



Information Commissioner's Office

The Information Commissioner's Office response to the consultation: Financial Conduct Authority – Mortgage Market Review – Data Reporting

The Information Commissioner has responsibility for promoting and enforcing the Data Protection Act 1998 (DPA), the Freedom of Information Act 2000 (FOIA), the Environmental Information Regulations (EIR) and the Privacy and Electronic Communications Regulations 2003 (PECR). He is independent from government and upholds information rights in the public interest, promoting openness by public bodies and data privacy for individuals. The Commissioner does this by providing guidance to individuals and organisations, solving problems where he can, and taking appropriate action where the law is broken.

The Information Commissioner welcomes the opportunity to respond to this consultation on the Mortgage Market Review – Data Reporting.

In this response we have focussed only on those issues which impact on information rights. The specific questions within the consultation are aimed at mortgage lenders, home finance administrators, firms that advise on or arrange mortgages and bodies that represent these firms. This response provides general comments on privacy and information rights issues rather than answering each question in the consultation paper.

Sections 2.44 to 2.48 focus on privacy issues. These sections acknowledge that the processing of the personal data will engage the Data Protection Act 1998 (DPA). Some of the key DPA issues are highlighted below.

The gathering of additional data as part of the MMR is a key theme of the consultation. When considering the proposed additional data items in DPA terms, it is important to ensure that each item is necessary, proportionate and relevant to the aim pursued. Firstly, FCA should ensure that the purpose for which the data items are collected is valid. The requirement to gather data in order to supervise the new rules made as a result of the MMR should serve to validate data collection in this context. We welcome the overall objective to secure an appropriate degree of protection for consumers. However, in terms of the collection of data, it is important to ensure that a balance is found between the rights of the individual and the interests of the FCA.

To find this balance, consideration should be given to the amount of data that it is necessary to gather about an individual to achieve aims under MMR. FCA is best placed to establish the level of data required to achieve their aims under MMR so this response has not focussed on the individual data items listed in the consultation. In general, FCA should ensure that, as well as their being a valid purpose to collect the data, that purpose can only be achieved by gathering the data items in question and the processing is proportionate to the aim pursued. The proposed additional data items should not lead to an accumulation of more data than is required.

It is clear from the proposed data items to be gathered that the accumulated information will form a detailed picture of an individual's financial status. Consideration should be given as to the further uses of the data, once it has been gathered. The consultation paper explains that FCA is placing a greater reliance on data than the FSA and goes on to highlight some of the proposed uses of the data – the geo-demographic profiling mentioned in section 2.10 for example. Wherever possible, this analysis should be carried out in an aggregated and anonymised format.

Section 2.47 states that the FCA recognises the requirement to be transparent when gathering data about individuals. This transparency should begin at the point of data collection by mortgage providers, who should explain that the data is shared with FCA and the purposes for that data sharing. FCA should also consider subject access rights under Section 7 of the DPA. This right will relate to the data held about an individual, be it a record as provided by a lender or analysis carried out on a lender by the FCA (unless the analysis is aggregated or anonymised).

There is also emphasis placed on the importance of keeping data up to date and accurate. This is a key data protection requirement and both FCA and lenders should guard against making decisions about individuals or producing analysis that is based on inaccurate personal data. It is also important to establish retention policies based around the necessity to hold the data (such as legal obligations) to ensure that no data is held for longer than necessary.

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