Question Set F, for other stakeholders

Please note all of these points before answering:

- If you have any questions contact Andy Agathangelou by Email
- Only reply to this question set if it applies to you
- This Call for Evidence is being handled by the APPG's Secretariat and support staff, who will collate the evidence and provide it to the APPG's members.
- Respondents' information will only be shared as necessary to enable the successful completion of the exercise and it will not be shared beyond the scope of this Call for Evidence.
- Please note that we ask respondents to only give evidence that they are free to provide. It is entirely the responsibility of the respondent to ensure they take into account any agreement(s) they may have entered into.
- Respondents may choose to skip answering any of the questions if they wish.
- It is for each respondent to decide whether their name and/or their responses are put into the public domain.
    - Do you give permission that your name is put into the public domain? ▪

      Yes
    - Do you give permission that your response is put into the public domain?
        - Yes

The process to follow

Once you have downloaded this document and answered the questions that you wish to, and having first saved your answers Email your completed document to the Chair of the APPG's Secretariat Committee, Andy Agathangelou, who can be reached by Email.

Timelines

We would like all written responses to be provided by 5pm on Monday 6th September, please. If you may require longer than that, liaise with Andy Agathangelou.

Other important points to note

Please note that:

- This exercise is about gathering evidence on what people think about the FCA; it is not about providing any assistance, guidance or advice on any case a respondent may have against the FCA, or any other entity.
- Respondents are asked to only provide answers to the questions given
- Respondents are asked to not provide any supplementary evidence or documentation
- Respondents are asked that their written response does not exceed 10,000 words in total

....

Name: Association of Mortgage Intermediaries (AMI)

REDACTED

Email address:

REDACTED

Mobile telephone number:

REDACTED

Association of Mortgage Intermediaries' response to APPG Call for Evidence about the FCA

Response

AMI welcomes the opportunity to respond to this APPG Call for Evidence.

Our view is that the FCA is a siloed organisation and has been and remains distracted by a policy and competition agenda. We are concerned by its data led approach to supervision and only by supervising firms better will it achieve the correct results.

We have experienced both positive and negative interactions with the FCA but overall, there is much room for improvement. As a conduct regulator, the FCA ought to be an organisation that is held to the same standards as regulated firms but in our opinion, it is falling drastically short of this expectation.

For the purpose of this response, we have focused on our interactions with the FCA as part of the post-Covid regime.

1. Please tell us about yourself and outline, just briefly to begin with, how you came to interact with the Financial Conduct Authority?

This response is submitted on behalf of the Association of Mortgage Intermediaries (AMI) and the Association of Finance Brokers (AFB). AMI is the trade association representing over 80% of UK mortgage intermediaries. AFB sits within AMI and represents second charge (formerly secured loan) brokers.

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. AMI members also provide access to associated protection products. AFB members also provide access to unsecured products.

Our members are authorised and regulated by the Financial Conduct Authority (FCA) to carry out mortgage, insurance mediation and consumer credit activities. Firms range from sole traders through to national firms and networks, with thousands of advisers.

Since AMI's formation in 2004 we have interacted with the FSA and subsequently the FCA. We engage with the FCA on behalf of our members to represent the voice of the mortgage broker, with input into policy and influence over its direction.

2. What is your interest in, or connection with, the FCA?

As a trade association in the financial services sector, we have a strong interest in the FCA. Its work directly affects our member firms as they are authorised and regulated by the FCA and pay annual FCA fees. The majority of activities undertaken by our member firms are regulated.

It is our role to ensure that the regulatory environment is proportionate, to enable mortgage intermediaries to deliver quality advice with the correct consumer outcomes in mind.

The mortgage intermediary market is highly competitive and there are relatively low levels of customer inertia. Providers and distributors work well together and consumers are well served. However, we also have an interest in the FCA's regulation and supervision of financial services as a whole given the impact of wider regulatory costs (such as FSCS) on our members and the manner in which the FCA allocates and prioritises work and resources.

3. Briefly describe the interactions you have personally had with the FCA.

AMI's primary interaction with the FCA is via two dedicated contacts in the mortgage sector team, with quarterly meetings to discuss any issues or areas of concern and to provide market updates. We also engage with mortgage technical specialists.

Occasionally we interact directly with individuals working in specific areas of policy, where the FCA's work impacts some of our members due to the size of the firm or its permissions and activities. Examples include operational resilience and General Insurance (GI) pricing practices.

Under the Bailey regime we had regular high level contact to discuss matters of mutual interest. Under the new regime the FCA appears less interested in directly discussing matters and wishes to pursue its internally agreed agenda with less consultation.

Our interactions include:

- Responding to relevant FCA discussion (DP) and consultation papers (CP).
- Raising queries, concerns and ambiguities relating to FCA policy.
- Accessing the FCA's news and publications pages on its website to identify areas of interest to and impact on our members.

