Financial Services Consumer Panel
AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

Telephone: 020 7066 9346
Email: enquiries@fs-cp.org.uk

Policy Consumer Credit
Financial Conduct Authority
12 Endeavour Square
London
E20 1JN

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By email: cp19-28@fca.org.uk

Dear Sir / Madam,

CP 19-28: Motor finance discretionary commission models and consumer credit commission disclosure

This is the Financial Services Consumer Panel's response to the FCA's consultation on motor finance discretionary commission models and consumer credit commission disclosure.

The Panel supports the FCA's proposal to ban discretionary commission models. These commission models work against consumer interests, and lead to them paying far more – around £500m more according to the FCA analysis - than they should. This substantial detriment demands a robust response, and the Panel is pleased to see the FCA making use of its wide-ranging powers by proposing a ban on discretionary commission models. As the harm to consumers will continue until the rules are implemented (which could take until July 2020 under the proposed timetable), the Panel urges the FCA to impose a shorter implementation period.

Before the ban comes into effect, the FCA should make clear to firms that such commission models are unacceptable, and they should do the right thing, and stop using these toxic business models that cause £500m of harm to customers each year. However, the experience of PPI suggests that, where firms make enough profit, 'doing the right thing' is insufficient incentive to stop bad behavior. To protect consumers from such exploitative practices, the Consumer Panel continues to call for a new actionable duty on firms to do the right thing, and act in the interest of their customers.

The Panel welcomes two particular aspects of the FCA's work on motor finance:

1. its use of mystery shopping, which allowed the FCA to understand how consumers are treated in this market; and
2. the quantification of consumer detriment, which highlighted just how much consumers lose out through unfair practices and helped to ensure that the corrective action proposed by the FCA is set at an appropriate level.

The Panel encourages the FCA to make more use of mystery-shopping in its other work, and to routinely quantify the detriment suffered by consumers. The latter should, in the Panel's view, be a key metric in outcome-based regulation.

Below we provide answers to the questions posed in the FCA consultation paper.

Yours faithfully,

Wanda Goldwag
Chair, Financial Services Consumer Panel

ANSWERS TO QUESTIONS

Q1: Do you agree with our proposed ban on discretionary commission models in the motor finance market?

Yes. We agree with the proposed ban on discretionary commission models. This should break the link between interest rate and commissions, removing the incentive for brokers to set a higher interest rate and, in so doing, decreasing costs for consumers. It effectively removes the barrier of 'first mover disadvantage' and makes firms change their culture and practice in the consumer interest.

The FCA's analysis revealed that discretionary commission models result in consumers paying significantly more for finance, with the interest rate charged not associated with a customer's credit risk. In total, the FCA estimated that under discretionary commission models approximately 924,000 customers pay around £500m in additional interest costs. The magnitude of this consumer detriment demands a robust and swift response. The Panel therefore welcomes the FCA proposals, and the fact that it demonstrates that, when required, the FCA is willing to adopt strong supply-side interventions.

If the FCA decides to implement its proposed ban on discretionary commission models, the Panel urges it to set out clearly what a well-functioning motor finance market should look like. This would enable it to evaluate the success of its interventions. As part of this evaluation exercise, the FCA should scrutinize the market to ensure firms have made the required changes and have not altered their business models in a way which is intended to side-step the ban and allow them to continue to over-charge customers.

Q2: Do you agree with a 3-month implementation period?

The Panel encourages the FCA to move swiftly to stop the detriment which consumers are currently experiencing, and indeed have been suffering for some time. Firms which have benefited from exploiting consumers for some time should not be permitted to continue to do so any longer than is strictly necessary.

We note that in its consultation paper, the FCA suggests that some firms have already moved away from discretionary commission models, with others intending to do so. Since the market has already given a clear signal that it is moving away from discretionary commission models, a 3-month implementation period seems more than generous. As the harm to consumers will continue until the rules are implemented (which could take until July 2020 under the proposed timetable), the Panel urges the FCA to impose a shorter implementation period.

Before the ban comes into effect, the FCA should make clear to firms that such commission models are unacceptable, and they should do the right thing, and stop using toxic business models that cause £500m of harm to customers each year.

Q3: Do you agree with our proposed commission disclosure clarifications?

The Panel welcomes the mystery shopping exercise conducted by the FCA to understand how motor finance was being sold, and encourages it to conduct mystery-shopping exercises more often in its investigative work across all sectors. In the Panel's view, mystery shopping enables the regulator to gain true insight into how firms are treating their customers in a real-world environment, rather than relying on information provided by firms which inevitably seeks to portray the firm in the best light.

The results from the motor finance mystery shopping were extremely poor. The FCA found that only 9% of firms overall disclosed to the customer that a commission may be received for arranging finance, with significant variation between types of firm.

These results demand robust and immediate action. If consumers are not provided the right information at the right time, then they are not able to make informed decisions and choose the best deal for them. Clarifying the rules is the minimum action the FCA should take. The Panel recommends that the FCA should make clear its intention to conduct a further wave of mystery-shopping to test compliance with the new rules. If this reveals any significant failings, the FCA should not hesitate to take robust enforcement action.

In addition, the Panel would like to see the FCA go further in two respects:

- CONC 4.5.3R: The FCA should provide examples of what constitutes (and does not constitute) 'prominent' disclosure so that firms are in no doubt.
- CONC 4.5.4R: Brokers should routinely have to disclose to consumers the likely or known amount of commission they receive, not rely on customers requesting this information (which seems likely to be a rare occurrence).

Q4: Do you agree our proposed commission disclosure clarifications should apply across all consumer credit markets?

Yes, it is important that the disclosure rules are applied correctly and consistently by firms in all consumer credit markets.

More broadly, the Panel has long-standing concerns about information disclosure by firms to consumers across the financial services industry. We believe there needs to be a comprehensive review of disclosure as part of the FCA's work on the future of regulation to consider new ways to address the significant shortcomings of the current regime, which is designed to satisfy lawyers rather than protect consumers.

Q5: Do you agree our proposed commission disclosure clarifications should take effect on the day the rules are made?

Yes, we agree that they should be introduced as soon as possible, and their implementation monitored through repeated mystery shopping by the FCA.

Q6: Do you agree with our analysis of the costs and benefits of the proposals?

Yes, we agree with the FCA's analysis of the costs and benefits of the proposals.

The Panel welcomes the FCA's quantification of the level of detriment suffered by consumers due to discretionary commission models. Calculating consumer detriment highlights just how much consumers lose out through unfair practices. It also helps to ensure that the corrective action proposed by the FCA is set at an appropriate level. The Panel encourages the FCA to make the quantification of consumer detriment an integral part of outcome-based regulation.