

Regulators run the risk

regulation coming out of Europe looks like it may catch some current



Ian Balfour, CEO, Solent Mortgage Services

On the face of it, the latest proposals from Brussels do not

seem comfortable reading because some of the points echo the Financial Services Authority's Mortgage Market Review, there are obvious unintended consequences in the short-term lending market which need to be addressed. With a high proportion of bridging and short-term business in the non-regulated sector, a major problem surrounds the treatment of buy-to-let under European Commission proposals. In its current form, all residential loans to consumers would be regulated. The difficulty comes in trying to assess what is a consumer transaction and what presents a business transaction. For lenders, how would they classify an applicant who was buying one property over someone who had a portfolio of a dozen or more? Is the purchaser running a business because he has more than one property? The criteria for assessing non-regulated from regulated could become a minefield, particularly when it comes down to the type of documentation necessary.

No doubt, as some of our fellow Europeans are adept at doing, we can apply for exemptions to some parts of the future directive,

which directly affect our particular national interests. At the moment, there is a clear and present danger that short-term lending could be severely damaged, if this proposal is unopposed.



Bob Hunt, chief executive, Paradigm Mortgage Services

If we have learnt anything since the introduction of mortgage

regulation, it is to expect more regulation.

The big question however is whether this type of regulation adds anything tangible to the end consumer? In my opinion, like that of many of our politicians and trade bodies, it does not.

We have struggled to get where we are today and it seems perverse that in a still fragile market we could well heap on a load more regulation which will only stifle it further.

We are already anticipating what the FSA will enshrine with the MMR and, it at last seems clear, that it will not attempt to regulate further until it sees the cut of this European Directive's jib.

I cannot fathom why we need further regulation of bridging loans and buy-to-let – two markets which have performed increasingly strongly in recent months.

We all know that regulation costs and if the directive is introduced –

and I say if as there are some major bodies and figures fighting against it – it is unlikely to add much in the way of protection and a lot in the way of cost, which will ultimately be paid for by the consumer.



Gary Bailey, director, Blemain Group

There will be significant cost and effort on behalf of lenders and brokers to

implement the final proposals. This will mean big changes to current processes, advertising and marketing, suitability, creditworthiness and disclosure, particularly in the property investment and developer markets.

Bridging on investment and commercial properties in particular has experienced rapid growth in recent years; a significant influx of new entrants are seeking to fill the gap left by high street lenders. Regulation in this sector will certainly stifle its growth and could well impede the consumer that it aims to protect. Private funders who might have moved into the market are less likely to want to absorb the increased cost of compliance – restricting competition when it is needed most.

Although regulation is aimed at providing greater protection for the customer, there are still a number of issues that need to be considered.

Regulators run the risk of stunting market

Regulation coming out of Europe looks like it may catch some currently unregulated bridging lending as well as buy-to-let lending



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Although regulation is aimed at providing greater protection for the customer, there are still a number of issues that need to be considered.

As a result, we could well see the appetite for bridging diminish as regulatory pressures impede property transactions.



Peter Turner,
commercial director,
AToM

Whilst it may not be too palatable that we are looking at regulation from Europe determining the future of the overall mortgage sector, it does seem inevitable that the bandwagon will continue to gather pace in coming months.

Having said that, regulation should still be regarded as necessary to instil and enforce a culture which ensures the safety and security of those investing their future in the potential of their new home or investment property.

So, is it any wonder that legislators are now considering bringing the same pressure to bear in the areas of bridging and buy-to-let?

Bridging is an area which undoubtedly needs some uniformity and clear outlines for prospective borrowers. It is a confusing and expensive area yet absolutely necessary to facilitate a wide range of transactions which otherwise would stall.

I would expect that short-term bridging of less than 12 months will escape the need for legislation but that anything longer will be caught.

Also, that it will probably only

apply to individuals and not corporate borrowers. Similarly, I would expect the buy-to-let market to come under the scope of regulation sooner rather than later.

The overall effect will, of course, slow the market down again as more rules and red tape come into play.



