

Policy Statement

PS24/1

Temporary changes to handling rules for motor finance complaints

January 2024

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Chapter 1

Summary

- 1.1** This policy statement explains our response to recent developments in the motor finance market. We are urgently carrying out diagnostic work to assess whether the historical use of 'discretionary commission arrangements' (DCAs) between lenders and credit brokers means a significant number of individuals could be due redress (compensation) from motor finance firms because they paid too much for their car loans. Firms dispute that they have acted in an unfair or non-compliant way and that their actions have caused consumers loss.
- 1.2** Our diagnostic work will help us determine whether firms owe redress to a large number of customers. If so, we may decide that providing redress through consumer complaints does not lead to the best outcomes for consumers or the effective functioning of the market. Instead, we may need to intervene with an alternative approach. For example, it may be appropriate to consider measures such as:
- using our powers under section 404 of the Financial Services and Markets Act 2000 (FSMA) to set up an industry-wide consumer redress scheme
 - applying to the Financial Markets Test Case Scheme, to help resolve any contested legal issues of general importance
- 1.3** To preserve our ability to use an approach to redress that best meets our statutory objectives, we have made temporary complaint handling rules for complaints about motor finance agreements involving a DCA. These rules, which will be relevant to motor finance lenders and brokers, mean firms will not have to continue closing DCA complaints within the usual 8-week time limit. We will use this time to carry out diagnostic work and determine how to resolve any issues. In this policy statement we use the phrase 'closing complaints' as shorthand for the process of investigating complaints and issuing final responses in line with firms' obligations.
- 1.4** We have made different rules for DCA complaints because of the potential large scale of individual complaints in this area. We also note the large number of cases relating to DCAs that have been referred to the county courts. On the evidence we have seen, we are concerned about the risk of increased complaints leading to disorderly, inconsistent and inefficient outcomes for consumers, firms and the market. Such outcomes would undermine our objectives under FSMA to provide an appropriate degree of protection to consumers, promote competition in consumers' interests, and to protect and enhance market integrity. This is due to the combination of the current complaint handling time limits in our rules and the trend of firms rejecting almost all DCA complaints they have received because they dispute that they have caused harm to consumers.
- 1.5** The new rules pause for a period of 37 weeks the requirement on firms to provide a final response to a DCA complaint within 8 weeks of receiving it, and the corresponding right that complainants have to refer their complaint for consideration by the Financial Ombudsman Service (Financial Ombudsman). The rules also extend the amount of time consumers have to refer DCA complaints to the Financial Ombudsman from 6 to 15 months, if the firm sent its final response to the complaint within the period specified in

the rules. We have explained these aspects of the rules and other, related changes we are making in more detail in Chapter 2. We also explain, in Chapter 2, the possibility that we may need to extend the pause.

- 1.6** We are making the changes to our complaint handling rules without consultation, in reliance on section 138L of FSMA. This is because we consider that the delay involved in consulting would be prejudicial to the interests of consumers. We explain in Chapter 2 why we think this is the case.
- 1.7** In developing our approach, we have worked closely with the Financial Ombudsman under the duty to cooperate and consult in section 415C of FSMA. As some of the firms receiving complaints are regulated by the Prudential Regulation Authority (PRA), we have also consulted the PRA.

Who this affects

- 1.8** The rules in this policy statement are directly relevant to:
- motor finance providers
 - motor finance credit brokers, including motor dealers
 - consumers who have taken out motor finance agreements involving DCAs
 - professional representatives bringing complaints to motor finance providers and credit brokers about DCAs, including claims management companies (CMCs) regulated by the FCA
- 1.9** The rules in this policy statement will also interest consumer organisations and trade bodies representing the motor finance and professional representative sectors.

The wider context of this policy statement

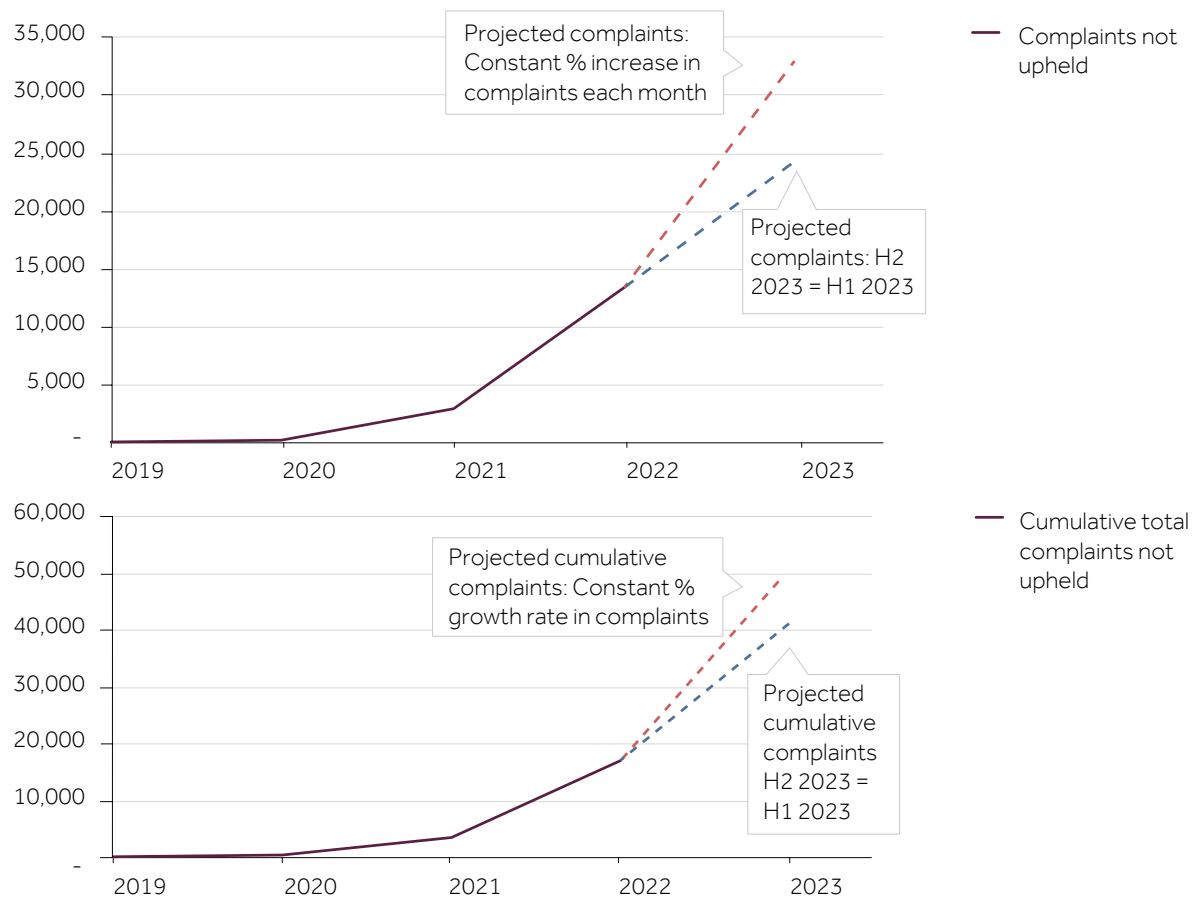
Background

- 1.10** Between 2017 and 2019, we carried out a review of the motor finance market. This identified concerns over the widespread use of DCAs that linked the commission received by the broker to the customer's interest rate under the finance agreement and allowed brokers wide discretion to set or adjust that rate. DCAs can harm consumers because they create conflicts of interest, with strong incentives for the broker to earn more commission by increasing the interest rate. This is why we banned DCAs in January 2021. When our ban came into force, we said we expected lenders to review their systems and controls in light of our findings and address any harm or potential harm they identified.
- 1.11** A significant number of motor finance arrangements made between 2007 and our ban in 2021 may have involved DCAs. This includes motor finance sales prior to us taking on the regulation of motor finance and other consumer credit firms in April 2014. Since our ban on DCAs, there has been a notable increase in complaints to firms about this issue, matched by a similar rise in data subject access requests (DSARs) by consumers

and, particularly, CMCs and other professional representatives. DSARs are a common precursor to complaints.

