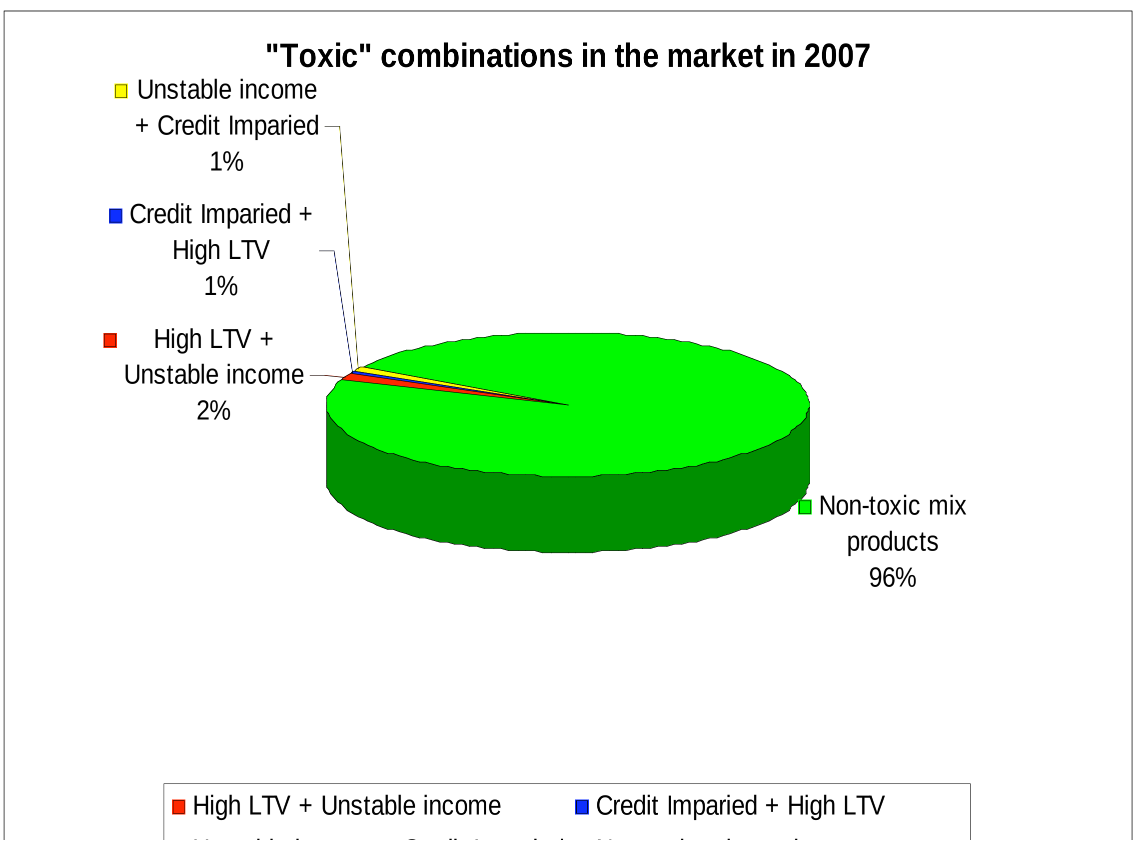
FSA is proposing that BTL mortgages be regulated but further consideration is needed of the method by which this is done and the scope of any regulation. As with second charge lending, the HM Treasury consultation states that the details of the regulatory regime will be determined by FSA.

The regulation of BTL mortgages is complicated by the vast potential scope of these products. AMI would want to see that any proposals balance the desire to protect consumers with a consideration of how FSA regulation would affect the wider commercial rental sector. An artificial divide will need to be put in place to draw a distinction between consumers and commercial businesses operating within the BTL market.

vi) Toxic product – multiple high-risk characteristics

AMI shares the view of FSA that product regulation is not the solution to the financial problems that the UK has recently experienced. The percentage of mortgages that are included within the multiple high-risk mortgage sectors represent a low market share. The total percentage for the four combinations of categories that represent the multiple high risk characteristics (High LTV, Credit-impaired and Unstable income) is only 3.4% of the market, which by itself does not appear to reflect a percentage that would be considered to be a high default rate. The category that contains all these high risk characteristics represents only 0.1% of mortgages, a total of only 2,587 mortgages. Such a small figure can hardly justify changes that will affect the whole UK mortgage industry. It seems unlikely that a robust cost benefit analysis (CBA) would stand up to justifying further product regulation.


High risk mortgages by type and proportion of total lending in 2007
High LTV
11%
Credit Imparied
2%
Unstable income
14%
Non-high risk
73%


"Toxic" combinations in the market in 2007
Unstable income + Credit Imparied
1%
Credit Imparied + High LTV
1%
High LTV + Unstable income
2%
Non-toxic mix products
96%
High LTV + Unstable income
Credit Imparied + High LTV

We do not believe that increased product regulation would be the most effective way to address the sale of mortgages with multiple high risk characteristics. FSA does not appear to have considered what those consumers who already have these types of products will do if they are banned. It would seem likely that many would be forced to remain on a high SVR as there would be little option for them to remortgage.

v) Debt consolidation

FSA infers that refinancing other debts into a mortgage is too often to the detriment of the consumer, due to the increase in total costs.

Whilst borrowing should clearly not be increased to a point where it causes financial distress to the consumer, for some consumers debt consolidation could be the best or the only option short of bankruptcy.

However, there are a number of further factors which we feel FSA has not fully addressed. These include the fact that inflation will, to some extent, erode the impact of compounded interest on consolidated debts over the long term, and that some mortgage rates of interest actually would represent a lower total cost despite an increased term when compared to unsecured products.

We believe that FSA should not restrict the refinancing of debts into mortgages, which could be to the detriment of some consumers. It could be argued that those consumers who wish to consolidate their debts into a mortgage should only be able to so once they have obtained appropriate advice from an approved mortgage adviser. Whilst currently out of scope of FSA, it clearly would be appropriate to focus more on the granting of excessive unsecured facilities, rather than the solution that preserves the ability of the customer to repay their debt over an extended but affordable period.

D) Professional standards

i) Qualification standards

AMI supports FSA's stance that there is no justification for higher qualification standards in the mortgage industry. Current mortgage qualifications are set at a competence level of QCF level 3.

Mortgage intermediaries have demonstrated, under the current qualification standards, that they have a good level of understanding of the mortgage industry and consumer issues.

ii) Professional Standards Board (PSB)

Whilst FSA's recent consultation paper 09/31 demonstrates a direction of travel away from the introduction of a separate PSB, AMI would still like to restate its position. We believe membership of any professional or trade body should be optional and the creation of a PSB will only prove useful if it is attuned to the needs of the industry, its powers reach to the highest levels of all firms, and it is costs justifiable. We do support FSA's proposal to have an in-house department to undertake certain tasks, such as the administration of the individual registrar.

iii) Approved Persons

FSA's proposal to apply individual registration to the mortgage industry is something that AMI has being calling for since prior to FSA mortgage regulation. AMI and its members anticipate that appropriately applying the Approved Persons regime to the mortgage industry could have positive outcomes. By making individuals personally accountable for their actions, we hope to see reduced consumer detriment and improving professional standards.