Laurence Goodman,
managing director,
Bridgebank Capital

The whole of the property lending sector has been fully aware for a long time now, that more and more regulatory control is to be imposed on lending activity. There is no doubt that this tide of change can't be stopped or pushed back, as tighter regulatory control is a mission to be accomplished by both Europe and the FSA.

The issue is really only when and to what extent. Certainly there must be an ongoing lobby with the rule makers to ensure that the rules imposed are both workable and sensible, notwithstanding that there is evidence to suggest that Europe doesn't really understand what bridging is all about, being a fairly alien, little used financing product outside of the UK.

However, like it or not, the imposition of greater regulation will continue to grab all sectors of the market over the forthcoming years. Those lenders not regulated will find it increasingly difficult to obtain authorisation, and

without authorisation may well eventually find that they are unable to lend.

Regulation will not impact on the demand for bridging funds from borrowers, the market opportunities will not diminish at all, but if some lenders are forced out of the sector, then regulated lenders will reap the benefit of greater market share.

The real issue however, concerns the extent of regulation on various lending situations and how this will affect the powers of recovery through Law of Property Act receiverships in the event of default.

The main drawback of current regulated loans is that recovery or possession action must be processed through the courts, a long drawn out and expensive process which does put off some lenders from entering the regulated arena at present.

However, the question that needs answering is what will be the powers of recovery or repossession under a regulated regime for non-owner occupied / investment property lending?



Ed McAara,
underwriting
manager,
Omni Capital

With the majority of bridging lending at present being unregulated it was an obvious move towards the regulation of all loans to individuals in the residential space. However, when and how regulation does ▶

come it is not likely to be black and white.

As with most regulation it takes many attempts before anything gets finalised, with the increased complexity in this case of the FSA and Europe having to complement one another's policies.

The FSA, whilst not too familiar with the bridging industry, has done its best to ensure that potential regulation will be well positioned by opening its doors to dialogue with the industry, in particular the Association of Short Term Lenders.

However problems are likely to arise on the back of the relative disparity between the housing and lending markets in Europe and the UK. Indeed it would be very difficult to have a one size fits all approach across Europe that is effective; we have learnt the consequences of such with the recent credit crisis.

Whilst regulation is inevitable is unlikely to be imminent, as reflected by the recent delays with progress at the FSA. Hence the impact on the market is unlikely to be dramatic but more of a gradual move as more clarity is provided out of Europe.

Regulation can only be a positive for the industry leading to further transparency, consistency and fair dealings. Indeed for the bridging market it serves as a platform to add credibility to what was once a cottage style industry.



Paul Brett, business development director, borrower

I have always believed that the glass is half full not half empty. At the moment this is no more than hype and should be treated with due consideration - as a wakeup call rather than the knell of doom.

There is a special case to be made for our interpretation of what constitutes regulated and non-regulated lending. And there is precedent already for making the necessary dispensation.

Admittedly that was on a national level, when the Consumer Credit Act was updated, but I am sure that trade bodies and government will be quick to ensure that the UK's regulated/non-regulated rules will be fought for.

To have it otherwise effectively means one of most dynamic parts of the UK's domestic lending market would be decimated overnight. I can't believe the powers that be would be that short sighted.

The concept of a uniform regulatory structure across the Eurozone is a sensible aspiration, but in the same way that forcing the UK to have all cars drive on the right hand side of the road to ensure conformity with our European neighbours would not work, it makes no practical or financial sense for the UK to toe the line on certain aspects of these regulatory proposals from Europe.



Gareth Lewis, head of business development, Tuta

There wouldn't be many people who believe that regulation isn't vitally important for consumers when it comes to their residential mortgage. Whether we need more regulation at a time when the market is struggling to rebuild itself is a moot point, however in our minds there is certainly no need for greater rules and regulations around the bridging and buy-to-let sectors.

Certainly, we would envisage a serious impact if this was forced

through and by this we would mean greater costs for us as a bridging lender which would ultimately have to be passed down to our customer in the form of increased pricing which they would have to bear.