1.12 Figure 1, which is based on data received from major motor finance lenders, shows that, between January 2019 and the end of June 2023, firms closed around 30,000 motor finance commission complaints, of which 99% were not upheld (ie rejected). Not all these complaints will be about DCAs. However, before we banned DCAs, they were by far the most common commission arrangement. On average, between 2007 and 2020, approximately three quarters of all agreements had a DCA of some description. Given the level of CMC and other professional representative activity in this area, we think it likely that DCA complaints will be overrepresented in complaints data compared to the market as a whole. This is because we think CMCs and other professional representatives are more likely to target lenders who used commission arrangements that have now been banned. So, we think it is reasonable to use data on all motor finance commission complaints as the basis for our estimates of DCA complaints in this policy statement.

Figure 1: Annual and cumulative motor finance commission complaint closures by firms (2019-2023)



Source: Complaints data for January 2019 to June 2023 provided to the FCA by a sample of motor finance lenders

Note: Collected data ends in June 2023. For the period July to December 2023, we have estimated closures in 2 ways. The higher estimate assumes the cumulative number of complaints closed each month between July and December 2023 increase at the same rate as between January and June 2023. The lower estimate assumes the number of complaints closed between July and December 2023 (H2 2023) is the same as between January and June 2023 (H1 2023). These do not represent an upper and lower bound. They represent 2 plausible scenarios that we have used to inform our decision making around the implementation of this policy. As we explain in Chapter 2, we believe these scenarios are more likely to underestimate rather than overestimate the number of complaints.

- 1.13** Firms are rejecting almost all the DCA complaints they receive because they consider that they have not acted in an unfair or non-compliant way and that their actions have not caused loss to consumers. Many consumers disagree with firms' decisions to reject their complaints. As at the beginning of December 2023, approximately 10,000 motor finance commission complaints had been referred on to the Financial Ombudsman, of which over 90% were referred since the start of 2022. While, as with our data on complaints from firms, not all the motor finance commission complaints referred to the Financial Ombudsman will be about DCAs, we think it is reasonable to assume that a significant proportion are (see paragraph 2.53). The dispute over whether firms are liable to pay redress to consumers is also reflected in the large number of cases relating to DCAs that have been referred to the county courts.
- 1.14** The Financial Ombudsman has now issued its first decisions upholding DCA complaints. Although Financial Ombudsman decisions are based on the specific facts of individual cases, these decisions are likely to alert other consumers and their representatives to the possibility of receiving redress for the way their motor finance agreement was sold, significantly increasing complaints. Given the number of motor finance agreements involving DCAs, we anticipate that there could be many more complaints raised with firms which could also potentially be referred to the Financial Ombudsman if rejected by firms. We recognise that the Financial Ombudsman's decisions are the trigger for an increase in DCA complaints, rather than the cause of those complaints.

Our diagnostic work

- 1.15** The complaints referred to the Financial Ombudsman raise various issues about historical sales of motor finance agreements involving DCAs. We will carry out diagnostic work to assess practices within individual firms resulting from the poor incentives potentially created by DCAs and how those practices affected their customers. This focus on conduct within individual firms makes our diagnostic work different from our motor finance market review, which only identified the potential for DCAs to cause harm. The diagnostic work will help us to determine:
- whether there is likely to have been a widespread failure to comply with relevant requirements that has caused financial loss to consumers
 - if there has been a widespread failure, the potential number of consumers who could be owed redress, and the potential amount of redress that could be owed
 - whether we need to take any action to ensure redress is provided to consumers in an orderly, consistent and efficient way
 - whether we need to take further steps to support the Financial Ombudsman in carrying on its own statutory function, given the potential complaints volumes it could receive
- 1.16** We will carry out diagnostic work using powers under section 166 of FSMA. This gives us the power to appoint a 'skilled person' to produce a report on any issue, if it is relevant to the carrying out of our statutory functions. Firms must provide all reasonable assistance to a skilled person, including any information that the skilled person considers necessary or desirable to carry out their task.

- 1.17** The skilled person will produce a report on how a sample of firms carried out motor finance sales before our ban in 2021. This will include sales before we took on the regulation of motor finance and other consumer credit firms in April 2014. It will involve the skilled person looking back over time at a large sample of customer files to review the arrangements between lenders and brokers, and the information provided to consumers at the point of sale, including how commission was disclosed. The findings will help us decide whether consumer complaints should continue, or if an alternative approach is needed to resolve this issue in an orderly, consistent and efficient manner.

The harm we are concerned about

- 1.18** As set out in the previous section, our diagnostic work will give us a clear view on whether firms' conduct means large numbers of consumers are owed redress. Until this work is complete, we will not be able to say whether this is the case and, so, what our final approach should be. In the meantime, however, we expect:

- DCA complaints to firms to increase, and
- because firms are likely to continue to reject many of these complaints for the reasons set out in paragraph 1.13, many to be referred to the Financial Ombudsman

- 1.19** We set out below the risks this situation presents and how it could harm consumers if we had not paused time limits for closing complaints. Importantly, by pausing time limits we will:

- mitigate the short-term impact on firms and consumers caused by the expected increase in DCA complaints
- preserve our ability, in the longer term, to use the approach to consumer redress that most appropriately balances our statutory objectives

- 1.20** As well as halting the cycle of firms rejecting almost all DCA complaints they receive, by pausing complaint handling time limits, we will limit the number of complaints that would otherwise end up in the Financial Ombudsman's jurisdiction while we carry out diagnostic work. Once complaints are within the Financial Ombudsman's jurisdiction, there are significant legal, practical and financial barriers to using our powers to resolve them through alternative approaches that may better meet our statutory objectives.

Risk of disorderly outcomes

- 1.21** If we find that large numbers of consumers require redress, we may decide a different approach to consumer complaints is needed to advance:

- our consumer protection objective, by ensuring consumers receive appropriate redress
- our market integrity and competition objectives, by ensuring the provision of redress to consumers does not increase the risk of disorderly failure and its consequences

- 1.22** At this stage, it is not clear whether a different approach will be needed. However, if it were needed, the benefits of such an approach in advancing our objectives will depend

to a large extent on how many cases it could be applied to. If, by the time such an approach could be put in place, large numbers of cases that would otherwise be covered by it had instead been referred to the Financial Ombudsman – whose remit requires it to only consider cases through the lens of what is fair and reasonable in all the individual circumstances of the case – the benefits of that approach could be significantly diminished.

- 1.23** We are also concerned that, under the current requirement to respond to complaints within 8 weeks, it is likely that firms will incur significant costs in the short term to rapidly scale up to manage the expected increase in complaints. We consider these costs would be likely to result in financial pressures that would affect smaller firms most, as smaller firms are more susceptible to cashflow problems. These costs would not be incurred (or at least not to the same extent) if firms had more time to handle these complaints. If firms continue to reject complaints wholesale, as they are now, it is likely that many of these complaints will be referred to the Financial Ombudsman, meaning firms will incur additional costs, increasing overall financial pressures on them.
- 1.24** If our diagnostic work finds large numbers of consumers are owed redress, the ability of firms to meet their redress liabilities could be weakened by the financial pressures set out in paragraph 1.23. By pausing time limits, we reduce the risk of disorderliness in the motor finance market resulting from the combination of potential redress liabilities and additional redress-related costs. If disorderliness results in firms failing, some consumers may not receive appropriate redress, as the Financial Services Compensation Scheme would not protect consumers who are owed money by failed motor finance firms.

Risk of inconsistent outcomes

- 1.25** If our diagnostic work finds large numbers of individuals are owed redress because of failings by motor finance firms, it would be essential for public confidence in the regulatory system, as well as to satisfy principles of fairness and justice, that as many of those consumers as possible are treated equally and consistently.
- 1.26** If we took no action to pause complaint handling time limits, there could, because our statutory objectives are different to those of the Financial Ombudsman, be a risk of inconsistent or divergent outcomes between consumers whose cases are resolved by the Financial Ombudsman and those whose cases are resolved by an approach that we put in place. By pausing complaint handling time limits, we will reduce the number of consumers potentially impacted by inconsistent outcomes.
- 1.27** Given that firms have rejected almost all the DCA complaints they have closed, the rate that DCA complaints are currently being referred to the Financial Ombudsman (which we estimate in Chapter 2 at between a quarter and a third of DCA complaints closed by firms) appears lower than might be expected. This could indicate that many consumers are not questioning firms' responses to their complaints. So, there is a risk that, if we did not pause complaint handling time limits and extend the time period within which DCA complaints can be referred to the Financial Ombudsman from 6 to 15 months (see paragraphs 1.5 and 2.24), many consumers would continue to be 'timed out' of taking their complaint to the Financial Ombudsman. This would be a particular problem

if, following our diagnostic work, we decided that an approach based around consumer complaints was ultimately the best way to resolve this issue.

