



FCA Review on Discretionary Commission Arrangements in Motor Finance

Factsheet- February 2024

Background





The Financial Conduct Authority (FCA) has recognised an increase in complaints relating to regulated credit motor finance agreements (such as Personal Contract Purchase and Hire Purchase) involving discretionary commission arrangements (DCA's). A large number of these complaints have been referred to the Financial Ombudsman Service (FOS) and some have been upheld. The FCA are concerned that a 'complaint-led' approach to redress could result in disorderly, inconsistent and inefficient outcomes for both consumers and the motor finance market.

What action have the FCA taken and what agreements does this apply to?

As a result of the above, the FCA are using their powers under s166 of the Financial Services and Markets Act 2000 to conduct a skilled persons' review of historical motor finance commission arrangements across several firms.

While this takes place, a 37-week pause on the usual rules applying to the handling of complaints has been initiated relating to motor finance complaints in relation to all regulated motor finance credit agreements (PCP and HP agreements) with discretionary commission arrangements in place between the lender and broker of the finance agreement.

The FCA have [defined a motor finance DCA Complaint](#) as the following:

-  The complaint is about a regulated credit agreement taken out before 28th January 2021.
-  The agreement financed the purchase (including via hire purchase) of a motor vehicle.
-  There was a discretionary commission arrangement between the lender and the broker of the agreement.
-  The firm:

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- Received the complaint between 17th November 2023 and 25 September 2024 inclusive and/or
- Sent its final response to the complaint between 12 July 2023 and 20 November 2024 inclusive.

As per the FCA's [Policy Statement](#) this does not currently apply to Personal Contract Hire (PCH) agreements.

The pause does not apply to:

- Civil Claims
- Complaints already referred to FOS
- Complaints that are not about motor vehicle finance (e.g. Caravans or Agricultural Tools
- Complaints that have already received a final response.

This pause will take place from the **11th January 2024** until the **25th September 2024** and will allow for the FCA to decide whether redress should be provided through complaints or an alternative approach. **The period for referring complaints to the FOS has been extended from 6 months to 15 months.**

The review aims to distinguish whether there is likely to have been a widespread failure to comply with requirements, and whether harm has therefore been caused to customers. The FCA will then also distinguish how many customers may be owed redress and the potential amount that could be owed.

Further information on the pause implemented by the FCA can be found on their [information for firm's webpage](#) and on the [BVRLA's Motor Finance Complaints FAQ webpage](#).

What does this mean for Brokers?

Responding to Complaints:

The FCA have recognised the likelihood that brokers will receive an increased number of complaints while the review takes place. It's really important that complaints continue to be handled in a timely manner with adequate information provided to consumers.

Both Consumer Finance Champion websites and Claims Management Companies have prepared easily downloadable templates which consumers can distribute en masse to brokers who have supported them with arranging car finance and their respective lenders that they have had historical agreements with. Brokers should carefully review the agreement referenced in any complaint, along with the context of that complaint, to ensure that:

1. The agreement is a regulated credit agreement rather than a regulated hire agreement before deciding their next steps and

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2. That the nature of the complaint is specific to DCA's before deciding whether the pause applies.

Responding to a DCA complaint on a **PCP** or **HP agreement**:

- Written acknowledgement to any complainants of a DCA complaint to include an explanation of the pause time limits for dealing with their complaint.
- They should be made aware why the time limits have been paused.
- Complainants that have already received a written acknowledgment on their complaint should be written to again to notify them of the pause and the reason for it.
- A final response may still be the correct course of action during the pause in situation such as:
 - A consumer who's previously complained about commission and received a final response is now raising a different complaint or
 - Where it's possible to resolve the complaint as the DCA is not a relevant consideration.

Responding to a DCA complaint on a **PCH agreement**:

- The usual [DISP rules](#) will continue to apply to complaints about a **regulated hire agreement** or where the broker wasn't acting under a DCA.
- The FOS will continue to investigate and determine complaints not covered by the pause based on the individual circumstances of the complaint. Members will be required to cooperate with the FOS in the usual way.

Record Keeping

The FCA's [general rules on record retention](#) required regulated firms to arrange for orderly records to be kept of their business including all services and transactions undertaken. This requires that firms should retain records for 'as long as they are relevant for the purposes for which they were made'.

Both lenders and brokers should (regardless of whether the customer has complained or not) maintain and preserve any records that **are or could be** relevant to the handling of complaints or civil claims relating to agreements with DCA's entered into before 28th January 2021. This requirement will apply until the 25th January 2025.

If you do not have the relevant records retained in relation to DCA complaints, they should still be investigated fairly.

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Consumer Duty and Complaints Procedures

The FCA have clearly outlined that the changes that they have made do not change their expectations of firms in relation to the Consumer Duty.

Brokers should:

- Anticipate increased customer contact. It is likely that many customers will not know what type of agreement they had with their finance provider (whether PCP, HP or PCH) so are likely to contact you for this information on the chance that they are able to try and reclaim compensation.
- Be operationally prepared by having adequate resource across your customer facing functions to handle an increase in complaints.
- Review current record keeping policies and procedures in line with this review and recommend any improvements are made as soon as possible, whilst ensuring that any potentially significant existing records are not disposed of.
- Review your complaint handling procedure ensuring that it is:
 - Fit for purpose (following the [DISP rules](#)),
 - Includes all of the relevant contact information and timelines,
 - Clear, concise and easy for customers of all abilities to read,
 - Includes contact details for the relevant alternative dispute resolution services ([FOS](#) and the [BVRLA](#)).

Next Steps

For further information please contact compliance@bvrla.co.uk

Useful Information

FCA [information for firm's webpage](#)

FCA Complaint Handling Rules: [DISP rules](#)

Financial Ombudsman Service: [FOS](#)

BVRLA Conciliation Service: [BVRLA](#)

[BVRLA's Motor Finance Complaints FAQ webpage](#)

FCA [Policy Statement 24/1](#)

FCA [information for consumers](#)

FCA [Webinar on Temporary Changes to Handling Rules for Motor Finance Complaints](#)

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