

FCA – Motor Finance Market

Could motor finance customers now get compensation for non-disclosure of commission?

The answer to this is, yes very likely...!

The FCA reported (11 January 2024) that due to there being a high number of complaints in the motor finance industry and customers seeking compensation for commission disclosure arrangements, it is now considering whether customers could be owed compensation.

For a very long time it has kept quiet about this particular area whilst we've seen a huge rise in cases go to the Financial Ombudsman Service (FOS) – mostly driven by claims management companies – and cases going through the court system.

In its report, the FCA pointed to several claims which have been processed via FOS and took this as an indicator of increasing levels of customer harm. As we know, there are still thousands of claims with FOS still awaiting to be reviewed.

As a result of this, the FCA has decided now to exercise its powers under s.166 of the Financial Services & Markets Act (FSMA) which will allow it to review historical motor finance commission arrangements and sales across several firms. It wants to ensure that those who are owed compensation:

'...receive an appropriate settlement in an orderly, consistent and efficient way and, if necessary, resolve any contested legal issues of general importance.'

In order for the FCA to conduct its investigations – which will include analysing issues and deciding what actions it might need to take to include legal action if necessary – it has decided to **pause the eight week final response period** where there was

a discretionary commission arrangement between the lender and the broker, for a period of **37 weeks** (approximately nine months) **effective as of 11 January 2024**. This pause will apply to complaints received by firms on or after 17 November 2023 and on or before 25 September 2024.

The FCA has said the reason for this pause:

'...is to prevent disorderly, inconsistent and inefficient outcomes for consumers and knock-on effects on firms and the market while we assess the issue and determine the best way forward. In deciding next steps, we will be informed by our statutory objectives to protect consumers, ensure market integrity and promote competition in the interests of consumers.'

This is because the motor finance industry is not protected by the Financial Services Compensation Scheme.

The other change the FCA has reported to put in place is that:

'...consumers will have up to 15 months in which to refer their complaint to the Financial Ombudsman, rather than the usual six months. This extension applies to complaints where the firm had sent a final response in the period beginning with 12 July 2023 and ending with 10 January 2024, or where the firm sends a final response during the period beginning with 11 January 2024 and ending with 20 November 2024.'

Further information will become available in the middle of this year, and we shall of course keep you posted of any further developments in the meantime.


How we can help

Receiving a s166 notice from the FCA is a concerning experience for any firm, particularly those who may have had limited previous contact with the regulator. If it does happen it is important to carefully consider your actions, because how you respond will determine the outcome. And even if you have just had a request for information from the FCA, it is important to recognise that your responses will determine whether the regulator is content with your approach, or they decide to escalate to a s166.

At Auxillias we have long experience of the s166 process, and can provide you with upfront advice, and ongoing support through the investigation. Our consultants have worked as s166 Skilled Persons, and they know that firms under investigation who have good professional advisors supporting them have a far easier time of it.

We are a mix of lawyers, and consultants who are well equipped to provide;

- advice on how to respond to the initial s166 draft notice, and how your response at this stage can influence the final requirements notice
- guidance on how to engage with the s166 Skilled Person during the course of the investigation, and how this can influence the content of the final report
- on the ground advice utilising best practice from other remediation programmes
- gathering and dissemination of complex current and historical sales and customer data
- risk rank and categorisation of customer segments
- training, management information reporting, quality frameworks and other relevant functions and resources where needed to help see through any FCA enforcement or remedial actions and orders

We are also able to set up a process of delivering remedial action to the end customer whilst protecting BAU delivery. 

Please contact us via the details below to schedule a no-obligation 30 minute chat:

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