• Subscribing to the FCA's daily news and publications alerts email.
• Attending FCA webinars (such as on vulnerability and the new Consumer Duty). • The FCA communicating updates for us to cascade to our members. For example, it notifies us of Covid-19 impact surveys that are due to be sent to member firms. • Arranging and attending meetings between member firms and the relevant FCA policy team(s) to discuss rules and guidance in greater depth.
• Engagement with the FCA in April 2020 to raise a number of issues relating to the impact of coronavirus on the mortgage intermediary sector.
• Attending trade body conference calls.
• Involvement in the FCA's mortgage prisoner work.
• Attending the FCA trade association cyber insight group (TACIG).
• Attending the Regulatory Consultative Group – their CMC liaison meetings. • Holding meetings between FCA Chair and AMI Chief Executive and AMI Chair. • Attending FCA roundtables (usually attended by AMI Chief Executive).

4. In broad terms, what have your dealings with the FCA been like?

Our dealings have been positive with regard to day-to-day policy work. We have a strong working relationship with our two mortgage sector team contacts and where we have engaged with individuals in different policy teams, have been satisfied with levels of engagement, knowledge and proactiveness.

We feel the FCA has handled the coronavirus pandemic competently, particularly in the early stages where it moved quickly to consult on and implement policy on mortgage payment deferrals. However, there have been shortcomings. It decided to remove network meetings and roadshows ('live and local'), which provided valuable engagement and insight to both firms and the FCA. We appreciate the pandemic required the FCA to divert its resources and attention elsewhere but these events could have been replaced with virtual offerings. At the time of submitting this response, the FCA has not communicated if and when these will be re instated.

Our member firms deal directly with the FCA's authorisations department. These interactions have been less positive. Firms frequently wait in excess of three months on what should be routine authorisations, such as an individual that has previously held Senior Manager Functions moving from one mortgage intermediary firm to another. We have also been informed of a recent case where a firm moving from appointed representative (AR) status to DA (directly authorised) found the application process complicated and stressful, to the extent that the individual is considering leaving the industry due the impact of the process on their health. There have been occasions where AMI has intervened on cases to ensure prompt resolution.

The FCA has recently (September 2021) confirmed that in Q1 2021 it received significantly higher volumes of Senior Manager Regime and Significant Influence Function applications that have caused authorisation delays. It cited reduced capacity due to Covid-19 as a reason but has not indicated when this problem will be rectified. Regulated firms are expected to maintain business as usual throughout the pandemic and this is an example of how the FCA has provided sub-par service that regulated firms would have been castigated for if they took the same approach with their customers.

With regard to dealings with the FCA's supervision and enforcement teams, AMI shares intelligence and market insight with the FCA. Our biggest concern is the FCA's apparent lack of understanding of what is happening on the ground in the markets it regulates, as well as wider concerns over the FCA's general approach to supervision and enforcement.

The FCA has failed to understand and address the core issues within markets and does not have its finger on the pulse. In our view, it has failed to exercise reasonable control and has been too slow to react with far reaching implications on the number of firms flowing into the FSCS and subsequent impact on FSCS funding.

AMI members contribute £19m to the FCA annually for their mortgage permissions and a further £11m for their insurance permissions, in addition to circa £2m under the new Appointed Representative (AR) levy, but we question whether they obtain fair value. Only a few firms within our membership have any access to a dedicated supervisor who they only have due to their dominant parent company. Where firms have an FCA supervisor, it is difficult to build a trusted relationship as supervisors tend to change every 18 months.

We would say that no AMI member firms are aware of the individuals within their portfolio supervision team. Mortgage intermediary firms changed to a portfolio structure in 2018/19 and this resulted in firms no longer having meaningful conversations with the FCA and severely limited the FCA's ability to gather insight directly from industry. Firms that are members of trade bodies such as AMI benefit from access to individuals at a policy level within the FCA,

facilitating a more in depth discussion and debate. In comparison, contact with the FCA Supervision Hub can leave firms feeling unsupported by the FCA as complex queries are often met with the response that it is down to the firm's own judgement. This can leave smaller firms in particular feeling isolated and questioning the value they receive from their regulator.

Due to coronavirus the FCA paused some of its work. This included follow-up work on the suitability of advice in the lifetime mortgages market, after in June 2020[1]it published its findings from its review of the equity release sales and advice process. It was clear from the trade association call attended by AMI at the time of release that this was a significant piece of work; the FCA found that whilst there were cases where lifetime mortgages were working well, there were cases where it was not clear that the advice was in the best interests of the consumer (areas of concern centred around insufficient personalisation of advice, insufficient challenging of customer assumptions and lack of evidence to support the suitability of advice).

We understand that post-review, the FCA has interacted with a number of lenders and distributors in the market. However, there has been a lack of external communication to industry on what the regulator's next steps are. The FCA is in the process of considering its current priorities, resources and timescales and cannot, at present, provide an update on when this work will re-commence. We understand that it is recognised as a key issue but resource is the challenge.