If FSA does decide to apply its Approved Persons regime for mortgage advisers we would want to be assured that the implementation is carried out through FSA and not through a third party such as a Professional Standards Board (PSB). Our wider concerns around second tier regulation that the application of the PSB could bring about are well versed. Furthermore, whilst we support the principle of individual registration, the justification for any implementation will need to proportionate to the proposed costs.

Whilst we support the principle of mortgage intermediaries and branch staff being covered by the Approved Persons regime, the outcomes require further consideration. Many issues surrounding mortgage fraud are as a result of the actions of solicitors and valuations. It would seem unlikely that the Approved Person regime will be able to resolve these types of fraudulent activities.

In supporting the creation of an individual register we would wish a mortgage approved persons regime to be proportionate to the mortgage market. We do not believe that a straight read-across of the investment sectors approved persons regime would be appropriate.

However, AMI does question whether the proposals of applying the Approved Persons regime will have a positive impact which reduces the need for more costly conduct of business regulation being implemented by FSA as set out in parts of this consultation.

iv) Financial Promotions rules

The mortgage industry has always been innovative and has embraced new technologies as they have been developed. Given the rise in the use of the internet, not only to carry out mortgage transactions but also to drive new business, we believe that further regulation of this area is now urgently required.

The increasing use by consumers of price comparison web-sites and their connection to lead generation and lead aggregator sites has created a new market-place. Many of these are now developing systems that will take an initial general enquiry all the way to application submission to the lender. Consumers may consider that they have received advice by way of the nature of the questions asked and the guidance to a product provided. However, they will actually have little regulatory protection and may purchase an inappropriate product or be cascaded to a poorer rate without re-assessing their needs. Whilst some companies' websites are covered under Financial Promotions rules and/or the non-real time quality control promotion rules the companies themselves are not currently subject to regulatory controls. We would also like to see further application of the protection offered by the advertising standards agency, trading standards and OFT applied to these companies and their websites.

E) Disclosure

i) New definition of "Single lender", "Limited number of lenders" and "Whole of market".

FSA has proposed to replace the existing 'whole of market', 'Limited number of lenders' and 'Single lender' labels, with the terms 'independent' for whole of market advice and 'restricted' for Limited number of lenders. The term 'information-only' will be applied for non-advised sales.

It is important to allow for a variety of appropriate business models to operate to meet consumers' needs. AMI believes that, whilst these changes to labelling may not solve all of the problems associated with this issue, change is required.

Currently mortgage intermediaries who operate on a whole of market basis only have to provide advice on the products available to them. With the proposed move towards the term 'independent' for whole of market we would not want to see added requirements placed on advisers to consider direct products as well. Any proposals will need to acknowledge that there will always be products in the mortgage market, be they exclusives or direct only deals, that some advisers will not be able to access. Clearly a straight read-across of the terminology and definitions used in the RDR would not be appropriate for the mortgage market.

Any new labelling for whole of market will need to ensure that the adviser is only required to consider the products available to them, which may only be fair and representative of the total products across the mortgage market.

We do not believe that changing the name for ‘non-advised’ sales to ‘information only’ will increase consumer understanding by itself. AMI believes that more stringent disclosure is needed, in particular on direct non-advised sales, to ensure that consumers are not confused or misled about the level of advice provided.

ii) Standardising some industry definitions such as sub-prime

We would agree that standardising some industry terms would be helpful to improving consumers understanding. We have already seen how FSA has done this in other areas with varying levels of success. However, it must be remembered that the terms sub-prime and non-conforming meant just that, those products that did not sit in the standard prime category. If FSA is intending to standardise the term ‘sub-prime’ it may be better to opt for a clear re-classification using a new name, rather than trying to standardise the terms that are already entrenched in use. AMI’s sister organisation AIFA is conducting similar work in conjunction with ABI in the decumulation space; it may be that these objectives are better completed by the industry.

iii) Oral disclosure

FSA suggests that oral disclosure could be a more effective way of getting key sections of information across to the consumer. Given the recent changes to ICOBS rules which now place greater emphasis on oral disclosure, we would welcome seeing details of FSA’s post-implementation checks and measures of the consumer betterment achieved in this market. Learning from and evaluating the success of similar changes in other markets should form the basis of further applications of regulatory interventions.

AMI does think that FSA has failed to make clear how it would want mortgage intermediaries to ensure that oral disclosure has been sufficiently evidenced. We believe that FSA, in conjunction with FOS, needs to clarify how it would want businesses to demonstrate that this process has been carried out to the required standard.

iv) Replacing IDD with disclosure of key messages

The requirement to disclose key messages in documents may not clearly distinguish the levels of service offered to consumers.

AMI strongly agrees with Which? that, *“There has to be a clear distinction between those offering unbiased advice and those simply trying to sell products.*

It must be made crystal clear to consumers what type of service they are receiving and how they are paying for it" (Which?, Press Release `putting the independent back into IFA`, November 2008)

Whilst key features can be explained orally most consumers will want a written record of what level of service has been received and intermediaries will want to provide a record of this to the consumer, not least to ensure there own records can demonstrate that this has taken place.

There will be no additional cost to the industry if the IDD is retained. If the IDD were to be replaced with the requirement to disclose key messages, we would want to see that FSA clarify how intermediaries are to demonstrate that such a disclosure has taken place.

v) KFI to be kept

AMI believes that whilst the KFI should be retained it should be accepted that the way it is used by consumers is not the same as its original purpose. It has been shown that the KFI is used by consumers as a post sale review record, rather than being used as a product or pricing comparison tool. FSA Mortgage Effectiveness Review Stage 2 Report stated that, *"While the Key Facts Illustration (KFI) was seen as an important document and used to check any points of detail and clarify uncertainties, it was not viewed primarily as a means for product comparison or shopping around".*

However, rather than simply contemplating whether the KFI should be replaced or not, FSA should consider the EU Commission's proposals to adopt the European Standardised Information Sheet (ESIS) in place of the KFI. Not considering ESIS at this stage would seem to be delaying the inevitable, as consideration will clearly be required at some stage in the future.

vi) Suitability letters

AMI considers the use of suitability letters to be clear evidence of best practice. However, whilst many of our members already use the suitability letter and we were surprised that it was omitted from the original FSA regulations, we do not support the mandatory use of the letter. With the potential for a European intervention with the ESIS, the KFI, the IDD which we propose keeping, we do not believe that a further mandatory document is of benefit to the consumer, nor cost justifiable. Whilst many good firms will be choosing to produce these already, the cost implications of prescribed formats and text are considerable, and would not be justifiable by any consumer benefit.

