Barclays Government Relations
and Public Policy
One Churchill Place
London
E14 5HP

www.barclays.com

PRIVATE & CONFIDENTIAL

30 October 2014

FAO: mcdconsultation@hmtreasury.gsi.gov.uk

EU Mortgage Credit Directive Consultation
Banking & Credit Team
HM Treasury
1 Horse Guards Road
London SW1A 2HQ

Dear Sirs

Implementation of the EU Mortgage Credit Directive

Please find attached Barclays response to the Government consultation on implementing the EU Mortgage Credit Directive (MCD).

We welcome the open approach HM Treasury (HMT) have taken with engaging lenders regarding the MCD and look forward to continuing this.

The UK already has a robust regulatory regime for mortgage lending (including the recent Mortgage Market Review changes) which affords consumers appropriate protection and the MCD does not materially improve the protection for UK consumers. In fact, certain measures will potentially prove to be obstructions for UK consumers seeking mortgage credit (for example the approach to Buy to Let mortgages and foreign currency mortgages) or lead to confusion (for example, the 20 year APRC requirement).

Whilst complying with the MCD requirements is unavoidable, HMT should be seeking to go no further than the minimum requirements, and wherever possible find appropriate solutions that ameliorate the negative impacts that the MCD presents for consumers and lenders. There are specific issues where HMT and FCA could go further to agree more pragmatic and practical solutions for UK lenders and consumers.

We would therefore like to highlight the following key issues and concerns arising from our review of your proposed changes:-

- **Buy to Let** (BTL) – Whilst we appreciate that HMT is seeking to exclude BTL as far as possible from the MCD, the proposed approach creates consumer behavioural risks and presents additional conduct risks for lenders

- **Implementation timescales** – given that the MCD text was passed in February, the formal HMT and FCA consultation process could have commenced earlier than September in order to allow sufficient time for the UK to agree and implement the changes. As a result, the consultation process and subsequent implementation process are on an extremely tight schedule, and our options for implementation become more limited as the deadline approaches
- **Second Charge lending** – While we support the principle of bringing the regulation of first and second charge lending together under the same mortgage conduct regime, the proposed approach fails to fully integrate second charge lending by retaining existing consumer credit protections that are unnecessary. In addition, the FCA are seeking to "gold-plate" first-charge lending by applying some migrated consumer credit requirements to first-charge lending outside of the scope of MCD implementation. Furthermore, the proposal to bring all second charge back-books under the mortgage regime will be costly and problematic and without benefit for consumers, particularly where the back-book is closed to new business
- **FCA Implementation** – The UK already has a very well-functioning mortgage market; it is essential that the implementation of the MCD does not jeopardise this and that only essential changes are made. However the detail of the FCA Consultation Paper CP14/20 goes beyond the requirements of the MCD in certain respects, and we have yet to see the detail of their approach to BTL
- **Pipeline transition –** There are no proposals in this Consultation Paper to assist UK lenders, intermediaries and consumers in managing the pipeline of mortgage transactions when the MCD takes effect – we believe that this is essential to avoid significant consumer detriment and market disruption.

In addition, we have also noted a number of issues with the detailed drafting in the Draft Statutory Instruments (SI) and also inconsistencies with the draft FCA rules which would lead to unintended consequences if they remain unresolved. These include the definition of a regulated mortgage contract, the exclusion of the back-book of first charge Consumer Credit Act (CCA) loans from the migration to the mortgage conduct regime and circumstances in which unsecured loans may be captured by the MCOB requirements.

In answer to the specific questions raised in the Consultation paper, please see Appendix A for our detailed responses.

We can also confirm that Barclays has contributed to and supports the views expressed in the separate response to this consultation provided by the Council of Mortgage Lenders.

We trust that you find Barclays contribution of assistance and would be happy to discuss our views in further detail. If you have any follow-up questions please contact alan.ainsworth@barclaycard.co.uk.

