Mortgage Professional

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Supporting members and driving standards

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THE WIND OF CHANGE BLOWS...

As we enter 2016, your professional body is undergoing some changes. ***Lee Travis*** *looks at what's new at the SMP*

Welcome to the first edition of *Mortgage Professional* for 2016. So to start with, I would like to wish you a very prosperous and successful year. It has been all change here at your professional body, with a new look to our supplement front page, an updated image for the Society of Mortgage Professionals (SMP), and an announcement of our new mortgage and protection continuing professional development events.

Significantly, we also say goodbye to Gary Little, former head of operations, who has joined The Mortgage Alliance after two years at the SMP. I would personally like to thank Gary for all he has achieved for us to date and wish him the best of luck in his new role.

Those are very large shoes to fill as I am sure you will agree so, with that, further change comes in the shape of my appointment as head of professional development, and I look forward to using my experience and passion in guiding our profession to achieve better businesses and client outcomes. Raising standards and uniting us as a profession are just two of many things on our agenda that we can all agree are positive things to achieve – and we have a strong platform on which to build further.

For this edition, my thanks go out to Lawrence Baxter, Andy Couchman, Ray Boulger, Andrea Rozario, David Thompson and Helen Gasser for their contributions and I hope you enjoy their articles.

Typically, I am optimistic about 2016 with an expected increase in lending on 2015 and also house prices, but as always we continue to be faced with challenges and some 'key drivers' this year will be:

- Lending into retirement
- The Mortgage Credit Directive
- Peer-to-peer lending
- Interest only
- Buy-to-let
- Senior Managers and Certification Regime
- New and closing government initiatives
- CPD

With so much going on, adviser education today is more important than ever and we will continue to raise standards of professionalism in both mortgage and protection advice. With that in mind and as mentioned earlier, we are pleased to announce 10 dates as part of our professional development programme for 2016, so please save one of the dates below.

We have some excellent speakers lined up, including the Financial Conduct Authority, which is significant in its own right and testament to our relationship with the regulator that it chooses our events to communicate directly with our members. These events are at no cost and a great value-add opportunity to attend, so I look forward to seeing as many of our members there.

Lee Travis is head of professional development at the Personal Finance Society

LEARN MORE

Learn more about the Society of Mortgage Professionals here: **www.thesmp.org**

Save the date

Newcastle	Tuesday	8	March
Birmingham	Wednesday	9	March
Bristol	Thursday	10	March
Scotland	Tuesday	15	March
London	Friday	18	March
Haydock	Tuesday	4	October
East Mids	Wednesday	5	October
Southampton/Hants & Dorset	Thursday	6	October
Northern Ireland	Tuesday	11	October
London	Thursday	13	October

ONLINE ///

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Beware THE SURCHARGE

The new 3% surcharge for homeowners purchasing an additional property is likely to have a big impact on the market, as ***Ray Boulger*** *explains...*

The Chancellor's announcement in the Autumn Statement of a 3% stamp duty surcharge for most property purchasers who already own a property has all the hallmarks of an ill-conceived policy.

The basics of the new rules are that unless exchange had taken place on or before 25 November 2015, any completion from 1 April 2016 where the buyer already owns at least one property anywhere in the world, will attract an additional 3% stamp duty.

The main exception is that anyone selling a main residence and buying another main residence will not be caught by the 3% surcharge. Therefore, existing buy-to-let (BTL) investors – whether owning one or 100 properties – and second homeowners will not incur the 3% surcharge when they move home.

There are provisions for the 3% surcharge to not be incurred if the sale and purchase are not simultaneous. If the sale is first, the subsequent purchase of a new main residence within 18 months will not incur the 3% surcharge. If the purchase is first, the extra 3% will have to be paid but can be reclaimed if the previous main residence is sold within 18 months. One simple thing the government could do to mitigate the cashflow issues for some movers in the second category would be to not charge the 3% surcharge if contracts have been exchanged for a sale of the previous main residence by the time the purchase completes.