F) Re-defining the market

i) Challenging the presumption of home

FSA proposals present a desire to encourage people who may consider owning a property to more seriously consider that renting is a more sensible financial solution to their housing needs. It would appear that FSA is proposing to promote guidance that promotes renting as a positive alternative to property ownership. AMI considers that any decision in this area should be subject to a very wide discussion and debate, with decisions made at a political level within Government. We are not aware of such a debate and would ask the FSA to consult more widely before implementing such a change.

FSA proposals could be interpreted that mortgage intermediaries will be required to consider the suitability of renting, as an alternative to actually taking out a mortgage. As part of this consideration it could be seen as relevant for the broker to consider the total cost of renting as well as the total cost of taking out a mortgage. However, a fundamental difference between taking out a mortgage and renting is that a mortgage can be repaid whereas rental payments will be required until death. Furthermore, by having a mortgage repaid by retirement people can afford to live on a pension that is substantially less than the wage they earned in their working life. A study carried out by the Pensions Policy Institute in September 2009 found that, *"Owning your own home in retirement can reduce living costs relative to paying rent (not having any housing wealth) by around 30% for a single person and by 40% for a married couple".*

By removing this emphasis to get people on to the property ladder FSA is likely to push people into being proportionately more impoverished in retirement than those who are living rent free, in a property that is owned outright. As such, the true cost of renting will need to be carefully considered and fully disclosed by FSA if it is to propose that its suitability for consumers should be considered.

If it is the intention to introduce such requirements AMI would like to be fully involved in ensuring that any proposals are developed through a proportionate approach.

ii) Limiting equity release

Whilst we appreciate the need to protect consumers from acquiring debt that is unaffordable, the proposals to limit equity release could have far-reaching consequences which we believe are unintended. The regulation of the Equity Release market appears to be operating effectively within the FSA regime. FSA appears to have used limited data from a single year to justly its proposal to limit equity release. AMI would question how effective regulation could or should be in attempting to limit individuals from being free to decide what they as individuals do with the equity they have accumulated in their house. This seems to go against the grain of what has been deemed to be the rights of UK residents since the property owning democracy was first established. We do not consider that it is intentional to limit access to equity, unless FSA wishes to return to a more formal era of credit controls. It is not for FSA to decide how individual use the equity they have accumulated in their properties.

iii) Limiting the extension of credit to individuals who are unable to afford such high levels of debt

We would not want to see the majority of people who are able to make controlled borrowing decisions for themselves restricted due to the action of a credit hungry few. We do not believe that regulations should be implemented to prevent the extension of credit because a minority of borrowers have made poor decisions. We would think that this should be left to market forces to decide. It is rarely the refinancing of unsecured debt to mortgage that is the problem. It has been the prior advancing of credit lines by unsecured providers, often at high rates of interest that can then be funded by lower APR, longer term debt that is seen by consumers as a valuable safety net.

Since the start of the economic downturn and the resulting financial troubles we have seen a strong reduction in credit being extended to individuals, in particular those who present a higher risk. Whilst we believe that those individuals who cannot afford their borrowing commitments should be helped, we would not want to see regulations put in place that restrict credit for all, for the sake of protecting the few. As such, we would want to see a strong CBA before any further proposals are suggested in this area. This is an important escape valve for many consumers, who otherwise may have to consider the sale of property, IVA or bankruptcy. Whilst these should be considered, we must not close down viable avenues of responsible credit repair.

G) Prudential regulations

i) Capital requirements

The cause of the banking crisis clearly lies with the actions of banks and other lenders, rather than those of mortgage intermediaries. FSA may deem that further capital requirements are needed due to the risks inherent with mortgage lending, however, FSA will need to be careful that these requirements do not restrict the availability of funding for lending, which will be essential to bring the UK through the recovery period. Many of the current market issues we face are caused by the lack of funding in the market and FSA would not want to propose actions that further created detriment for consumers and the UK economy.

ii) Non-bank distributions channels

FSA says that non-banks have actively used the intermediary distribution channel to grow their market share. FSA believes that non-banks used the intermediary distribution route as it was a lower barrier to entry than traditional deposit based banks. The EU has previously praised the intermediary distribution route for delivering low barriers to entry and making cross border activity between member states in the mortgage industry possible. FSA's concerns in this area appear to be running contrary to the fundamental objectives of the EU.

AMI does not believe that the method of distribution is to blame for poor lending decisions. The ultimate lending decision is always down to the lenders underwriters. Furthermore, we would not want to see FSA taking action that would harm this distribution channel based on the current abnormal economic environment. We would ask FSA to manage access to the mortgage market by reviewing lenders' plans and strategies. This would ensure responsible market participation and continued development of viable business models that benefit consumers. Competition and consumer choice are imperative to ensuring the recovery of the mortgage market. The intermediated route to market has been key to providing both enhanced consumer choice and increased competition within the UK mortgage market.

Conclusions

- The second of FSA's two main objectives of the MMR is *'to have a flexible market that works better for consumers'*. However, the discussion paper appears to neglect the role of the consumer within its considerations. Rarely are responsible consumers' interests, wants and needs contained within FSA's analysis of its proposals. If the proposals are to provide a positive outcome for consumers, FSA will need to first; consider what the unintended consequences of these proposals will be, and second; consider how the cumulative effect of the separate facets of these proposals will alter the way in which consumers buy and sell properties in the UK.

- There is no evidence to suggest that product bias is prevalent in the mortgage sector, and therefore a wholesale move to an equivalent adviser charging model is unnecessary. The decision as to how remuneration takes place should be for the consumer and adviser to discuss and agree on. If the consumer wants to add fees to the mortgage, and providing the cost of doing so is fully disclosed, we do not believe that FSA should remove this option.

- We do not believe that there is sufficient evidence – nor consumer appetite - to justify any increase in the level of product regulation by FSA. We do not believe that there should be restriction on LTV, LTI or equity withdrawal. Nor do we believe that the quantity of 'toxic mix' products sold is sufficiently high to justify the proposed ban. We accept that self-certification in its old format will no longer exist but lower risk application/fast track mortgages, which are distinctively different from self-certification, should not be included within such a ban. We believe that all cases of financial hardship should be considered on their own individual merits, therefore, we do not believe that FSA should ban the consolidation of other debts into a consumer's mortgage. What would seem more appropriate is to allow an individual to seek expert independent advice as to what is the most appropriate and suitable solution for their needs, which may or may not be consolidating debts into their mortgage.

- We would agree with FSA's initial conclusion that there is no need for higher level qualifications as they would not necessarily raise standards within the mortgage industry. We have long campaigned for an approved persons regime in the mortgage industry and overall we welcome an appropriate introduction of CF10 and CF30.