- 1.28** As we explain in paragraph 2.32, if we implemented an approach for providing redress that was not based around consumer complaints, it may be open to us to address this inconsistency by including cases that would otherwise have been timed out of the Financial Ombudsman.

Risk of inefficient outcomes

- 1.29** As an approach to providing redress, consumer complaints typically address issues on an individual basis. This means that, compared to approaches that take a more systematic approach, consumer complaints are potentially an inefficient way of dealing with potential large-scale consumer redress issues that involve many cases with similar circumstances.
- 1.30** As explained above, if we took no action at this stage to pause complaint handling time limits, higher volumes of complaints would potentially be referred to the Financial Ombudsman. We recognise that the Financial Ombudsman has established casework procedures to deal efficiently with large numbers of complaints presenting similar issues and that it can scale up its operations to deal with a significant and sustained influx of complaints about a particular type of product. However, the Financial Ombudsman is nonetheless constrained by the requirement to consider each complaint individually, consistent with its duty under FSMA to resolve complaints based on what it thinks is fair and reasonable in all the circumstances of the case.
- 1.31** As a general principle, resources to deal with large-scale consumer redress issues should be shared across the firms who may need to provide redress to consumers. If we determined that an approach that achieved this outcome was necessary for motor finance DCA cases, the benefits of that approach would be significantly reduced if large numbers of cases had been referred to the Financial Ombudsman by the time we are able to put that approach in place.
- 1.32** We are also concerned that the referral of further DCA complaints to the Financial Ombudsman could, at least in the short term, divert resources away from other complaints. This could mean that consumers with any type of complaint already at the Financial Ombudsman have to wait longer for their complaint to be resolved.

How it links to our objectives

- 1.33** In summary, pausing time limits for responding to DCA complaints before they can be referred to the Financial Ombudsman will enable management of the expected increase in complaint volumes in a way that minimises the above harms. During this period, we intend to gain a detailed understanding of whether large numbers of consumers may be owed redress because of historical motor finance agreements involving DCAs.
- 1.34** This, in turn, will help us to assess whether the provision of any redress to consumers should continue through consumer complaints, or through an alternative approach. We

consider that pausing complaint handling time limits for 37 weeks will give us the time necessary to announce a decision on whether this issue should be resolved through:

- consumer complaints (with no additional interventions), meaning no further extension to the pause
- an alternative redress approach, meaning an extension to the pause would be needed while we take steps to implement that approach

1.35 As set out below, our rules aim to secure an appropriate degree of protection for consumers, protect and enhance the integrity of the UK financial system, and make sure that markets, in particular the motor finance market, are effective, efficient and reliable.

Consumer Protection

1.36 In paragraphs 1.18-1.32 we have set out our view of the harms (disorderliness, inconsistency and inefficiency) that would likely arise – and how these would adversely impact consumers – had we not paused time limits for responding to DCA complaints.

Enhancing market integrity and effectiveness

1.37 We consider our objective to protect and enhance the integrity of the UK financial system is advanced by prompt and assertive action to ensure that a potential major redress event is resolved in the most orderly, consistent and efficient way possible. This will maintain confidence in the regulatory framework and, so, also support our objective to promote competition in the interests of consumers, as it will encourage firms and consumers to participate in the motor finance market and investors to invest in it.

1.38 When carrying out our functions, we must also have regard to the need for efficiency, as set out in the regulatory principle that any burden or restriction that regulation imposes on a person, or on the carrying on of an activity, should be proportionate to the benefits that are expected to result from that burden or restriction (section 3B FSMA). In our view, it is consistent with this principle to take the necessary steps to determine whether there is a more efficient way overall of providing redress to consumers than through complaints.

International competitiveness and growth

1.39 We consider our rules are compatible with advancing the FCA's secondary international competitiveness and growth objective. Pausing the requirement for firms to close DCA complaints within 8 weeks, will allow us to ensure the most orderly, consistent and efficient provision of redress by firms to any consumers who are owed it, as well as help to manage the significant operational impact on firms and the Financial Ombudsman and reduce the risk of firms failing. By promoting market integrity and better outcomes for all consumers in this way, we ensure continued trust and confidence in the UK's financial markets, as well as in the regulatory framework, which are essential for sustainable economic growth and international competitiveness.

What we are changing

- 1.40** As set out at paragraph 1.5, the main effect of our rules is to pause for a period of 37 weeks the requirement that firms must, within 8 weeks of receipt, respond to DCA complaints and give complainants the right to refer their complaint to the Financial Ombudsman. The rules also extend the time limit for referring DCA complaints to the Financial Ombudsman from 6 to 15 months where the firm sent its final response within the timeframe specified in the rules.
- 1.41** The pause will apply to all DCA complaints submitted to firms on or after 11 January 2024, as well as to DCA complaints that have not been closed by the firm and are less than 8 weeks old at that date. Our rules also include requirements on keeping complainants informed about changes to complaint handling timeframes.
- 1.42** Our rules will also extend the amount of time some complainants will have to refer DCA complaints to the Financial Ombudsman from 6 months to 15 months.
- 1.43** Chapter 2 of this policy statement explains in more detail our rules, how they will operate, and the timeframes during which they will apply. The rules instrument can be found at Appendix 1.

Outcome we are seeking

- 1.44** We want to ensure that consumers who have been harmed by motor finance arrangements with DCAs, are provided with appropriate redress from firms in an orderly, consistent and efficient manner and in a way that protects and enhances market integrity.
- 1.45** Given this outcome, we recognise that giving firms more time to handle DCA complaints may seem counterintuitive. However, as set out above, we are concerned that the current time limits for responding to complaints may prevent us from achieving an orderly, consistent and efficient resolution.
- 1.46** So, the direct outcome of the rules set out in this policy statement is to manage the risk of harm that is presented by the time limits in the current complaint handling rules while we carry out work to identify whether an alternative approach would be more appropriate in the longer term.

Measuring success

- 1.47** We will use the 37-week pause to the complaint handling time limits to:
- carry out diagnostic work to assess whether the sales of motor finance agreements involving DCAs fell below applicable regulatory and legal standards, resulting in consumers being owed redress
 - if necessary, assess the costs and benefits of available alternative mechanisms for providing appropriate redress to any consumers who are owed it

Our ability to carry out this analysis and implement the approach we consider most conducive to our objectives will be a key success measure of our rules.

- 1.48** For the harms discussed in paragraphs 1.18-1.32, we will measure success in mitigating them by comparing actual measured outcomes with what we expect to have happened, had we taken no action. We will focus on how we have promoted:
- **orderliness**, by assessing whether fewer firms failed and/or failed in a disorderly manner, resulting in a greater proportion of any consumers who are owed redress receiving it and helping to ensure competition in the market and access to credit is not unduly reduced
 - **consistency**, by assessing the extent to which consumers in similar situations have similar experiences and, if relevant, redress outcomes
 - **efficiency**, by assessing whether all consumers (those with DCA and non-DCA cases) wait less time on average for resolution and whether administrative costs for firms are lower on a per case basis
- 1.49** We will also:
- monitor how straightforward firms find it to understand and implement our rules
 - work with the Financial Ombudsman to monitor DCA complaints referred to it following implementation of our rules

Equality and diversity considerations

- 1.50** We do not consider that the proposals materially impact any of the groups with protected characteristics under the Equality Act 2010.

Environmental, social & governance considerations

- 1.51** We have considered the environmental, social and governance (ESG) implications of our proposals and our duty under sections 1B(5) and 3B(1)(c) of FSMA to have regard to contributing towards the Secretary of State achieving compliance with the net-zero emissions target under section 1 of the Climate Change Act 2008. We do not consider that the proposals are relevant to contributing to those targets.

Next steps

- 1.52** The rules described in this policy statement will come into force on 11 January 2024. The rules mean firms do not have to provide final responses to DCA complaints within 8 weeks during the period beginning with 11 January 2024 and ending with 25 September 2024. However, we nonetheless encourage firms to continue to progress DCA complaints where possible during this period by continuing to investigate and collect evidence to help with their eventual resolution. Even if we determine that such complaints should, ultimately, be resolved through an alternative approach, it is highly likely that firms will need to take similar steps under that approach.

