Motor finance FCA complaints: impact on retailers and lenders

BY ALISON BARKER

On 11 January 2024, the FCA announced that it is looking into motor finance complaints for certain types of motor finance sold between 6 April 2014 and 28 January 2021. Analysts are quoted as saying the impact could be between £2bn and £8bn for the motor finance sector, which is currently estimated to be worth around £40bn. But what will the new requirements mean, and what are the potential impacts on motor retailers and lenders? And what are the next steps they can take?

The FCA estimates motor finance firms have around 30,000 customer complaints about paying too much for motor finance that used discretionary commission arrangements (DCAs), and around 10,000 complaints which have been referred to the Financial Ombudsman Service (FOS). Recent decisions by the FOS and courts have found in favour of the complainant that sales were unfair.

The FCA is concerned that resolving these complaints on a case-by-case basis will lead to inconsistent outcomes. Therefore, it proposes to investigate and decide whether to introduce an industry-wide redress scheme, with a decision expected by 25 September 2024.

To allow time to carry out its diagnostic work and draw up proposals, the FCA has paused the normal complaint resolution deadlines until this date.

The issues only relate to motor finance sold by lenders or retailers who were credit brokers with a discretionary commission arrangement. There were several types of arrangements in the market during the time period under review. It only applies to motor finance – for example, PCP and HP finance agreements. Leasing agreements are not included. Discretionary commission arrangements on other products such as caravans are also out of scope.

The period of motor finance sales under review is from 6 April 2007 to 28 January 2021. This is from when the Financial Ombudsman jurisdiction applied to consumer credit, until these types of arrangements were banned. There are FOS limitation periods to

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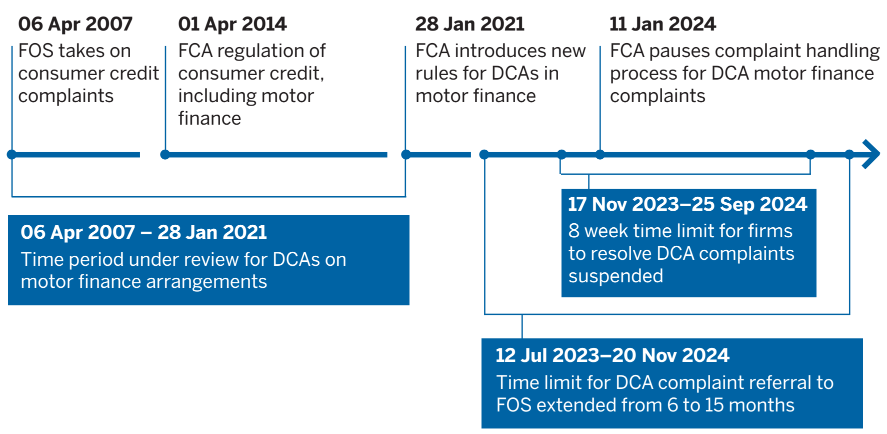
MOTOR FINANCE DCA TIMELINE



bringing a complaint. The first is of six years from the event and the second is three years from reasonably being aware there was an issue. However, in practice these limitations may not take effect as most consumers would not have been aware of the issue and the FOS has not historically been supportive of such jurisdiction arguments from firms.

Skilled persons review

This type of review is commissioned by FCA under s.166 of the Financial Services and Markets Act. This enables FCA to define a scope and set of questions it requires a skilled person to analyse on its behalf. The scope of the review will not be published, and firms included in the sample already know who they are. The FCA has said it could request the skilled person to extend the number of firms in the sample.

The FCA has said it will decide on next steps by 25 September 2024, although it is possible this could be extended. If it decides some type of industry-wide redress scheme is needed, it will need to consult publicly, setting out its proposals and timescales.

The FCA is looking at the responsibilities between the credit broker and the lender. It may be the case that customers have to complain to both the lender and the broker. Under FCA rules, brokers do not have to pass the complaints to lenders but can do so if they think the lender has responsibility. This position between lenders and brokers is going to be complex. Both lenders and credit brokers should understand what contracts were in place between 6 April 2007 to 28 January 2021 and their potential exposure.

In 2018, the FCA conducted a review into the use of DCAs and the controls lenders had in place to curb poor practices. The issues identified by the FCA included poor disclosures to consumers at the point of sale and agreements that allowed a wide discretion to charge rates without appropriate controls to balance the conflicts of interest between the retailer and the consumer.

Complaints handling

The FCA has paused the requirement to resolve and respond to a complaint within eight weeks until 25 September 2024. However, the FCA explained that there are several steps it expects firms to continue taking during this paused period.