- The quantity of consumers taking out mortgages on a 'non-advised' basis is too high in certain areas, and distorted across the market. It is inappropriate to consider these mortgages as 'execution only' arrangements. Therefore, the assessment of affordability should be the same whether the sale is advised or non-advised. Furthermore, it will be very difficult to assess a consumer's affordability, at the level proposed by FSA, on a non-advised basis, therefore, it could be argued that all such sales should only take place on an advised basis.

- As mortgage intermediaries do not have access to the same level of information as lenders, we do not see how FSA could expect more than the proposed preliminary assessment. Lenders should be ultimately responsible for assessing affordability as they will make the decision to advance their funds.

- Establishing a consumer's actual expenditure will be more difficult than assessing affordability. FSA has not considered how new technological systems have already moved lenders away from the costly process of reviewing paper based income documents.

- A consumer who has no intention of taking out a capital repayment mortgage should not have to be assessed on the basis of whether that option is affordable to them. In some circumstances such as credit repair, an interest-only option might be the most suitable product for an individual.

- The proposed labelling changes lack justification and market failure analysis, and ignore the fundamental issue of financial promotions. Changing the terms of 'non-advised' sales to 'information only' is unlikely to substantially improve consumers' understanding of whether or not advice has actually been provided. If a consumer does wish to proceed on a non-advised basis a clear disclosure to this effect should be completed.

- The IDD should remain as the main disclosure document but it should be much clearer and more explicit. The KFI should be retained as, whilst it is not used by consumers for its intended purpose, it is still used as post-sale record. However, FSA should also consider the Commissions proposals on the adoption of ESIS. The mandatory use of suitability letters in additional to the retention of the IDD is not welcome and AMI does not believe it is appropriate.

- Evidencing oral disclosure has caused problems in other sectors, such as general insurance. Whilst we believe that providing key messages orally can support the disclosure process, FSA will need to clarify how it intends this process to be carried out to the required standard.

- FSA appears to be proposing to shift UK society away from its motivation to be part of a property owning democracy, by removing the long held view that it is beneficial to purchase a property and suggesting that renting is a positive alternative for certain groups of individuals. We do not believe that it is for FSA to state whether renting is a better option than a house purchase nor should it dictate how much equity can be withdrawn from someone's house. We consider that these are social policy issues and should be debated more widely before being part of FSA's policy.

- The paper does not consider the intentions of the European Commission with regards to the regulatory framework of residential mortgages in the UK. FSA concerns about the non-bank distributions channels would seem to run contrary to EU objectives of creating a single market with low barriers to entry. We do not believe that the non-bank distribution models should be blamed for the problems experienced in the UK economy. FSA should carefully balance proposals so as not to restrict any recovery of the mortgage market. Any increased capital requirement costs for higher LTV products will ultimately be passed on to the consumer.

- There is a lack of understanding in the paper around the use of new technologies and non-paper based routes within the mortgage market. FSA appears to be looking at issues without taking account of the technological advances that have taken place within the mortgage industry.

AMI

29 January 2010

Consultation Questions

Q1: Do you agree that the prudential reforms will ensure that banks and building societies are adequately capitalised for the risks inherent in mortgage lending and should support a more stable mortgage market through the economic cycle?

We have not commented as we do not represent Banks and Building Societies.

Q2: Do you agree with our analysis of the implications of applying higher capital requirements to high-risk loans (on top of the prudential reforms) and that to do so would not be likely to protect borrowers from the risks of taking on such loans?

We would agree that there is insufficient evidence that applying higher capital requirements to higher-risk loans would result in enhanced consumer protection.

Q3: Do you agree that more direct intervention through business model analysis; applying asset limits; or increased prudential requirements is required to deal with the consumer and systemic risks posed by non-deposit taking lenders?

We would ask FSA to manage access to the mortgage market by reviewing lenders' plans and strategies. This would ensure responsible market participation and continued development of viable business models that benefit consumers. Competition and consumer choice are imperative to ensuring the recovery of the mortgage market. Non-deposit taking lenders provide innovation and provide competitive products for consumers.

Q4: Are there any other considerations that are relevant to the issue of how prudential requirements influence mortgage market outcomes?

As well as considering the effect of individual proposals, FSA needs to consider the cumulative effect that its various proposals will have on the mortgage industry to ensure that there are no unforeseen consequences.

Q5: Do you agree with our analysis that, on the grounds of consumer protection, there is no case for prohibiting the sale of loans above certain LTV, LTI or DTI thresholds?

We agree with FSA that it should not employ regulations limiting products with high LTV or LTI nor on DTI thresholds. As FSA acknowledges in this discussion paper, there is not sufficient evidence to justify that such products have led to substantial consumer detriment. Such a ban would have grave consumer consequences as it will limit future product innovation. We would agree with the views expressed in *The Turner Review*, *(March 2009)* that *"product regulation would stifle innovation, which in a competitive market has beneficial effects, and that the regulator is less well placed than the market to judge whether products deliver customer value".*

It would also further restrict first time buyers entering the market. FSA appears to be in agreement with this view, *Lesley Titcomb, sector leader, retail intermediaries and mortgages at the Financial Services Authority, speaking at the Treasury Select Committee Meeting stated "Putting a superficial cap on LTVs is not a true test of affordability and would alienate a lot of first-time buyers from the market".*

In addition we understand that the consumer lobby also supports the flexibility that the absence of LTV/LTI creates.

Q6: Do you consider that the FSA should prohibit the sale of mortgages to borrowers with multiple high-risk characteristics? If yes, what particular combinations of risk factors should the FSA consider prohibiting and why?

AMI shares the view of FSA that product regulation is not the solution to the financial problems that the UK has recently experienced. The percentage of mortgages that are included within the multiple high-risk mortgage sectors appear to be low. It seems unlikely that a robust cost benefit analysis (CBA) would stand up to justifying such a ban. The total percentage for the four combinations of categories that represent the multiple high risk characteristics

(High LTV, Credit-impaired and Unstable income) is only 3.4% of the market, which by itself does not appear to reflect a percentage that would be considered to be a high default rate. The category that contains all these high risk characteristics represents only 0.1% of mortgages, a total of only 2,587 mortgages. Such a small figure can hardly justify changes that will affect the whole UK mortgage industry.

We do not believe that a robust CBA would show this to be the most effective way to address the sale of mortgages with multiple high risk characteristics. We do not believe that FSA has considered what those consumers already with these types of products will do if they are banned. It would seem likely that many would be forced to remain on a high SVR as there would be little option for them to remortgage.

Q7: Do you consider that requiring verification of income by the lender for all mortgage applications is a viable option, and one which is sufficient to ensure responsible and sustainable levels of mortgage lending?

AMI does not believe that FSA has fully appreciated the fundamental differences between fast track and self-certification mortgages in providing better customer outcomes when making these proposals. It appears that the data, which FSA used in its MMR paper to justify the restriction, does not make a distinction between the fast track and self-certification mortgages. FSA appears to have considered that the data only represents self-cert mortgages. It would seem that the percentage of sales that were on a self-certification basis has been overestimated.

