

BSA response to FCA consultation on mortgage advice and selling standards

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 Building
Societies
Association

Introduction

1. The Building Societies Association (BSA) represents all 43 UK building societies, as well as 5 credit unions. Building societies have total assets of £415 billion and, together with their subsidiaries, hold residential mortgages almost £330 billion, 23% of the total outstanding in the UK. They hold over £280 billion of retail deposits, accounting for 19% of all such deposits in the UK. Building societies account for 37% of all cash ISA balances. They employ approximately 43,000 full and part-time staff and operate through approximately 1,470 branches.
2. The BSA welcomes the opportunity to respond to this paper, this response was prepared in consultation with our members.

General Comments

3. In our response to the Mortgage Market Study (MMS) Interim Report we suggested that whilst a fully advised process was suitable for the majority of consumers, those who legitimately wanted to transact via execution-only were currently denied this opportunity, due to restrictions in rules and guidance. We are pleased that the FCA is consulting to address this issue. These proposals could lead to greater consumer choice, and allow further development of digital solutions.
4. The BSA is broadly supportive of the FCA's proposals. However, as our answers to the questions will demonstrate we feel more clarity is required in some areas, in order for firms to act upon the changes. According to FCA figures' since the Mortgage Market Review (MMR) approximately 97% of new sales are advised, this is unique when compared to the sale of other financial products. Both pre-and post-crisis, around 70% of new sales were advised. FCA research did not find evidence of widespread unsuitability where consumers had elected a non-advice journey.
5. We recognise that price comparison websites (PCWs) may play an increasingly significant role in customers' buying process. These online tools can provide invaluable help to consumers in navigating financial services products, and it is clear that a great many consumers benefit from using them. However, where they provide incorrect, inconsistent or incomplete information they can operate as a barrier to competition.
6. PCWs could be a key driver for many consumer decisions, and should be supported by the right amount of information, to help the consumer understand the features and cost calculation behind these products. By providing the right amount of information and the ability to rank products by factors such as cost over defined terms, PCWs could play an important role in expanding and enhancing consumer choice.

7. We believe it is essential that PCWs are correctly incentivised and monitored to ensure that search results are presented in a fair and transparent way and do not mislead consumers. The current approach adopted by PCWs is to promote sponsored links and list products by the cheapest headline rate (which ignores, for example, offsetting fees). We are concerned that current practice gives prominence to those companies that pay for prominence via sponsored links.
8. We understand that PCWs are subject to various legal provisions, including the Consumer Protection from Unfair Trading Regulations 2008. However, except where special rules mandate regulation they are regulated directly by the FCA only if they undertake a regulated activity, such as insurance mediation or credit broking, when they will be subject to certain conduct of business rules and FCA Principles.
9. It is important that the FCA monitor PCWs that operate on the perimeter of FCA regulation and act promptly if they see evidence of customer detriment or increasing reliance on these tools in the decision making of mortgage applicants.

Questions

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

Yes, lenders need to be comfortable offering search and filter options without the fear of drifting into steering/advice. Current guidance is outdated, and was written prior to online transactions becoming widespread in other markets, we welcome added guidance.

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

Broadly yes, the clarity for providers in the investment space, has led to digital innovation and more consumer choice. However, these proposals seem to be more restrictive in some areas which we will discuss in more detail in Q5. The proposals do not seem to cater for guidance, which is possible under the perimeter guidance for investment advice. We believe that the same guidance should be possible in the execution-only mortgage journey.

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

Yes.

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

Yes, it is important that more interaction with customers is allowed, this will make the journey smoother for execution-only customers' and ensure they are supported through an application process. Providing generic information and guidance as to support an application can clearly be separated from regulated advice.

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

We disagree with the example; Giving the customer an indication of monthly cost of a regulated mortgage contract. The example states:

"This would not be permitted if it were an indication personalised to the customer, for example where the indication is of the monthly cost in respect of the amount which the customer wishes to borrow over the term for which the customer wishes to borrow it; such an interaction will trigger the need for advice and the firm would need to comply with MCOB 4.7A."

Surely if this interaction is customer led, giving a monthly cost when provided with a defined term, is providing a factual answer to a specific question. We are unclear why this would trigger the need for advice, it seems to contradict other guidance presented on the provision of factual information and could significantly disrupt the customer journey. Under these proposals customers may be required to complete a mortgage application in order to gather simple detail such as monthly payments.