What we will we do next

- 1.53** We plan to communicate a decision on next steps at the very latest by 24 September 2024, which is the date before the pause to complaint handling time limits is due to end. This would include whether we consult on extending the pause or make other changes.

What you need to do next

- 1.54** If your firm is affected by these changes, you must ensure that you comply with all the rules in Appendix 1 that are relevant to your business.
- 1.55** To help inform our decision on the next phase of our work, we would welcome feedback from all stakeholders on the impact of the rules and our approach to the provision of redress for harm caused by DCAs more generally. Feedback can be sent to queries-ps24-1@fca.org.uk up to and including 11 March 2024.

Chapter 2

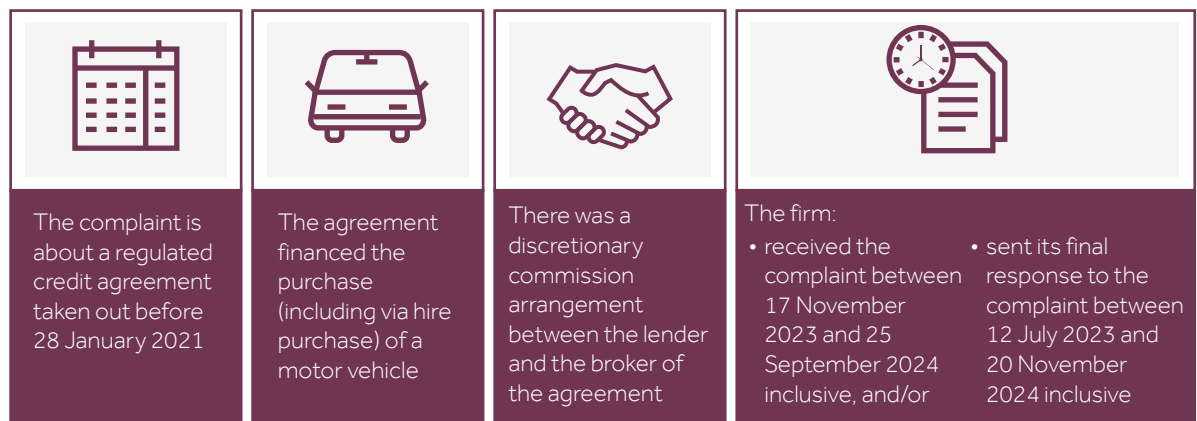
Our rules and why we are making them without consultation

Our rules

Application of our rules

- 2.1** The rules explained in this chapter will be added to the Dispute Resolution: Complaints (DISP) sourcebook and will apply to complaints about motor finance agreements involving a DCA, as set out in Figure 2. So the rules will be of particular interest to lenders and credit brokers in the motor finance market. For the avoidance of doubt, where this policy statement refers to time periods in the rules that begin with a specified date and end with a specified date, those periods include the specified dates.

Figure 2: How we have defined a motor finance DCA complaint



Source: DISP 5.1.2R

- 2.2** As Figure 2 shows, the rules apply to complaints about regulated credit agreements used to acquire a motor vehicle, including hire purchase agreements (such as Personal Contract Purchase agreements). Complaints about consumer hire agreements – commonly known as Personal Contract Hire are not captured by our rules.
- 2.3** We have adopted a relatively wide definition for a DCA complaint. We consider this preferable to adopting a narrower definition that risks not capturing all the complaints we want to and could be circumvented by consumers or professional representatives. This could prevent us from achieving our policy objective.
- 2.4** A wide definition will enable firms to easily identify complaints our rules apply to, making them less burdensome to implement. This is important given that we are introducing our rules with immediate effect and without consultation.

2.5 The downside of a wide definition is that it could catch complaints related to motor finance agreements with a DCA where the DCA is clearly not relevant to the resolution of the complaint. As set out in paragraph 2.13, our rules do not prevent firms from responding to DCA complaints, so in cases where firms are able to easily identify that the DCA is not a relevant consideration, we encourage them to provide a final response (ie within 8 weeks).

2.6 Examples where it might be appropriate for firms to provide a final response while the pause is in place include where:

- a consumer who has already complained about commission, and received a response, wishes to raise a different complaint
- it is possible to resolve the complaint without having to consider whether the DCA element of the agreement was fair

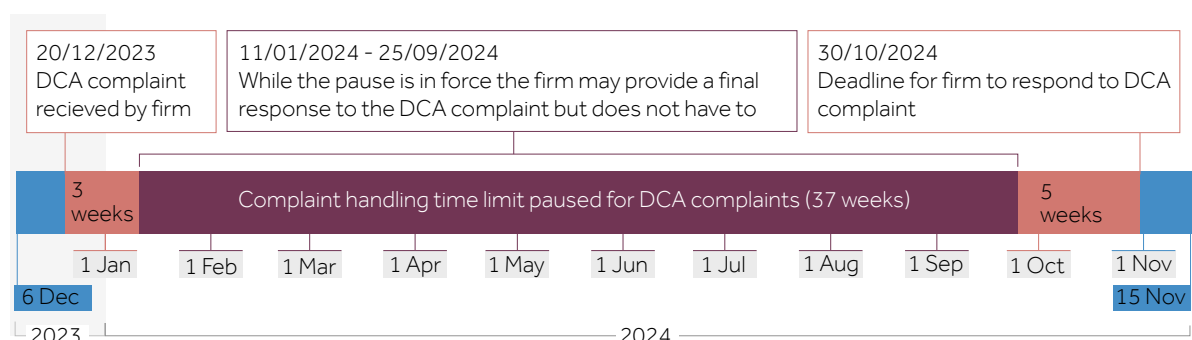
Pausing complaint handling time limits

2.7 In line with DISP 1.6.2R, when responding to complaints, firms must, by the end of 8 weeks after receipt of a complaint, send the complainant a final response (DISP 1.6.1R(1)) or a written holding response explaining why they are not able to issue a final response (DISP 1.6.2R(2)). Following this, consumers have the right to refer their complaint to the Financial Ombudsman if either they are not satisfied with how the firm has resolved the complaint, or if the firm has not issued a final response.

2.8 For DCA complaints, we have decided that the 8 weeks firms have under DISP 1.6.2R will be paused for a period of 37 weeks beginning with 11 January 2024 and ending with 25 September 2024 ('the pause'). This will mean, unless the firm decides to respond to their complaint, consumers will not be able to refer their complaint to the Financial Ombudsman during the pause. Once the pause ends, the 8-week time limit will be reinstated and, unless we take further action, consumers will be able to refer complaints to the Financial Ombudsman again.

2.9 Figure 3 gives an example of how the pause will work. If a complaint was made to the firm 3 weeks before the start of the pause on 11 January 2024, the firm would have only 5 weeks remaining after the pause ends on 25 September 2024 to issue a final response or a holding response if a final response is not possible. For complaints received during the period the pause is in place, the 8 weeks will start to run from 26 September 2024. This will help ensure firms prioritise complaints from complainants who have been waiting the longest.

Figure 3: Example of how the pause affects the 8-week time limit



2.10 DISP 2.8.1R says, in summary, that the Financial Ombudsman can only consider a complaint that is not an electronic money or payment services complaint (to which different time limits apply) if::

- the respondent (ie the firm) has already sent the complainant its final response or summary resolution communication (DISP 2.8.1R(1)), or
- 8 weeks have elapsed since the respondent received the complaint (DISP 2.8.1R(2))

unless

- the respondent consents and:
 - the Financial Ombudsman has informed the complainant that the respondent must deal with the complaint within 8 weeks and that it may resolve the complaint more quickly than the Financial Ombudsman (DISP 2.8.1R(4)(a)), and
 - the complainant nevertheless wishes the Financial Ombudsman to deal with the complaint (DISP 2.8.1R(4)(b)).

2.11 These rules will continue to apply during the pause. We are, however, making changes so that the pause is included when calculating the 8 weeks in DISP 2.8.1R(2). We will also be making a consequential change to DISP 2.8.1R(4)(a) so that the 8 weeks are paused for the period beginning with 11 January 2024 and ending with 25 September 2024.

