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Mortgage Regulation Consultation
c/o Michael Cornford
Banking and Credit
H M Treasury
1 Horse Guards Road
London
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Our ref: mortgage regulation

15 February 2010

Dear Mr Cornford

Mortgage Regulation

This is the Financial Services Consumer Panel's response to the Treasury Consultation Paper on mortgage regulation.

The Panel strongly supports the proposals set out in this Consultation Paper for the extension of the FSA's regulatory remit to second-charge mortgages; buy-to-let mortgages; and the new regulated activity of managing a regulated mortgage contract, as part of the Government's programme of strengthening consumer protection in the mortgage market, subject to the carrying-over of key aspects of the protection currently provided by consumer credit legislation. Once the correct framework is in place the key to delivering the required level of consumer protection will be robust supervision and enforcement. This is an area that we will be pursuing with the FSA.

We have set out below our answers to the specific questions posed in the consultation paper.

Chapter 2: the regulation of second-charge mortgages

Q1: Do you agree with the analysis of the second charge mortgage market?

We agree with the analysis contained in the Consultation Paper which we believe presents an accurate picture of the second charge mortgage market.

Q2: Do you agree that extending the scope of FSA mortgage regulation to include the second-charge mortgage market would achieve the Government's objective of ensuring a fair, stable and efficient market for second-charge mortgages?

We agree that bringing the regulation of second-charge mortgages within the FSA's remit should go some way towards achieving the Government's objective, provided that the FSA takes a close and detailed approach to supervision, compliance and enforcement.

Q3: Do you consider that any further action would be necessary in order to ensure that any transfer of responsibility for regulating second-charge mortgages from the OFT to the FSA would not result in a loss of consumer protection?

There are a number of consumer protection measures that should be carried over to FSA regulation of second charge lending, where such measures are not already incorporated within existing Mortgage Conduct of Business requirements. These would include, but not be limited to:

- Creditor liability for breaches of supplier
- The provision of regular information statements of account
- Early settlement rebates
- Duty to give information to surety
- Enforcement in the event that the lender does not comply with the necessary procedures
- Time orders; and
- The unfair relationships test.

Q4: Do you believe that there are any other ways to mitigate the potential future risks posed by second charge mortgage markets?

There will be opportunities for the new Consumer Financial Education Body to provide information on the advantages, disadvantages and implications for consumers of using second charge lending.

Q5: Do you agree with the costs and benefits of the options under consideration in relation to second-charge mortgages, as set out in the Impact Assessment?

We have no specific comments on the Impact Assessment.

Q6: Do you agree that FSA regulation of second-charge mortgages should be limited to lending to individuals and trustees?

This seems to be the correct approach, although it would create a potential loophole for less scrupulous lenders. Borrowers could be persuaded to set up a company through which to borrow funds, thereby relinquishing the protection offered by the new regime and relieving the lender of its regulatory obligations. This is an issue that would have to be addressed in the structure of the new regime.

Q7: Do you agree that the proposed new definition of a regulated mortgage contract would include second-charge mortgages and continue to include first-charge residential mortgages in its scope?

We support the proposed new definition of a regulated mortgage, which captures both first and second-charge mortgage contracts.

Q8: Do you agree that the regulated activities in relation to regulated mortgage contracts should apply to second-charge mortgages?

Yes, we support this proposal.

Q9: Do you agree that the exemptions and exclusions that apply in relation to regulated mortgage contracts are appropriate for second-charge mortgages?

We agree.

Q10: Do you agree with the proposed arrangements for dealing with second-charge mortgages entered into before the date specified in the draft order?

We urge H M Treasury to consider taking the necessary steps to ensure that existing second-charge mortgages are brought within the remit of the FSA from the date specified in the draft order. As is argued in the Paper, the FSA's regulatory regime is expected to offer greater levels of consumer protection than those provided by Consumer Credit legislation alone. It seems inappropriate and unfair to deny existing second-charge mortgage borrowers that greater level of protection over the life of their mortgage – perhaps the next 25 years. We are aware that this approach might present some practical and legal issues in terms of applying remedies now to loans taken out under earlier legislation, but we believe that these issues can and should be addressed, given the scale of potential detriment that would result from a simple 'cut-off' approach.

Chapter 3: Regulation of buy-to-let mortgages

Q11: Do you agree with the analysis of the buy-to-let mortgage market and the risks of market failure?

We agree with the analysis.

Q12: Do you agree that FSA regulation will mitigate the risk of market failure in the buy-to-let mortgage market?

We agree, provided that the FSA is robust in its regulation of the sector and in its enforcement of rules and principles.

Q13: Do you agree with the costs and benefits of the options under consideration in relation to buy-to-let mortgages, as set out in the Impact Assessment?

We have no comments on the details of the Impact Assessment.

Q14: Do you agree that FSA regulation of buy-to-let mortgages should be limited to lending to individuals and trustees?

Please see our answer to question 6 above. Steps would have to be taken to ensure that borrowers were not persuaded to borrow money through a corporate body so that lenders could avoid the requirements of the new regulatory regime.

Q15: Do you agree that the proposed new condition relating to the use of the property as a dwelling would include buy-to-let mortgages and continue to include residential mortgages?

Yes, we agree.

Q16: Do you agree that the regulated activities in relation to regulated mortgage contracts should apply to buy-to-let mortgages?

We strongly support this proposal.

Q17: Do you agree that the exemptions and exclusions that apply in relation to regulated mortgage contracts are appropriate for buy-to-let mortgages?

Yes, we agree.

Chapter 4: Protecting borrowers when mortgages are sold on

Q18: Do you agree with the analysis of potential consumer detriment in the market for the onward sale of mortgage books?

Yes, we agree with this analysis.

Q19: Do you agree that borrowers should continue to benefit from the protection of FSA regulation in the case that their mortgage is sold on by their lender?

We strongly support this proposal.

Q20: Do you agree with the costs and benefits of the options under consideration in relation to protecting borrowers when mortgages are sold on, as set out in the Impact Assessment?

We have no comments on the Impact Assessment.

Q21: Do you agree that the proposed definition of “managing a regulated mortgage contract” would include the activities that have the potential to cause harm to borrowers when mortgages are sold on?

We agree.

Q22: Do you agree that a mortgage owner’s ability to delegate this activity to a third party means that only those firms engaging in activity with the potential to cause harm to borrowers will be subject to regulation?

Paragraph 4.16 of the Paper says that authorisation will be required by the firm that has the ability to make decisions that will materially affect the borrower. ‘Materially affect’ seems to be wider than ‘potential to cause harm’. We suggest that any firm

that will have direct contact with the borrower should be subject to regulation, as well as firms that have the ability to make decisions that will materially affect the borrower.

Yours sincerely

Adam Phillips
Chairman
Financial Services Consumer Panel