Yours sincerely

Andy Gray
Managing Director, Mortgages

Please note that Barclays considers the information it has supplied in response to this consultation to constitute confidential information provided to a public authority for regulatory purposes. Accordingly, we are disclosing this information on the understanding that it will be exempt from disclosure under the Freedom of Information Act 2000, and that, to the extent that disclosure of this information is considered in future, you will engage Barclays prior to taking a decision as regards any such disclosure and take into account any representations that Barclays may have against its disclosure.

APPENDIX A

CONSULTATION QUESTIONS

Question 1
• Do you agree with the government's proposed approach to implementation of the MCD, building on the existing regulatory architecture where it exists?

Barclays broadly agrees that this approach is the correct one. Given the timelines we are facing, with the implementation deadline of March 2016, this is the most sensible option.

Nevertheless, it is important to note that under the proposed approach the lack of provision for pipeline applications will likely cause significant issues for Barclays and the wider mortgage market. The absence of any pipeline or transitional rules will have the consequence of either bringing the effective implementation date forward by 6 months (due to the typical length of Mortgage Offers) or would result in potentially re-underwriting all cases which haven't completed by March 2016. The first option seems extremely unrealistic given final rules are only expected in Q1 2015 and significant systems and process changes will be required. The second option would have a significant impact on not only Barclays but the entire mortgage market, particularly as the MCD would take effect at the end of Q1 2016, right at a peak period of the house buying season, meaning even more consumers would be affected.

Barclays suggestion would be for a pipeline or transitional arrangement to be put in place, as our experience of a similar approach under the Mortgage Market Review (MMR) was very successful and led to minimal customer disruption.

We have set out in our response to Question 3 our detailed concerns relating to the retrospective application of the MCD to existing second charge loans. Although we recognise for certain companies there will be synergies gained from applying the same requirements to first and second charge lending, we do not think that these benefits apply to firms who are not entering into new second charge loans and are currently winding down existing second charge portfolios.

Barclaycard has previously shared with HMT the benefits in giving such firms a choice as to whether they move into the FCA mortgage regime or remain in the FCA consumer credit regime. If the FCA is concerned that elements of the FCA consumer credit regime do not provide the same levels of consumer protection as the mortgage regime this could be addressed through amendments to CONC. For example, the provisions in MCOB 13 which relate to arrears and enforcement could be incorporated by reference for back-book second charge loans.

Question 2

- Do you agree with the government's proposed timeline for putting in place the legislation necessary for the implementation of the MCD?

Barclays agrees with this timeline. The approach proposed looks to be the swiftest way to put in place the necessary legislation, indeed there appear to be few other options available given how close we are to implementation.

Our concern remains the short timescales between issuance of final rules and implementation twelve months later. This presents a significant challenge to effective implementation for all lenders given the extent of the changes proposed. Moreover, this difficulty is compounded by the current lack of detail regarding Buy to Let mortgages and the separate FCA Consultation Paper which addresses the implementation of much of the MCD. These concerns are also mirrored for existing second charge lending, as the imposition of the FCA mortgage credit regime will require significant systems changes. It is unlikely that a period of a year between issuance of final rules and implementation will allow sufficient time for a lender with systems designed for compliance with the consumer credit regime to convert to the FCA mortgage regime. From our experience of other projects requiring significant systems development, we believe a minimum 18 months to two year transition period for new conduct requirements is required.

We understand HMT has proposed granting second charge lenders additional time to implement some changes which don't impact on the Government's obligation to implement the MCD by 31 March 2016. Given the significant changes faced by second charge lenders, this additional time will be important.

Question 3a

- Do you agree with the government's proposal to amend the scope of FCA mortgages regulation to cover both first and second charge mortgage lending?