Complaints that will be paused

2.12 The pause will apply to DCA complaints, as defined above. More specifically, it will apply to any:

- 'new' DCA complaint, ie a DCA complaint received by the firm on or after these rules come into force on 11 January 2024 (in line with DISP 1.7.2R, where a complaint has been forwarded to the firm by another firm, this includes forwarded complaints received by the firm on or after 11 January 2024)
- DCA complaint received by the firm on or after 17 November 2023 (as these complaints will be less than 8 weeks old when the rules come into force), where the firm has not sent the complainant a final response (as with new DCA complaints, where a complaint has been forwarded to the firm by another firm, this includes forwarded complaints received by the firm on or after 17 November 2023)

Requirements while the pause is in effect

2.13 DISP 1.4.1R continues to apply while the pause is in force. This rule requires firms, among other things, to assess and investigate complaints promptly and diligently. Where possible, we encourage firms to continue to progress DCA complaints by investigating and collecting evidence that could help with their eventual resolution. Even if we determine that such complaints should, ultimately, be resolved through an alternative approach, it is highly likely that firms will need to take similar steps under that approach.

2.14 The pause does not prevent firms that wish to respond to DCA complaints from sending final responses during the period the pause is in place. Such a response would give the

complainant the right to ask the Financial Ombudsman to consider their complaint. The Financial Ombudsman will be able to consider such a complaint in line with DISP 2.8.1R. Nor does the pause prevent firms from responding to a complaint in line with the provisions in DISP 1.6.4R, which provides an alternative approach to that set out in DISP 1.6.2R.

- 2.15** If firms choose to provide final responses to DCA complaints or make offers of redress during the pause they should ensure that they are complying with the usual requirements in DISP. This includes the complaint resolution rules in DISP 1.4 that cover investigating, assessing and resolving complaints and co-operating with the Financial Ombudsman.
- 2.16** As set out in paragraphs 2.10-2.11, the Financial Ombudsman will also still be able to consider a complaint during the pause if no response has been sent and:
- the firm consents, and
 - the Financial Ombudsman has informed the complainant that the firm may resolve the matter more quickly, and
 - the complainant nevertheless wishes the Financial Ombudsman to deal with the complaint

Rationale for a 37-week pause

- 2.17** We have paused the time limits for 37 weeks as we consider this gives sufficient time for:
- the skilled person helping us with our diagnostic work (see paragraph 1.17) to report back to us, providing a better understanding of the circumstances of sales of motor finance agreements involving DCAs
 - us to consider what this understanding means for our decision on what steps we should take next
 - us to announce a decision on whether the most efficient, orderly and consistent resolution of this issue is through:
 - consumer complaints (with no additional interventions), meaning no further extension to the pause
 - an alternative redress approach, meaning an extension to the pause would be needed while we take steps to implement that approach (see paragraph 2.61)
- 2.18** If we consider it would be appropriate to make any amendments to the rules, including extending the pause further, we will communicate this in advance of the pause expiring. As explained in paragraph 2.60, while we have made these rules without consultation, we intend to consult on any future amendments to the rules.

Impact of the pause on consumers who have a complaint with or have received a final decision from the Financial Ombudsman

- 2.19** The Financial Ombudsman will continue to investigate and determine complaints that have been correctly referred to it based on what the Financial Ombudsman considers to be fair and reasonable in all the circumstances of the complaint. Firms should cooperate with the Financial Ombudsman Services in the usual way, as required by DISP.

- 2.20** Our rules do not affect the position of consumers who have already received a final decision from the Financial Ombudsman. Firms should comply promptly with those decisions, as required by our rules.

Keeping complainants informed about complaint handling time limits

- 2.21** Our rules require firms to tell complainants with DCA complaints about the pause to the time limits for dealing with their complaint and the reason why the time limits have been paused. Our rules also require firms to update currently published consumer-facing information about their complaint handling procedures, such as information on their websites, to reflect changes to the complaint handling time limits. We have published information on our website and shared information directly with firms to enable them to do this.
- 2.22** On receiving any complaint, a firm must send the complainant a prompt written acknowledgment. We are introducing a rule so that when a DCA complaint is received the acknowledgement must include an explanation of the pause to the time limit rules in DISP 1.6.2R. Where a firm has already sent a written acknowledgment to a DCA complaint, because the complaint was received before the pause commenced, we are requiring firms to promptly inform the complainant of the pause and the reason for it. For all complaints within the scope of the pause, firms must also:
- direct the complainant to the information published on the FCA's website that explains the reasons for the rules, and
 - ensure the complainant is kept informed thereafter of the progress of the measures being taken for the complaint's resolution
- 2.23** Our Principles for Businesses continue to apply to DCA complaints. Among other things, they require firms to treat customers fairly, including how they communicate with them, and we expect firms to exercise particular care with consumers in vulnerable circumstances. If, for example, the firm is aware that the complainant could have difficulty accessing the information on our website, it should take reasonable steps to provide them with the information in an alternative format or a way of requesting it in an alternative format. Read our 'Guidance for firms on the fair treatment of vulnerable customers'.

Referring a complaint to the Financial Ombudsman in time

Changes to the requirement to refer a complaint within 6 months of the firm's final response

- 2.24** DISP 2.8.2R(1) provides that the Financial Ombudsman cannot consider a complaint if it is made to it more than 6 months after the firm sent the complainant its final response (or, if the complaint was resolved by the 3rd business day following receipt of, its 'summary resolution communication'). As set out in Table 1, we have amended this rule so that where a final response to a DCA complaint is sent during the period beginning with 12 July 2023 and ending with 20 November 2024, the complainant will benefit from a 9-month extension to this time limit. So these complainants will have 15 months from the date the final response is sent to refer their DCA complaint to the Financial Ombudsman.

Table 1: Time to refer complaints to the Financial Ombudsman

Group	Scenario	Time to refer complaints to the Financial Ombudsman
A	Consumer was sent a final response to their DCA complaint during the period beginning with 12 July 2023 and ending with 10 January 2024 (ie before the pause took effect) but has not referred their complaint to the Financial Ombudsman and the 6 months have not yet expired.	Within 15 months of the date the firm sent its final response to the complainant.
B	Consumer is sent a final response to a DCA complaint during the period beginning with 11 January 2024 and ending with 20 November 2024 (ie 8 weeks after the end of the pause).	Within 15 months of the date the firm sends its final response to the complainant.
C	Consumer is sent a final response to a DCA complaint on or after 21 November 2024.	Within 6 months of the date the firm sends its final response to the complainant.

2.25 We have given consumers more time to refer DCA complaints to the Financial Ombudsman to:

- ensure consumers are not forced to decide whether to refer DCA complaints that were closed by the firm before the pause came into effect to the Financial Ombudsman before we have made our announcement on our final approach to providing redress, and
- help reduce the operational impact on the Financial Ombudsman resulting from the expected increase in complaint referrals to it that:
 - were closed by the firm prior to the pause coming into effect but which had not, at that point, been referred to the Financial Ombudsman, and
 - arise following the end of the pause when firms may have to issue large numbers of final responses in a short space of time, if we decided that our final approach to providing redress should be through consumer complaints

2.26 As with non-DCA complaints, the Financial Ombudsman will be able to consider DCA complaints referred to it outside this extended time limit. This will depend on whether, in the Financial Ombudsman's view, the failure to comply with the time limit was as a result of exceptional circumstances, or the firm has consented to the Financial Ombudsman considering a complaint where the time limits have expired.

2.27 Firms must write to consumers in Group A of Table 1 (ie consumers who received a final response to a DCA complaint before the pause took effect) to explain that the 6 months to refer the complaint to the Financial Ombudsman has been extended to 15 months. Consumers in Groups B and C will be informed of how long they will have to refer their complaint to the Financial Ombudsman when they are sent a final response. For consumers in Group C the time to refer their complaint to the Financial Ombudsman will revert to 6 months, unless we decide we need to intervene with an alternative approach.

- 2.28** We do not consider it proportionate to make changes to the Financial Ombudsman's consumer leaflet that firms are required to provide when sending a final response. The leaflet says that complaints should usually be referred to the Financial Ombudsman within 6 months of a final response being sent. Instead, we will require firms to explain to DCA complainants where relevant that the leaflet does not contain the correct time limit. Firms should also, where appropriate, amend the wording in DISP 1 Annex 3R that they are required to use in final responses, so it refers to 15 months rather than 6 months.
- 2.29** There will be some consumers who made a complaint before 17 November 2023 who have not received a final response but have been sent a written holding response informing them that they may now refer the complaint to the Financial Ombudsman.
- 2.30** A written holding response does not start the time a complainant has to refer a complaint to the Financial Ombudsman running for the purposes of DISP 2.8.2R(1). This means that consumers who wish to wait and give the firm more time to provide them with a final response before referring their complaint to the Financial Ombudsman can do so.
- 2.31** Finally, if we implement an alternative approach for the provision of redress to consumers who are owed it, we will consider whether complaints that have been made out of time of the time limits set out in DISP 2.8.2R(1) should fall within scope of the alternative approach.