There is also the issue of the end user of bridging loans - the vast majority of our borrowers are using the finance on a commercial basis either to invest, for development purposes or to carry out refurbishments on existing properties.

This being the case there appears to be little need for a series of rules and regulations which attempt to give these borrowers the same level of protection as that which is needed for residential borrowers. These are commercial and investment decisions made by our customers and should ultimately be treated quite differently.

Also, by its very nature, catch-all regulation is going to miss the nuances and subtleties of different product sectors.

In a sense, the UK is fortunate in that it is has not just a mature mainstream mortgage marketplace but also various other non-mainstream lending sectors which are suitable for different borrowers with different needs.

When you apply a broad-brush approach to regulating on lending in general then you tend to overlook those factors which make a sector appealing to both lender and borrower. There is also a danger that the European Union fails to grasp the intricacies of these products and the way we lend and we are left with an entirely unsatisfactory state of affairs.

A very strict regulatory system for bridging loans may well make the product less successful and less appealing - and we should be under no illusions that bridging finance has been one of the few success stories of the lending industry in the

past few years. Do we really want to stymie this area with increased regulatory detail and pressures? I hope not.



Alan Cleary, managing director, Precise Mortgages

As if we haven't got enough regulatory change to worry about, along comes

a bunch of bureaucrats from Brussels telling us that consumers would benefit from cross border competition when it comes to mortgages.

Whilst I get the logic I can't help but think the UK is going to come off worse as a result. The UK has the most regulated mortgage market in the EU if not the world and the distribution route of choice is tipped towards mortgage intermediaries.

This differs massively from the rest of Europe where home ownership is not as aspirational as in the UK and mortgage intermediaries are much less of a force.

I fear we will come out with a botched set of regulations that have been so watered down as to be meaningless or even worse dominated by the French and Germans' interests which are not aligned with ours.

Whilst I am pro-regulation in the buy-to-let space I want it to be proportional and beneficial and driven by the UK; unfortunately buy-to-let is very much in the sights of Brussels and it looks highly likely that they will push for regulation across the EU.

In turn this will catch a large section of the short-term lending markets and will have unforeseen consequences for us all. Clearly, all

lenders and brokers will have to have a view about how this might pan out and this undoubtedly will create additional cost.

Regulation, whether driven by domestic or foreign bodies, tends to favour larger lenders and intermediaries so we could well see the network model gaining ground. The only plus point I can see for us is that it will take years to implement.



Rob Killeen, mortgage broker, Capital Fortune

The issue of European directives impacting on regulation here

in the UK remains an interesting debate.

Whilst there is continued concern that further European regulation may catch all bridging lending and buy-to-lets its actual impact and implementation for us as a company, remains to be seen. Many commentators are now stating further regulation is a 'done deal' despite ongoing lobbying by the Council of Mortgage Lenders and the Association of Mortgage Intermediaries.

The proposed directives are yet to go through to the European Parliament in Brussels, but even if passed and buy-to-let and bridging finance were deemed regulated requiring an amendment to regulated activities under the Financial Services and Market Act 2000, it wouldn't be the first European directive to be ignored or to inevitably face a future legal challenge.

One such directive at odds with the UK regulator is the European ruling that all declines on a mortgage case must be coupled with

an appropriate level of explanation and reasons given to the client.

The FSA has taken a bold step and indicated that lenders should not be compelled to give reasons, indicating that to do so empowers and gives important information to fraudsters. This is another area, where European regulators may have to pay second fiddle to UK regulation, however this will likely be only short-term as it remains wide open to challenge.

From a legal perspective, and a market-liberalist philosophy, it is right that national lenders should give proper explanations for a mortgage decline. This seems only fair and within the spirit of treating customers fairly. In the case of a "reasonable" as opposed to "fanciful" suspicion of fraud, the lender could always exempt itself from explanation, under the Proceeds of Crime Act, under its money laundering provisions. But this should not apply to a standard policy and not in the 90% of cases where fraud is not evident.