For firms who are not entering into new second charge loans we are concerned that the application of the FCA mortgage regime will potentially give rise to significant implementation costs without any significant increase in consumer protections. Borrowers with existing second charge loans are subject to the protections of the FCA consumer credit regime. Many existing borrowers will have had their loans in place for a number of years. For example, loans in the Firstplus portfolio were originated before 2008. These borrowers have been subject to the same processes in terms of the post-contract notice requirements and enforcement provisions since 2008. Borrowers are therefore familiar with the protections granted under the CCA and may be confused if they become subject to new processes in terms of how the loans are administered and enforced. With the application of the provisions of CONC these borrowers are now subject to a higher degree of protection including the application of the Principles for Businesses. It is difficult to see how these protections will be enhanced through a move to the MCOB regime especially in the light of the proposal to maintain certain elements of the consumer credit protections.

We note that the post-origination requirements of the MCD are limited to:

- Article 27 – information concerning changes in the borrowing rate; and
- Article 28 – arrears and foreclosure.

The provisions of Articles 27 and 28 substantially mirror the current requirements of the consumer credit regime. Given this, we are of the view that there is unlikely to be an increase in consumer protection through imposing these requirements on lenders through the MCOB regime rather than the consumer credit regime.

We think further consideration is required in relation to which provisions of the consumer credit regime should continue to apply to existing second charge loans if the FCA mortgage regime is applied to existing second charge loans. Retaining these provisions will require a firm who enters into both first and second charge loans to maintain dual procedures and as a result this will impact the perceived benefits of integrating the two regimes. Although we recognise that the sanctions for non-compliance are different, we believe that translating these requirements into MCOB will achieve the same levels of consumer protection.

We also have a query relating to the movement of second charge lending from CCA to MCOB and which customers this would capture under an RMC. Under the CCA an 'individual' is clearly defined to include a partnership consisting of two or three persons not all of whom are bodies corporate (section 189(1) of the CCA). However, there is no equivalent definition of an 'individual' in the draft legislation (for the purposes of an RMC), nor under the MCOBS regime. It therefore appears that by moving the regulation of second charge lending from the CCA to MCOBS, the scope of those 'individuals' covered by the regulatory framework is being expanded to cover partnerships of any size (and not just those consisting of three partners or less). In practice this will mean that all second charge mortgages to partnerships, regardless of their size, will become regulated agreements i.e. RMCs. This issue does not appear to have been addressed in HMT's consultation, nor specifically in the FCA's, and so further clarity is required here.

Question 3b

- What will be the costs to second charge firms associated with the government's proposal that they are required to secure a FCA mortgages permission rather than a FCA consumer credit permission?

The costs associated with this proposal are unclear; whilst there will be the cost of obtaining the mortgage lending permission itself, there will be much larger costs related to the internal process of meeting the conduct requirements of the permission and the rigor that will sit with this. In addition, there are companies within the Barclays Group who currently only carry on activities related to second charge mortgages. These companies have already incurred costs in ensuring compliance with the new consumer credit regime and in particular the requirements of CONC. Furthermore, work has been undertaken to prepare such entities for the application for full FCA consumer credit permissions. Additional costs will therefore be incurred if these companies are required to apply for an FCA mortgage permission. We anticipate that the application process is unlikely to be significantly different but the applicant will need to demonstrate that it has compliant procedures in place for MCOB rather than CONC and as a result there will be increased costs. In addition to the costs, we believe it is important to understand the detail behind the proposed new regime and the requirements to be placed upon lenders even where they only hold a back-book of Second Charge loans.

Question 4a

- Do you have any comments on the government's proposed legislative changes to bring mortgages into FCA regulation if any part of the property is occupied by the borrower or their relative and the borrower is acting for purposes which are outside his trade, business or profession?

Barclays already adopts the approach whereby if a borrower or their relative occupies any part of a property, then that mortgage must proceed on a regulated basis. As such, these legislative changes will have minimal impact.

