

The purpose of this note is to provide an overview of the Financial Conduct Authority's (**FCA**) recent intervention in the motor finance sector and to set out steps that should now be taken.

## 1. The FCA's Intervention

- 1.1. On 11 January 2024, the FCA published Policy Statement PS 24/1 (the **Policy Statement**).
- 1.2. The Policy Statement is focused on discretionary commission arrangements (**DCAs**), which are essentially arrangements whereby a lender allows the broker to set the interest rate on a credit agreement and the amount of commission the broker receives is linked to the interest rate. Generally, the higher the interest rate, the higher the commission the broker would receive.
- 1.3. Following its review of the motor finance sector between 2017 and 2019, the FCA introduced a ban on DCAs, which took effect from 28 January 2021.
- 1.4. In the Policy Statement the FCA announced:
  - 1.4.1. A skilled person review under s.166 of the Financial Services and Markets Act 2000 (**FSMA**);
  - 1.4.2. Temporary rules that provide for:
    - 1.4.2.1. a 37 week pause to the requirement for firms to provide a final response to a DCA complaint within 8 weeks of receipt (starting on 11 January 2024 and ending 25 September 2024) (the **Pause**);
    - 1.4.2.2. an extension to the period for complainants to refer their DCA complaints to the Financial Ombudsman Service (**FOS**) from 6 to 15 months where the final response was sent during the period beginning 12 July 2023 and ending 20 November 2024 inclusive (the **FOS Extension**);
    - 1.4.2.3. various requirements in terms of the communications that must be sent to complainants in relation to DCA Complaints, such as requirements to notify complainants of the Pause and explain why the Pause has been implemented; and
    - 1.4.2.4. record keeping requirements.

### **s.166 Skilled Person Review**

- 1.5. The s.166 skilled person review is being conducted to undertake diagnostic work aimed to help the FCA determine whether firms owe redress to a large number of customers. If so, the FCA may decide that providing redress through consumer

complaints does not lead to best outcomes for consumers or the effective functioning of the market. Instead, the FCA may intervene with an alternative approach, such as:

- 1.5.1. Setting up an industry-wide consumer redress scheme (under s.404 of FSMA); or
- 1.5.2. Applying to the Financial Markets Test Case Scheme to resolve any contested legal issues of general importance.
- 1.6. The aim of the diagnostic work is to help FCA determine whether *“there is likely to have been widespread failure to comply with relevant requirements that has caused financial loss to consumers.”*
- 1.7. The s.166 skilled person will report on how a sample of firms carried out motor finance sales before the introduction of the ban on DCAs in 2021. This will include sales before the FCA took over regulation of motor finance and consumer credit in April 2014 and goes back to 6 April 2007 (when consumer credit first came within scope of FOS jurisdiction). The FCA has indicated that it believes a significant number of motor finance arrangements made between 2007 and the ban on DCAs in January 2021 may have involved DCAs.
- 1.8. The skilled person will look back *“...over time at a large sample of customer files to review the arrangements between lenders and [dealers], and the information provided to consumers at the point of sale, including how commission was disclosed. The findings will help [the FCA] decide whether consumer complaints should continue, or if an alternative approach is needed to resolve this issue in an orderly, consistent and efficient manner.”*
- 1.9. Those in the market who are involved in the s.166 review have already been informed and the review is now under way.

### **Temporary Rules – The Pause**

- 1.10. The Pause only applies to certain “DCA complaints”.
- 1.11. A DCA complaint is defined as follows:
  - 1.11.1. The complaint is about a regulated credit agreement taken out before 28 January 2021;
  - 1.11.2. The agreement financed the purchase of a motor vehicle (including HP but excluding lease or hire agreements);
  - 1.11.3. There was a DCA in place between the lender and the dealer (as broker of the agreement); and
  - 1.11.4. The firm:

- 1.11.4.1. Received the complaint between 17 November 2023 and 25 September 2024 inclusive; and/or
  - 1.11.4.2. Sent its final response to the complaint between 12 July 2023 and 20 November 2024 inclusive.
- 1.12. The Pause only applies to:
- 1.12.1. 'New' DCA complaints received on or after 11 January 2024; and
  - 1.12.2. DCA complaints received on or after 17 November 2023 where no final response has been sent.
- 1.13. The Pause does not prevent firms from responding to DCA complaints during the period of the Pause. DISP 1.4.1R continues to apply during the Pause. This requires firms to assess and investigate complaints promptly and diligently. The FCA encourages firms to continue to progress DCA complaints during the Pause by investigating and collecting evidence that could help with eventual resolution.

