

Mortgage Strategy Article 20 Oct 2008

By Richard Farr, Project Director, Telos Compliance

Section 166 Reports

So the first three things that come into your mind are: What on earth is a Section 166 Report? Why are they rearing their heads now? And, why should I be concerned?

All reasonable thoughts so let's pick them off one by one.

A Section 166 Report is also known as a Skilled Persons Report (SPR), the name coming from the part of the Financial Services and Markets Act, 2000 which gives the FSA the authority to request firms to seek specialist assistance.

Skilled Persons Reports are most often required as the result of an FSA visit to a firm. They are used to find out what further regulatory action may be needed and to see if there has been a breach of a rule or any failure of the firm's systems and controls, particularly where customer detriment is suspected.

The FSA will appoint a Skilled Person to produce a Section 166 Report on potentially four areas of each firm :

- Identify, assess and measure the risks.
- Report and monitor the identified risks.
- Suggest preventative action.
- Propose any remedial action including any customer redress.

So this is pretty serious stuff and up until now has been reserved for those firms who have been identified as high risk during the FSA's thematic visits, quality of advice work or those firms involved with the 200 suspected fraud cases of which we have seen the rash of enforcement notices coming out over the last few months.

So with the current difficult economic environment and extreme trading conditions why should advisers be ready to face up to this additional level of scrutiny? After all, most firms have never had a visit from the Regulator. The simple answer is the Small Firms Regional Assessments, which are part of the FSAs enhanced retail strategy. Since Mortgage regulation began in November 2004 only large firms have had visits (sometimes regular) from the FSA. Now every firm over the next 30 months is being directly contacted. And it is for this reason that any previous potential mortgage miss-selling will be evaluated, and for firms that are identified as higher risk Section 166 reports will come into play.

Already Northern Ireland and the North West have been fully visited, with the Midlands currently under scrutiny. Preparation for these visits is crucial and there is plenty of help available from Trade Bodies, the FSA's own website and compliance firms.

The reason for mortgage advisers to understand the consequences of a Section 166 report is to avoid them. It is wholly better to have a Skilled Person working for you to address any potential problems, than have one appointed working on behalf of the FSA. The outcome will be similar in identifying any potential issues but the proactive firm will find the cost of this work significantly less.

So my advice is type Section 166 Reports into Google, get as much knowledge as you can about them and act now to form a strategy to ensure you are never obliged to come under the scrutiny of one.