Knock-on effects

This is likely to have a big impact on the let-to-buy market. When this concept first emerged, during the early 1990s property slump, it was to avoid having to sell a property in negative equity when moving. In most cases now it is used as a lifestyle choice, however, the 3% surcharge radically changes the economics.

In most cases people are trading up when letting to buy. The 3% surcharge is therefore payable on the more expensive of the two properties, which many are likely to baulk at, especially as most people in this situation tend to be fairly highly geared, which means they will also be badly hit by the summer Budget announcement to disallow interest costs when assessing taxable profits on a BTL.

For a couple buying together, the test for whether the 3% surcharge will be incurred is whether either person owns another property. For some couples buying their first home together, in many such cases one (or both) will have previously bought a property in their sole name and many in this situation decide to keep the property (or properties) as a BTL when they buy together.

Although the Chancellor claims that a reason for this new tax is to help first-time buyers, these couples will not be classed as such, despite buying their first property together, and will have to pay the 3% surcharge. Some unmarried couples prefer to retain a previously owned property in case living together does not work out. Had they been selling a main residence they would not have had to pay the 3% surcharge but because they do not own one together they cannot do that.

Another example of where the new rules will hit legitimate arrangements is when a parent buys a property jointly with their child simply to help the child meet a lender's affordability requirements. Even though the property might be owned as tenants in common, with the parent only owning 1%, such a purchase will now be hit by the 3% surcharge, assuming the parent owns a property. Advisers can help such purchasers by recommending one of the few lenders, including Woolwich and Metro Bank, which allow the parent to be included on the mortgage deed without being a joint owner.

Ray Boulger is senior technical manager at John Charcol

IMAGE: ALAMY

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Double JEOPARDY?

The new Consumer Rights Act gives customers the option of a repeat performance of the mortgage advice process if they are dissatisfied with their service. ***Helen Glasser*** *examines the potential implications...*

A new major piece of legislation in the form of the Consumer Rights Act (CRA) came into force on 1 October 2015. It affects all businesses that provide goods or services to consumers, including those providing mortgage advice.

Your basic obligation as a mortgage adviser is to provide your service with "reasonable care and skill". The Financial Conduct Authority already requires mortgage advisers, through the rules in the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB), to ensure they enquire sufficiently into the needs and circumstances of their customers, in order to tailor advice and a mortgage solution that is suitable, along with minimum record-keeping requirements to ensure firms can evidence their advice.

So as long as you follow MCOB your firm should also stay on the right side of the CRA. But what if things do go wrong – a slapdash adviser within your firm perhaps? A failure to provide the service with reasonable care and skill gives the customer the right to request that your firm undertake the whole mortgage advice process again, in all likelihood at your cost.

This is a new remedy for customers, in addition to the right to approach the Financial Ombudsman Service (FOS). If repeat performance of the mortgage advice process is impossible, for example if the circumstances of the customer have changed such that a mortgage is no longer viable, or the relationship with the customer has irretrievably broken down, then the customer can request a price reduction.

The CRA and MCOB also both prohibit mortgage advisers from excluding liability to consumers that may arise from a failure to act with reasonable care and skill. So any terms to this effect that your business may have in its standard terms and conditions are likely to be unenforceable.

Financial promotions

The CRA also impacts on financial promotions and advertising. The contract that your firm enters into with its customers will include, as a contractual term, pre-contractual statements or information about the services if these are taken into account by the customer when deciding to enter into the contract. So if you claim to be "the cheapest mortgage adviser in town" or "fully independent" and these statements turn out to be untrue, the customer is likely to be able to claim breach of the CRA and request a financial remedy.

While the CRA is new and clarifies a number of aspects of consumer law, it does not add a great deal to the regulatory rules that mortgage advisers are already subject to in MCOB, or the remedies that are within the powers of the FOS to award. The CRA does, however, potentially provide customers with another course of action against your business, one that claims management companies may latch onto in due course.