We believe this work should not continue to be delayed and ought to be high priority. If this is delayed further, it risks diluting the message, allows firms not meeting the FCA's rules and expectations to continue unperturbed and prevents other firms who seek to 'do the right thing' from benefitting from insight to improve their processes and customer outcomes. The sector as a whole would benefit from clearer guidance on the regulator's expectations, particularly around areas such as fees/charges related to both products and advice services.

This is at a time where the FCA has recently consulted on a new Consumer Duty, a significant piece of policy work split into two consultations that has likely required the time and attention of an extensive number of FCA policy staff and is subject to a second consultation at the end of the year. In our view, it is an example of how the FCA prioritises a policy and competition agenda at the expense of supervision and enforcement. We discuss our thoughts on this later in our response.

[1] https://www.fca.org.uk/publications/multi-firm-reviews/equity-release-sales-and-advice-process-key-findings

5. Have you experienced situations where interacting with the FCA has been helpful to either yourself or others? If so, please explain what made the interaction(s) helpful.

As mentioned briefly in our response to question four, we have experienced positive interaction with various FCA policy teams.

Notable examples include:

Interaction	What made the interaction(s) helpful
The FCA Directory team carried out a 'Show and Tell' session for AMI members in the run up to the Directory data submission deadline. This included a demo of how data should be submitted to the FCA Connect system and common pitfalls to avoid when completing the multi upload template.	The FCA was open and co-operative. It allowed firms to ask questions during the sessions and where these couldn't be answered due to time constraints, it followed up with a Q&A document. We were impressed with certain FCA staff and ensured we passed this feedback onto FCA senior management.

The FCA hosted three webinar sessions that covered the main remedies proposed in its GI pricing practices consultation.	The webinars were well structured and organised and a Q&A document followed. The sessions were useful as it developed AMI's thinking and shaped our consultation response.
The FCA contacted AMI to advise that it was due to send out a consumer credit survey and offered a discussion to provide further detail. This discussion resulted in the FCA adding a further two questions that would end the survey early for the majority of our members. Mortgage intermediaries are likely to hold a limited scope consumer credit permission to discuss consolidating debt on a consumer buy to let mortgage and as this permission is different to the credit broking permission there was no need for mortgage intermediary firms, in most instances, to complete the full survey.	The FCA clarified the purpose and aims of its survey and proactively engaged with us on the matter. We issued a communication to member firms to aid completion of the form. We had feedback from members to say that they benefitted from this insight as it allowed them to complete the survey more quickly and they had a better appreciation of why the FCA was asking for this information. From our experience, the level of engagement and proactivity can vary between FCA departments; some are more open and engaged than others.
The work from home setup due to the coronavirus pandemic has allowed the FCA to run webinars that have been, in the main, useful to our members. Its webinar on vulnerability helped deepen firms' understanding of the regulator's expectations.	As part of its webinar on vulnerable customers, the FCA went beyond the PS and included relatable examples of what good and poor practices look like. In contrast, its webinar on a new Consumer Duty merely repeated parts of the PS and did not include any additional insight.

6. What are your thoughts on whether the FCA lacks the powers that it needs; or conversely, that it doesn't make good use of the powers it already has?

We believe the FCA is already equipped with adequate powers but it does not make good use of these. Its existing rules and guidance are sufficient and instead it is its inadequate supervision and enforcement that needs addressing, not layering regulation through the creation of further rules.

The FCA, and prior to that the FSA, has utilised different models of regulation, shifting between principles based and outcomes focussed. We have recently seen a shift back to an outcomes based approach. In addition, there have been two significant regime changes at the FCA within the last decade. Despite these efforts, the FCA has not tackled the root issue: without adequate supervision the 'good' firms will continue to comply and strive to meet and often exceed the rules, whereas 'bad' firms will continue with their poor practices.

We believe the solution is for the FCA to increase 'feet on the ground' supervision. Supervisors need to experience and appreciate the culture of a firm, its employees and senior management and gain a deeper understanding of the application of its rules and guidance in live environments and how this influences and drives consumer outcomes. This insight is almost impossible to extract from data alone. An approach where data is the driver, monitors firms based on outputs and not necessarily outcomes. 'Feet on the ground' supervision would show clear intent, acting as a deterrent to poorly behaving firms.

Despite the coronavirus pandemic, our member firms have remained operationally resilient and maintained 'business as usual' (BAU). However, it appears the FCA has not returned to BAU supervision. The FCA recently (August 2021) published a multi-firm review on the GI and protection market[2] and highlighted that as part of this review it followed up with 'virtual visits' to firms. We are concerned that the FCA plan to continue the use of virtual visits in lieu of 'in person' visits and, in tandem with a data driven approach, this could result in supervisory shortcomings and the potential for consumer detriment. It also raises the question whether the FCA will refund FCA fee paying firms to reflect the cost savings it undoubtedly made in 2020/21 from virtual rather than in person supervision visits.

