

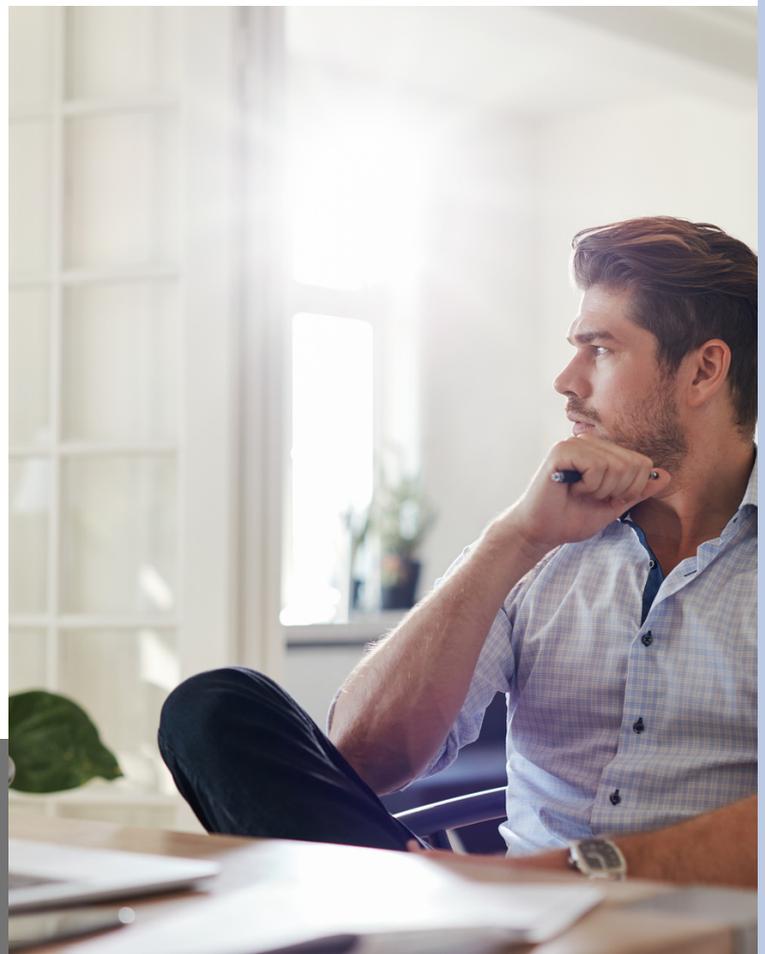
UPDATE FROM THE FCA ON DCA COMMISSION COMPLAINTS



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Following the announcement 2 weeks ago on the temporary complaints rules for DCA motor finance complaints, the FCA held a webinar on Wednesday 24th January to outline their expectations of firms, and the action they suggest firms to be taking during and after the temporary pause in complaints rules.

The view of the FCA aligns largely with our thoughts from our article last week, however we can now add some further points in an attempt to help firms take the right action to be as prepared as possible for what may come as a result of the S166 reviews currently underway and any decisions on whether such complaints will be dealt with via the individual firm's standard process or via a Consumer Redress Scheme, and what the redress calculation model will look like.



I have listed the key points from the webinar in bullet form below:

- Lenders and Brokers need to update their websites to include the temporary complaints arrangements for DCA complaints
- Cases sold between 06/04/2007 and 28/01/2021 are considered in scope
- All firms must preserve and retain records between those dates as per SYSC 9.1. Where no records have been retained firms are expected to have detailed discussions with the customers when a complaint is received, and to have open data sharing arrangements between all firms in the distribution chain
- Where no records have been retained the firm is still expected to undertake a full and thorough investigation and resolution
- Firms should consider their capital resources and exposure in respect of the additional workload required in preparation and managing the inevitable increase in complaints, and the anticipated redress exposure
- The FCA Section 166 review currently underway includes both Lenders and Brokers / Dealers. The FCA are adamant there is no pre-determined outcome that harm will be found or redress due
- It is highly likely that Brokers / Dealers will also be liable for their part in making the sale, this will be confirmed as part of the diagnostic work under the S166 assessment. However a complainant cannot make a claim from both parties under the same event
- Where a complaint is received with multiple issues, including DCA, the firm can settle the non-DCA related matters which are outside the scope of the temporary rules
- Where a complaint is received about a DCA arrangement, but no such arrangement existed for that particular case, the complaint is outside the scope of the temporary rules
- Similarly for any complaint relating to Non-Disclosure of commission where DCA was not a factor, these are also outside the scope of the temporary rules
- All firms must cooperate fully with any data subject access requests from customers or their representatives (such as a CMC), including full disclosure of the commission model used



- Previously closed complaints where DCA was a factor, may need to be contacted to advise of the temporary pause if it may impact them
- Lenders cannot instruct or mandate to Brokers / Dealers that all such complaints are forwarded to them as a matter of process. The FCA are clear that it is the responsibility of the firm who receives the complaint to make an assessment of whether it is appropriate to hand off to another party as per the complaints rules found in DISP 1.7. Where a complaint is handed off there must be valid reason for doing so
- During the temporary pause, the FCA may publish further information as they progress with their diagnostic work
- If the FCA determines that a Consumer Redress Scheme is to be introduced it would likely bind FOS to adhering to it when making determinations. However before any such scheme is introduced the FCA would consult with all stakeholders
- The FCA will contact any additional firms to be included as part of the diagnostic work under S166 by the end of April 2024
- The FCA are not currently taking a position on what is to be considered a reasonable rate of interest. Their diagnostic work at this stage is focussed on identifying whether the DCA model resulted in consumer harm
- Prior to any final decision being made the FCA will undertake a public consultation
- The 2 FOS determinations are relevant to how firms should now assess and determine the outcome of such complaints. There is no requirement to send a Final Response Letter until after the temporary pause has come to an end and the statutory 8 week period has expired
- The FCA are urging firms to take early action in preparation to identify the extent of any impact as a result of DCA arrangements

I think there are some critical takeaways from this, for me the most important being the necessity for advance preparatory work to identify how exposed a firm is likely to be. The better prepared and aware of the likely exposure a firm is, the easier it will be to manage whatever redress model or scheme is implemented as a result of the FCA S166 diagnostic work.

One thing is clear. This is not going away and should be taken seriously by all firms who are impacted.

We are offering free of charge initial consultations to any firm who wishes to discuss how they may be affected, and how best to proceed. We are also arranging a series of working groups and round table events with Lenders and Brokers / Dealers to share thoughts and best practices on how to prepare, share information effectively, manage DSARs etc.

-Andrew Smith

How can we help?

We have a long standing background in the motor finance sector, and have supported some of the UKs largest firms, both dealers and credit providers, with compliance advisory and consulting work in the past decade.

We have supported countless firms in preparations for S166 review work, and have on occasion undertaken the skilled person reviews.

We have access to some of the best and most experienced consultant resource in the UK, specialising in the areas of motor finance, complaints, large scale redress and remediation, resource deployment, and managed service project delivery.

We are offering a free of charge consultation to firms impacted by these recent events, and look forward to speaking with you in due course.



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