So at the start of this new year it is a good idea to dust off your advice process, and the standard documents you use with customers, and ask yourself the following:

- Is the price I charge my customers clear and expressed in pound-note terms?
- Do I attempt to exclude or limit my liability to customers (which may infringe both the CRA and MCOB)?
- Is the service I will provide clear enough, including what is not included?
- If I expect payment from customers if a mortgage does not complete, are the terms clear enough for my customers to understand?
- Has the customer approached me on the basis of any advertising that is potentially misleading?

If you can get comfortable with the answers to these questions then compliance with the CRA should not be too much trouble for your business and you will be well prepared for compliance in 2016.

Helen Gasser is head of compliance policy - TMA Mortgage Club

IMAGE: ISTOCK

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INCOME PROTECTION SEE WHAT IT CAN REALLY DO

With IP sales on the rise and State help for those unable to work weakening, ***Andy Couchman*** *takes a look at a growing opportunity for advisers*

Just before Christmas, national disabled people's charity Revitalise (www.revitalise.org.uk) published disturbing findings about disabled people and their carers. More than eight out of 10 respondents (83%) were concerned about what the future holds, and half of those (43%) were either very worried or had never been so worried. Only 5% were unconcerned about their future. Worries over tougher State support do not help.

Earlier research from Scottish Widows indicated more than a third (37%) of families now have to rely on two incomes, while LV found that 34% of working Brits would not get company sick pay if ill and, of those, some eight million would get just the minimum Statutory Sick Pay (£88.45 a week). That compares to average UK pay of just over £400 a week. If you cannot work, the future can look grim.

A more graphic angle on the realities and risks of being long-term ill or disabled, is the highly successful industry initiative Seven Families (www.7families.co.uk). If you want to know the difference income protection (IP) insurance can make to real people with real problems, just take a look at some of its videos about the families that have been helped. Seven Families is all about households that had no IP cover but were helped as if they had, and one of its key lessons is not just how important extra money is (above State benefits), but also just how important practical help and advice is too.

Multiple benefits

Can we put a value on such benefits? In

IMAGE: ALAMY

December, Zurich published a report by independent economist Kyla Malcolm, which found the rehabilitation support provided by the IP sector added up to a value of around £110m a year. Individuals benefited to the tune of £5m a year because they could get back to work and earning faster. The taxpayer benefited by £27m (because the State could pay out less on benefits), employers by £17m (lower occupational sick payments) and insurers £25m, through lower claims. In addition, there was £35m of indirect savings, such as the cost of employing temporary staff. Remember, all this is on top of the income benefits IP paid out.

The numbers and stories illustrate just how crucial help and income can be, and that is especially true for anyone buying a home.

Yet we know that most people do not get round to taking out IP or, worse, expect or believe their employer will help. Often, it is only when they cannot work that the harsh reality kicks in. Then, it is so easy to play the blame game and ask: 'Why did no one tell me?' Don't let that 'no one' be you, the adviser.

On the up

At this point, you will probably expect the old moan that not enough IP is sold. Well, to some extent yes, that is still true, but it may be changing.

Gen Re noted recently: "Sales of IP have continued to increase quarter by quarter and for the half year [to end June 2015] were up 16% on the same period last year." That is against a background of generally rising non-advised protection sales (not good news for advisers) but overall flat or falling protection sales.

For mortgage advisers, it is common sense that customers can now only get mortgages they can afford, even if interest rates rise – common sense that is now enshrined in law. But that is put at risk if someone cannot work. IP does not replace the need for life insurance or critical illness insurance, but it does provide the all-important income and help that makes everything else secure.

So, IP sales are rising, State help is weakening, non-advice cannot compete and the product can quickly be mastered. Increasingly, advisers are seeing the opportunities – and acting on them.