The FCA is clouded by the volume of firms it regulates (51,000 firms in 2021 although this is a reduction from nearly 60,000 in 2020[3]). AMI's view is that this could be better managed if the FCA focused more on supervision and enforcement rather than a policy and competition agenda. The vast majority of these firms are consumer credit permission firms where the credit is not their primary reason to trade. We perceive that the FCA has difficulty in identifying core risks and issues and applying appropriate resources. Mortgage advice firms pay a significant amount in fees but see very limited direct input or activity. When one adds the further £19m paid by mortgage lenders to the FCA we have in excess of £50m being paid in this market.

[2] https://www.fca.org.uk/publications/multi-firm-reviews/general-insurance-product-value-and-coronavirus-covid19-guidance-update

[3] https://www.fca.org.uk/about/supervision (page updates)

This is circa 8% of the FCA budget, yet we certainly do not see 8% of FCA staff time or activity in this well functioning market.

There are two recent examples that demonstrate how a supervision and enforcement approach may have been advantageous rather than the chosen solution of further regulation.

In May 2021 the FCA published its GI pricing practices PS. This is a market that has already encountered considerable scrutiny; over the last seven years the FCA has carried out a number of reviews on areas such as add-ons, transparency, and principals and appointed representatives. Each of these centred around the common theme of poor consumer outcomes. Evidently this has not successfully influenced correct behaviour and consumer outcomes given additional rules and guidance are due to be introduced following a 2018 thematic review. The inclusion of anti-avoidance rules also suggests that the FCA itself is not confident that all firms will adhere to the new requirements. To further the point, a recent (August 2021) FCA press release on product governance[4] stated some firms are not consistently meeting existing requirements and expectations. This raises the question: if some firms are not meeting existing rules, what is the likelihood of compliance with new rules?

To prevent history repeating itself, a different approach is required: one of improved supervision and enforcement. Currently the FCA's answer to regulation of this market is by requiring firms to submit copious amounts of data to monitor compliance. This feels like a reactive supervisory approach and does not align with a forward looking regulator.

We understand the FCA's data strategy will allow it to use data and analytics to identify harm and intervene quickly and to remedy gaps in supervision. Due to the inclusion of the notification rule in the GI pricing practices PS (where firms are required to notify the FCA if another firm in the distribution chain is not adhering to the pricing rules), it appears the FCA is not convinced that data as a supervisory tool is robust enough. There is the risk that the FCA becomes inundated with data from firms within this market and is provided with information that, once it has reached the FCA, will no longer be current data and could result in it being too slow to react. We are concerned that it is likely to adopt a similar data driven approach in other markets. This is another reason why a proactive supervisory strategy ought to incorporate increased 'feet on the ground' supervision.

The FCA has also introduced a rule within the pricing remedy that require firms in the distribution chain to notify the FCA if it becomes aware of, or suspects, another firm's non compliance with the pricing rule. This is evidence of a regulator that, overwhelmed by regulating firms fully itself, has effectively outsourced aspects of supervision to fee paying firms. We are concerned that this approach could be applied in other markets too and will result in the FCA distancing itself even further from industry.

Another example is the FCA's consultation on a new Consumer Duty. Whilst AMI do not disagree with the fundamentals of the proposals, we feel that existing regulation (such as Treating Customers Fairly outcomes, vulnerability guidance and the current principles) are clear in their requirements. The FCA's efforts should be focused on increased supervision and prompt enforcement; it already has at its disposal the required powers but is not applying them rigorously enough and has previously failed to recognise and act against firms who were breaching the principles and rules that have, ever since their inception, been created to protect consumers from harm. We are concerned about the layering of regulation on 'good' firms who are likely to incur significant cost to evidence compliance and could pass on this additional cost to consumers, while poor firms continue to ignore the rules and cause harm.

[4] https://www.fca.org.uk/news/press-releases/fca-warns-insurance-firms-over-product-governance-rules-deadline

The FCA stated in its 2021/22 Business Plan that it will be more assertive[5] and described itself as 'an organisation that runs towards the fire[6]'. If the FCA want to be able to swiftly extinguish any flames and stop them from spreading, then a more focused and invested approach to supervision and enforcement is key.

7. Have you experienced any difficulties or shortcomings in your interactions with the FCA?

On an operational level, interactions with the FCA have been positive. We feel that the weaknesses lie at Executive level, where poor and uninformed decisions have been made by senior management.

Broadly the difficulties and shortcomings experienced in our interactions with the FCA relate to three categories:

- Lack of detail.
- Lack of transparency.
- Communication.

Lack of detail

Usually, the FCA's fees and levies consultation paper is underpinned by its Business Plan but in 2021 publication of the Business Plan was moved from April to July. This made it difficult for AMI to assess how the FCA's fees align to its planned policy work (as this is consulted on in April).

Published in July 2021, the FCA Business Plan contained notably less detail compared to previous editions where work was segmented by each Financial Services sector. It feels the publication has been designed to cater for consumers, even though they are the unlikely target audience.

