UK FINANCE

CP19/17: Consultation on mortgage advice and selling standards

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Introduction:

UK Finance is the collective voice for the banking and finance industry. Representing more than 250 firms, we act to enhance competitiveness, support customers and facilitate innovation. We represent the full range of the industry from the largest lenders to the smallest, high street and challenger banks, building societies as well as non-banks and the regulated third party administrators who service inactive lenders. Our members include lenders who are fully intermediated and lenders who provide advice directly to customers.

General Comments:

We welcome the opportunity to comment on the proposals set out in this consultation paper. In our response to the Mortgages Market Study (MMS) Interim Report we suggested that the Financial Conduct Authority ("FCA") undertake a thorough review of the rules and guidance issued in relation to advised and execution only sales.

As has been shown in the interim and final reports the UK mortgage market works well on the whole.

- There is a high level of engagement in the remortgage market with more than 75% of borrowers moving their mortgage within 6 months of their deal period ending.
- There is a wide range of products on offer and competition on headline rates.
- There is no evidence that the commercial arrangements between firms result in material harm to consumers.
- Approximately 70% of customers find the cheapest deal when selecting a mortgage – but we do not think that this is the only indicator that the mortgage is suitable for customers.

As customers come to the end of a fixed rate, the ease of switching to a new lower rate is a factor in whether they will move onto a new deal. The current execution only rules set out in MCOB 4.8A.10 1(b) are preventing innovation in the market. Currently firms are only able to present new rates to customers in a non-interactive way. Lenders have said that they need to be very careful not to provide advice inadvertently, and that any "interaction" could be interpreted as delivering advice. This has stifled innovation in the field of digital advice. The current case studies in PERG 4.6 do not reflect the current multi-channel approach that consumers expect from lenders.

Lenders would like to see a more flexible approach in respect of customer interaction, for example interaction with a customer to assist them in completing an online process in a purely administrative capacity.

We agree with the FCA's statement that the proposals give consumers more choice about how to buy a mortgage and that this will enable borrowers to take more responsibility for their decisions. However some lenders do not think they go far enough in aligning the definition of advice to that used within the insurance and investment sectors; and think the proposed disclosure requirements where the 'cheapest' loan is not recommended are potentially unworkable.

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?

We welcome the proposal to update the guidance to indicate that a tool that allows a consumer to search and filter based on objective factors (such as interest-rate type and term) is not necessarily giving advice. We do not believe that the provision of purely factual information such as the cost of a mortgage over a range of mortgage terms or the total cost of a mortgage taking account various fee structures should be considered advice if there is no recommendation.

We agree that the removal of references to "explicitly or implicitly steers the customer to a regulated mortgage contact" is helpful. Lenders have found it difficult to interpret what is meant by "implicitly steering" in the context of execution only products or the provision of general advice. So, it is helpful to see that the additional proposed wording for PERG 4.6.5 (G) clarifies that generic or general advice is not regulated advice.

The addition of information about the uses of decision trees will assist firms and price comparison websites who are developing digital channels of distribution, and we expect this to be welcomed by consumers.

We do not think that all the examples in the consultation paper are helpful

- The example on pages 15/24 – "I suggest you take out (or do not take out) a variable rate mortgage" – seems to steer a customer toward a type of mortgage, where consideration should be given to the customer's circumstances and whether a fixed rate is more appropriate. We would consider this as giving mortgage advice, especially if the conversation were to proceed to the selection and application for such a mortgage.
- Some examples seem to contradict later statements in PERG (4.6.14.G) around what constitutes advice. That section states that the key is that information is accompanied by a comment or value judgement likely to influence the customer's decision. The examples of generic advice **do** include recommendations on types of mortgage and whether to take a mortgage but are **not** deemed advice for the purposes of PERG, which is confusing.
- It would be useful to have additional examples:
  - whether a customer should take a certain length of fixed rate (e.g. 2, 3 or 5 years), which is often asked in the retentions space.
  - an example on the cost of mortgage A over the cost of mortgage B would be useful.

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

Yes, this will help to give certainty to practitioners and customers. The FCA should strive for consistency of rules in similar circumstances across sectors where possible, However, the investment advice regime allows advisors to provide guidance as well as advice and we do not see why this cannot also apply in the mortgage sector, given guidance cannot include any personal recommendation.

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?