Impact of the pause on the 3- and 6-year time limits

- 2.32** DISP 2.8.2R(2) provides that the Financial Ombudsman also cannot consider a complaint if the complainant refers it to it more than:
- 6 years after the event complained of, or (if later)
 - 3 years from the date on which the complainant became aware (or ought reasonably to have become aware) that they had cause for complaint, unless
 - the complainant referred the complaint to the firm or to the Financial Ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received
- 2.33** We are not making any changes to DISP 2.8.2R(2). If a complainant is concerned about these time limits expiring, they should complain to the firm and ensure they get written acknowledgement of their complaint having been received. This will stop the time limits for the purposes of DISP 2.8.2R(2). Our rules do not prevent a complaint from being made to the firm during the period the pause is in place.

Impact of the pause on the Financial Ombudsman's complaint handling procedures (DISP 3)

- 2.34** The rules in Chapter 3 of DISP are made by the Financial Ombudsman and set out:
- the procedures for the Financial Ombudsman for investigating and determining complaints
 - the basis on which the Financial Ombudsman makes decisions
 - the awards which the Financial Ombudsman can make

- 2.35** DISP 3.2.2R provides that unless the firm has already had 8 weeks to consider a complaint, the Financial Ombudsman will refer it to the firm (except where DISP 2.8.1R(4) applies). However, given the changes we have made to the Financial Ombudsman's jurisdiction to implement the pause, this means the Financial Ombudsman need not make any changes to the rules in DISP 3.

Record keeping and record retention

- 2.36** DISP 1.9.1R requires firms to keep a record of each complaint received and the measures taken for its resolution and retain that record (in the case of DCA complaints) for 3 years from the date the complaint was received. The 37-week pause will apply to this rule so that the period beginning with 11 January 2024 and ending with 25 September 2024 will not contribute to the 3-year period, for the complaints in scope of these rules.
- 2.37** We expect firms, upon request, to be able to give us the information collected in complying with DISP 1.9.1R.
- 2.38** We are also introducing a rule that will require lenders and credit brokers to maintain and preserve any records that are or could be relevant to the handling of existing or future complaints or civil claims relating to agreements with DCAs entered into before 28 January 2021. This is regardless of whether the customer has complained or not. This requirement applies until 11 January 2025, 1 year from when the rule comes into force. The purpose of the rule is to supplement the general rules on record keeping in SYSC 9 and clarify that certain records must be kept.
- 2.39** During this 12-month period, we will assess this requirement and expect to be able to further clarify what records should be preserved and for how long. Any proposal to make this rule permanent will be subject to consultation.

Why we are making our rules without consultation

- 2.40** Section 137A of FSMA enables us to make rules where we consider it necessary or expedient for the purpose of advancing our consumer protection objective or our other statutory objectives. Paragraph 13 of Schedule 17 of FSMA enables us to make rules on time limits for referring complaints to the Financial Ombudsman. We have explained in Chapter 1 why we consider the rules advance our objectives.
- 2.41** We normally make rules after consulting on draft rules in line with section 138I of FSMA. However, section 138L allows us to make rules without prior consultation if we consider that the delay involved would be prejudicial to the interests of consumers. This section explains why we are relying on section 138L of FSMA to make our rules on handling DCA complaints without consultation.
- 2.42** In Chapter 1, we explained why pausing complaint handling time limits will mitigate consumer harms related to disorderliness, inconsistency and inefficiency that could arise if firms continued to reject high numbers of DCA complaints. In summary, we consider that the more complaints that would be closed by firms (and would, as a result, become eligible for referral to the Financial Ombudsman) while we consulted, the

greater the harm to consumers' interests. This is because, as we explain in Chapter 1, once complaints are referred to the Financial Ombudsman, they are outside the scope of any alternative approach to redress that we may ultimately put in place for the benefit of all consumers, risking inconsistent outcomes.

- 2.43** In summary, consulting on our rules for a period of 4 to 6 weeks is, in our view, likely to result in firms having to close between 2,000 and 3,000 additional complaints. We think it reasonable to expect that between 400 and 1,500 of these complaints would be referred to the Financial Ombudsman. It is important to note that these are relatively conservative estimates (see paragraph 2.51). Our estimates are sensitive to the impact of any decisions issued by the Financial Ombudsman on the rate of referrals to it, as well as the length of our consultation and rulemaking process. As we explain in paragraph 2.55, if our process took longer than 8 weeks, for example, if our analysis of consultation responses took longer than currently estimated, then we would expect the numbers of complaints and referrals to be much higher.
- 2.44** By not consulting, we also relieve firms of the obligation to significantly scale up their operations to be able to respond within 8 weeks to the influx of complaints we expect to see during any consultation period. We consider that uncertainty about the outcome of our consultation, particularly the duration of any pause, would be highly undesirable at a time when firms will need to make critical financial and operational decisions. We note in Chapter 1 that scaling up to deal with sudden and significant increases in complaints could particularly place smaller firms under significant financial pressure, increasing the risk of consumer harm resulting from disorderliness.

Evidence of rising complaints about discretionary commission arrangements

- 2.45** As set out in Chapter 1, data we have received from a sample of lenders (representing around 90% of the motor finance market) on motor finance complaints show a clear trend of rising volumes. Excluding abandoned or withdrawn complaints, to comply with the current 8-week time limit on responding to complaints, these lenders closed a total of approximately 12,000 complaints in the first 6 months of 2023. For comparison, the equivalent figure for the whole of the previous 4 years was approximately 17,000 complaints.
- 2.46** Chapter 1 explains that virtually all complaints to date have been rejected, making it likely that many complainants will refer their complaint to the Financial Ombudsman. Generally, complainants must refer their complaint to the Financial Ombudsman within 6 months of the firm sending its final response. This means there can be a reasonably long lag between a firm closing a complaint and it being referred to the Financial Ombudsman.
- 2.47** As set out in paragraph 2.19-2.20, DCA complaints that have already been referred to the Financial Ombudsman, or which could be referred to the Financial Ombudsman because either the complainant has received a final response letter, or more than 8

weeks have elapsed since the firm received the complaint, are out of the scope of our pause rules.

- 2.48** So, our focus is how many further complaints would have to be closed by firms and become eligible for referral to the Financial Ombudsman if we followed the normal rule making process, rather than making rules without prior consultation.

Complaints that would be closed by firms and become eligible for the Financial Ombudsman if we consulted on our rules

- 2.49** We have actual data on complaint closures up to the end of June 2023. We do not have data on how many complaints firms closed in the approximately 6 months between the beginning of July and our rules coming into force at the date of this policy statement. In the absence of this information, we have produced estimates for the number of closed complaints for each month in 2023. As our estimates are not based on data from all firms who might receive complaints about DCAs, they are likely to understate the number of complaints.
- 2.50** Based on data from the first half of 2023, when firms in our sample closed approximately 12,200 motor finance complaints, we consider it reasonable to estimate that firms are closing at least 500 DCA complaints a week. However, as Figure 1 in Chapter 1 shows an overall trend of rising complaints, it is unlikely that complaint volumes in the second half of 2023 will be the same as in the first half of 2023. So, an estimate of 500 DCA complaint closures a week is likely to be conservative. Figure 1 shows that in a not implausible scenario where complaint volumes grew at a constant monthly rate throughout 2023, firms would be closing over 4,000 DCA complaints in December alone. However, we only have annual complaints data from firms, so we do not consider it appropriate to use estimates based on monthly growth rates in our analysis.
- 2.51** We consider we would need to consult for a minimum of 2 weeks to appropriately balance the need to make the rules as quickly as possible against the need for meaningful consultation. We would need at least 2 more weeks to complete other procedures necessary for making rules, including reviewing consultation responses, producing our policy statement, and seeking approval from our Board. We estimate that a delay of 4 weeks would result in firms closing a further 2,000 complaints that would not have to be closed if our rules came into force immediately. For the reasons set out in Chapter 1, we expect that almost all these complaints will be rejected by firms, making referral to the Financial Ombudsman more likely.
- 2.52** We do not have data to confidently predict how many of these rejected complaints would be referred to the Financial Ombudsman. The Financial Ombudsman has told us that, as at the beginning of December 2023, it had around 10,000 open motor finance commission complaints. Of those complaints, it was still working with firms to identify the type of commission arrangement that applied in about a third of the cases. For the complaints where the Financial Ombudsman has identified the commission arrangement, it has told us that approximately half related to DCAs.
- 2.53** Because the number of DCA complaints currently with the Financial Ombudsman is uncertain, it is difficult to reliably estimate the current rate at which DCA complaints

are being referred to the Financial Ombudsman. If the split between DCA and non-DCA complaints turns out to be the same for complaints where the commission arrangement is currently unknown as it is for those where the arrangement has been identified, this would mean around 5,000 of the Financial Ombudsman's 10,000 motor finance commission cases are about DCAs. This would suggest a referral rate of approximately 20% of DCA complaints closed by firms. Applying this referral rate to our conservative estimate of 2,000 additional closed complaints that might be closed by firms during a consultation period gives a figure of 400 referrals to the Financial Ombudsman. However, as we set out in the following section, we think the referral rate is likely to increase in the near future.