We recommend this rule is modified to allow the provision of factual information and guidance, including monthly payments, as long as the customer has not been led to a specific product, product term or overall term and requests the information purely from their own volition.

We are aware that some lenders have developed "cost effectiveness" tools. Lenders will often offer a fee-bearing product alongside a non-fee bearing product, generally the fee-bearing product will be priced lower than the non-fee bearing product. These tools will calculate which product is the most cost effective, in some scenarios the higher interest rate may be more cost effective than the lower one over the initial product period.

Where a customer has self-selected a product, product term and overall term we feel this type of tool would be very helpful in an execution-only setting. The current proposals do not seem to allow for this type of tool, however, we feel this would be valuable for customers who do not require a "fully advised" process.

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

Yes, previous prescriptive detail and reporting requirements suggested that the FCA did not look favourably on execution-only and considered it riskier than advised business. This will help firms develop tools that increase consumer choice.

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

Yes, firms were previously reluctant in marketing or designing execution-only solutions as they feared breaching rules.

MCOB 4.8A.6A is clear that marketing execution-only or applying different pricing will not automatically be treated as having breached MCOB 2.5A.1R or MCOB 4.8A.5R, this clarity is welcome.

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

Yes, this is a sensible approach and would improve the customer journey, as well as removing an unnecessary administration exercise.

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

Yes, in this scenario showing the entire product range does not add value for the customer and only leads to confusion.

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

Yes, the disclosure should be presented in a medium that can be preserved.

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

Yes, this will help improve the customer journey.

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

In our response to the MMS interim report we felt that the FCA had underestimated the importance of "non-price" factors such as speed to offer and customer service.

Proposed amendments to 4.7A.23A indicate that the FCA interpretation of cheapest is a comparison of total cost over the initial product period for any suitable products. This fails to consider where a customer decides to add a fee to the loan, the interest would be payable for the entire term of the mortgage. **"Cheapest" has been debated since the mortgage market study interim report. We recommend the FCA explicitly define what they mean by "cheapest" to avoid any confusion.**

It is unclear if these proposals are targeted at intermediaries only or intermediaries and lenders. Annex 2: Casual chain diagram references "broker". MCOB 4.7A.23R does not mention "broker" instead using the term "firms". We would welcome clarity here, these rules are more relevant to firms offering products from different providers

rather than lenders who generally only offer their own products. Lenders who offer products from other providers should be subject to the same rules as intermediaries.

The FCA has helpfully clarified that lenders can dual price, in order to reflect lower costs for execution-only. It is unclear at this stage whether lenders will choose to take up this option or decide to offer the same rates to all customers.

We feel it may be counter-productive for customers transacting through an advice process, to receive an explanation discounting lower rates available via execution only. This could encourage some consumers to use execution-only when advice may be a more suitable option for them.

In terms of intermediaries explaining why they have not selected the cheapest rate, this is already good industry practice utilised by many brokers within the mortgage file, being transparent with the customer is a positive step.

Some of our members have expressed concern that this could incentivise some brokers to select the cheapest mortgage rather than the most suitable option. The FCA should watch this closely during supervision of firms and revisit this once the new rules have been bedded-in.

Calculation of “cheapest deal” may bring some complexity for brokers as initial product deals often have different end dates depending on the lender making it difficult to compare “true cost” across multiple lenders. Consideration of incentives such as free legals, valuations and cashback etc... Add to the complexity as they could often represent an attractive saving for customers.

The FCA may also need to consider whether the drafting of MCOB 4.7A.23A R is sufficiently clear in how MCOB 4.7A.5R and 4.7A.6R should be taken into account. For example it is not clear whether a weak preference (rather than a strong preference) for any one of the factors in MCOB 4.7A.5R and 4.7A.6R would mean that a firm need not disclose the availability of a ‘cheaper’ option. An alternative would be to base this upon the product being “dominated”, as described in this consultation and Occasional Paper 33. This term should then be added to the glossary with a clear definition and for the assessment to be based upon this.

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

Yes.

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

Yes.

If you have any questions relating to this response please contact
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The Building Societies Association (BSA) is the voice of the UK's building societies and also represents a number of credit unions.

We fulfil two key roles. We provide our members with information to help them run their businesses. We also represent their interests to audiences including the Financial Conduct Authority, Prudential Regulation Authority and other regulators, the Government and Parliament, the Bank of England, the media and other opinion formers, and the general public.

Our members have total assets of over £400 billion, and account for 23% of the UK mortgage market and 19% of the UK savings market.