Contained within the FCA 2021/22 fees and levies is £10m for its Transformation Programme yet information in the Business Plan is vague, simply stating that it is 'investing in systems and capabilities to enable better use of data and intelligence to regulate around 51,000 firms effectively and efficiently'. Fee paying firms deserve considerably more detail than this, such as what the FCA plans to do, how this work might impact firms or advisers, the predicted timeline and when this work will conclude.

Another area where FCA detail has been scant is the creation of a new fee class (A22). This requires Principal firms to pay £250 per Appointed Representative (AR) and £75 per Introducer Appointed Representative (IAR), creating a total levy of £7.2m.

The FCA's justification for this new fee is to address harms that stem from a Principal firm's failure to oversee their ARs appropriately. The network model is used extensively within the mortgage intermediary industry and as part of AMI's response to the fees and levies consultation, we queried the lack of evidence in the CP on how this model has resulted in consumer harm within our sector. The FCA's response within its CP feedback was that '[it] used particular examples in the CP, which is not to say that issues do not exist elsewhere'. A subsequent conversation with the mortgage policy team has been unable to provide clarity on where the concerns lie on the use of this model in our market.

[5] https://www.fca.org.uk/publication/business-plans/business-plan-2021-22.pdf

[6] https://www.fca.org.uk/news/speeches/transforming-forward-looking-proactive-regulator

As part of its work on the use of the AR model, the FCA issued a pilot questionnaire to select mortgage intermediary Principal firms that operate a network to understand how the model is used in this market. We understand the questionnaire will be distributed more widely after the pilot is complete and feedback has been considered. It feels the FCA has taken a backwards approach where it has levied £7.2m on a new funding class (A22) to fund its work before it is able to justify and provide evidence on where the issues lie. This initial exploratory work should have been funded from the FCA's general supervision budget and only once has it completed this work would it be fair to charge firms, as it will be in a position to provide clear rationale for its policy and ongoing supervisory work.

It therefore feels the FCA has not been clear in its intentions. Until evidence is provided on the harm created by network models in the mortgage intermediary industry, we feel the mortgage intermediary sector is paying for failures and lack of oversight in other markets (notably general insurance and investment management sectors, as these were specifically mentioned in the CP as areas where there had been significant shortcomings identified). Further, they are now ascribing the issues surrounding Greensill to be an AR related issue. This could not be further from the way the AR structure is applied in the mortgage market.

We likewise expected there to be considerably more detail provided in the FCA's Business Plan on this matter. However, this was covered in a small section that focused on the outcomes the FCA wants to achieve rather than providing the detail that AMI had called for in our response: how the regulator has acted to address the 'issues' (we are not aware of any particular action having been needed or taken in our sector); and why the FCA believes that the action it has taken in the past has not been enough.

Finally, the FCA continue to lack detail in its consultations. It's approach to the consultation on a new Consumer Duty consultation has left AMI and its member firms with more questions than answers. We have been unable to fully assess the impact or benefit of the proposals and it has not helped that the FCA has split the consultation into two segments. This approach feels disjointed and crucial detail on how the FCA intend to supervise and embed the Consumer Duty will not be included until the second consultation. The way that it has interacted on this occasion feels more like a discussion paper than a consultation paper.

<u>Lack of transparency</u>

As noted in the previous section, the FCA has failed to be transparent on evidencing its concerns and issues within the network (AR) model.

The 2021/22 Business Plan is another example of how the FCA does not hold itself to the same transparency standards expected of regulated firms. If a regulated firm submitted a business plan as part of FCA authorisation process that was similarly lacking in detail it would certainly be asked to review and re-submit.

The FCA's Business Plan refers to a desire to be a regulator that is more transparent and accountable. Whilst the FCA provided metrics and outcomes, these are nebulous and lack detail. The FCA should publicly share its framework as soon as possible and clearly state its targets, how it plans to meet them and how it will be measured. The FCA has also stated that it will report on progress against each of the metrics and overarching outcomes in April 2022. Our view is that it should not wait until Q2 2022 to report on progress, as doing so diminishes the significance of the task and gives no assurances that this FCA regime will be different to the one before.

As part of our response to the FCA 2021/22 fees and levies consultation we questioned why the FCA had not provided a cost benefit analysis upon introduction of the new A22 fee class (payable by Principal firms based on the number of ARs). This would be expected as new rules have been created. The FCA failed to address this point within its feedback response.

Linked to this, the AR/IAR fee is calculated based on the number of AR/IARs a Principal firm has as of 1 April 2021. The FCA failed to be transparent as this new fee class was included in the April 2021 fees and levies consultation paper and not in the November consultation paper, as would be expected. This meant the fee applied retrospectively because it was not consulted on until the consultation paper was issued on 20 April 2021. This has resulted in some firms paying for an AR/IAR for a further year when, if they had been made aware of the forthcoming charge, may have decided to terminate the relationship with an AR/IAR ahead of 1 April 2021.