Impact of likely higher rates of referral to the Financial Ombudsman

2.54 As explained in paragraph 1.14, although Financial Ombudsman decisions are based on the specific facts of individual cases, its decisions upholding DCA complaints are likely to alert other consumers and their representatives to the possibility of receiving redress for the way their motor finance agreement was sold. We think it is reasonable to expect the referral rate to increase as a result. We do not have any data that could reliably indicate what the rate could increase to, so have modelled plausible rates of 30%, 40% and 50% to compare with our current estimate of 20%. The impact of different rates of referral on the number of complaints that we estimate would be closed by firms under consultation and rulemaking periods of different lengths (see paragraphs 2.55-2.57) are set out in Table 2.

Table 2: Impact of different rates of referral and consultation and rulemaking periods on DCA complaints referred to the Financial Ombudsman Service

DCA complaints closed by firms	Number of DCA complaints referred to the Financial Ombudsman			
	20% referral rate	30% referral rate	40% referral rate	50% referral rate
2,000 (4-week consultation and rulemaking period)	400	600	800	1,000
3,000 (6-week consultation and rulemaking period)	600	900	1,200	1,500
4,000 (8-week consultation and rulemaking period)	800	1,200	1,600	2,000

Impact of a longer delay to making our rules

2.55 We must also consider the impact on our estimates of us not being able to conclude a consultation and rule-making process within 4 weeks. From a technical perspective, the rules would have facilitated a relatively quick consultation, because we have sought to make them as easy to understand and straightforward for firms to implement as possible.

- 2.56** However, there are several factors outside our control that could have a significant impact on how long the overall process takes. For example, we may receive a very large number of responses to our consultation, some of which may be very extensive and detailed, and we would have to consider all of them. We note that consulting and making rules during and around the winter holiday season, as would be the case if we consulted on our rules, will present additional challenges for us and our stakeholders and increase the risk of delay.
- 2.57** If our process took 6 weeks, we estimate that firms would close 3,000 DCA complaints. As set out in Table 2, we estimate that between 600 (20% referral rate) and 1,500 (50% referral rate) would be referred to the Financial Ombudsman during this period. However, in a conceivable scenario where our process took 8 weeks or more then we would expect to see a much larger impact. This is because we expect a sudden and nonlinear increase in complaints to firms once the Financial Ombudsman issues its decisions and, at the 8-week point, firms would have to start responding to complaints received after the Financial Ombudsman's decisions were issued.

Future consultation and request for feedback

- 2.58** We considered whether it would also be appropriate to consult shortly after making the rules and relying on section 138L to have done so without prior consultation. We concluded, however, that this would be disproportionate given the temporary nature of the rules and the resources this exercise would divert away from work towards achieving our ultimate objective.
- 2.59** To help inform our decisions on the next phase of our work, we would welcome feedback from all stakeholders on the impact of the rules and our approach to the provision of redress for DCAs more generally. Feedback can be sent to queries-ps24-1@fca.org.uk up to and including 11 March 2024.
- 2.60** Stakeholders should note that we intend to follow the usual rule-making procedures, including public consultation, if we decide to extend the pause and/or make any other changes to the rules (see paragraph 2.18).

Annex 1

Abbreviations used in this paper

Abbreviation	Description
CMC	Claims Management Company
DCA	Discretionary Commission Arrangement
DISP	Dispute Resolution: Complaints sourcebook
DSAR	Data Subject Access Request
ESG	Environmental, Social and Governance
FCA	Financial Conduct Authority
Financial Ombudsman	Financial Ombudsman Service
FSMA	Financial Services and Markets Act 2000
PRA	Prudential Regulation Authority

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Appendix 1

Made rules (legal instrument)

**DISPUTE RESOLUTION: COMPLAINTS SOURCEBOOK (MOTOR FINANCE
DISCRETIONARY COMMISSION ARRANGEMENT COMPLAINTS)
INSTRUMENT 2024**

Powers exercised

- A. The Financial Conduct Authority (“FCA”) makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137A (The FCA’s general rules);
 - (2) section 137T (General supplementary powers);
 - (3) section 138L (Consultation: general exemptions);
 - (4) section 139A (Power of the FCA to give guidance);
 - (5) section 226 (Compulsory jurisdiction); and
 - (6) paragraph 13 of Schedule 17 (FCA’s rules).
- B. The rule-making provisions listed above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 11 January 2024.

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Dispute Resolution: Complaints sourcebook (DISP) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as Dispute Resolution: Complaints Sourcebook (Motor Finance Discretionary Commission Arrangement Complaints) Instrument 2024.

By order of the Board
10 January 2024

Annex A**Amendments to the Glossary of definitions**

Insert the following new definition in the appropriate alphabetical position. The text is not underlined.

*relevant motor
finance DCA
complaint* (in *DISP*) has the meaning in *DISP* App 5.1.2R.

Annex B

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

In this Annex underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

1 Treating complainants fairly

1.1 Purpose and application

...

Application to designated finance platforms

...

1.1.10L ...

Application to firms in relation to a relevant motor finance discretionary commission arrangement complaint

1.1.10M R In relation to a relevant motor finance DCA complaint:

(1) DISP 1.6; and

(2) DISP 1.9,

apply as modified by DISP App 5 (Relevant motor finance discretionary commission arrangement complaint handling rules).

1.1.10N G DISP App 5 contains complaint handling rules in respect of a relevant motor finance DCA complaint.

...

1.2 Consumer awareness rules

Publishing and providing summary details, and information about the Financial Ombudsman Service

1.2.1 R ...

Relevant motor finance discretionary commission arrangement complaints

1.2.1A G DISP App 5.2.4R requires a respondent to update the information it has published pursuant to DISP 1.2.1R(1) in relation to the complaint handling time limits that apply to a relevant motor finance DCA complaint.

...

2 Jurisdiction of the Financial Ombudsman Service

2.1 Purpose, interpretation and application

...

Application

...

2.1.6A ...

Application to the Ombudsman and respondents in relation to a relevant motor finance discretionary commission arrangement complaint

2.1.6B R In relation to a relevant motor finance DCA complaint:

(1) DISP 2.8.1R(2);

(2) DISP 2.8.1R(4)(a); and

(3) DISP 2.8.2R(1).

apply as modified by DISP App 5 (Relevant motor finance discretionary commission arrangement complaint handling rules).

2.1.6C G DISP App 5 contains complaint handling rules in respect of a relevant motor finance DCA complaint.

...

After Appendix 4 (Handling pension transfer redress calculations), insert Appendix 5 (Relevant motor finance discretionary commission arrangement complaint handling rules). All of the text is new and is not underlined.

App 5 Relevant motor finance discretionary commission arrangement complaint handling rules

App 5.1 Purpose, interpretation and application

Purpose

- App 5.1.1 G (1) This appendix contains *rules* and *guidance* in relation to a *relevant motor finance DCA complaint* that:
- (a) apply and modify the *rules* and *guidance* in DISP 1.2 (Consumer awareness rules), DISP 1.6 (Complaints time limit rules) and DISP 2.8 (Was the complaint referred to the Financial Ombudsman Service in time?); and

- (b) require *lenders* and *credit brokers* to retain and preserve relevant records.
- (2) Where, in relation to a *relevant motor finance DCA complaint*, provisions in *DISP* 1 or 2 refer to *rules* or *guidance* that are modified by this appendix, the modified provisions apply.
- (3) All *rules* and *guidance* in *DISP* continue to apply to a *relevant motor finance DCA complaint* unless otherwise stated.