We believe that lower risk applications/fast track play an important role within the mortgage industry. FSA needs to consider that there are some consumers that do not require the same level of checks as others. Should the pure self-certification mortgage be abolished by FSA, this does not mean that lower risk applications/fast track should be included within this ban. We would prefer that the proportion of non-income verified mortgages as a proportion of a lender's overall book be limited. When breaching agreed thresholds, lenders may be required to provide FSA with more detailed analysis, or at other levels apply more capital.

Q8: Do you agree with our proposal to require lenders to take ultimate responsibility for affordability?

We would agree with FSA that mortgage intermediaries could not properly ascertain the suitability of a mortgage product without first assessing a borrower's affordability. Furthermore, research shows that mortgage intermediaries are the preferred contact for borrowers and are also the best placed to obtain information about a consumer's income and expenditure, including gathering the supporting documentary evidence.

We do not believe that a suitable sale can be made without the mortgage intermediary at least making a preliminary assessment of affordability. However, whist there could easily be a case for mortgage intermediaries to do more, the lack of access to the range of information available to lenders makes this further assessment difficult.

Therefore, if FSA does not intend to require that mortgage intermediaries have the same access to information as lenders, we do not see how FSA could expect more than the proposed preliminary assessment from a mortgage intermediary.

Ultimately the decision to advance the funds has to come from the lender. Regardless of what the mortgage intermediary and consumer have agreed to be a suitable recommendation, the lender will always want to use its underwriting department to consider the application before releasing the funds. Given that mortgage intermediaries do not have the same level of access to information as lenders, and that it is the lenders funds that are at risk, it would seem difficult to envisage a scenario where the lender was not ultimately responsible for assessing affordability.

Furthermore, it is the lender that sets and manages its credit policies, so it is the lender that determines the type of business that it operates, subject to FSA agreement and supervision.

Q9: Do you agree with our proposal to require lenders to assess affordability based on;

(i) the borrowers free disposable income;

AMI believes that FSA's proposal to base lending on the consumers' free disposable income (the amount of money available for mortgage servicing that is calculated as gross income minus expenditure) seems sensible in theory and is current practice in the market, be that at an intermediary level or under a lender's criteria.

However, establishing a consumer's actual expenditure is often more difficult than establishing their actual income. Consumers must be recognised as 'humans' rather than 'econs'. Whilst 'econs' would accurately understand the full extent and range of their expenditure, 'humans' do not. For example, inertia towards cancelling an underused gym-membership, or an underestimation of the cost of a holiday are entirely normal. Further individual perceptions of discretionary and fixed expenditure differ by person. As such, in some cases not even the most detailed investigation will give an exact expenditure figure. FSA has considered the notion of rational borrowers' behaviour within this paper however, this must be considered not just within the remit of borrowers using mortgages as a means to obtain a given product or goods but also within the context of the means of obtaining the finance.

Whilst theoretically, we would agree with FSA's view that the majority of information provided by the consumer can be checked, the cost and benefit of this activity is not clear. Some information will be much more difficult to check than others. Obtaining data to check all expenditure information would lead to substantial extra costs within the industry. We are sure that FSA would need to be extremely confident in the rigorousness of its CBA on such a high level of scrutiny to avoid subsequent legal challenge. It would be disproportionate to consider such measures across the whole of the market, given the inherent variations in risk posed by borrowers.

Often prospective borrowers are prepared to sacrifice some forms of expenditure, such as holidays, to afford a new mortgage. It is also apparent that someone's free disposable income will change over time. For some consumers, such as those undertaking professional qualifications, material increases in their disposable income in a relatively short period of time are common. Others may experience redundancy, illness or divorce which radically alter their level of free disposable income. It is questionable how all these variables can be considered under a prescribed format. The assessment of expenditure should be based on committed expenditure. Discretionary spending should not be required to form part of the calculation, but will usually be discussed when discussing the budget with the client.

Many lenders are incorporating new systems and procedures to move away from the timely and costly process of reviewing actual paper documents (i.e. pay slips or accounts) when considering affordability. FSA would not want to propose that firms revert to the more costly, less technologically advanced methods of affordability assessment. Any increase in cost will inevitably end up being passed on to the consumer and would make the CBA for any proposed changes far more challenging. It would be inappropriate if proposals increased the costs to all mortgage borrowers, especially given that many borrowers will already be able to demonstrate that they have low LTV and a good repayment history with their current lenders. Not all consumers will require such a detailed assessment to deem that the mortgage will be affordable. However, under the proposals they will still be assessed as if their affordability was in doubt and, as such bear that cost of that assessment.

(ii) a consumers borrowing capacity;

AMI believes that this is too rigid and does not allow advisers/lenders to take account of individuals' actual needs and circumstances. The consumer borrowing capacity plus any saving that the consumer has will end up being the key instrument to dictating the purchase prices of properties in the UK, as no one will be able to borrow more than that amount. Given differing appetites for risk by different lenders, this is a level of product regulation that would strip much competition from the market, to the direct detriment of consumers. It is more important that customers really understand the impact of an increase in rates and the effect this will have on their mortgage commitments.

The DP proposes a stress test to take account of increases in interest rates. It suggests a figure of the current standard variable rate of the lender plus a 2% margin. There is no justification for use of an arbitrary figure of 2% which in some circumstances would be inappropriately small, and others inappropriately large. FSA should consider the historic use of stress testing figures in other financial services sectors, such as the use of LAUTRO rates in the investment markets. It has been previously shown that the use of such simplistic set figures has not resulted in enhanced consumer protection.

We believe that there is industry-wide consensus that a more sophisticated approach is appropriate. Any calculation will need to be able to adapt to changing market conditions. We would not want to see such a system failing in the same way that the investment projection tables did when the rates presented were no longer realistic. We believe that any margin figure should take account of factors such as the BofE base rate at the time. Anything less than this would appear to be too simplistic to cope with likely changes to market condition over the term of the mortgage product. However rather than look at the full term of the product, consideration of costs over a more predictable period, say five years, may be sensible.

When considering the implementation of such a model FSA should demonstrate what the effect would have been on the mortgage market if it had been applied over the last decade. FSA should show what the effect on consumer borrowing would have been and whether it would have had a positive effect on repossession figures. If it would not have had a positive effect over the last decade, it is questionable what good such a proposal would do.

(iii) the plausibility of the information obtained; and

See above

(iv) a capital repayment basis?

AMI strongly disagrees with all affordability being considered on a basis of capital repayment. Current market practice often results in lenders in effect making assessments on a basis of capital repayment, and thus not offering to advance more funds to a consumer who opts for an alternative repayment strategy. However, reducing flexibility and innovation for lenders would not benefit consumers.

