Motor Finance

Opportunities in a regulated world beyond EU Exit

BVRLA | Fleets in Charge
Breakout Session

CONSUMER CREDIT AND ASSET FINANCE SPECIALISTS

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Commission Models/Disclosures
SM&CR Update
Guidance on Vulnerable Customers
Updated Temporary Relief on Covid-19
Horizon Scanning

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Commission Models

Implementation date – **28 January 2021**

- **Broadened definition of** discretionary commission arrangement.
- **Scope of ban on motor vehicles –** definition of 'motor vehicle' not provided.
- **Loan size –** The FCA do not intend to ban commission products linked to loan size.
- **Varying commission levels across dealers/brokers –** The FCA does not expect, or want, the industry to move towards a common commission level.
- **Rate for risk models –** The FCA confirms that firms can continue to use rate for risk models.
- **Prices –** the FCA does not have evidence that prices in the market are inherently too high.
- **Interest rate negotiation –** Brokers can negotiate rates – the industry are deciding on what extent this will permitted.
- **Secondary brokers –** The FCA do not categorise many secondary brokers as 'credit brokers'.

  The scope of the ban is therefore not being widened to secondary brokers in cases where they are both:
  (i) not negotiating or determining what the consumer pays for motor finance and
  (ii) being rewarded by the lender for doing so.
- **Consumer hire –** the FCA are taking no action at this stage to expand the scope of the ban to consumer hire but firms are strongly advised to remove the models that are banned for credit products in light of the level of harm that such models have caused.

Commission Disclosure

- **Ban to apply to all firms carrying out credit broking –** harm occurred regardless of the broker type.
- **Commission disclosure applies to all regulated consumer credit matters including hire.**
- **CONC 3.7.4G** is amended so it is clear that firms should disclose the **nature of commission** in their financial promotions (as well as when making a recommendation).
- The FCA guidance clarifies that firms should consider the impact commission could have on a customer's willingness to transact and that firms should consider whether and how much commission can vary depending on the lender, product or other permissible factors and tailor their disclosures accordingly.
- **CONC 4.5.3R** clarifies that the existence and nature of commission arrangements where the commission varies depending on the lender, product or other permissible factors should always be disclosed prominently.
- The disclosure must also cover how the arrangements could affect the price payable by the customer, it said.
- Once the models are agreed within the industry, the disclosure statements can be finalised. Lenders should be leading on this and agreeing these requirements with their brokers.
- Both the new commission models and the new disclosure statements need to be in place for the 28 January 2021.

Senior Managers & Certification Regime (SMCR) Update

- A new report (REP008) for firms to inform the FCA where they have taken disciplinary action against individuals who are not Senior Managers for breaches of the Conduct Rules. A nil return is required if there have been no breaches resulting in disciplinary action. First return, will be certified persons and board directors who are not Senior Managers. Once other staff are subject to the conduct rules, this form will apply to them (see below).

- The first REP008 is due on **02/11/20 for the period 09/12/19-31/08/20.** A failure to submit a report by the deadline will be charged a late return fee of £250. This must be submitted annually thereafter. For conduct rule breaches by senior managers, Form D or C will apply submitted via Connect at the time of the breach.

- The deadline for firms to assess the fitness and propriety of their Certified Persons will be delayed from **9 December 2020 to 31 March 2021.** If firms can certify their staff earlier they should do so. To remain consistent, the FCA are also consulting on extending the deadline to the 31 March 2021:-
  - the date the conduct rules come into force;
  - the deadline for submission of information about directory persons to the register.
  - the deadline for assessing certified persons as fit and proper (this has been agreed by the treasury).
- Senior manages must ensure training is effective. The FCA will produce further guidance on their expectations.
- Further update to the Consultation is due to be released sometime in October 2020.

Senior Managers & Certification Regime (SMCR) Update Cont..