Interpretation

App
5.1.2

- R (1) For the purposes of this appendix, a relevant motor finance DCA complaint is a *complaint* where:
- (a) the subject matter of the *complaint* relates, in whole or part, to a *regulated credit agreement* entered into before 28 January 2021;
 - (b) the *regulated credit agreement*, in whole or part, financed the purchase of a motor vehicle, or a motor vehicle was bailed or hired under the agreement;
 - (c) there were arrangements between the *lender* and a *credit broker* relating to the entering into of that agreement that included a *discretionary commission arrangement*; and
 - (d) the *respondent*:
 - (i) received the *complaint* in the period beginning with 17 November 2023 and ending with 25 September 2024; or
 - (ii) sent a *final response* to the *complaint* in the period beginning with 12 July 2023 and ending with 20 November 2024.
- (2) The arrangements referred to in (1)(c) are to be read as including any arrangement which would, if it had been entered into on or after 28 January 2021, have constituted a *discretionary commission arrangement*.

App
5.1.3

- G (1) The purpose of *DISP* App 5.1.2R(2) is to ensure that the *complaint* handling *rules* in this appendix apply in respect of motor finance commission arrangements which are in substance equivalent to a *discretionary commission arrangement* but do not (because of the time at which they were entered into) meet the *Handbook* definition.
- (2) This will include such arrangements between persons undertaking equivalent activities under an Office of Fair Trading licence prior to the transfer of responsibility for the regulation of consumer credit to

the *FCA* on 1 April 2014 (provided the other requirements in *DISP* App 5.1.2R(1) are met).

- (3) The effect of *DISP* App 5.1.2R(2) is that a *relevant motor finance DCA complaint* includes *complaints* involving any motor finance commission arrangements which would, if they were entered into on or after the date that the prohibition in *CONC* 4.5.6R was introduced, fall within the definition of a *discretionary commission arrangement*.

Application

- App 5.1.4 R This appendix applies to:
- (1) *respondents* and the *Ombudsman* in respect of a *relevant motor finance DCA complaint*; and
 - (2) *lenders* and *credit brokers* in respect of records relating to any *regulated credit agreement* entered into before 28 January 2021 that meets the requirements in *DISP* App 5.1.2R(1)(b) and (c).

- App 5.1.5 R Where this appendix applies or modifies provisions in *DISP* 2, the term *respondent* in *DISP* App 5.1.2R and 5.1.4R has the *glossary* meaning that applies in that chapter.

App 5.2 Complaint handling rules in respect of a relevant motor finance DCA complaint

Time limits for a final response, consideration by the Ombudsman and complaints records

- App 5.2.1 R (1) This *rule* applies in respect of a *relevant motor finance DCA complaint*:
- (a) that is received in the period beginning with 17 November 2023 and ending with 25 September 2024; and
 - (b) in relation to which a *final response* has not been sent.
- (2) For the purpose of calculating the eight-week period in:
- (a) *DISP* 1.6.2R;
 - (b) *DISP* 1.6.7G;
 - (c) *DISP* 2.8.1R(2); and
 - (d) *DISP* 2.8.1R(4)(a),

time is to be treated as not running for the period of thirty-seven weeks beginning with 11 January 2024 and ending with 25 September 2024.

- (3) The three-year period in *DISP* 1.9.1R(2) (Complaints record rule) is to be treated as not running for the period beginning with 11 January 2024 and ending with 25 September 2024.

Time limits for referring a complaint to the Ombudsman

- App 5.2.2 R Where a *final response* to a *relevant motor finance DCA complaint* is sent in the period beginning with 12 July 2023 and ending with 20 November 2024, the six-month period in *DISP* 2.8.2R(1) is extended to fifteen *months*.
- App 5.2.3 R (1) This rule applies in respect of a *relevant motor finance DCA complaint* where a *final response* is sent in the period beginning with 11 January 2024 and ending with 20 November 2024.
- (2) For the purpose of complying with *DISP* 1.6.2R(1)(f), the appropriate wording to include in a *final response*, as set out in *DISP* 1 Annex 3R(1), (2) and (3), is modified so that the references to ‘six months’ in these *rules* are substituted with ‘fifteen months’.

Communicating with consumers

- App 5.2.4 R (1) A *respondent* must update any information it has published pursuant to *DISP* 1.2.1R(1) as soon as is practicable to:
- (a) inform consumers of the pause to time limits for a *final response* as set out in *DISP* App 5.2.1R(2); and
 - (b) refer them to fca.org.uk/car-finance-complaints, which explains the reason for the pause.
- (2) This rule applies until 21 November 2024.

Communicating with complainants

- App 5.2.5 R In relation to a *relevant motor finance DCA complaint* received in the period beginning with 11 January 2024 and ending with 25 September 2024:
- (1) *DISP* 1.6.1R applies as modified by this *rule*.
 - (2) Where a *respondent* has:
 - (a) on or before 10 January 2024 sent a written acknowledgement in accordance with *DISP* 1.6.1R(1) but has not sent a *final response* in accordance with *DISP* 1.6.2R(1), the *respondent* must:
 - (i) promptly inform the complainant in writing of the pause to the time limits as set out in *DISP* App 5.2.1R(2); and
 - (ii) comply with (3);

- (b) not, on or before 10 January 2024, sent a complainant a written acknowledgement in accordance with *DISP* 1.6.1R(1), and has not sent a *final response* in accordance with *DISP* 1.6.2R(1), the *respondent* must:
 - (i) explain the pause to time limits set out in *DISP* App 5.2.1R(2) when complying with *DISP* 1.6.1R(1); and
 - (ii) comply with (3).
- (3) A *respondent* must direct the complainant to the information published at fca.org.uk/car-finance-complaints, which explains the reason for the pause.

Communicating the Financial Ombudsman Service temporary time limits

- App 5.2.6
- R (1) This *rule* applies to a *relevant motor finance DCA complaint* where a *final response* is sent in the period beginning with 12 July 2023 and ending with 20 November 2024.
- (2) Where, in accordance with *DISP* 1.6.2R(1), a *respondent* has on or before 10 January 2024 sent a complainant a *final response*, the *respondent* must promptly in writing inform the complainant that:
- (a) the time limit to refer the *complaint* to the *Financial Ombudsman Service* has been extended to fifteen *months* beginning with the *day* on which the *respondent* sent its *final response*;
 - (b) the six-month time limit contained in the *Financial Ombudsman Service's* standard explanatory leaflet does not apply; and
 - (c) the information at fca.org.uk/car-finance-complaints explains the reason for the extension.
- (3) Where a *respondent* has not on or before 10 January 2024 sent a complainant its *final response*, it must, when complying with *DISP* 1.6.2R(1):
- (a) explain that the time limit to refer the *complaint* to the *Financial Ombudsman Service* is fifteen *months* beginning with the *day* on which the *respondent* sent its *final response*; and
 - (b) provide the information contained in (2)(b) and (c).

App 5.3 General record retention

- App 5.3.1
- R (1) *Lenders* and *credit brokers* must retain and preserve records:

- (a) relating to any *regulated credit agreement* entered into before 28 January 2021;
 - (b) which meet the requirements in *DISP* App 5.1.2R(1)(b) and (c); and
 - (c) that are or could be relevant to the handling of existing or future *complaints* or civil claims relating to *discretionary commission arrangements*.
- (2) The requirement in (1) applies:
- (a) regardless of whether a *relevant motor finance DCA complaint* has been made; and
 - (b) in the period beginning with 11 January 2024 and ending with 10 January 2025.

App
5.3.2

E The following will be relevant records for the purposes of the requirement in *DISP* App 5.3.1R:

- (1) the *regulated credit agreement*;
- (2) records of the commission arrangements relating to the *regulated credit agreement*;
- (3) records of any commission, fee or other financial consideration paid (directly or indirectly) in connection with the *regulated credit agreement*, including details of its structure and calculation;
- (4) customer files and records, including any agreement setting out the nature of the services offered, any customer transactions and payments; and
- (5) communications with the customer.