The rate of technological change in the mortgage and other financial sectors is rapid, with firms developing their own products or purchasing them from FinTech firms. Firms will want to develop tools that provide generic information to assist with execution only mortgages as well as full advice.

The examples included in PERG 8.30A appear to reflect the types of tool that are currently available or may be developed by lenders.

However, this section of PERG should be kept under review to ensure that it remains up to date.

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

Yes, there is a clear difference between the provision of advice and a recommendation and the provision of support to someone completing an application, providing generic information and unregulated advice, irrespective of whether interactive or not. This will allow firms to develop better online and remote services for customers.

As in the case of investment advice, the amount of interaction should not be relevant in determining whether regulated advice has been given. Rather, it should be whether any recommendation has been made. Customers should be able to ask for factual information (and firms should be able to supply it as many times as they like) without the interaction constituting regulated advice.

Firms would welcome more information on what constitutes generic information and what constitutes advice. Customers should be aware when they have been in receipt of advice.

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

Some of the examples are useful and reflect lenders' questions. However, examples such as "Giving the customer an indication of the monthly cost of a regulated mortgage contract" is not as clear as it could be and could be open to interpretation. We consider the provision of factual information in response to such a request should not constitute regulated advice.

4.8A.7B G (2) and 4.8A.7B G (3) are not as clear as they need to be. These examples have the potential to restrict lender interaction with customers or force a customer into an advised route when this is not their desire or need. The examples seem to prevent non-advisers from responding to a simple customer request e.g. "I'm interested in your xx rate. How much would £xx cost over a xx term?"

The guidance at PERG 4.6.14.G is somewhat contradicted by some of the examples in MCOB 4.8A.7B (3). For example, “Giving the customer an indication of the monthly cost of a regulated mortgage contract: if the customer asks for that information in the context of a contract variation conversation” (or similar - for example, often customers want to know how much they would need to extend the term to ensure a contractual monthly instalment of £x per month) would seem to be factual information only. The firm would not be giving a comment or value judgement but merely providing factual information in response to a customer’s question. Therefore, it should fall clearly outside of the advice requirements.

It would be helpful to build flexibility into the Guidance which would enable a response to direct questions asked by a customer who may be trying to gain an idea of the potential costs of a mortgage. However, this response should not imply the product is suitable or recommended for the customer’s circumstances. This could be supported by a prescribed disclosure at this point to reinforce that the lender is providing ‘information’ and would recommend the customer seeks advice if they need any further detail about the suitability of this product for them.

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

Yes, as for many customers an execution only transaction, e.g. an internal transfer at the end of a fixed term to another fixed term, is no more risky than an advised sale. (Of course, they may get a cheaper deal going elsewhere but cost may not be the only reason that the customer chooses a particular offer.)

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, in principle, lenders should be able to reflect the different characteristics of the different distribution channels in their pricing and marketing.

However, lenders have noted some challenges to this approach, for example, where a customer initially engages with one channel but then seeks to finish with another. This could be more acute if a customer identifies a rate online, engages with the lender in an advised process and then finds they “cannot” revert to select the product online. Lenders may require additional disclosure requirements to explain the difference in prices along with warnings about the loss of protection for execution only, but these may be of limited benefit and the customer may be unlikely to understand the impact if they choose execution only and select an unsuitable product.

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 will give the customer the information they need to make a decision without unnecessary layers of administration and avoid the customer receiving duplicative information.

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, if the customer approaches the lender looking for a match to a specific product then the current lender should only be required to provide details of a matching product and not their full product range.

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 in a medium that can be recorded and preserved.

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

Yes, this should assist the development of better customer experience.

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

In our submission in response to the interim report we stated it is important to make the distinction between the "cheapest" mortgage and the "right" mortgage. We do not think that the cheapest loan is necessarily the most suitable. Our views have not changed.

We think it would be helpful for the FCA to make it clear in the guidance that finding the cheapest mortgage is not a substitute for finding the most suitable mortgage. The first stage in developing a recommendation should be for the adviser to identify the products for which the customer is eligible, then to find out which of the products are the most suitable and, finally, select the most cost-effective loan.

Lenders and brokers need clarity on how 'cheapest' is calculated and over what period. For example, is it for the introductory period only or whole term?