### ***Temporary Rules – Communications About Complaints***

- 1.14. The FCA requires dealers to update the information that they have published regarding their internal complaints procedures to inform consumers of the Pause and to refer consumers to [www.fca.org.uk/car-finance-complaints](http://www.fca.org.uk/car-finance-complaints). This would extend to pages on websites or similar setting out details of a dealer's complaints procedures.
- 1.15. In terms of communications with complainants in relation to DCA complaints:
- 1.15.1. Where, on or before 10 January 2024, a written acknowledgement was sent in accordance with DISP 1.6.1R(1) but a final response has not yet been sent, the dealer must write to the complainant to inform them of the Pause and direct the complainant to [www.fca.org.uk/car-finance-complaints](http://www.fca.org.uk/car-finance-complaints).
  - 1.15.2. Where neither a written acknowledgement nor a final response has been sent on or before 10 January 2024, the dealer must write to the complainant to inform them of the Pause and direct the complainant to [www.fca.org.uk/car-finance-complaints](http://www.fca.org.uk/car-finance-complaints).
  - 1.15.3. Where a dealer has sent a final response to the complainant during the period beginning on 12 July 2023 and ending on 10 January 2024 (both inclusive), the dealer must now write to the complainant to inform them of the FOS Extension, make clear that the 6 month time limit contained in the FOS explanatory leaflet does not apply and direct the complainant to [www.fca.org.uk/car-finance-complaints](http://www.fca.org.uk/car-finance-complaints).
  - 1.15.4. Where a dealer sends a final response, they must ensure that the final response informs the complainant of the FOS Extension, makes clear that

the 6 month time limit contained in the FOS explanatory leaflet does not apply and directs the complainant to [www.fca.org.uk/car-finance-complaints](http://www.fca.org.uk/car-finance-complaints).

### **Temporary Rules – Record Keeping**

- 1.16. The requirement to keep a record of each complaint received for three years does not run for the period beginning on 11 January 2024 and ending on 25 September 2024 (inclusive). Effectively, the period is interrupted and so extended.
- 1.17. For the period commencing 11 January 2024 and ending on 10 January 2025 (inclusive), lenders and credit brokers must retain and preserve records in relation to any relevant regulated credit agreement (which was entered into before 28 January 2021 and which meets the requirements of DISP APP 5.1.2R(1)(b) and (c)<sup>1</sup>) regardless of whether a DCA complaint has been received.

## **2. Suggested Template Communications**

- 2.1. Included at Annexes 1 – 4 to this advice note are four suggested communications intended to address the communication requirements under the FCA’s temporary rules.
- 2.2. The suggested communications comprise:
  - 2.2.1. **Annex 1** – A suggested form of wording to be included on dealers’ websites to inform consumers of the Pause and to refer consumers to [www.fca.org.uk/car-finance-complaints](http://www.fca.org.uk/car-finance-complaints). This could be used as a “pop up” when consumers click to view a dealer’s complaints procedure.
  - 2.2.2. **Annex 2** - A suggested form of wording for a letter to be sent in relation to DCA complaints where an acknowledgement has been sent but no final response has been provided. The purpose of this letter is to inform the complainant of the Pause;
  - 2.2.3. **Annex 3** - A suggested form of wording for a letter to be sent in relation to DCA complaints received on or after 11 January 2024, where neither an acknowledgement nor a final response has been provided. The purpose of this letter is to acknowledge the complaint and to inform the complainant of the Pause; and
  - 2.2.4. **Annex 4** – A suggested form of wording for a letter to be sent in relation to DCA complaints where a final response was sent during the period between 12 July 2023 and 10 January 2024 (inclusive). The purpose of this letter is to inform the complainant of the FOS Extension.

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<sup>1</sup> DISP APP 5.1.2R(b) and (c) require that the credit agreement financed the purchase of a motor vehicle and that there was a DCA in place between the dealer and the lender.



If you have any queries relating to the changes to the complaints rules, use of the template documents or anything else connected with the FCA's review, please contact the NFDA on [nfda@rmif.co.uk](mailto:nfda@rmif.co.uk).

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