Andy Couchman is co-chairman of Protection Review

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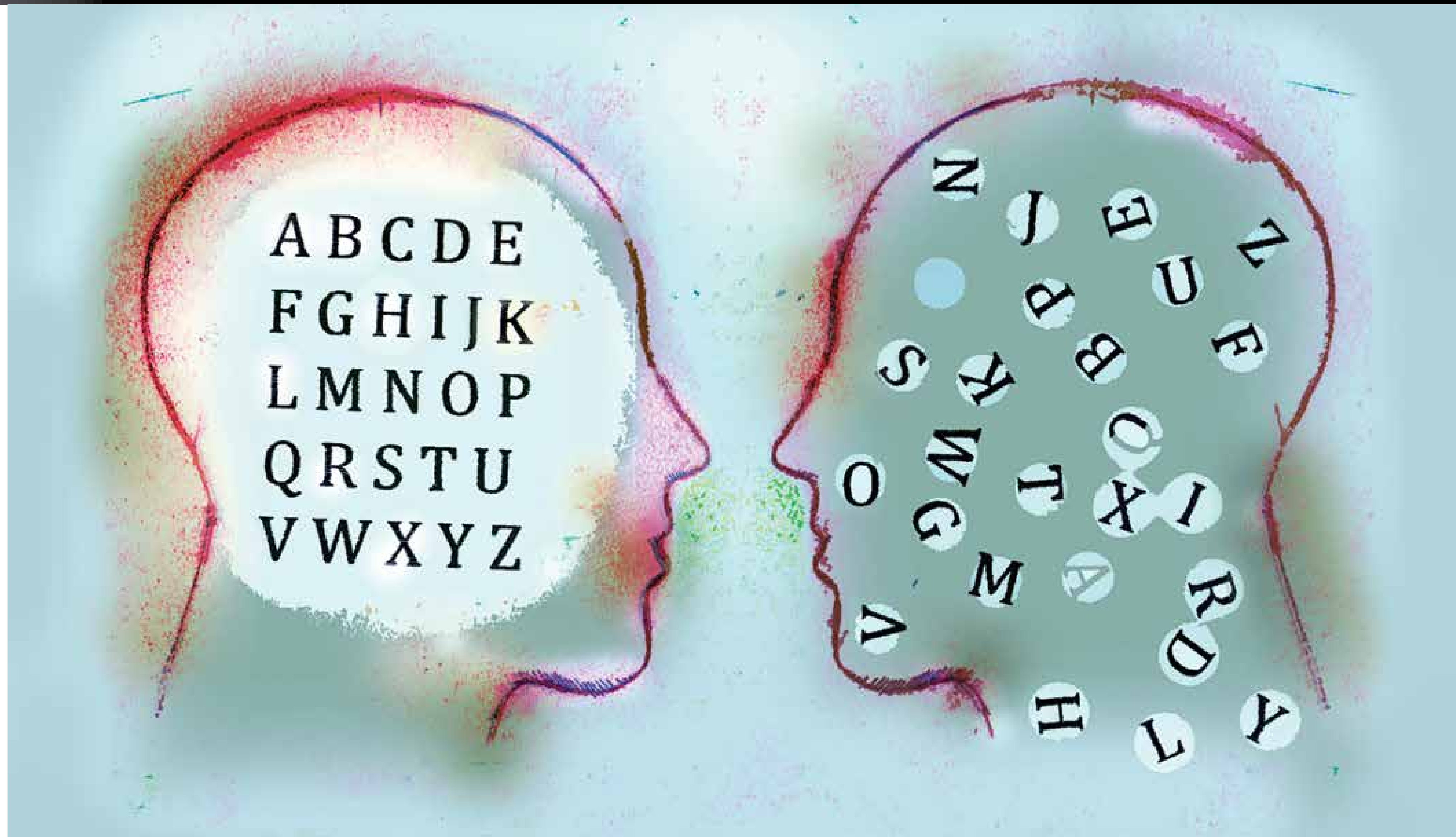

DOING THINGS BY THE LETTER

*The new year will see the outgoing APR replaced by the tongue-twisting SM&CR. Other than giving us a new acronym to remember, what do the changes mean for mortgage advisers on the front line? **David Thomson** explains…*

Anybody working in the world of mortgages would be forgiven the assumption that surviving through the Mortgage Market Review would be a cause for celebration and the hope that this might mean the sector would have a calm regulatory horizon for the next few years. Unfortunately, anyone thinking that is about to be disappointed.

