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PRIVATE & CONFIDENTIAL

To Whom It May Concern

**Key Factors arising from FCA CP25/27 - Motor Finance Consumer Redress Scheme, Diagnostic Report & Technical Annex 1**

1. The FCA are consulting on an industry-wide compensation scheme for motor finance customers who were treated unfairly.
2. They have reviewed 32M agreements and found widespread failings on how motor finance firms disclosed commission payments and commercial ties between lenders and brokers. Their view is that inadequate disclosure of commission means consumers are less likely to make informed decisions, negotiate or shop around for a better deal. Their analysis indicates that many people may have overpaid on their motor finance
3. **They estimate 14.2M agreements – 44% of all agreements made since 2007 – will be considered unfair.**
4. The proposed scheme would cover regulated motor finance agreements taken out by consumers between 6 April 2007 and 1 November 2024 where commission was payable by the lender to the broker.

The 6 April 2007 date being when the transitional provisions commenced for s.140A-C of the Consumer Credit Act 1974 ('1974 Act') which introduced the unfair relationship provisions.

The Claimant space is en masse going to challenge the start date and counter propose that any agreements which were taken out pre-April 2007, but live post- this date should be included – which will cover circa 3M to 4M additional agreements.

Sections 140A-C were inserted into the 1974 Act by sections 19 to 21 of the Consumer Credit Act 2006. Those provisions were brought into force on 6 April 2007 by article 3(2) of the Consumer Credit Act 2006 (Commencement No 2 and Transitional Provisions and Savings) Order 2007. The transitional provisions are contained in Schedule 3 to the 2006 Act. They provided for a "transitional period" of one year which ended on 5 April 2008. The evident purpose of the transitional period was to give creditors a window of time in which to bring an existing relationship arising out of a credit agreement to an end if they wished to avoid that relationship being subject to sections 140A-C.

This is further supported on the basis that one can litigate an unfair relationship claim for an agreement taken out on any date, if it was on-going/live post 06 April 2008. If a credit agreement did not become a "completed agreement" before the end of the transitional period, i.e. on or before 06 April 2008, an order under section 140B of the 1974 Act could subsequently be made in connection with the agreement

5. There are repeated citations of the Supreme Court decision in the consultation paper, which found that the lender acted unfairly – and therefore unlawfully – because of the high, undisclosed

commission paid to the broker and the failure to disclose a commercial tie. The Supreme Court said the commission plus interest at a commercial rate should be repaid to the borrower. That rate was agreed at 7% which is very much at odds with the FCA's proposal for calculating compensatory interest.

As we know, the Supreme Court is the highest court and their decisions are binding on all other lower courts and in turn, extremely persuasive to the regulator, who is going to come under pressure to not consider increasing its proposals for the calculation of compensatory interest.

Whilst they are proposing that simple interest should be paid on the compensation, based on the annual average Bank of England base rate per year plus 1% from the date of overpayment to the date compensation is paid. **Consumers will be able to challenge this with evidence if they feel this is unfair.** It is currently unclear how this will work - but the expectation being that all will challenge given the Johnson 7%.

6. A relationship would be considered unfair where it involves inadequate disclosure of one or more of the following: **a.** DCA **b.** high commission arrangement (where the commission is equal to or greater than 35% of the total cost of credit and 10% of the loan) **c.** tied arrangements that gave a lender exclusivity or a first right of refusal.

Where a case includes one or more of the three arrangements above, there would be some *limited circumstances* in which a lender may be able to prove that it was fair not to disclose it or that the consumer did not suffer any loss. **Their findings suggest these cases will be rare.**

Table 1 shows the results of the 3,333 DCA casefiles reviewed. Seven casefiles were excluded due to not having date values.

**Table 1: DCA casefile review findings on commission disclosure**

|   |   |
|---|---|
| Evidence that the customer was informed that commission "would" be paid and given information about the DCA commission arrangement  | 0 casefiles   |
| Evidence that the customer was informed only that commission either "may" and/or "would" be received by the broker.   | 60% (1988 casefiles)<br>(including 226 casefiles recorded as 'Yes' to both the 'may' and 'would' questions) |
| Insufficient evidence on file to determine whether the customer was informed that commission "may" or "would" be received by the broker or that the broker was acting under a DCA | 40% (1338 casefiles)  |

Not a single DCA agreement reviewed had evidence that the consumer was informed of the existence of a commission payment.

7. The FCA are proposing that lenders will deliver the scheme, rather than brokers (the car dealers). This is what we want as lenders are more experienced, from PPI, and capable of operating a scheme as opposed to brokers.
8. To avoid consumers being disadvantaged by evidential gaps beyond their control, the FCA are proposing that where evidence of what was disclosed to the consumer is missing, lenders must presume that disclosure was inadequate. **This is very significant – as it means that lender’s can’t get around paying out by saying they no longer hold any records for a consumer and get around it by pursuing data retention arguments.**
9. The FCA have made it clear that it is up to the consumer whether they wish to participate in the redress scheme – i.e. they are not closing the door on consumers having the option to litigate.

With litigation it will take longer to resolve and there are no guarantees of a successful outcome. Whereas, under the redress scheme there will be a guaranteed offer, if the criteria at para 6 are met.

10. Taken from the Technical Annex at 1.101 “..... brokers were likely to earn higher commission from DCA agreements than non-DCA arrangements in the pre-ban period. Prior to the DCA ban, the average broker commission for a DCA agreement was £747 (weighted average of increasing DiC, reducing DiC, and scaled commission models), and the average broker commission for a flat fee agreement was £268. Following the DCA ban, the average broker commission for a flat fee agreement increased to £706, which could be due to the compositional effects of the market transitioning from mostly DCA agreements to mostly flat fee agreements .....)”.

NOTE: DiC (Discretionary Interest Commission) is the previous abbreviated term for DCA (Discretionary Commission Arrangement).

: Loan level data (collected in autumn 2024), time-restricted sample (January 1 2019 to December 31 2022). I flag this as it only covers 2 years of DCA prior to the ban – the claimant space is seeking to use statistical experts to show the DCA commissions were higher from 2007 to 2018.

11. The FCA’s estimate of £700 average redress per case is a broad proxy only. When industry experts apply the correct commission data, APR reconstruction, and causation criteria, the true quantum per claim can be significantly higher. Critical touchpoints such as commission type, margin banding, and payment structure materially affect redress outcomes. Properly evidenced claims could therefore yield substantially enhanced compensation.

Even on the FCA’s own figures for agreements which meet the high commission threshold, the mean redress amount is £1,108.35.

12. Their analysis of approximately 230,000 agreements between January 2019 and January 2021 finds that APRs on loans with two types of DCAs – reducing difference-in-charges (DiC) or scaled commission models – were typically 20–24% higher than comparable flat fee loans. In other

words, borrowing costs on loans with a flat fee commission structure were on average 17% lower than comparable loans with reducing DiC or scaled commission models.

13. Following their 2021 ban on DCAs, average APRs fell by around 20% compared to a control group of personal loans, *indicating that DCAs were driving higher costs for consumers before the ban*. This is also likely to be a lower bound to the losses faced by consumers as it looks at how much more consumers paid than they would have done in a transparent market and not the losses involved with receiving an unsuitable product or the erosion of trust and confidence.

Yours sincerely



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