The Money Charity Response – FCA CP19/28 on Motor Finance Discretionary Commission Models (December 2019)

The Money Charity is a financial capability charity whose vision is to empower people across the UK to build the skills, knowledge, attitudes and behaviours to make the most of their money throughout their lives.[1]

We welcome the opportunity to respond to CP19/28 on 'Motor finance discretionary commission models and consumer credit commission disclosure.'

In this response, we set out our Key Points, make some overall comments on the issue then answer the questions posed in the Consultation Paper.

[1] See box on back page.

Key Points

1. The Money Charity agrees with the changes to rules on motor finance and information disclosure proposed by the FCA in CP19/28.

2. In our view, the findings of excessive charging and non-compliance with FCA rules on information disclosure provide further evidence for stricter enforcement of existing FCA rules and Principles and for the introduction of an actionable Duty of Care toward consumers on the part of financial services providers.

Overall Comments

We note that the FCA's study of motor vehicle finance has shown that:[2]

- Firms use broker commission models that allow brokers to raise the interest rate paid by borrowers in order to earn additional commission.
- This has led to motor finance over-charging estimated by the FCA to amount in aggregate to between £300 million and £500 million per year.
- The typical excess cost is £1,100 on a vehicle finance package of £10,000.
- The difference between the average and highest commission can be as much as £2,000.
- Mystery shopping has shown that more than 90% motor finance brokers are not complying with the FCA's commission disclosure rules.

We therefore support the FCA's proposed rule changes, as set out in our answers to the consultation questions below.

However, as with the FCA's recent findings on defined benefit pension transfer advice,[3] the motor finance findings reveal large scale breaches of the FCA rules and Principles (treating consumers fairly) as they currently stand, suggesting that the current regulatory regime and enforcement are insufficient.

We call on the FCA to take two further steps:

1) More actively enforce the current rules, with an approach such as is used for enforcing road safety and traffic rules, with a spectrum from instant fines to de-authorisation, depending on the severity of the breach.

2) Introduce a formal Duty of Care, requiring financial service providers to avoid reasonably foreseeable harm to consumers and to act in the best interests of consumers. Ideally the Duty of Care should be statutory, but in the interim it could be placed in the

[2] CP19/28, pages 9-10, 14.
[3] CP19/25.

FCA Principles and should be made actionable for individual consumers and for class actions by consumers.

It is clear that at present financial service providers do not fear FCA enforcement or consumer legal action and this feeling of impunity is leading sectors of the industry to engage in egregious consumer exploitation. While it is good that the FCA is reacting to these cases in its sectoral studies, the after-the-fact approach is not preventing new cases of severe consumer harm from appearing.

While fear is not the only aspect of good regulatory strategy, there does have to be an element of fear, just as drivers fear speeding tickets or other more serious consequences if they break the rules of the road, and especially if they cause harm to others.

An actionable Duty of Care would change the risk analysis within firms when designing products or planning marketing strategies and lead to a lower rate of consumer harm for the FCA to respond to in other ways. As we understand it, the FCA is developing its next paper on Duty of Care at the present time, for publication in early 2020, and we urge the FCA to come back to the industry and the public with a proposal to introduce a Duty of Care and to seek for it to be made statutory.

Answers to consultation questions

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

Yes. As well as responding to consumer harm, it does not feel right in principle that brokers should be able to adjust interest rates. The interest rate is the price of finance and sits between the lender and the borrower. The broker brings borrowers and lenders together but does not provide the finance. The broker should not charge for the finance, but only for the broking service.

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

This seems fair.

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

Yes. However, we think the current rules are clear enough and should be enforced. Firms that are disposed to exploit consumers will try to wriggle out of whatever wording is adopted. It would be better if the FCA simply fined offenders and de-authorised those who refuse to change their ways.

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

Yes.

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

Yes.

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

The approach taken to CBA in Annex 2 seems reasonable and is impressively detailed. The finding that costs will be a small proportion of consumer gains seems entirely plausible given the nature of the charging and communication practices the FCA seeks to change.

The Money Charity is the UK's financial capability charity providing education, information, advice and guidance to all.

We believe that everyone achieves financial wellbeing by managing money well. We empower people across the UK to build the skills, knowledge, attitudes and behaviours to make the most of their money throughout their lives, helping them achieve their goals and live a happier, more positive life as a result.

We do this by developing and delivering products and services which provide education, information and advice on money matters for those in the workplace, in our communities, and in education, as well as through influencing and supporting others to promote financial capability and financial wellbeing through consultancy, policy, research and media work.

We have a 'can-do' attitude, finding solutions to meet the needs of our clients, partners, funders and stakeholders.

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