- Senior managers should actively oversee the assessment process and ensure appropriate reporting. It is poor practice for senior managers to delegate without demonstrating adequate oversight and reporting.
- Senior managers should sit on fitness and propriety panels and give consideration to marginal cases if they arise.
- The FCA's guidance reiterates the obligation for firms to undertake regular, thorough, and consistent fitness and propriety assessments. An individual's competence should be assessed in relation to their specific role.
- Assessments should effectively identify all issues with staff. This means that some staff may fail the test or require development plans to be put in place. A "rubber stamp" approach will not be sufficient to meet the FCA's expectations.
- Firms must incorporate a robust process for identifying certification staff on an ongoing basis.
- Firms must obtain satisfactory regulatory references that identify the necessary concerns, and must do so in a timely manner.
- The FCA have released a list of positive and negative indicators to help with assessments to support firms with their assessments.
- Conduct and Culture are key for firms to implement alongside SMCR.

Guidance on Vulnerable Customers

- The FCA's wants to ensure the fair treatment of vulnerable consumers is properly embedded by firms in their culture, policies and processes.
- The guidance provides clarity and is intended to focus firms' attention on what they should do to comply with the FCA's Principles for Business, in particular its sixth principle on "**treating customers fairly**".
- Previous guidance, needed to consider both actual and potential vulnerability. New guidance, firms must look at 'Spectrum of Risk' and be ready and able to respond.
- There is a need in the new guidance for firms to encourage customers to talk about needs and actively promote support services available.
- The guidance applies to where products and services are supplied to individuals who are retail consumers and also individuals who are business customers. This includes sole traders and some partnerships.
- While the guidance will not directly apply where regulated firms provide services to incorporated businesses, it should not be disregarded.
- The guidance consultation closes for comments on **30 September 2020** and will take effect when it is issued. There will not be an implementation period.

Vulnerable Customers – To Do Checklist

- **Exercise judgement:** Use own judgement to consider what each section means to firms and what they should do to ensure they treat consumers fairly – this should not be treated as a tick-box exercise.

- **Review culture, policies and processes:** Demonstrate how culture, policies and processes ensure the fair treatment of all consumers including vulnerable customers which should be embedded in product, service and process design and communications.

- **Deliver staff training:** It may not be proportionate to send all staff on vulnerability training courses. Firms should consider updating existing training to reflect how the fair treatment of vulnerable consumers is relevant to their role.

- **Check systems and functions:** Set up systems and processes in a way that will support and enable consumers to disclose their needs.

- **Assess product service and design:** Consider the needs of vulnerable customers at all stages of product and service design: idea generation, development, testing, launch, and review.

- **Evaluate the customer journey:** Respond to the needs of vulnerable consumers at all stages of the customer journey, including the sale of products and services.

- **Learn and improve:** Continuously monitoring and learning - what activities and processes work well? what needs to be adapted to improve the outcomes for vulnerable consumers?

Updated Temporary Relief on Covid-19

- The Guidance applies to consumers who:
    - Have benefited from 2 payment deferrals granted under the July guidance and remain in payment difficulties;
    - Have benefited from an initial payment deferral when the July Guidance is no longer generally in effect and remain in payment difficulties; or
    - Experience payment difficulties as a result of circumstances relating to coronavirus when the July guidance is no longer in effect.
- The July Guidance will continue to apply to customers newly affected by Covid-19 until the end of October – with consumers able to receive an initial or further payment deferral which could last until 31 January 2021.
- New Guidance came into force 2 October 2020

Updated Temporary Relief on Covid-19 Cont/d…

The finalised Guidance sets out the FCA's required outcomes and a summary of the changes are:

- **Section 2: Consumer Credit and Coronavirus** – end of deferral review and approach – requirement to offer a more tailored support
- **Section 3: Dealing with Customers at the end of a payment deferral period** – customer contact, persistent debt, arrears, waiving interest and refinancing – how this works in line with CONC 5, 6 and 7
- **Section 4: CRA Reporting** – resume normal CRA reporting
- **Section 5: Delivering Effective Forbearance** - forbearance options, staffing, range of forbearance options, sustainable arrangements, I&E Assessments, preventing escalating balances, review, customer communication, vulnerable customers and right to VT – delivering fair customer outcomes
- **Section 6: Repossession (HP, conditional sale and consumer hire)** – resumes from 1 November 2020
- **Section 7: Debt Help and Money Advice** – types of debt help and money guidance available to customers