Some consumers may opt for an interest-only mortgage with an alternative repayment strategy as they are aware of further funds being available to them to pay off their mortgage at a later date; it could be that a consumer is expecting substantial pay rises (as per many younger professionals), or that the consumer is entering a period of credit-repair. It cannot be appropriate to assume that everyone should be able to afford a capital repayment mortgage if they are not going to take one out, and the additional detriment caused to young professionals or those taking responsibility for their own situations through credit-repair arrangements is tangible. This requirement does not allow for consumers' who may only want to live in a property for a short period of time and therefore will not benefit from any substantial capital reduction by having a capital repayment mortgage.

Furthermore, interest-only may be the best option for some credit repair scenarios, regardless of whether the capital repayment option was affordable or not. Whilst we understand FSA's concerns surrounding interest-only mortgages, and in particular those borrowers without repayment strategies in place, we do not believe that FSA should propose to create an inflexible regulatory policy, when interest-only mortgages are so clearly an appropriate mortgage method for many consumers' individual circumstances. To restrict interest-only mortgages may protect a small minority of consumers but it is also likely to lead to significant consumer detriment for other groups including some extremely vulnerable groups. Therefore, we would want to see clear justification from FSA to substantiate this proposal

Q10: Is the increased focus on affordability the right way to ensure sustainability of lending and consumer protection?

Fundamentally, AMI believes that FSA's proposals to implement affordability assessments and an 'Approved Persons' regime are sufficient measures to ensure sales standards and protect consumers. We do not believe that further regulatory action, in addition to these proposals, is required or justified.

However, maintaining a competitive and level playing field of the sale process requirements for mortgage intermediaries and direct branch staff is critical. Equivalent standards will avoid the potential for consumer detriment.

As an example, AMI feels that it would be extremely challenging to provide an assessment of a consumer's affordability, at the level now proposed by FSA, on a non-advised basis. Therefore, if such a detailed examination of affordability is be carried out during an advised sale, should not all such sales only be on a fully advised basis?

Q11: Are there any additional policy levers we should use to curtail income inflation and related mortgage fraud?

No

Q12: Do you think that the FSA should limit the amount of equity a consumer can withdraw from their home?

No, FSA's proposals to limit the amount of equity that an individual can withdraw from their home are both politically inappropriate, and do not demonstrate any consumer benefit.

FSA says in the MMR paper that "by (2007) home purchase equity withdrawal replaced home purchase as the main purpose of mortgage borrowing" and that "39% of all mortgages sold in 2007 were advanced for this purpose". It would seem that FSA's figure of 39% was calculated on the basis of the (BofE) figures of £42bn for housing equity withdrawal and £108bn for net lending in 2007. Therefore, it would appear that FSA's justification for limiting equity withdrawal is based on out of date figures from a single year. We would expect a more detailed analysis to be made before such conclusions are reached. We would at least expect FSA to consider figures over a three year period in addition to those considered in the DP.

The 2008 BofE revised house equity withdrawal figure was negative at minus £7.8bn, with net lending at £40bn. Therefore, it could be said that the market had adjusted itself without the need for regulatory intervention by FSA. *(Bank of England Housing Equity Withdrawal (HEW) Q1 2009).*

Consumer borrowing directly related to the value of the property is certainly desirable to some and is beneficial to many. The removal or restriction of this option could be to the detriment of these consumers. Whilst homeowners will still require sufficient income to pay off increased loans, for some this increase may be the most suitable option for their circumstances. For example, if the funds are used for major repairs or additions that lead to the increased value of the property. Older homeowners, especially those in retirement, may also see additional benefits in having the option of increasing income through the various equity release schemes available to the over-sixties.

Housing accounts for around 40% of total household assets and differs from other assets in that it is used as well as owned. In AMI's paper on the UK Mortgage Market – a comparative study reflecting US and European influences 2009 we discussed how Benito explores the complex relationships between house prices and consumer spending in two key papers. The first argues that the linkages are more subtle and less stable than is often assumed. The second argues that, although mortgage equity withdrawal may be used for consumption, it really plays the role of a financial buffer. The equity within a property might be drawn down when temporary adverse shocks have been experienced, given that many homeowners have little cash but relatively large amounts of housing equity.

Others, such as the BofE, say that even if access to credit is taken into account, consumption growth depends on changes in housing wealth, income employment, interest rates and how much consumption and net financial wealth differ from their long-run or ‘core’ values.

Q13: Do you agree that we need to strengthen the selling standards for non-advised (information-only) sales to ensure consumers are only entering into contracts which are both affordable and appropriate?

Yes, in order to limit consumer detriment, regardless of the status of the transaction, AMI believes that the requirement to assess affordability should be comparable, whether the sale is advised or non-advised. This would echo elements of the suitability requirements for certain insurance products under ICOBS which are required for both advised and non-advised sales.

FOS complaints data, showing the percentage of complaints received during 2008/09 by financial sectors, demonstrates that over twice as many complaints are made against banks as made against mortgage intermediaries

By comparing FSA mortgage PSD on mortgage sales distribution channels with FOS complaints data we are able to clearly see that direct sale routes have a disproportionately higher level of complaints than intermediary routes. Direct routes accounted for 68% of the 7,602 mortgage complaints that FOS received in 2008/09. However, direct sales only accounted for 45% of mortgage sales.

Currently a consumer taking out a mortgage on a non-advised basis is deemed equivalent to an execution-only sale. Whilst some consumers may be in a position where mortgage advice would not be necessary, the percentage of direct sales that are non-advised is 62%, compared with 10% of non-advised intermediary sales. It could be argued that the non-advised sales figure is too high to assume that all those consumers who take out mortgages on a non-advised basis in the direct-sale environment, were fully aware of the product’s risks and features. Therefore, we believe that non-advised sales should have the same requirements to assess the affordability and appropriateness, of that product for the consumer, as is required for an advised sale.

Q14: What measures should the FSA take to ensure sales standards in advised sales meet the needs of the market and appropriately protect consumers?

Fundamentally, AMI believes that FSA’s proposals to implement affordability assessments and an ‘Approved Persons’ regime are sufficient measures to ensure sales standards and protect consumers. We do not believe that further regulatory action, in addition to these proposals, is required or justified.

However, maintaining a competitive and level playing field of the sales process requirements for mortgage intermediaries and direct branch staff is critical. Equivalent standards will avoid the potential for consumer detriment.

As an example, AMI feels that it would be extremely challenging to provide an assessment of a consumer's affordability, at the level now proposed by FSA, on a non-advised basis. Therefore, if such a detailed examination of affordability is to be carried out during an advised sale, should not all such sales only be on a fully advised basis?

Q15: To what extent should intermediaries retain responsibility for assessing a consumer's ability to repay? How could this work in practice?

