Dear Ms Grey

I hope you and the rest of ASIC will listen to what I have to say.

I'm worried that you have already made up your minds about what you are going to do and that your update to RG209 will make things even worse for borrowers than you have already.

This is because I've seen statements that ASIC is 'trying to debunk anecdotal stories you hear about people having trouble to get a loan and being asked to provide their Foxtel bills' (Michael Saadat in the Australian Financial Review on 27 February). So ASIC thinks that these are just stories that people are making up? But your own consultation paper says that statements for pay tv should be something that borrowers have to provide (Appendix 1, Table 4)!? In the same article Michael Saadat also says banks should be required to get borrower spending data through open banking. Why? I have a lot of clients that don't want people looking at their spending history and they plan to change their spending habits when they get a new loan anyways.

I've also seen statements from your Chairman saying he wants to debunk myths that responsible lending laws are to blame for borrowers having a hard time getting a loan (Australian Financial Review 28 March 2019). Seems like a lot of debunking that ASIC is up to. How about listening. Your Chairman not only says that there have been no changes to the laws since they came in more than a decade ago but that there has been no change to ASIC's administration of these laws. That is not true. Over the years ASIC has done reviews and released reports that have made it harder and harder for borrowers to get a loan. For example Report 445 on interest only loans suggested that lenders needed to get a detailed breakdown of borrower expenses and that where a benchmark was used it should be based on the borrowers income. This was despite there being no indication of people getting loans they couldn't afford. The result seems to be less people getting loans (likely paying more as well given the extra work that brokers and lenders are doing) and that borrowers are having a harder time refinancing. I'm worried that ASICs update to RG209 will make it even harder.

So hopefully you really will listen to what people are saying. And when I say people, I mean the vast majority of people. Not just the consumer groups who think that all credit is evil (even when there is no charge like Afterpay) and that it is good if credit is harder to get. And not just the extreme stories you see in the newspapers, the ABC, Today Tonight, or that got brought up at the Royal Commission. Bad things happen sometimes. But just because a few people get loans they can't afford doesn't mean everyone else who wants a loan should be punished. I think a lot more people are concerned about not being able to get a loan than getting a loan they can't afford.

So here are some responses to your questions.

B1Q1 - While it would be nice to have more certainty about what we need to do, I'm worried that the certainty we will get will not be good. A clear example of this is what ASIC said in Report 445 and what is contained in Appendix 1 of CP309. Getting all the documents listed in Appendix 1 would take a lot of time, likely increasing costs and why? Borrowers can change their spending. We should also be able to take borrowers at their word and not have to assume that they are always lying or trying to trick us. For example, isn't getting a payslip good enough to verify income. Why should we have to get a bank statement as well?

B1Q3 - It would be reasonable to require less inquiry and verification for refinances. If borrowers are up to date with their repayments on their current loan and just want to refinance for the same amount of money they should be able to do so easily, particularly where the new loan has a lower interest rate.

B1Q4 - There isn't anything that needs to be inquired about in all circumstances. For example, inquiries should usually be made about income. However in a refinance situation where the loan is up to date or where the borrower has a history of paying off loans on time, then there probably is no need.

B1Q5 - There is no need to verify living expenses as borrowers can change their spending habits.

B1Q6 - If ASIC gets specific about what inquiries and verifications need to be done, based on what I've seen so far it will be harder for borrowers to get loans (with some people not being able to get loans that they could probably afford) and that the cost of loans will go up. This has already been the case based on ASIC's reviews and reports.

B1Q7 - Business costs will go up because it seems ASIC keeps wanting more and more detailed inquiries and verification to be done. This was the case with Report 445 and looks to be the case with Appendix 1.

B1Q8 - Competition would decrease because all lenders would end up doing the exact same thing. This would mean that lenders could likely be more sure of not losing customers because they would know exactly how all other lenders would consider applications and they would know that more borrowers could not be bothered going through all the extra work of a loan application. This would mean they could probably increase interest rates.

C1Q1 - C1Q2 There is no need to have a detailed list of all documents that could be used for verification. Having such a list seems to suggest that you have to get everything and usually you only need one or two things. Most of what is on that list is not needed

C1Q3 - There is no need for data aggregation services. It seems ASIC is suggesting this because of living expenses and there is no need to verify previous expenses given they can change.

C2Q1 - The proposed clarification on verification would not be useful. It is just proposing to require lenders to do more than they need to, such as requiring them to look line by line at bank statements to track all expenses even if the bank statements are obtained to confirm genuine savings for a deposit.

C2Q2 - An if not why not approach would not improve practices and in fact would likely make things worse. Lenders would be worried about not having a good enough explanation to not get all documents so would always get all documents. This would make the whole loan process more time consuming and costly which would discourage many persons from applying for new loans.

C2Q3-C2Q5 - Loan applications would be more time consuming and costly for consumers. There would be many consumers who couldn't get loans that they otherwise could and would be able to afford or who couldn't be bothered refinancing if they had to get more documents. The proposals would increase business costs which would be passed on to consumers. Competition would decrease.

C3Q1 - The proposed clarification about benchmarks would not be useful. There should be no need to verify previous living expenses. Benchmarks are useful for serviceability assessments. Once you know how much disposable income someone has left, after deducting payments for other ongoing loans from an applicant's income, then a benchmark helps a lender decide if a person can afford to meet payments for the proposed new loan. The benchmark provides an indication of what the applicant could reduce their living expenses to get by on. There is nothing wrong with using a figure reflective of 'low budget' spending. Many people are quite happy to make big sacrifices to get a home loan and it is their decision to make not ASIC's. For the same reasons there shouldn't be a need to use a special benchmarks for different incomes or geographic areas.

C3Q2 - There is no need for a buffer. ASIC doesn't seem to understand maths or HEM. Just as there are people who spend more than HEM, so are there people who spend less than HEM. HEM itself includes amounts for discretionary spending that could likely be given up without a borrower actually suffering real financial difficulty. It's as if ASIC doesn't understand what real financial difficulty is. If anything, guidance should go the other way and say it is good enough to use a benchmark figure less than HEM.

C3Q3 - If ASIC says that lenders have to use a benchmark higher than HEM then a lot of people who could afford a loan will not be able to get one. This will hurt the economy even more than ASIC and the responsible lending laws already have done so.

C4Q1 - The proposed clarification of guidance would not be useful. Report 493 gave some examples of some good practices for mortgage brokers in relation to interest only home loans. This does not mean that these practices are legal requirements for all mortgage brokers. Many of these practices are also not relevant to lenders or other loans.

C4Q2-C4Q3 - The proposal would likely increase business costs which would be passed on to consumers. I cannot see how this proposal (or other proposals) could reduce the cost or increase access to credit.

D1-D5 - Other than the proposed guidance in relation to repayment history information (D3) which may me useful and increase access to credit, all other proposals would not be useful and would likely increase business and consumer costs and reduce access to credit.

I hope that ASIC seriously considers these comments. I also hope all comments, including mine, will be made public so that everyone can see what people are actually saying. Borrowers and the economy were doing just fine before we had responsible lending laws. ASIC's increasingly strict view over the last few years of what responsible lending laws require has already had a negative impact on borrowers and the broader economy. There is a real danger that ASIC's proposed guidance could make things even worse. If more people start having problems paying off their home loans it will likely be because too much 'responsible' lending has harmed the housing industry and the broader economy, not because of irresponsible lending.

Sincerely
Jamie