We have identified some irregularities between various documents relating to the removal of the 40% occupancy rule in the draft amended definition of an RMC. In the Draft SI the definition of residential occupancy has retained the 40% rule, and it is also retained in parts of the separate FCA Consultation Paper on the MCD. The Directive does not make this distinction regarding what proportion of a property should be for residential use to be classified as a residential property, and so we believe these sections should be modified accordingly.

Question 4b

- Do you agree with the government's assessment that this change will have a limited impact on the market?

Yes, we agree that the change to this particular rule will have a limited impact. We believe that some of the other changes proposed to Buy to Let will have a much greater impact on the market and we address this in our responses to subsequent questions.

Question 5a

- What are your views on the government's proposed use of the provisions in the MCD which allow member states to limit the application of an appropriate framework to

buy-to-let to consumers?

We have a number of concerns regarding the proposed use of the provisions:

1) The proposed split of Buy to Let customers by ‘intention’ has the strong potential to create a Conduct Risk in the market. We see there being a risk whereby customers who are not operating in a business capacity are driven down that particular route in order to secure a Buy to Let mortgage, particularly in circumstances whereby they would not be able to meet the lending requirements of a ‘consumer’ Buy to Let mortgage. In our experience, customers’ primary concern at point of sale is ease of access to funds, as opposed to any protections that may be afforded them by a regulated contract and so they may choose to define themselves as a business customer simply for expediency and not consider the future implications of this. This view seems to be echoed by the FCA who discussed consumer actions in their Occasional Paper No. 1 relating to behavioural economics[1]. Here the FCA addresses at length the issues around behavioural biases and the implications they have on consumers and firms. Of particular relevance is the acknowledged Projection Bias that can exist whereby customers at point of sale may underestimate the effect of possible changes to their circumstances and therefore the protections they might need[2]. Of course firms may take actions to mitigate these risks although the FCA appreciate these remedies can sometimes only go so far.

   Perhaps the clearest way to ensure that consumers do not lose, or are unable to sidestep the relevant protections would be to regulate all Buy to Let loans (whether consumer or for business purposes). Yet this option of maximum customer protection (even in such cases where the argument for the protection hasn’t been made) must be balanced against the competitive disadvantage that it would potentially create for a firm. By one firm opting to apply a low-risk approach and treat as regulated all Buy to Let business, the Draft SI leaves open the door for competitors, or less scrupulous lenders, to offer unregulated lending with fewer requirements and so encourage business to be placed with them. This dichotomy of competition versus consumer protection is a very real one and the balance of regulation must be carefully struck to avoid unintentionally creating a separate market; we are firmly of the belief that the MCD should lead to customer protections rather than forcing customers to make choices.

2) As it stands, there is no set definition of what would be defined as Buy to Let for business purposes. Previously the Council of Mortgage Lenders have obtained a legal opinion on this issue which indicated that Buy to Let investing, unless there was a portfolio of at least 3

[1] ERTA, Kristina, et al. Occasional Paper No. 1: Applying Behavioural Economics at the Financial Conduct Authority. *The Financial Conduct Authority*, April 2013 [viewed 22 October 2014]. Available from: http://www.fca.org.uk/static/documents/occasional-papers/occasional-paper-1.pdf

[2] *Ibid* p.57-58

properties, was vulnerable to challenge as not being a business. Though the proposed definition provided by HM Treasury is helpful in going some way to define what is, or should be, a consumer Buy to Let versus a Buy to Let for business purposes, it will be difficult for the Bank to distinguish between those cases.

Linked to this, there is a lack of clarity regarding the second line of defence at underwriting where lenders are expected to verify that the customer is as they say on the business purpose declaration. Whether a customer's intention is wholly or predominantly for a business purpose is a question of fact, however it will be difficult to give definitive guidance to advisors and underwriters on what would qualify as a business purpose, given HMT's policy intention to carve out from the Consumer Buy to Let mortgage regime where the customer "makes an active decision to become a landlord". There is an argument that any "active" decision to retain a property (for example, once inherited) to rent out, would indicate an active step being taken to act predominantly for a business purpose. This approach creates uncertainty with regards to how the bank should identify personal investments as opposed to investments made for a business purpose, with each customer being dealt with on a case by case basis.