As stated above, we would agree with FSA that mortgage intermediaries could not properly ascertain the suitability of a mortgage product without first assessing a borrower's affordability. Furthermore, we believe that intermediaries are the preferred contact for borrowers and are also the best placed to obtain information about a consumer's income and expenditure, including gathering the supporting documentary evidence.

We do not believe that a suitable sale can be made without the intermediary at least making a preliminary assessment of affordability. However, whist there could easily be a case for intermediaries to do more, the lack of access to the range of information available to lenders makes this further assessment difficult.

Therefore, if FSA does not intend to require that mortgage intermediaries have the same access to information as lenders do, we do not see how the FSA could expect more than the proposed preliminary assessment from intermediaries.

Q16: Do you agree that suitability letters should be introduced as a compulsory standard?

AMI considers the use of suitability letters to be clear evidence of best practice. However, whilst many of our members already use the suitability letter and we were surprised that it was omitted from the original FSA regulations, we do not support the mandatory use of the letter. With the potential for a European intervention with the ESIS, the KFI, the IDD which we propose keeping, we do not believe that a further mandatory document is of benefit to the consumer, nor cost justifiable. Whilst many good firms will be choosing to produce these already, the cost implications of prescribed formats and text are considerable, and would not be justifiable by any consumer benefit.

Q17: What are the implications of applying the Approved Person's regime to all individual mortgage intermediaries?

FSA's proposal to apply individual registration to the mortgage industry is something that AMI has being calling for since prior to FSA mortgage regulation. AMI and its members anticipate that appropriately applying the Approved Persons regime to the mortgage industry could have positive outcomes. By making individuals personally accountable for their actions, we hope to see reduced consumer detriment and improving professional standards

If FSA does decide to apply its 'Approved Persons regime for mortgage advisers we would want to be assured that the implementation is carried out through FSA and not through a third party such as a Professional Standards Board (PSB). Our wider concerns around second tier regulation that the application of the PSB could bring about are well versed.

Whilst we support the principle of mortgage intermediaries and branch staff being covered by the approved persons regime, the outcomes require further consideration. Many issues surrounding mortgage fraud are as a result of the actions of solicitors and valuations. It would seem unlikely that the Approved Person regime will be able to resolve these types of fraudulent activities.

However, AMI does question whether the proposals of applying the Approved Persons regime will have a positive impact which reduces the need for more costly conduct of business regulation being implemented by FSA as set out in parts of this consultation.

Q18: Do you agree with our conclusion not to read across the adviser charging element of the RDR proposals into the mortgage market?

Yes, AMI would agree with FSA that there is no justification to read-across the RDR proposals on adviser charging into the mortgage market. There is a crucial key difference between investments and mortgages. When a consumer asks for advice on investments, by definition they have available cash and so using a small amount of that cash to pay the adviser's fee is unlikely to be a practical problem. However, the opposite applies with a mortgage. A consumer seeking advice for a mortgage is borrowing money, any fee they pay will mean that, other things being equal, they will have to borrow that amount extra.

Q19: Are there any other considerations that are relevant to the assessment of the issues and risks posed by the current remuneration model within the mortgage market, which are not identified within the DP?

AMI has long campaigned for flexible remuneration methods for the benefit of consumers. There is no evidence of market failure from current remuneration practices in the mortgage market and AMI therefore supports FSA in not introducing alternative charging models into the mortgage industry. The evidence shows that the current options work to consumers' benefit.

AMI's research also shows that a majority of mortgage intermediaries charge fees, but only to a minority of their customers. There remains consumer resistance to the paying of broker fees. It has already been established that consumers are generally happy with remuneration coming from the product provider.

Q20: To what extent should the proposals for a PSB as outlined in the RDR be extended to the mortgage market?

Whilst FSA's recent consultation paper 09/31 demonstrates a direction of travel away from the introduction of a separate PSB, AMI would still like to restate its position. We believe membership of any professional or trade body should be optional and the creation of a PSB will only prove useful if it is attuned to the needs of the industry, its powers reach to the highest levels of all firms, and it is cost justifiable. We do support FSA's proposal to have an in-house department to undertake certain tasks, such as the administration of the individual registrar.

Q21: Do you agree that simplified scope of service labelling, limited to 'independent' or 'restricted advice' and also describing a non-advised service as 'information-only', will result in better consumer understanding of the services on offer?

AMI believes that, whilst these changes to labelling may not solve all of the problems associated with this issue, change is required. It is important to allow for a variety of appropriate business models to operate to meet consumers' needs.

Currently mortgage intermediaries who operate on a whole of market basis only have to provide advice on the products available to them. With the proposed move towards the term 'independent' for whole of market we would not want to see added requirements placed on advisers to consider direct products as well. Any proposals will need to acknowledge that there will always be products in the mortgage market, be they exclusives or direct only deals, that some advisers will not be able to access. Clearly a straight read-across of the terminology and definitions used in the RDR would not be appropriate for the mortgage market.

Any new labelling for whole of market will need to ensure that the adviser is only required to consider the products available to them, which may only be fair and representative of the total products across the mortgage market.

We do not believe that changing the name for 'non-advised' sales to 'information only' will increase consumer understanding by itself. AMI believes that more stringent disclosure is needed, in particular on direct non-advised sales, to ensure that consumers are not confused or misled about the level of advice provided.

Q22: Do you agree with the proposals to;

(i) remove the requirement for the IDD and replace with disclosure of key messages.

AMI strongly agrees with Which? that, *"There has to be a clear distinction between those offering unbiased advice and those simply trying to sell products. It must be made crystal clear to consumers what type of service they are receiving and how they are paying for it" (Which?, Press Release `putting the independent back into IFA`, November 2008)*

The requirement to disclose key messages in documents may not clearly distinguish the levels of service offered to consumers.

Whilst key features can be explained orally most consumers will want a written record of what level of service has been received and intermediaries will want to provide a record of this to the consumer, not least to ensure their own records can demonstrate that this has taken place.

If the IDD were to be replaced with the requirement to disclosure key messages, we would want to see that FSA clarifies how intermediaries are to demonstrate that such a disclosure has taken place.

(ii) retain use of the KFI.

AMI believes that whilst the KFI should be retained it should be accepted that the way it is used by consumers is not the same as its original purpose. It has been shown that the KFI is used by consumers as a post sale review record, rather than being used as a product or pricing comparison tool. FSA Mortgage Effectiveness Review Stage 2 Report stated that, *"While the Key Facts Illustration (KFI) was seen as an important document and used to check any points of detail and clarify uncertainties, it was not viewed primarily as a means for product comparison or shopping around".*

However, rather than simply contemplating whether the KFI should be replaced or not, FSA should consider the EU Commission's proposals to adopt the European Standardised Information Sheet (ESIS) in place of the KFI. Not considering ESIS at this stage would seem to be delaying the inevitable, as consideration will clearly be required at some stage in the future.

(iii) require elements of disclosure to be carried out on an oral basis.