Mortgage intermediary firms are required to be transparent when charging customer fees and therefore it is only fair that the regulator is held to the same standards as regulated firms. In the future it should be more open and transparent with industry over plans to introduce new fee classes and should in no circumstances be able to charge retrospectively.

Finally, AMI was involved in the FCA's mortgage prisoner project. We feel the FCA was not transparent in providing data. In addition, it was using historic data that was poorly segmented. The requirement to only write once to eligible mortgage prisoners with no mandatory wording made the exercise superficial. To avoid competition issues the broker directory was opened to all, this resulted in an overwhelmingly long 36 page list of mortgage intermediary firms that mortgage prisoners could approach, segmented into areas of the UK and organised alphabetically. This would have worked better if it had been limited to a smaller number of specialists. It is to be hoped that the review currently being undertaken produces better processes and outcomes.

Communication

Under the Andrew Bailey regime AMI had a nominated Executive Director as a prime point of contact, holding three meetings per year and an annual meeting with the CEO. Since Covid and the arrival of the new CEO, we have not had any Executive Director contact therefore we have been unable to address matters of common concern at a senior level. This isolationist approach is unhelpful.

Over the last 18 months the FCA has increased the number of surveys sent to firms. This includes a Covid-19 Financial Resilience Survey that has been issued regularly by the FCA. We have been notified by some firms that this survey has been sent to an individual who no longer works at the firm, despite the firm updating its contact details with the FCA. It is of concern to us that the FCA is using multiple and/or out of date databases; particularly concerning where a data request is subject to FCA powers under Section 165 and the ramifications of a firm's non-completion is significant. The integrity of its data was also brought into question in a recent Complaints Commissioner report[7], compounding our concerns.

The FCA has made improvements with its communications and the way it disseminates information. For example, it created daily and weekly news and publication e-mail alerts. These commenced during the coronavirus pandemic and the FCA decided to adopt this approach permanently, a positive move as it has made it easier to monitor publications. Also, the FCA has started to provide feedback statements in a more interactive format, making it easier to digest information and data. This is a positive step forward.

Nevertheless, there are still improvements that could be made. The FCA does not always flag the pages that have been updated on its website and this can result in situations where a webpage is accessed casually for the reader to realise that changes have been made. Any webpage changes should form part of the FCA weekly update e-mail, or a separate

[7] https://frccommissioner.org.uk/wp-content/uploads/FCA00908-Issued-12-July-2021.-Published-03-August 2021.pdf

communication. Some pages are updated with details of what has been updated and when but this approach is not always applied consistently. The FCA could improve its communication by adopting the approach used on government webpages, where updates are presented chronologically at the bottom of each webpage.

8. Have you experienced the FCA being reluctant to give clear answers to

questions? Please refer to our answer to question seven.

9. What is your perception of the culture of the FCA, and what do you think of it?

We perceive the culture at the FCA to be broken and we do not trust the FCA

culturally.

The FCA's current work schedule focuses heavily on culture, diversity and inclusion and the fair treatment of customers yet we do not feel the FCA's behaviour and culture reflect the same standard that is expected of regulated firms. For example, there have been instances where the FCA has demonstrated a lack of empathy when member firms have spoken to FCA staff in its Supervision Hub. The FCA as part of its consultation on a new Consumer Duty speaks about the importance of firms putting themselves in their customer's shoes; in order to have credibility and respect from firms and to influence the correct behaviour, the FCA must demonstrate it is the epitome of what 'good' looks like. It will require a lot of work within the FCA to get to this point.

The FCA has previously outlined that it has implemented the Senior Managers Regime within the organisation, however it appears Senior Managers do not have the same levels of accountability placed on them compared to Senior Managers within a regulated firm. In commercial firms both Senior Managers Functions and Material Risk Takers can have their bonus terms impacted by poor outcomes. The FCA's 2021/22 Business Plan talks about it being held accountable publicly but lacks tangible detail on what this truly means and the consequences if it fails to meet the metrics and defined outcomes.

On occasions we have heard members of staff referring to their 'seniors', a phrase which we deem to be antiquated and indicative of an organisation with poor culture. If the FCA want the industry to be more diverse and inclusive it also needs to reflect on its own hierarchical structures and how these are viewed and referenced both internally and externally.

We also witness an organisation where internal policy encourages poor staff behaviour. A Freedom of Information request shows that laptops and tablets reported as lost in 2021 increased sharply, from 30 tablets and three laptops in 2020 to 120 tablets and 68 laptops in 2021[8]. This was at a time when the pandemic still required many of us to work from home. We understand this to be a result of FCA policy where "broken" technology is repaired and staff aren't provided with a replacement. Therefore, the only route to a functioning laptop/tablet is to report it lost or stolen.