Horizon Scanning - FCA Latest Update

- **The Unsecured Credit Market**, and while targeting buy now pay later products, the regulator warned it won't loosen up controls over high-cost credit – Recommendations will be made to the board in early 2021

- **Operational Resilience** to cyber threats no longer just an IT issue for lenders - As the cyber threat to financial institutions becomes an occupational hazard, firms need to adjust their approach to operational resilience. Consultation closed 1 October 2020

ANY
QUESTIONS?

If you have any questions or would like more information on any aspect of this presentation, please contact:

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Is your Sales Process right for the customer?

Key Aspects of the customer journey that could be improved

ccas consumer credit advisory services

Naveed Asif

Common findings/shortcomings

1. Relevant sales documentation/Information
2. Cancellation Fees
3. Complaints MI
4. Forbearance.

FCA priorities on consumer credit

In a nutshell:

- right products for the right people
- right information → customer makes right choice
- affordable (+ no unsustainable debt)
- vulnerability recognised

…and always:

- PRIN (integrity, fairness, information)
- SYSC (MI, governance, ‘virtuous circle’)
- SMCR (accountability, culture, purpose)

FCA understand motor finance well

Key current issues:

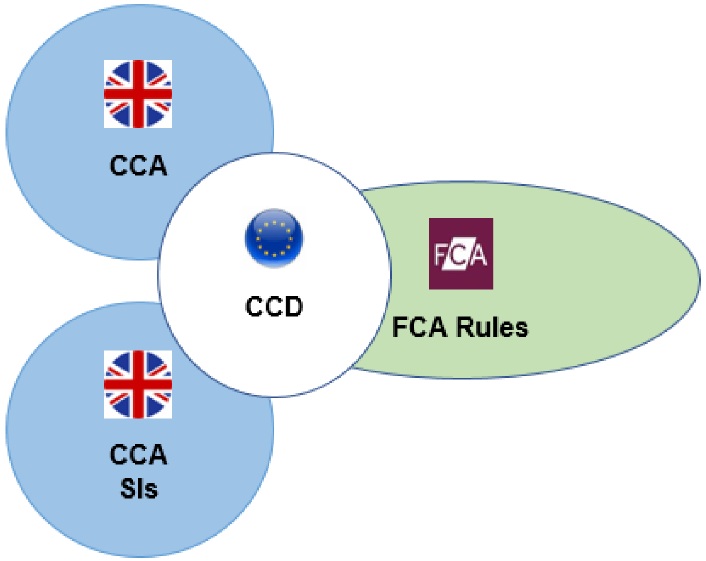
- dealer commissions – the final furlong
- forbearance
- intermediary oversight – unfinished business (→ opportunity)
- competition and price
- sub-prime and vulnerable customers
- Fintech

Opportunity for industry to 'own' its issues and retain regulatory trust

Current Position

The current legal and regulatory regime for consumer credit is complex, out-of-date, inflexible and hard to navigate, consisting of:

- Consumer Credit Act 1974 (CCA)
- 27 statutory instruments made under the CCA
- Consumer Credit Directive 2008/48/EC (CCD)
- FCA rules, mainly in the Consumer Credit Sourcebook (CONC), made under the Financial Services and Markets Act 2000



Future Position

The UK will cease to be bound by the CCD from January 2021. If UK primary legislation can be secured, this affords an opportunity to enact a more transparent, future-proof and adaptable regime for consumer credit. This would consist of a smaller Consumer Credit Act, where only matters that require legal enactment (such as rights and liabilities) would be provided for, with all other matters delegated to FCA rules – as for other financial services products.