The point of regulation is to ensure customers obtain a fair deal. Fair deals in finance should apply as much to commercial as it does to all credit cards, mortgages and loans. Fair is not broker specific, but should be across the spectrum of all financial service providers and their agents. Any bridging or buy-to-let transaction usually involves a significant financial transaction and until institutions and individuals wake up to the fact that customers in the UK, do not get a fair deal, (a preserve not just restricted to financial services), then perhaps further regulation is actually necessary and long overdue.

We work closely with our lender partners and support them where appropriate, but the lack of regulation assisted in causing the financial mess we are in today. ■


NEWS FOR YOUR DIARY

September 2011
RESIDENTIAL MORTGAGE LENDERS ASSOCIATION DINNER.

November 2011
RESIDENTIAL BUSINESS EXPO, Olympia 2, London


January 2011
**RESIDENTIAL SERVICES AUTHORITY MORTGAGE
AGREEMENT REVIEW** consultation paper due.

MOVING PLACES

 Bridging specialist Cheval has announced the appointments of Neil Molyneux and Gordon Rae as new business development managers within its sales team. Molyneux joins from estate agency group Sequence where he was mortgage services sales manager for the Fox & Sons and Allen & Harris brands. Rae's most recent position was as regional account manager at Tiuta.

Young has been appointed as business development executive at first distribution distributors Brightstar Residential. Young joins Brightstar as compliance checking where he has held a number of roles in first distribution over the past 15 years including group commercial development director at Network Data, business manager of partners at Enterprise and first mortgage and protection at Networkshield's directly authorised mortgage club.



 Gareth Lewis, formerly national sales manager at Cheval, has joined Tiuta as head of business development while Kirsty Buchanan, previously with J S Law, has been appointed as a new business development manager. Lewis and Buchanan will report to Tiuta chief executive, Steven Nicholas, and will be responsible for generating business through existing and new broker relationships.

THE MYSTERY NEWS BLOGGER

Mystery surrounds the identity of the blogger at bridgingnews.com – a wordpress blog site which reveals some entertaining garb on the bridging industry.

Although difficult to pinpoint due to a cloak of secrecy we're pretty confident who the mastermind is and find it rather patronising that they won't reveal their true identity to the wider world.

So a challenge to readers – a Mont Blanc pen to the first who can tell all about this finance site and why they want to be quite so coy about it all. It all seems a bridge too far.

HERE IN MY KA

One lender going a bridge too far seems to be Roger Morris of Precise Mortgages fame who has been roving around the country in his Ford Ka.

"The brokers love it," a bashful Morris confessed to *BI* editor Sarah Davidson.

"No – they just feel sorry for you," piped up a bemused John Ahmed, financial services director at Intrinsic.

Either way we couldn't help but think of Roger bopping along to the Gary Numan classic Here in my car as he goes about selling his wares for Precise.

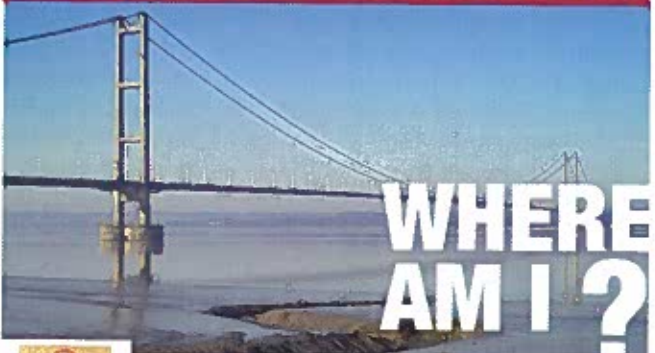
"Here in my Ka , I feel safest of all, I can lock all my doors, it's the only way to live, In ka's

"Here in my Ka, I can only receive , I can listen to you, It keeps me stable for days, In Ka's

"Here in my Ka, Where the image breaks down, Will you visit me please?, If I open my door, In Ka's "

With apologies to Gary Newman.

THIS ISN'T THE BRIDGE YOU'RE LOOKING FOR



Guess where the bridge pictured is and win a box of beer courtesy of Two Bridges Brewery. Email your answer to: Robyn@mortgageintroducer.com, along with your address. First out of the hat wins.