

Financial Services Consumer Panel

AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

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By email: cp24-22@fca.org.uk

Dear Sir/Madam,

Financial Services Consumer Panel response to CP24/22: Further temporary changes to handling rules for motor finance complaints

The Financial Services Consumer Panel (the Panel) welcomes the opportunity to respond to the FCA's consultation on further temporary changes to handling rules for motor finance complaints.

The need for further temporary rules on complaint handling

The Panel appreciates the potential significance of the Court of Appeal decision in 'Johnson and others' of 25th October (the "Decision") as well as the scope for significant volumes of consumer complaints over a short period of time.

As the Panel has previously stated, to the extent there is widespread redress owed to consumers, the implementation of an orderly, consistent and efficient redress scheme is likely to be desirable. Assuming the Decision becomes a major redress event, we are supportive of steps taken to deliver appropriate redress to consumers in a swift and efficient manner.

Given the parties to the Decision have publicly stated their intention to appeal the Decision to the Supreme Court, the Panel can see the potential benefits of introducing a temporary pause on the complaint handling rules for relevant complaints. In the circumstances, we are supportive of such a proposal.

That said, the Panel wishes to sound a note of caution to the FCA in dealing with this issue and any future potential major redress events. While there are clear benefits for delivering redress in such circumstances in an orderly, consistent and efficient manner, it is not incumbent on the FCA to ensure this takes place in the 'most orderly, consistent and

efficient way possible' (see, for example, para 3.23). This not only risks the FCA setting an unrealistic target for itself, but also risks unnecessary delays to consumers obtaining fair redress while also consuming more resources than necessary (both at the relevant firms and the FCA).

The duration of any new temporary pause on complaints

While the Panel may be supportive of the proposal for a pause, we are concerned by the proposal to apply such a temporary pause until December 2025. Although the consultation paper notes that were the pause to last until then, the FCA would be able to end the temporary pause early should this be appropriate, the Panel is concerned a longer initial pause may nevertheless lead to unnecessary delays in the receipt of any redress owed to consumers.

Instead, the Panel is far more supportive of a temporary pause until shortly after the Supreme Court has announced whether it will accept an appeal of the Decision. To the extent the 31st May 2025 represents a genuine best estimate as to such a date, the Panel would be supportive of such an approach. The Panel believes this would be a preferable way forward because:

- If the Supreme Court does not accept an appeal of the Decision, it would seem that consumers will be owed compensation at that time - that compensation should not be subject to unnecessary delays.
- In the event the Supreme Court accepts an appeal, the FCA will be, at that stage, in a much better position to understand the likely timeframes for that appeal to be heard and, accordingly, would be much better positioned to decide how any temporary pause on relevant complaints may need to apply going forward. For example, it may be that an appeal to the Supreme Court relates to just some types of commissions, meaning some complaints need be subject to no further delay.
- To the extent consumers are due compensation, ensuring this is paid to consumers as soon as reasonably possible should be a priority. The Panel considers that proposals to bring a temporary pause to an early end is likely to be met with considerable resistance by firms and tie-up considerable resources at the FCA – resources that could be put to better use.

The complaints subject to any new temporary pause

The Panel understands the reasons set out in the CP for a broad scope to any new temporary pause. The Panel also welcomes the FCA's acknowledgment that while the proposed definition would likely capture some non-commission complaints, it would nevertheless expect firms to progress any non-commission complaints according to the standard DISP rules.

The Panel considers that any non-commission complaints should be progressed promptly and be unaffected by any temporary pause. We therefore believe the FCA should consider placing firms under a clear obligation (rather than simply an expectation) to ensure this outcome is delivered to consumers. Further, we think consideration needs to be given to ensuring that where complaints concern both commission and non-commission elements, it is only the commission elements that are subject to any temporary pause.

Panel expectations during any temporary pause on complaints

The Panel welcomes the proposals that in the event of a temporary pause, firms will still be required to investigate and gather evidence to enable complaints to be progressed promptly as and when the temporary pause comes to an end. We also welcome the proposals to extend the requirements on firms to preserve and maintain any relevant records, though we note any such extension needs to account for any extended timeframes proposed for consumers to take relevant complaints to the Financial Ombudsman Service.

However, the Panel believes the FCA needs to give careful consideration to going further than this. We would suggest the FCA explore the opportunity to use any temporary pause to work with the affected firms and the Financial Ombudsman Service to review a number of 'typical cases'. This would be with a view to moving all relevant stakeholders, promptly, to a common understanding on matters such as the circumstances in which redress is likely to be owed and, in such circumstances, how redress should be calculated.

While we recognise the Supreme Court may overturn the Decision, or may adopt a different approach, we also note that there may not be any appeal and the Supreme Court may uphold the Decision in its entirety. In such circumstances, the Panel does not consider it would be right – nor fair on consumers – for the proper consideration of the redress picture to only commence at the end of the legal process. This would lead to long – and avoidable – delays to consumers obtaining any redress they are due.

Further, the Panel notes that in the courts, consumers would receive 8% interest on sums owing or outstanding. However, a similar provision under a statutory redress system is not guaranteed. The Panel would urge the FCA to use any extension of the complaint handling rules to consider how it can best ensure that (where redress is due) consumers are appropriately compensated for the delay in receiving their redress caused by a pause in complaint handling. This is particularly important in the current economic climate where the 'time value of money' is more acute for many consumers. In contrast, the Panel notes that any delay gives

firms a longer timespan to set aside funds for any potential redress and manage the financial consequences for them of any pause.

Communications with consumers

The Panel is supportive of the proposals in the CP to inform complainants of any temporary pause implemented in relation to their complaints. Indeed, we think this is essential and entirely consistent with a firm's obligation to ensure a complainant is informed of the progress of their complaint. It is important that the communication about these proposed changes is absolutely clear to consumers.

However, the Panel believes the FCA should also consider whether an additional information requirement is needed – to ensure those consumers who may have a valid commission-based complaint are aware of any temporary pause implemented. If the aim of the FCA is to ensure there is an orderly, consistent and efficient redress process, we consider it is important for all potentially affected consumers to be proactively kept informed from the outset. This would help to set consumer expectations, but also help to ensure consumers make informed decisions and feel empowered to raise any relevant complaints themselves at the right time and in the right way.

Yours sincerely,

Helen Charlton
Chair of the Financial Services Consumer Panel