Customers should know the reason why they have not been offered the cheapest mortgage and this should help in dealing with any future complaints about rates. The FCA may need to monitor/review this closely to ensure this rule does not incentivise brokers to focus on price to avoid having to provide the explanation.

Lenders have noted that price will not be the only consideration for some customers. Therefore, advisers should seek to find the cheapest rate available to the customer which is in line with that customers stated requirements and preferences.

Anecdotal evidence suggests that convenience, speed, quality of service and brand loyalty are just as important for some customers as headline prices. The smaller the price differential between products/lenders the more significant these other factors are likely to be in influencing customer preference. Consumers will go with lenders for different reasons including brand loyalty or not wanting to take a mortgage from a lender they have not heard of.

For some customers getting certainty quickly will be a priority even if it is not necessarily the cheapest mortgage. Brokers will often know which lenders offer the quickest turnaround and also know that this may change at different times depending on funding cycles. In the new build market, for example, often there are advantages in opting for a lender known for their expertise and speed of service, given the generally tighter timeframes between offer, exchange and completion. Customers may rationally prioritise this certainty to some degree over the headline price of the mortgage to avoid incurring costs (typically the loss of deposit/reservation fees) associated with not satisfying sale and purchase deadlines.

We have a concern that advisers will not always be able to clearly identify the cheapest mortgage based on the FCA's definition. For example:

- Different lenders will offer initial deals with different end dates (e.g. Lender A's 2 year fixed might end in 2 years 3 months, where Lender B's ends in 2 years 6 months). This is likely to mean Lender A is the cheapest based on the proposed MCOB definition, but Lender B could actually be offering the lower rate.
- It may be difficult to compare the costs of mortgages of different terms.
- The inability to include non-rate/fee features of a product could mean a customer actually ends up with a less valuable product. For example, many lenders offer significant incentives and other product features (e.g. cashbacks) to customers but these are not taken into account with the proposed calculation, meaning an adviser may feel obliged to recommend a product with a slightly lower rate even though when the incentive is taken into account the slightly higher rate actually provides more financial value to the customer.
- The proposed calculation could also cause problems where the customer's needs and circumstances do not dictate a specific initial product period. For example, the customer may just be looking for the best value product regardless of whether that be a 2 or 3 year fixed and have no overriding need. The proposed calculation would mean the adviser had to compare monthly payments over 24 months with one over 36 months, thus resulting in customers without a specific product period being advised to take a 2 year fixed in the vast majority of cases.
- The way fees are treated in some circumstances could cause an unfair comparison. For example, a customer may have funds to pay a £500 fee up front but a product with a £2,500 fee would need to be added to the mortgage. The rules would require the comparison based on them both either being added or paid up front, but this could distort the comparison as it would either base the lower fee product as having interest charged or the higher fee as not.
- There is a concern it could lead to an unintended reduction in product innovation in the market as lenders drive lower rates at the expense of product innovation/features or service which could ultimately have an adverse customer outcome.
- The proposal does not support lender direct offers where products are priced by channel. For example, a lender may offer a digital execution only rate to take into account the lower distribution costs (as clarified as being possible within the proposed rules) but an adviser may have to compare the rate that is offered to customers receiving advice in a branch with those offered by the lender's online process and then justify why they have not recommended the cheaper product to the customer. A similar issue could occur for customers considering an internal rate switch with their existing lender as the current rules could require the adviser to compare their Product Transfer range with their Remortgage range.

A focus on price could result in lenders focussing on the cheapest fixed term periods. As it is normally the case that the shorter the term the cheaper the lending, we are concerned that very short term fixed rate deals will be developed e.g. fixed rates for six-months. If sold to customers who are inert this could result in long term customer harm.

The more complex the processes are for the consumer, the more likely it is that poor customer outcomes happen. If the consumer does not understand the product being recommended for them then s/he cannot make a rational decision whether to buy it.

This rule change will not solve the problem of systematic bias in the actions of intermediaries in only selecting mortgages from a limited panel of lenders. The customer will not be aware of the intermediary's recommendation history and the lender will not know that they are not being recommended.

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

Yes, it makes sense to incorporate these amendments at this time.

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

We agree with the statement at Annex 4 of the consultation paper.

Contact

Should you have any questions about the content of this consultation response please contact Sue Rossiter, Principal Mortgage Regulation at sue.rossiter@ukfinance.org.uk