The banking collapse in 2007 set in train a number reforms, which resulted in the Independent Banking Commission recommending that: 1) regulatory overview for banking needed to change by 2016; and 2) over time the rest of financial services needs to move away from the Financial Conduct Authority's (FCA) Approved Persons Regime (APR) to a new structure.

As a result of this, all banks and building societies (including employees involved in their mortgages businesses) will have to conform to a new set of requirements called the Senior Managers and Certification Regime (the less-than-snappily titled SM&CR) for banks, building societies and, in a modified form, for insurers. This will introduce a new regulatory framework for individual accountability to replace the APR for banking sector firms from March 2016.

The new framework

The new framework will have three components as set out by the FCA:

- Senior Managers Regime (SMR)
- Certification Regime
- Rules of Conduct

The SMR will directly replace the APR in its application to persons performing senior roles in a firm. These roles – known as Senior Management Functions (SMFs) – will have been specified in rules created by the Prudential Regulation Authority (PRA) and FCA. Firms need to provide for individuals already approved to be 'grandfathered' into relevant roles in the new regime. Any firms planning a new senior manager appointment, or a material change in role for currently approved individuals, will need to prepare and submit an application to the regulators for approval.

The Certification Regime will apply to individuals who are not carrying out SMFs but whose roles have been deemed capable of causing significant harm to the firm or its customers by the regulators. The regime requires firms themselves to assess the fitness and propriety of persons performing other key roles and to formally certify this, at least annually. These roles ('significant harm functions') are also specified by the regulators in rules but the appointments are not subject to prior regulatory approval. For example, in the case of banking, mortgage advisers would fall within this category.

Under the SM&CR, the regulators will have the power to make Rules of Conduct, which will apply to senior managers, certified persons and other employees. For senior managers (and other approved persons), these rules replace the statements of principle made under the APR.

As the FCA argues: "The SM&CR therefore gives the regulators flexibility to ensure a more effective, better targeted regulation of individuals working in the banking sector. For the most senior persons working in firms there will still be prior regulatory approval of individual appointments through a robust assessment process. For less senior but nonetheless important positions, firms will have to take responsibility for ensuring that the individual is 'fit and proper' on a regular basis, formally confirming this at least once a year.

It goes on to argue: "This improves upon the APR as the assessment is ongoing, as opposed to at a point in time under the current regime. The SM&CR will limit the number of individuals subject to prior regulatory approval to the top decision-makers in a firm while at the same time ensuring that the fitness and propriety of a far wider range of individuals is subject to a formal annual assessment by firms."

The impetus behind these changes is to encourage better behaviour individually, and collectively by firms, so there will also be Rules of Conduct to be applied to a "much broader range of staff [who] will also instil standards of good conduct across the financial services industry".

Unlevel playing field?

As the sharp-eyed of you will have noticed, this creates an interesting split across the mortgage market – with a different regulatory treatment for mortgage advisers working for a bank or building society from other mortgage advisers or brokers. But in October 2015 the FCA answered this challenge by announcing the second phase of its proposed changes, subject to approval by Parliament, saying it intends to extend the new regime to all firms by 2018, in a proportional manner, and replace the existing APR.

According to the FCA this will address the need for all financial firms to enhance personal responsibility for senior manager as well as providing a "more effective and proportionate means to raise standards of conduct of key staff more broadly".