FSA suggests that oral disclosure could be a more effective way of getting key sections of information across to the consumer. Given the recent changes to ICOBS rules which now place greater emphasis on oral disclosure, we would welcome seeing details of FSA's post-implementation checks and measures of the consumer betterment achieved in this market. Learning from and evaluating the success of similar changes in other markets should form the basis of further applications of regulatory interventions.

AMI does think that FSA has failed to make clear how it would want mortgage intermediaries to ensure that oral disclosure has been sufficiently evidenced. We believe that FSA, in conjunction with FOS, needs to clarify how it would want businesses to demonstrate that this process has been carried out to the required standard.

Q23: Do you agree that the limitations on the rationality of consumer behaviour in the mortgage market support the case for greater regulatory intrusion?

AMI shares the view of FSA that product regulation is not the solution to the financial problems that the UK has recently experienced. The percentage of mortgages that are included within the multiple high-risk mortgage sectors represent a low market share. The total percentage for the four combinations of categories that represent the multiple high risk characteristics (High LTV, Credit-impaired and Unstable income) is only 3.4% of the market, which by itself does not appear to reflect a percentage that would be considered to be a high default rate. The category that contains all these high risk characteristics represents only 0.1% of mortgages, a total of only 2,587 mortgages. Such a small figure can hardly justify changes that will affect the whole UK mortgage industry. It seems unlikely that a robust cost benefit analysis (CBA) would stand up to justifying further product regulation.

Q24: Do you agree that the FSA has a role in preventing the extension of credit to individuals who are unable to afford such high levels of debt?

We believe that FSA's role should be to ensure responsible market participation. This should be achieved through reviewing lenders' business plans and strategies. It should be for the lenders themselves to apply a risk-based approach to their actual lending decisions, which FSA supervision should check is in-line with their approved business plans.

Q25: Do you have any comments on the financial capability initiatives designed to support the overall mortgage market reform?

We would ask FSA to consult on this further and produce a more in-depth analysis, before introducing such initiatives.

Q26: Do you have any comments on our proposals to strengthen our approach to firms' arrears management practices?

This is not an intermediary issue therefore we have declined to comment

Q27: Do you consider that the mortgage market fees and charges reflect the underlying costs or are consumers paying excessive charges?

This is an issue that AMI is happy to continue to work with FSA on. However, the subject requires further statistical analysis by FSA before any conclusions can be made.

Q28: What would be the impact of consumers not being allowed to roll up intermediary fees and product charges into the mortgage loan?

We are aware that product fees are often added to the loan and have been increasing in size in recent years, with large product fees often being paid to secure a lower rate of interest. AMI believes that consumers should be aware of the fees and charges that are associated with their mortgage, rather than merely focusing on the interest rate of the product on offer. Whilst there are concerns about consumers paying interest on fees, if those fees are added to the loan, for many consumers they may consider this their only option. AMI does not believe that there should be a restriction on fees being added to the loan but consumers should be aware of the implications of doing so.

On a practical level, the outcome for a consumer with finite savings will be the same whether they add a fee to a mortgage, or pay a fee directly, and then borrow an equivalent amount more to compensate for a reduced deposit. However, in adding a fee to a loan, a consumer withdrawing from a contract prior to completion often benefits from not losing a fee paid, and has benefited from additional interest on those funds in their own savings account.

Some consumers will be unable to change to a better mortgage deal if they do not have sufficient savings to pay the fees upfront and are unable to roll up the fees when remortgaging. This may result in considerable consumer detriment if consumers are unable to access the most competitive rates on the market.

In the remortgage market, the mandatory payment of fees could result in many consumers – particularly the vulnerable (those with limited or no savings) being unable to remortgage and benefit from a reduced interest rate, or the security of a fixed interest rate. Current market practice would be to consider the fee and interest-rate combination against the existing cost of borrowing. The ability to fully consider the true costs over the correct time periods is an essential part of the process and is a clear demonstration of the value of advice.

In addition we believe that expert advice is more likely to achieve a better understanding of a mortgage product’s true cost than increased disclosure.

Q29: Do you agree that the FSA should collect data to enable us to track arrears and repossessions cases back to the original product transaction on a permanent basis? What would be the costs imposed on the market?

We believe that FSA needs to consider the combination of factors that effect arrears and repossession. Life events such as redundancy or illness, which have occurred after the advice has taken place, are likely to have a substantial effect on a consumers ability to repay their mortgage. Arrears and repossessions will not only occur as a consequence of poor advice.

It is an unfortunate fact of life that, although at the time of taking out borrowing it may be perfectly affordable to the consumer, events such as job loss or illness can have a significant effect on their ability to make payments. In UK society job losses and illness will always occur but it is not the case that all product transactions should be reviewed if arrears and/or repossessions happen. Collecting data to track arrears and repossessions cases back to the original product transaction will have a substantial cost to the mortgage industry and, therefore, we would want to see a thorough CBA performed to justify such a proposal.

Q30: Do you agree the FSA should standardise some existing industry definitions such as sub-prime? And if yes, are there any existing definition issues other than sub-prime?

We would agree that standardising some industry terms would be helpful to improving consumers understanding. We have already seen how FSA has done this in other areas with varying levels of success. However, it must be remembered that the terms sub-prime and non-conforming meant just that, those products that did not sit in the standard prime category. If FSA is intending to standardise the term ‘sub-prime’ it may be better to opt for a clear re-classification using a new name, rather than trying to standardise the terms that are already entrenched in use. AMI’s sister organisation AIFA is conducting similar work in conjunction with ABI in the decumulation space; it may be that these objectives are better completed by the industry.

Q31: What are the potential compliance costs if the FSA collected better data on fees and charges directly from lenders on an ongoing basis as part of regulatory reporting?

This is not an intermediary issue therefore we are not best placed to comment.

Q32: Are there any additional measures that you feel the FSA could take to reduce the risk of financial crime?

We believe that the Approved Persons regime will be the most appropriate tool for FSA to implement to reduce the risk of financial crime.

Q33: Do you agree that the cumulative effect of the policy levers as outlined within our DP will have a positive effect on;

(i) the equity release market.

We do not believe that the cumulative effect of these proposals will have a positive effect on the equity release market. If these proposals are to be implemented it would seem more likely that this niche market would be further restricted, which would be to the detriment of some consumers. What would have a positive effect on this market would be an increase in funding, however, the cumulative effect of these proposals will not deliver this.

(ii) the right to buy market.

The cumulative effect of FSA's proposals will not have a positive effect on the right to by market. However, FSA's proposals on affordability assessments and the 'Approved Persons' regime may address the issues that have previously been highlighted in this market. Given that the right to buy market and the general profile of consumers involved in these transactions have a higher potential for consumer detriment than standard mortgages, there could be a need to ensure that such transactions are only carried out on an advised basis or that an advised sale is the default option.