There is a lack of industry experience within senior positions at the FCA. At these levels an organisation needs a mixture of individuals with experience within financial services and those with an outsider's view to be able to effectively challenge. It is positive that the FCA is working towards a more diverse management team as this can help to avoid groupthink but we note it missed its target on female representation by 2%[9]. It must lead by example to ensure that collectively we accelerate the pace of change on diversity and inclusion in the financial services sector.

8 https://www.ftadviser.com/fca/2021/07/15/fca-loses-300k-worth-of-electronic-devices/

9 https://www.fca.org.uk/publication/annual-reports/annual-report-2020-21.pdf

The FCA is able to attract talent into the organisation, with individuals that are intellectually curious but as many of these individuals have not worked in the financial services industry, there is a lack of understanding around how policy changes will translate into the day-to-day business of mortgage and protection advice firms. The FCA ought to consider broadening its talent pool to achieve diversity of thought and experiences.

10. Have you ever complained officially about the FCA; if so to whom? What happened, and how do you feel about what happened? What feedback, if any, have you had about your complaint? How helpful was the feedback? How long has it taken for your complaint to be processed?

We wanted to answer this question in respect of a complaint made to the FCA by a member firm, given that AMI provided feedback to FCA senior management in connection with the case.

In 2020 a member firm submitted a formal complaint to the FCA due to delays in authorisation of a new AR and as part of the complaint the FCA acknowledged that it took longer than expected to allocate AR notification and it should have dealt with the firm's queries more efficiently.

AMI provided comments to FCA senior management and in referencing this complaint, highlighted the common thread of the FCA central complaints team passing complaints to the area or individuals being complained about to provide a response. We expressed concern over the lack of oversight of the investigation or response and that this would not be practice in regulated firms. The FCA's formal response stated that a review of the local area complaint process was being considered as part of the FCA's Transformation Programme over the coming months. However, as we have highlighted in our response to this call for evidence, the FCA has not provided sufficient detail on its Transformation Programme and it is therefore unclear whether work to improve local area complaints procedures will take place.

In our view it is important for the FCA to carry out a review to ensure a fair approach to complaint handling, in line with expectations of regulated firms handling complaints. We believe it should be more transparent with industry on its work in this area, as it feels this is taking place 'behind closed doors'. In addition, the FCA is due to publish changes to its Complaints Scheme in Q4 2021. As part of this communication, it should be clear on how it will address existing deficiencies in its handling of complaints, as this will drive positive effective change.

We regularly monitor Independent Complaints Commissioner reports. The Complaints Commissioner has criticised the FCA for delays within multiple reports over the last 12 months (examples: complaint references FCA00878, FCA00841, FCA00811). The Complaints Commissioner even went so far to state in one response dated March 2021 that '[the complainant's complaint] is far from the only complaint which has suffered from delays in the FCA[10]'. We are concerned that without public commitment from the FCA on how it will improve complaint oversight and delays and how this forms part of its Transformation

Programme, we are unlikely to see meaningful change.

Overall, the real issue is that it is very difficult to hold the FCA to account as they have statutory immunity. Judicial review is only over breach of process not poor performance. The FCA Panels are abused as a tick-box exercise and have no power; to address this, the panel Chairs must be elevated to full Board status. The Treasury Select Committee (TSC) works hard but is dependent on the market "squealing" on their supervisor.

11. What do you think about the possibility of conflict of interest issues at the FCA?

Many senior people within the FCA leave the organisation with a view to attain a role in industry or consultancy. This has the potential to cause conflict of interest issues, particularly as we understand there are no contractual limitations.

The FCA's 2020/21 annual report refers to the Mutually Agreed Resignation Scheme (MARS)[11] which ran in 2020/21 and gave eligible colleagues the opportunity to resign from the FCA with a severance payment. In 2020/21 85 colleagues took up the opportunity to leave, with many of these at managerial level. We are concerned that the FCA may not have considered conflicts of interest as part of this scheme, with the annual report focusing solely on the benefits.

12. Do you believe there should be spot checks by the FCA on regulated and/or unregulated entities, perhaps similar to the spot-checks by VAT inspectors

We do not believe that spot checks are the solution. The FCA needs a thorough supervisory approach that includes 'feet on the ground' supervision, coupled with swift and decisive enforcement action.

The FCA's plan to create a regulatory 'nursery' is welcomed but it must not lose sight of the importance of ongoing supervision throughout the lifespan of a firm. We are concerned that too much focus is placed on stronger oversight of newly authorised firms at the expense of existing firms, where the consumer harms identified in past thematic reviews have originated from.

13. What positives are there about the FCA that you would like to comment on?

As stated in our response to a previous question, we have encountered positive engagement with various policy teams. We have excellent engagement with "junior" staff but have concerns that once elevated to Head of Department or Director level, FCA politics comes into play and there is a significant degree of top down dogma which limits good thinking and communication.

We have also remarked on other positives about the FCA throughout our response.

As a whole, the FCA is an organisation that embraces progressive thinking, is forward looking and is made up of staff that are passionate and determined to make a positive difference to the financial services industry.