So while there will be an unlevel playing field for firms from March 2016, the FCA is moving to fill this as it moves towards implementation of the regime across the whole market in two years time. Early 2016 should bring more detail of how this will happen, including any transitional provisions required.

But what is the regulator trying to achieve?

So that is the what, but what about the why? Interim FCA chief executive Tracey McDermott set the philosophy behind the changes in a recent speech:

"How will we know if we have succeeded? The measure should not be 'no misconduct'. I think this would be unrealistic. Things will go wrong and in financial services, as in any other industry, there will always be rogues. But what I would hope to see is more cases where misconduct is spotted by firms rather than by the regulator.

"And where it is spotted, it is identified sooner and acted on robustly. And I would want more of this to be identified not by firms' legal and compliance departments, but by those working on the front line. That people do not turn a blind eye to those pushing the boundaries."

So with the advent of 2016 comes a new set of acronyms to get used to. Enjoy!

David Thomson is director of policy and public affairs at the CII

IMAGE: ALAMY

IMAGE: ALAMY

Viva LA EVOLUTION

Following a year of change for the equity release industry, ***Andrea Rozario*** *looks back at the key events, and ahead to 2016*

Taken as a whole, 2015 was an interesting year for the equity release industry for several reasons. Large growth in lending, while relative, has been record-breaking, while we have also seen the entrance of a new big name lender in the form of L&G, interest rates dropping below the 5% mark and increasingly innovative products. Elsewhere, the Financial Conduct Authority (FCA) has questioned whether regulation is holding back the market – leading to much debate – and the pensions revolution has impacted on the funding of equity release, forcing lenders to think outside the box.

With predictions of further growth signalling what now looks set to be an ongoing trend, all in all it appears there are exciting times ahead for equity release and lending in retirement.

The older customer

Lending in retirement is a hot topic and for obvious reasons. The customer base is evolving and slowly but surely, so will the market. Attitudes are changing and our view of what we still label as an 'elderly' customer has to adapt. We also have to consider the pressure of the interest-only timebomb and the impact this will have on lending into retirement.

Both the Council of Mortgage Lenders (CML) and Building Societies Association have expressed interest in this market and the launch of a CML report – *Retirement Borrowing: Reality, Perceptions, Projections and Potential* – among other things, explores the potential for a market in the 50-75 age group for a product that can flex between capital repayment and interest-only rollup over time, along with the potential for further product innovation for the 65-74 age group.

Demographics and increasing need will inevitably drive change. At present, the over-65s control more property wealth than any other age group; they also constitute the most mortgage-free group and the majority will live into their 80s and beyond. So, with around £1trn of property wealth controlled by the over-65s, both traditional equity release and lending into retirement is a serious market.

Regulation and industry have been guilty of treating these customers as one homogenous group. There are myriad needs and attitudes among the older generation. Innovation, competition, appropriate compliance and service all have to develop and recognise just what the customer wants and needs. In terms of regulation we need to consider the impact of not just the FCA but our own industry regulation via our trade body. While I do not agree that removing hard-won safeguards is necessarily the way forward, I do feel that a system of tailor-made safeguards that actually counter the various needs of a variety of customers will be progression.

We have to change and adapt the attitude that all customers are 'vulnerable'. The industry and the regulator need to identify where this is the case and develop a real understanding of what is a very wide spread of customers.

Evolving market

Overall, 2015 has been a great year, but there is still a lot to do as we enter the next 12 months. We need to work together to develop products and advice that fit this evolving market, we need more advisers and more providers, and we need to really understand how our customers are changing.

Traditional equity release will always play a part and this will continue, which means we have to spread the word and educate the general population about the truths, risks and options in retirement. Increasing those options is good news for the customer and good news for the industry – it is inevitable that the face of equity release and lending in retirement will evolve just as the customer is evolving.

Andrea Rozario is chief corporate officer at Bower Retirement Services