We believe that a sensible approach would be to have a clear, robust definition of what is a consumer Buy to Let case and that all Buy to Let cases which do not fall under that definition would be able to proceed as an unregulated Buy to Let mortgage. We suggest this definition cover all cases of inherited properties and all Let to Buys will come under Consumer Buy to Let definition and therefore be regulated mortgages.

3) Barclays also has a concern that the complexity of the consumer Buy to Let provisions, and the Conduct Risk that this complexity presents, could lead to lenders moving away from this area of the market. The implication being that there would not only be less choice for customers, but that it has the potential to drive consumer Buy to Let customers down the Buy to Let for business borrowers channel. These customers would thereby lose any protections provided under a regulated contract

4) The timeline issue is a very real concern relating to this point. Implementing consumer Buy to let as a regulated mortgage contract would be entirely new proposition with a huge impact on technology development and the training and up skilling of frontline advisors, supporting teams and Underwriters.

Question 5b
• Under these proposals, how many transactions would you expect to be subject to an appropriate framework for buy-to-let mortgage lending to consumers?

It is extremely difficult to gauge how many transactions would be affected under this proposal. By making the proposed changes the entire Buy to Let market would be in a state of flux. Without further information we are unable to say how lenders would respond to these changes and what the market, and customer behaviours, would look like.

Nevertheless, as it stands, a significant minority of existing Barclays Buy to Let customers are Let to Buy customers who, we argue, should be captured under the consumer Buy to Let definition. As described above, care needs to be taken to ensure that these proposed changes do not actually create a scenario which hinders customers being able to take out a Let to Buy mortgage. The implications of this would carry over onto the residential market as if it is difficult to release equity from a Let to Buy mortgage customers will find it difficult to purchase another property elsewhere and move.

Question 6a

- What are your views on the proposed content of the appropriate framework for buy-to-let mortgage lending to consumers?

We welcome HM Treasury sharing the Draft SI at this time which helps lenders better assess the proposed changes. A number of our concerns relating to the Draft SI are outlined elsewhere in this response; however it is important they are drawn out again at this point.

There appears to be an error in the Draft SI where the definition of RMC has retained the 40% rule for residential occupancy. The MCD does not make this distinction, as drawn out in HM Treasury's Consultation paper, regarding what proportion of a property should be for residential use to be classified as a residential property.

As has been mentioned, regarding the split of Buy to Let lending, there is no set definition of what a business is (or indeed of what is a consumer Buy to Let). Previously the Council of Mortgage Lenders have obtained legal opinion on this issue which indicated that Buy to Let investing, unless there was a portfolio of at least 3 properties, was vulnerable to challenge as not being a business. It was for this reason that a specific exemption for investment property was introduced into the CCA regime when the monetary limits were removed. Though the proposed definition provided by HM Treasury is helpful it is still ultimately a matter of opinion until tested in the courts.

The Directive itself allows Member States to exclude credit agreements where the property is not occupied by the consumer or a family member from the Directive, provided that an "appropriate framework at a national level" is in place, recognising that these "may require a more adapted framework" (Directive 2014/17/EU Article 3 point 3(b) & 4). In the HMT consultation, we note that HMT state that the intention is only to meet the minimum MCD requirements in its transposition, and that "it may not be appropriate to apply all the detailed MCD requirements due to the different characteristics of buy-to-let mortgages, while other elements may need to be adapted".