[11] https://www.fca.org.uk/publication/annual-reports/annual-report-2020-21.pdf

14. If you could change three things about the FCA, what would they be? We would like to change the following:

- **Approach to supervision and enforcement**
  - As highlighted throughout our response, the FCA is focused disproportionately on a policy and competition agenda and not sufficiently focused on supervision to ensure firms are adhering to its rules. We would like the FCA to carry out more 'feet on the ground' supervision to visit more firms. The FCA has 1,519 employees working in supervision (across retail and authorisation and investment, wholesale and specialist) and 699 in enforcement and oversight, compared to 521 in strategy and competition[12]. We do not feel this split in resources is reflected in the current prioritisation of work and its understanding of where the core issues lie.
  - We believe the FCA is a siloed organisation and needs to improve communication and intelligence sharing between departments. We have seen recent reports[13] of individuals that previously worked at regulated firms that had defaulted joining claims management companies to bring claims against their previous firm. Whilst the FCA has committed to crack down on phoenixing, in order to achieve success it should focus on the internal management of data and information and the process of sharing insight between authorisation and supervision and enforcement teams.
- **FCA rule book**
  - The FCA rule book needs to be re-structured away from product silos and focus on the financial lives of consumers. The current rule book makes it difficult for firms to interpret what good looks like and allows firms to operate in a product solution rather than customer centric environment. This is particularly relevant to the lifetime mortgage market where products and consumer demand has evolved over the last decade but the rule book has not adapted.
- **Transparency**
  - Some of the FCA's shortcomings could be addressed by becoming a more transparent regulator. To draw on some examples highlighted in our response the FCA could: improve the way it communicates why it is collecting specific data from firms and what it plans to do with this data; not introduce new fee classes retrospectively; be more upfront on its Transformation Programme and provide a breakdown on how the £10m levied on firms in 2021/22 will be spent; clearly state how and by when it will clear authorisations backlogs; explain how FCA senior management will be held more accountable as part

of the Transformation Programme. We feel these are areas that would be relatively straightforward for the FCA to address yet would result in tangible benefits and outcomes for regulated firms and other stakeholders.

[12] https://www.fca.org.uk/publication/annual-reports/annual-report-2020-21.pdf
[13] https://www.ftadviser.com/regulation/2021/09/14/fscs-uncovers-400-adviser-phoenixes-at-cmc-firms/

15. The FCA is undertaking a Transformation Project. Do you have any comments to make about that?

As already highlighted in our response, there is overall a lack of detail on the FCA's Transformation Programme. In 2021/22 firms will have contributed £10m to this project but the FCA has not provided detail on what the project involves and the deliverables. Charles Randell (FCA Chair) provided an update to the Economic Secretary John Glen by letter on 16 April 2021[14], summarising the work it has carried out to date but did not provide industry with a direct explanation as to how the 2021/22 £10m levy will be allocated. Fee paying firms deserve to have more detail provided on this in the FCA's Business Plan and should not have to rely on a letter to the Treasury to understand how 2020/21 income has been spent.

We do not feel the FCA is held accountable to past statements relating to areas that will be addressed as part of its Transformation Programme. To illustrate, in its 2020/21 Fees and Levies consultation the FCA said that it would be conducting a wider review of its fees structures as part of the Transformation Programme. To date, it has not provided detail on what this entails. This is the type of information and insight that would be hugely beneficial for fee paying firms and other stakeholders, particularly as many firms have felt the pressure of the cumulative impact of escalating regulatory fees. It is this lack of clarity and detail that makes us concerned whether the Transformation Programme will bring about meaningful change.

We are also deeply concerned by the FCA's ambition to become a data led regulator. The FCA in its 2021/22 Business Plan webinar described itself as 'a data regulator as much as a financial one' yet we have not been provided with any assurances on how this enables it to become a better regulator, apart from it will help to identify data gaps in everyday supervision of firms and remedy those gaps. The FCA should provide detail on how data would have assisted the supervision of high profile firm failures (such as London Capital Finance, Connaught and Woodford). With the combined costs of FCA, FOS and FSCS nearly reaching £2bn per annum, the industry expects – and is entitled to - greater clarity.

The FCA has said that it has seen a 200% rise in the volume of data that is receives and this will rise exponentially[15]. If the FCA relies heavily on data as supervisory tool then it will struggle to become a forward looking regulator, as data shows what has already occurred and is a reactive rather than proactive approach. The FCA has been heavily lambasted for its slow reaction to firm failures, such as London Capital Finance, and we struggle to see how the assessment of data will be sufficient to prevent the repeat of previous regulatory failures. This re-iterates our point of the need for the data strategy to be complemented with increased 'feet on the ground' supervision.

16. Are there any other comments that you would like to make?

We have no further comments to make.

[14] https://www.fca.org.uk/publication/correspondence/charles-randell-letter-to-est.pdf
[15] https://www.fca.org.uk/news/speeches/transforming-forward-looking-proactive-regulator