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Our ref:PR8/MT

Dear Sarah

CP 194: Amendments to the Training and Competence sourcebook: including consultation on Competencies for Mortgage Advisers

This is the Consumer Panel's response to CP194.

Q1: Do you agree with the proposal to move from FSA 'approved' examinations to 'appropriate' examinations?

Q2: Do you agree with the proposal to refer to the examinations list maintained by the Skills Council for Financial Services?

The Panel believes that the FSA should not move from FSA 'approved' examinations to 'appropriate' examinations unless there is a robust Memorandum of Understanding (MOU) in place to deal with the relationship between the FSA and the Skills Council.

The Panel welcomes the statement in paragraph 3.7 that 'these proposals will not remove the need to demonstrate competence'. However, the terms of reference of the Skills Council are very different from the statutory objectives of the FSA (both under FSMA and European directives), and the Panel would want to be assured that the FSA could still meet its statutory objectives, and particularly the consumer protection objective, under the proposed system.

For example, the Panel is concerned to ensure that any gaps in knowledge found by the FSA during the course of their compliance and supervision work would be fed into the examinations structure. Previous regulators have sometimes imposed training requirements (such as those for broker fund managers) to deal with regulatory problems. If the FSA needs to use a similar regulatory tool in future, will the FSA be in a position to ask the Skills Council and the professional institutes to introduce the relevant exam, even if the market for it is likely to be small, and to do so quickly enough to meet the regulatory aim?

The Panel believe that the following issues should be covered in the MOU:

- Ensuring that consumer protection remains to the fore and that standards remain high. With three main professional institutes serving the industry, the possibilities

of conflict exist, and the risk of arbitrage between exam boards may be increased if FSA is no longer there to hold the ring. The Panel believe that consumer protection should be within the Council's terms of reference, and that the process for judging whether an exam is 'appropriate' should be clearly set out, including a list of criteria to be met.

- Governance of the Skills Council. The Panel seek FSA's assurance that consumer representation on the Skills Council will be robust and fed in at an early enough stage to influence policy development.
- Transparency to act as a counterbalance to industry dominance of the Skills Council. The FSA is committed to full and open consultation, and the Panel believe that if FSA is to delegate its powers to approve examinations, the SCFS should commit itself to an equivalent level of consultation.
- Relationships between the FSA and the Skills Council. Would FSA as the regulator have any representation on the Council itself? What powers would FSA have if it felt that the Skills Council had failed in its remit?
- Systems for feeding regulatory experience back into the examinations process.

Q3: Do you agree with the proposal to amend the record keeping requirements in TC 2.8.2 R (2)?

The Panel has some concerns about these proposals. It is possible, for example, that an individual may stop engaging in or overseeing a particular role, but then start again after a three-year gap. Complaints may be made after the three-year period, and as the recent Lloyds TSB case shows, training issues may form an important point of a regulatory case. We question whether this change is necessary, since paragraph 4.4 makes the point that many firms currently keep such records for much longer in any case.

Q4: Do you agree with the proposal to provide additional guidance on the supervision requirements in TC 2.7 of the TC sourcebook?

The Panel agrees with the proposal, however on the monitoring of sole traders the Panel would encourage the FSA to be more inventive in what is regarded as 'appropriate arrangements'. The Panel believes that consideration should be given to increasing supervisory attention for these advisers, unless (for example), they were to undertake an external compliance audit or undergo regular re-testing.

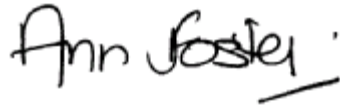
In this context, the Panel would like to clarify its views on re-testing, which were not clearly reported in FSA's feedback statement to CP 157. In this response, the Panel reiterated its support for periodic re-testing, but stated that the form that this takes, and its frequency, should depend on what is being tested, and should also be informed by some analysis of where consumer detriment has been caused in the past by failures to maintain competence.

Q5: Do you agree that the learning outcomes and indicative content proposed in Annex D, are appropriate for the activity of advising on mortgages and non-advised sales of lifetime mortgages?

Detailed comments are given below. However the Panel wishes to re-iterate its concern that existing advisers will be 'grandfathered' for the purposes of selling equity release mortgages, even though the current examination covers them only tangentially. The Panel believe that the risks to consumers in this developing market are such that advisers who wish to carry on selling equity release mortgages should

be required to sit the forthcoming examination within a reasonable time, as part of their obligation to maintain competence.

Yours sincerely,

A handwritten signature in black ink that reads "Ann Foster". The signature is written in a cursive style with a horizontal line underneath the name.

Ann Foster
Chairman
FS Consumer Panel

cc. The Consumer Panel

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Detailed comments on the proposed Mortgage Examination Curriculum

Both curricula necessarily reflect the status quo. They also need to acknowledge that legislation and practice can change, by specifically requiring advisers to 'know and understand how to use' the key sources of information for keeping up to date.

Summary of learning outcomes

It would be helpful to add the following to the (possibly after current outcome 9): 'Know and understand how to compare different types of mortgage product and repayment options'.

Indicative content paragraph 3 (the differing requirements of borrowers)

It would be useful to add 'joint borrowers' here as there are some considerations surrounding joint tenancies/tenancies in common, and issues such as separation or divorce.

Indicative content paragraph 4 (principles behind mortgage advice)

The overall cost of a mortgage may be different from its affordability and 'cost' should therefore be one of the key factors.

Indicative content paragraph 13 (different types of valuation and survey)

Presumably sellers' packs will be included here.

Indicative content paragraph 15 (insurance)

As well as the consequences of not having insurance, the limitations of insurance policies should be considered. Other items which should be covered here are the assignment of policies: and the need to take into account the impact of any existing policies – for example, which existing policies could be used to cover the mortgage?

Indicative content paragraph 23 (codes of conduct and legislation)

The role of the Ombudsman for Estate Agents should be added to this list.

Lifetime mortgages module

Currently the learning outcomes make no specific reference to home reversion schemes, although this would be covered in item 9. The Panel believes that it is vital to make completely explicit throughout this document (including indicative content paragraphs 2 and 3) that advisers are expected to understand reversion schemes, whatever their regulatory status.

In addition, although there is a welcome coverage of the risks of equity release, there appears to be nothing specifically addressing schemes' relative value for money. Choosing a poor value scheme can present a risk in itself. The Panel would like to see something requiring the adviser to know how to compare the cost of different schemes.

Indicative content paragraph 7 (factors relevant to assessing risk)

The adviser should also be required to know and understand any associated products and how they interact with the scheme. For example, advisers may put together a 'bespoke' scheme to cover long-term care costs or school fees.