



4th December 2014

Dear Complainant,

Complaint against the Financial Conduct Authority
Reference Number: FCA00036

Thank you for your email of 24th November 2014.

As the rules of the scheme under which I consider complaints can be found on our website at www.fsc.gov.uk, I do not intend to set them out fully below.

Your complaint

From your email and the papers you have submitted to me and the FCA I understand that your concerns relate to the fact that:

- you are unhappy with the provisions of the regulator's Mortgage Market Review (MMR) and the impact this has had upon you personally; and
- you add that, you believe that the requirements the regulator introduced has resulted in mortgage lenders refusing to offer mortgages to those who do not have high incomes, are disabled, are elderly or have other incomes which are no longer taken into account.

My position

In considering this case, I have reviewed the regulator's investigation papers and the arguments put forward by it. I have also reviewed a number of emails that you have sent to my office in relation to this matter.

Before I comment further, it may be beneficial if I provide you with some further information on the MMR and its introduction. On 31st October 2004 the arrangement of mortgages became a regulated activity and those providing mortgages (and more specifically mortgage advice) became subject to the Financial Services Authority's (FSA) rules and supervision. The FSA was the regulator at the time. However, by 2007, which represented the height of the mortgage market, it had become clear that, while the mortgage market had worked well for many people, it had been a cause of severe hardship for others.

The regulatory framework in place at the time had proved to be ineffective in constraining particularly high-risk lending and borrowing (and some lenders were offering extremely high multiple loans where the borrower's long term ability to continue with repayments was uncertain). This led to severe difficulties for a large number of borrowers. The MMR package of reforms is aimed at ensuring the continued access to mortgages for the great majority of customers who can afford it, while preventing a return to the poor practices that were seen in the past.

The FCA, when responding to your complaint, explained that the reforms were subject to several public consultations; and also confirmed that information about the review and consultation documents which were available to the industry and consumers can be viewed on its website (<http://www.fca.org.uk/firms/firm-types/mortgage-brokers-and-home-finance-lenders/mortgage-market-review>).

Although the FCA has directed you to its website I feel it may be useful if I provide further detail about the consultation process which took place. In October 2009¹, as a result of its concerns, the FSA announced that it was to undertake a comprehensive review of mortgage market regulation. Following its review, in December 2011, the regulator issued a consultation paper² which set out its proposals for the future regulation of the mortgage market. In issuing the consultation paper the FSA asked the industry, consumers and consumer groups to comment upon its proposals.

The FSA reviewed the comments it received and, where necessary, amended its proposals to take into account the feedback it received before, in October 2012, issuing its revised rules and requirements which it did in the form of a policy statement³ (which also set out details of the feedback it had received to its proposals and its response to that feedback). Although the policy statement was issued in October 2012, the majority of the reforms that were brought about by the MMR did not come into force until April 2014.

Some of the main changes that were introduced by the MMR rules were:

- the removal of the non-advised sales process,
- strengthening of the arrears charging rules, and
- responsible lending reforms which were set out in three key elements, namely:
 - an affordability assessment: a lender must verify income and be able to demonstrate that the mortgage is affordable taking into account the borrower's net income and, as a minimum, the borrower's committed expenditure and basic household expenditure.
 - an interest rate stress test: the lender must also take account of the impact on mortgage payments of market expectations of future interest rate increases.
 - revisions to the interest-only rules: the lender must also assess affordability on a capital and interest basis, unless there is a clearly understood and believable alternative source of capital repayment.

I know that you are unhappy with the affordability assessment and stress test but these were introduced to ensure that consumers would not find themselves in financial difficulty as a result of changes to their circumstances or increases to the interest rates. I would also add that these rules only set out a framework for lenders, and the FCA does not directly set the lending criteria that are used to assess mortgage applications. These are commercial decisions for each lender, with criteria set according to their business models and risk appetites.

¹ DP09/3 (<http://www.fca.org.uk/your-fca/documents/discussion-papers/fsa-dp09-3-mortgage-market-review>)

² CP11/31 (<http://www.fca.org.uk/your-fca/documents/consultation-papers/fsa-cp11-31>)

³ PS12/16 (<http://www.fca.org.uk/your-fca/documents/policy-statements/fsa-ps12-16>)

I know that you are equally unhappy with the FCA's decision that it was unable to consider your complaint under the provisions set out within paragraph 3.4(c) of the Complaints Scheme which sets out:

3.4 Exclusions to the Scheme

Excluded from the Scheme are complaints:

- c) in relation to the performance of the regulators' legislative functions as defined in the 2012 Act;

Although you have asked me to consider the implications the MMR has had on those seeking mortgages as a resolution to your complaint, I am unable to do this, for the reasons already explained to you by the FCA. Unfortunately, as the definition of the FCA's legislative function as defined within the Financial Services Act 2012 (the 2012 Act)⁴, includes the making of rules (the provisions of the MMR amount to rules), I agree with the FCA's view that your complaint is not one which can be considered under the Complaints Scheme.

Although I cannot help you, I understand that a member of the Treasury Select Committee has suggested that the FCA should undertake an implementation review of the MMR. It may be that your local Member of Parliament could offer you some assistance by passing your comments and concerns to the Treasury Select Committee.

In conclusion, I consider that the FCA's response to your complaint was correct, and I do not therefore uphold your complaint to me. I appreciate that you will be disappointed with my decision but hope that you will understand why I have reached it.

Yours sincerely



Antony Townsend
Complaints Commissioner

⁴ Paragraph 85(4) of Part 6 of the Financial Services Act 2012