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OUR THOUGHTS ON THE DCA FOS DETERMINATIONS

There has been much discussion and speculation within the UK Motor Finance sector since the FCA announced the temporary complaints rules and skilled person review, which focus on DCA complaints.

We have seen numerous reports and press articles with incorrect or misleading information about this such as:

- It only affects lenders, brokers and dealers are not impacted
- Firms can sit back and take a breath during the temporary pause
- CMCs will likely 'back off' as a result of the temporary rules
- Customers will be able to claim an average of £6,000 of more

It is frustrating given the nature of the information being published by the FCA and their recent webinar which gave as clear a picture as is possible.





In answer to the above points, our view is that:

- The FCA has very clearly confirmed that brokers are also in the scope of their S166 diagnostic work and are not excluded.
- Firms should not sit back. They should ensure their complaints handling processes and information are up to date and include the relevant temporary wording, and they should also begin to prepare for the inevitable increase in complaints and claims.
- CMCs will not back off but will be desperate to try and gain traction after the FCA announcement. A quick look at social media will show this is already the case.
- On the above point, I cannot reasonably see where the average claim value of £6,000 will possibly come from

To that end, and following our recent articles, we have been looking in more detail at the two FOS determinations:

- FOS DRN - 4326581 – Miss L v Clydesdale Financial Services Limited
- FOS DRN - 4188284 – Mrs Y v Black Horse Limited

Bearing in mind the FCA has yet to begin forming conclusions from its recently commissioned diagnostic work, including the extent and calculation method of any financial loss to the customer, the FOS determinations both give an indication of what the redress in each case should be, which it states is the difference in monthly payment between the rate offered and the lowest rate that was available, plus 8% PA interest on each payment from its payment date until the end of the finance agreement or the finance has been settled, whichever is sooner. As such, for clarity, we have undertaken an assessment of each case and calculated the indicative redress for both to give some perspective.



FOS DRN – 4326581 – Miss L v Clydesdale Financial Services Limited

Miss L purchased a vehicle with a cash price of £19,133 and a deposit of £5,800. The total amount of credit was £13,333 over a term of 60 months, which was due to finish in November 2023; however, in July 2020, she was granted a 3-month deferral for COVID in line with the FCA guidance at the time. Therefore, the final payment is due in February 2024.

The interest rate offered was 4.67% (flat rate) resulting in payments of £274.10 per month.

BPF was prepared to lend to Miss L at a flat rate of 2.68%, with anything above this amount being paid to the broker in commission.

For the purposes of an indicative calculation, I have assumed that all payments due have been made and that the account is now concluded.

- Cash price £19,133
- Deposit £5,800
- Total borrowing £13,333
- Term 60 months
- Flat Rate offered 4.67%
- Monthly payment at 4.67% £274.10
- Lowest available flat rate 2.68%
- Monthly payment at 2.68% £251.99
- Monthly payment difference £22.11
- Total overpayment assuming 60 months paid £1,326.60
- Total of 8% interest on each individual payment to the end of the agreement £269.74
- **Total redress using the FOS model £1,596.34**

FOS DRN - 4188284 - Mrs Y v Black Horse Limited

Mrs Y took an HP agreement to buy a car in April 2016. The cash price was £7,619.13, and no deposit was required. Therefore, the total amount of credit was £7,619.13. The loan was over a 60-month term.

The interest rate offered was 5.5% (flat rate), resulting in monthly payments of £161.91 and a final payment of £162.91, including a £1 purchase fee. For the purposes of calculating the interest-bearing payments, we will use 60 months at £161.91.

The lowest rate available to Mrs Y at the time was 2.49% (flat rate), with anything above this contributing to the broker's commission.

The agreement was settled early in June 2017, with Mrs Y paying a total of £827.39 in interest, which represents 39% of the total cost of credit. In calculating the difference, I will assume the same 39% of the total cost of credit applies to the recalculated lower interest rate.

- Cash price £7,619.13
- Deposit £0
- Total borrowing £7,619.13
- Term 60 months
- Flat rate offered 5.5%
- Monthly payment at 5.5% £161.91
- Total interest paid due to early settlement £827.39
- Lowest available flat rate 2.49%
- Monthly payment at 2.49% £142.80
- Monthly payment difference £19.11
- Total interest assumed paid at early settlement at 2.49% £369.95
- Total overpayment of interest based on the above £457.44
- 8%PA interest applied £36.60
- **Total redress using the FOS model £494.04**

These are, of course, only preliminary calculations and are not a prediction of what the outcome of the FCA review is likely to be. But I hope it at least gives some indication of what the possible redress could look like if the FCA agrees with the outcomes of the FOS. The message is that the claims of "thousands of pounds" due to every customer are not only wildly overstated but also simply incorrect.




In respect of who is impacted by this we maintain our previous view on this which is:

Credit providers – are obviously under the spotlight as the firm who has provided the credit at the rate offered, and paid the commission to the broker or dealer.

Dealers / brokers – those who set the interest rate that was offered to the customer, made the sale and received the commission.

Appointed Representative Principal Firms – as those responsible for the conduct of their AR firms, the AR principal should have robust monitoring and oversight in place to ensure good conduct and fair outcomes. Such arrangements as DCAs should have been approved and monitored by the AR Principal, being the entity that assumes regulatory and conduct responsibility for those who operate under its authorisation, and should have clear visibility of all commissions received for regulated activity of its ARs.

For all impacted firms, we recommend taking early action to prepare for the rise in complaints and claims and the outcome of the FCA review.

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- Undertake a full review of pre-January 2021 agreements to identify the population of impacted accounts
 - Begin categorising those impacted accounts into agreement type
 - Preserve and prepare easy access to the account files and ringfence the impacted population in anticipation of the likely influx of DSAR requests (from both customers and CMCs)
 - Identify and preserve data that clarifies and evidences the commission model and rates applied to the population, to avoid assumption or hypothetical calculations being used in the absence of robust data
 - Review historic complaints data with a particular emphasis on DCA complaints and outcomes, and any that are with FOS
 - Begin a detailed individual file review of all impacted accounts to identify the likely exposure, and to begin ringfencing possible redress funds
 - Begin collating detailed MI and data on historical oversight and monitoring activity, KPIs, outcomes, and file checking/call monitoring. This is particularly important to AR Principals whose primary purpose is to take regulatory responsibility for the conduct of the broker/dealer firms operating under their regulatory umbrella
 - Begin work in creating an end-to-end process that can deal with the anticipated volumes of complaints, from receipt of the complaint through to liaison with the FOS if necessary

-Andrew Smith

How can we help?

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

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

We have access to some of the best and most experienced consultant resources 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 firms impacted by these recent events a free consultation and look forward to speaking with you soon.



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