Firms should be checking what records they have and getting these in order. This may be quite a task for records going back up to 14 years across multiple lenders and brokers. The FCA has suggested firms should be asking customers to send in the records they hold which means gearing up to receive and process information. Historically FOS has expected firms to make legitimate efforts to find records.

Lenders and brokers should be assessing their potential exposure. This means understanding the potential population of consumers in scope and the potential redress liability. The FCA has not provided further information about how to assess the amount of potential redress, although the current FOS decisions give an insight to their view. Auditors may assess the work done to quantify the potential liabilities.

The FCA is keen to ensure firms understand their liabilities and responsibilities. Any changes to corporate structure or that might affect liability/redress should be notified to the FCA – ie no changes to circumvent redress liabilities. Firms should manage financial resources to pay redress and deal with operational costs. Lenders and credit brokers should be acting to:

- Acknowledge all complaints received and update information on websites so customers understand there is a pause to the resolution timescale for complaints
- Determine which complaints are in scope
- Locate all information that will help to investigate complaints – this could be from customers and the lender/broker
- Investigate and resolve elements of complaints that do not relate to discretionary commission arrangements
- Gear up operationally to handle an increase in complaints and queries
- For complaints in the pipeline, inform complainants their response will be paused
- Locate records, agreements and any other documents which could assist in supporting a complaint or a redress process
- Start preparing analysis about the potential population and scale of any redress programme to assess exposure
- Risk and compliance functions should consider assessing if complaint handling rules are being met
- Board risk and audit committees should be asking for an assessment of the exposure
- Make appropriate notifications to FCA about corporate changes

Increased volume of complaints and enquiries

Commenting on what might be in store for retailers and lenders, Richard Barnwell, partner at BDO within the financial sector advisory, said: "While the outcome of FCA decisions is a few months away, there is a lot for firms to be doing in assessing their potential exposure and meeting current regulatory expectations. At the same time, firms can reasonably expect a higher volume of complaints and enquiries."

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Used stock funding must match retailer dynamics

A number of factors look set to make used car stocking and funding a key area of focus in the year ahead. These include used car value realignment, an increased focus on costs/overheads, the continuing impact of the cost-of-living crisis, the appetite for the increasing supply of BEVs and, linked to this last point, the impact of the ZEV Mandate and its 22% of new car volume target.

2023 saw used car supply increase, moving closer to something approaching normal. At the same time, consumer demand rose only slightly. The net result of supply exceeding demand saw downward price pressure, initially on used EVs, but followed by newer ICE cars later in the year. It all tested the industry mantra for the success of 'buying right' when it comes to used purchasing.

'Buying right' is part art but arguably increasingly science. It requires an agile stock purchase ethos and access to funds when needed. Activity across our stock funding options shows retailers increased their activity over the last year. Our Supplier Direct Funding stock funding service grew by 43% in 2023, and January saw record funding, up 30% on the service's best monthly performance. Trade buyers are active, and as a business, we are happy to help fund that demand.

Some of the demand will be post-December re-stocking, but into 2024 I am particularly interested in how demand for used BEVs evolves. After early falls in value in 2023, BEVs finished 2024 strongly. According to data shared by Auto Trader, 60% of 2023's fastest sellers were alternatively fuelled vehicles, including two all-electric models, with the Kia Niro and Audi e-tron taking on average just 16 and 18 days to sell, respectively. Our stock funding analytics provide a similar picture, with EV demand strengthening as the year progressed.

The immediate picture for EVs remains encouraging, with Auto Trader's most recent fastest seller list being 'dominated by electric', with five EVs reaching the top 10.

Given the lack of low cost BEVs (there are so few 'older' BEVs) and the continuing cost of living pressures on many households, it will be interesting to see how the used BEV trend unfolds. However, consumer demand will not be the only factor. There is a broad expectation of a return to 'push' tactics for new BEVs by some OEMs and their retailers as they seek to achieve the government's 22% of new car sales ZEV targets.

At MotoNovo, we continue to call for government help to support consumers buying used BEVs. Increasing the demand for used BEVs is crucial to the strong residual values needed for new car finance pricing. However, right now, the used market will continue to be driven by market forces. We expect the landscape to be ever-shifting, but we can proudly say that our stock funding options and ambition will mean we are here to help.

● Author Chris Rowthorn is director of motor sales operations at MotoNovo Finance, a commercial partner in *Auto Retail Bulletin*. Find out more at motonovofinance.com