



Risk Assessment Checklist:

Compliance Following Court of Appeal Ruling on Commission Disclosure.

Factsheet – January 2025

V3.0

Background

In October 2024, the [Court of Appeal](#) found in favour of the consumer in three separate claims by individuals who had purchased cars through motor dealers acting as credit brokers. The finance for the cars was provided to the consumers through third-party lenders. The lenders were required to refund the commission paid to the broker and in one instance to pay compensation to the consumer for interest paid in respect of the commission relating to the finance agreements.

To assist you with the impact of this judgement, we have prepared a risk assessment checklist document for BVRLA members which aims to:

- Support you in understanding the full detail of the judgement, the implications it could have on your business and the wider industry
- Consider the next steps for both the short and long term to help you understand what you need to do to comply with the law.

Section 1: Understanding the Judgment and Its Implications

Review the Court Judgment

- ☐ Are you aware of the recent [Court of Appeal judgment](#) on motor finance and commission disclosure?
- ☐ Have you reviewed the [BVRLA's Commission Disclosure webpage](#), including the legal summary note and webinar?

Key objective: Understanding the full context of this ruling is essential. This judgment affects how you disclose commissions, highlighting the importance of transparency and understanding for both consumers and customers. For consumers, particular emphasis is placed on ensuring disclosures are clear and accessible, especially for vulnerable individuals.

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Risk Assessment Implementation Plan

- ☐ Do you have a risk assessment implementation plan that outlines the purpose and key areas for change as a result of the court ruling?

Guidance: Developing a structured risk assessment implementation plan can help identify areas requiring adjustment, such as policy updates, process changes, or additional documentation needs to comply with the new standards.

Identify Key Areas of Impact

- ☐ Do you understand how this ruling applies to your business model, specifically in the context of acting as both a broker and a seller and in relation the particular products you offer?

Key objective: The judgment underscores potential conflicts of interest when a broker also acts as a seller. Reflect on whether your current processes clearly communicate the broker's dual role to consumers and customers, particularly emphasising transparency for financially unsophisticated consumers.

Assess Potential Legal Duties

- ☐ Have you reviewed your responsibilities under “disinterested duty” and “fiduciary duty”?

Key objective: Brokers are required to offer impartial advice and, in some cases, owe a fiduciary duty. Failing to disclose commissions can breach these duties, especially if the customer, particularly a vulnerable or financially unsophisticated consumer, does not give informed consent.

Section 2: Policy and Process Adjustments

Commission Disclosure Policies

- ☐ Have you updated your policies to ensure that they conform with the principles laid out in the judgment?

Key objective: Non-disclosure of commissions can lead to legal consequences. Your policy should detail how and when commissions are disclosed, with an emphasis on transparency to prevent confusion among both consumers and customers. Additional care should be taken to ensure disclosures are accessible and understandable to vulnerable or unsophisticated consumers

Conflicts of Interest

- ☐ Do you have a Conflicts of Interest policy that addresses potential conflicts arising from commission arrangements and a Conflicts of Interest register to record any actual conflicts recognised?

Key objective: Your policy should clearly address how you manage conflicts of interest, especially given the dual role as both seller and broker. Ensure that any bespoke deals or volume-based incentives with funders are logged in your Conflicts of Interest Register, particularly where they might impact transparency or fairness for consumers or customers. This should detail who is responsible for managing the conflict of interest and the steps taken to mitigate the risk.

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Complaints Handling Process

- ☐ Have you reviewed your complaints handling process to ensure it covers issues related to commission disclosure?

Key objective: Consumers and customers may raise complaints if they feel commission disclosure was unclear or unfair. Your process should include steps for investigating and addressing complaints related to undisclosed commissions, with particular attention to the needs of vulnerable or financially unsophisticated consumers.

Remuneration Policies

- ☐ Have you reviewed your remuneration policies to ensure they do not create incentives that could harm consumer or customers interests?

Key objective: FCA regulations prohibit commission models that incentivize higher finance costs. Ensure that your remuneration policies are structured in a way that aligns with the best interests of both consumers and customers, with particular emphasis on safeguarding vulnerable or financially unsophisticated consumers.

Data Subject Access Request (DSAR) Management

- ☐ Do you have a plan in place to handle an anticipated increase in DSARs from consumers and customers?

Key Objective: Following recent rulings, consumers and customers may request more information about their agreements, including commission disclosures. Ensure you have resources and processes to respond to DSARs promptly and accurately.

Section 3: Consumer Communication and Documentation

Clear Consumer Communication

- ☐ Do you provide clear information about your role as both seller and broker, including potential conflicts of interest?

Key objective: Make sure both consumers and customers understand your role in both selling and financing. For consumers, ensure communication accounts for their potential financial vulnerability or lack of sophistication. This helps avoid confusion and ensures they make informed decisions about their finance options.

Informed Consent for Commissions

- ☐ Do you have a documented process for obtaining informed consent from consumers and customers regarding commission payments?

Key objective: To meet regulatory requirements, ensure consumers and customers provide informed consent. For consumers, this includes disclosing the existence, nature, and impact of commissions in

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a way that accounts for their understanding and vulnerability. This should include clear information on the commission's existence, nature, amount, and impact on their payments.

Disclosure of All Fees and Remuneration

- ☐ Are all forms of remuneration, including panel fees, administration fees, and volume-based incentives, clearly disclosed to consumers and customers?

Key objective: Transparency about all remuneration types is crucial to avoid potential claims of unfairness. Ensure that consumers and customers are aware of any fees that may impact their finance agreement. Transparency is especially important for consumers who may be more vulnerable to unfair practices.

Section 4: Training and Continuous Improvement

Staff Training

- ☐ Do you provide regular training to staff on updated commission disclosure requirements and the importance of informed consent?

Key objective: Ensure staff understand the importance of transparent commission disclosure and how to obtain informed consent from consumers. Regular training supports compliance and consistent practices. Training should include specific strategies for communicating with both consumers and customers, emphasizing tailored approaches for vulnerable consumers.

Continuous Policy Review

- ☐ Do you have a process for regularly reviewing and updating your policies in response to regulatory changes and legal developments?

Key objective: Establish a process for keeping policies up to date, especially as new guidance and regulations emerge. This can help prevent non-compliance and enhance consumer and customer trust.

Audit and Internal Review

- ☐ Do you conduct regular internal audits or reviews to identify any gaps in compliance with commission disclosure practices?

Key objective: Periodic audits provide an opportunity to assess and improve your processes. Focus on identifying any risks in areas such as commission disclosure, informed consent, and conflicts of interest.

Useful Resources

[BVRLA Webpage on Commission Disclosure, including Norton-Rose Fulbright Summary](#)

[Court of Appeal Judgement](#)

[BVRLA Webinar on Court of Appeal Commission Case](#)

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Compliance & Governance



[Consumer Credit Act 1974](#)

[FCA Handbook](#)

Contact

For any further queries or information on the Court of Appeal judgement on Commission Disclosure, please contact commissions@bvrla.co.uk

Version	Date	Owner	Approved by
1.0	6 th November 2024	BVRLA Compliance	Harry Madan

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