We believe that the content of Annex C in the Draft Statutory Instrument remains, ostensibly, as the requirements of the MCD itself and that HMT should make significant amendments to Annex C to tailor an appropriate framework that reflects and supports the unique nature of the UK BTL market. As stated above, the Directive refers to "an appropriate framework" not an equivalent framework to the MCD. We would recommend that the following areas need to be revisited:

- Knowledge and competence requirements for staff – whilst it is important to us that our staff are competent in their roles and have the requisite knowledge, we do not consider it necessary to make the MCD requirements mandatory for the appropriate consumer BTL framework.
- General information – these requirements also need to apply to credit intermediaries when advising or arranging on a consumer BTL mortgage.
- Pre-contractual information – refers to provision of "an offer binding on the lender" however binding offers should not be imposed on the BTL market.
- Adequate explanations – these requirements should be limited to the pre-contractual information requirements and the credit intermediary information requirements in paragraphs 6(2) and 7(1) of the Schedule respectively.
- Calculation of the APRC – it is not necessary to harmonise the APR calculation with the MCD definition.
- Obligations to assess the credit-worthiness of the borrower – The Schedule refers in paragraph 12 to the assessment of creditworthiness including the impact of "rental voids, rental arrears and typical letting costs". In the UK market, lenders do not consider these on a case-by-case basis but often employ a mortgage interest cover ratio where the assessed rental value of the property must exceed the mortgage payments by a specific percentage –typically 125%. The principal reason for this is to provide a buffer against rental voids, arrears and management costs of letting a property. The Schedule should be amended to reflect how the UK market operates and allow for lenders to apply their own modelling, or strategies, to this assessment.
- Standards for advisory services – it is important to recognise that regulated advice does not exist in the BTL market as it does in the residential mortgage market, and that lenders can choose whether to offer unregulated advice or not. This unregulated advice does not give rise to the same consumer protections as the regulated advice in the residential mortgage market.
- Foreign currency loans – it is not necessary to apply the MCD requirements on foreign currency loans to BTL. The foreign currency definition in the MCD is fundamentally flawed and will have unintended consequences on cross-border transactions in contrast with the principles of the MCD; it would be a mistake to bring the same deficiency to bear on the BTL market and BTL consumers
- Early repayment – this needs to be aligned with the proposed approach in the FCA consultation to apply the same standards across consumer BTL and residential mortgages – in practice, lenders will design products in the same way for both markets.

Question 6b • What are your views on the proposed approach to the supervision and enforcement of the appropriate framework for buy-to-let mortgage lending to consumers?

Barclays agrees that it is sensible for the FCA to be the common regulator.

Question 7 • What would you expect the costs and benefits to be of the introduction of an appropriate framework for buy-to-let mortgage lending to consumers?

This is a completely new concept and so we are unable to give specific responses relating to costs and benefits as we do not split our lending like this. However, the majority of the current Buy to Let lending we engage in is to customers borrowing in a business capacity.

To implement a consumer Buy to Let regime, and run this alongside a separate regime for Buy to Let borrowers acting in a business capacity, would incur significant technology development, project resourcing, training and governance costs.

With a regulated consumer Buy to Let mortgage there would necessarily be increased costs relating to frontline advisors, supporting Quality Assurance, Underwriting and supporting functions. Even though this will be a smaller share of the Buy to Let market than business Buy to Let, it would have a disproportionately greater impact upon resourcing.

Question 8a • What are your views on the number of further changes the government is proposing to align the scope of FCA regulation with the MCD?

Barclays does not currently engage in equitable or timeshare lending and so we do not have any views on this aspect of the consultation.

Barclays does engage in some international lending where the property is located within the EEA and the firm arranging the mortgage is based internationally but maintained by Barclays Bank Plc. The concern here is that through meeting the requirements of the MCD and by widening the definition of regulated mortgages to include mortgages on properties in the EEA, the scope will be expanded not only for lending originating from the UK, but also for lending originating from other international branches of Barclays Bank Plc.

For example, currently a mortgage offered by Barclays Bank PLC, Monaco Branch to a UK resident secured on a property in France would not be a regulated mortgage. However, if regulated mortgages include mortgages on properties in the EEA, then this example would be a regulated mortgage subject to MCOB. This may then give rise to conflicts with any regulations around mortgage lending in place in Monaco and France.

