

## Motor Finance Commission update from the FOS – May 2024

The Financial Ombudsman (FOS) has reached out to firms to verify their strategies for addressing complaints related to motor finance commission and their expectations from firms with complaints lodged with FOS.

Currently, FOS has approximately 20,000 unresolved complaints linked to motor finance commission. Its primary goal is to ensure that every legitimate complainant receives fair compensation. It aims to offer clear and well-reasoned responses promptly, regardless of the final decision.

This approach will help complainants gain a better understanding of their situation, assist firms in improving their handling of similar complaints, and provide third-party representatives with the necessary information to make informed decisions about the complaints they bring to financial institutions and the Ombudsman.

The FOS has made significant progress in addressing numerous complaints, particularly those not related to DCAs. Its first set of final decisions (DRN-4188284, DRN-4326581, DRN-4218349) were published in January, covering a wide range of arguments from both complainants and firms regarding Discretionary Commission Arrangements (DCA) and non-DCA complaints.

Since then, there have been notable changes in the motor finance commission complaints landscape as referred to below:

- As we know, in **January** the Financial Conduct Authority (FCA) initiated a review of past motor finance DCAs and temporarily halted ('paused') the requirement for firms to provide final responses in certain DCA cases. The FCA has been unable to

disclose any findings as yet but it is committed to sharing more details on future steps by 24 September 2024. Click [HERE](#) to view our background briefing on this.

- In **March**, the county courts granted permission to appeal three motor finance commission related claims to the Court of Appeal, such cases we have reported on previously and covered in our Helping Hands session. Click [HERE](#) and [HERE](#) to view background information on these cases. The Court of Appeal is expected to examine the application of the law regarding secret and half-disclosed commission to motor finance commission payments, whilst the industry eagerly awaits the outcome.
- Moving on to **April**, *Clydesdale Financial Services Limited (trading as Barclays Partner Finance)* initiated judicial review proceedings against FOS's decision to uphold a complaint concerning a DCA. Again we eagerly await the outcome from this review but it is likely to come once the FCA has set out its findings.

FOS acknowledges that the outcomes of the judicial review and the Court of Appeal's rulings could potentially influence their approach to handling similar complaints. However, they will continue to accept, investigate, and advance complaints to the best of their ability, so for now firms should continue to work and process complaints in the usual way unless it is a DCA matter.

They will continue to collect information from both firms and consumers and evaluate grievances in order to:

- Obtain the necessary information to make a decision on the complaint as soon as it is appropriate to do so.

- Determine whether the complaint is likely to be influenced by ongoing court proceedings. If this is the case, the parties involved will be notified, and if possible, an indication of the expected outcome will be provided.
- For complaints that are not affected by court proceedings, the FOS will issue provisional assessments by the Investigator and final decisions when appropriate.

Nevertheless, it is expected they will not make their final decisions on affected cases for a while, but it will continuously assess the situation. Considering the significant number of complaints related to commissions that firms are currently receiving, it is crucial to diligently and promptly investigate and address these complaints in accordance with the FCA's updated DISP requirements. Additionally, firms must uphold their regulatory obligations by cooperating with FOS.

### What should firms do?

Firms should ensure they have proper arrangements in place to accurately identify, document, and clarify the commission model(s) used when addressing complaints initially and when responding to information requests from the Ombudsman within the specified time limits. To assist firms in providing the necessary information in the appropriate manner, FOS has developed a business response form, found here:

<https://www.financial-ombudsman.org.uk/files/324424/Motor-finance-commission-Business-response-form.pdf>

FOS has confirmed that providing comprehensive and precise responses to customer inquiries will help prevent unnecessary referrals of unidentified DCA-related complaints, avoid unjustified investigations and case fees, and enable prompt and accurate investigation and resolution of properly referred complaints.

FOS also expects firms to address Investigator assessments quickly or provisional decisions within

the specified timeframe. This includes providing supporting evidence and presenting compelling arguments that demonstrate fairness and reasonableness in light of the complaint's circumstances.

### Unfair relationships cases

It's also worth noting, that FOS has informed the FLA about a change in their approach to unfair relationships (s140A) complaints. It has confirmed that it is now sending provisional decisions to firms in cases affected by a recent Supreme Court ruling clarifying time limits for complaints about unfair relationships between lenders and borrowers. 🏠

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### Contact us

Should you need any support or resources in dealing with complaints or putting together appropriate responses, please do get in touch.

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