Further, the expansion of the definition of a Regulated Mortgage Contract (RMC) to now include property within the EEA leads to questions on when MCOB should apply. MCOB applies to a RMC if the customer is a UK resident –so on the face of it a loan to a UK resident to buy property located elsewhere in the EEA and secured over that property can potentially be subject to MCOB. If the same loan is made to a non UK (but still EEA resident) customer and the Bank is carrying on the activities out of a UK establishment of the Bank again MCOB can potentially apply.

This issue appears inadvertently to run the risk of regulating under UK conduct regulation purely overseas transactions which will routinely be subject to overseas (EEA) regulatory provisions.

The current jurisdictional scope of regulated activities is broadly covered in sections 19 and 418 of FSMA and Perg 2.4.3. In general, if the activities are being undertaken entirely in another EEA state then there would be no issue of UK regulation applying or UK law having jurisdiction save for in certain specific provisions/circumstances. As it stands the amendment to the definition of an RMC sat alongside MCOB 1.3 does potentially suggest that, even in that scenario, it is within scope of MCOB.

Even if this is clarified, one source of additional complexity is likely to be where the mortgage activities are undertaken in part out of establishments in the UK and in part from those in the other EEA state (possibly using UK services to process transactions written in the other state). This issue can arise now under the current regime, but the extended RMC definition will increase the likelihood of bringing more such transactions into the UK regulatory jurisdiction and so the risk of potentially overlapping/duplicating regulatory requirements of 2 or more regulators.

We also have a number of concerns relating to Article 15 of the Draft SI and the changes that are proposed to the CCA. By adapting the scope of the CCA to include credit agreements where the 'purpose of which is to acquire or retain property rights in land or in an existing or projected building', it would mean that such agreements would need to be originated under the modified MCOB process. This would apply even if the loan is unsecured and would require that providers of these loans are able to advise on them which is a completely different proposition to that which currently operates. Notwithstanding the level of changes that creating a new regime would require to systems and processes, there would be huge difficulty in identifying such cases at the outset. Associated with this, it is unclear what the position would be if only a portion of the loan were to be for renovation, or acquiring or retaining property rights.

Whilst these changes have been proposed in the Draft SI, the equivalent amendments have not been made to the Regulated Activities Order (RAO). There appears to be an inconsistent position between these documents and the FCA's separate consultation paper.

Question 8b • What is your assessment of the impact of these changes on the UK mortgage market?

Whilst we believe these changes will be minimal in respect of the UK mortgage market, our concern remains the wider impact that these changes may have regarding international lending, as per our response above.

On the separate issue regarding the modification to the CCA and unsecured lending, the potential impact on the market could be very great. In particular, the requirement that this kind of lending be advised has wide implications on not only the lending proposition, but also training and compliance which would have ongoing costs associated with it. It should be noted that this is a well-functioning and long-established model which is at risk of great upheaval with an unproven benefit for consumers.

Question 9 • Do you have any comments or concerns with the government's proposed changes to FSMA?

As mentioned in a number of areas of this response, we have observed that there are inconsistencies within the Draft SI and the draft FCA rules relating to Buy to Let mortgages and the percentage thresholds of owner occupation.

We have also raised similar concerns regarding the definition of a RMC and the relevant jurisdiction of MCOB when it comes to international lending (see response to question 8a for further details). Separate to this, there also appears to be a variance between what the SI and what the FCA's consultation paper state regarding when the MCD regulated mortgage contracts take effect. The SI makes it clear that the new provisions and regulatory status "does not apply to a contract existing before 21st March 2016", however the FCA's definition of an MCD regulated mortgage contract contains no such reference to dates, thereby bringing all existing regulated mortgage contracts under MCD requirements. These differences could lead to confusion and unintended consequences if left unresolved and so we would strongly urge clarification before the changes are made to FSMA.