

24 October 2022

Final report by the Complaints Commissioner**Complaint number 202201177***The complaint*

1. On 25 August 2022 you asked me to investigate a complaint about the FCA.

What the complaint is about

2. The FCA summarised your complaint as follows:

In March 2019, the FCA published its final findings on motor finance discretionary commission models and consumer credit commission disclosure. You bought a car in May 2019. Changes to disclosure rules took effect on 28 January 2021. You are unhappy that it took the FCA 2 years to introduce a ban on discretionary commission models. Remedy sought. You have not stated the remedy that you are seeking to resolve your complaint.

What the regulator decided

3. The FCA responded that:

I am sorry to learn of the issues that you have experienced. However, after carefully considering the information, you have provided, we have concluded that we cannot investigate your complaint under the Complaints Scheme (the Scheme). This is because the Scheme covers the investigation of complaints that arise in connection with the exercise of, or failure to exercise, any of the FCA's relevant functions. The 'relevant functions' of the FCA are defined in the Scheme and Part 6 of the Financial Services Act 2012, and broadly speaking cover the FCA's regulatory functions that arise under the Financial Services and Markets Act 2000, or such other functions as may be ordered by HM Treasury. Expressly excluded from the definition of 'relevant functions' is anything arising from the FCA's exercise of legislative functions or standards

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review functions. 'Legislative functions' of the FCA include the making of rules, and the issuing of general guidance. Your complaint relates to the time taken to implement FCA rules, which is an exercise of our legislative functions. Therefore, your complaint is excluded from being considered under the Complaints Scheme, as confirmed in paragraph 3.4(c) of the Scheme.

Although your complaint has not been formally investigated under the Scheme, I have contacted the relevant area of the FCA to provide the following information to you, which I hope you find useful. The FCA wanted to address the harm caused by discretionary commission models as soon as possible. Consultation Paper 19/28 (CP19/28) suggested a three-month implementation period. However, it was recognised that firms would need more than 3 months to implement the required changes. The FCA decided on a six-month implementation period. The publication of Policy Statement 20/8 (PS20/8) was put on hold as part of the FCA's publication moratorium in response to the coronavirus (Covid-19) pandemic. I believe you are aware of the information in PS20/8 because you have quoted from it in your complaint, but I wanted to ensure that you are aware of it. This has been taken from paragraphs 1.18-1.20 of PS20/8.

1.18 Our decision to give motor finance firms more time to implement the discretionary commission model ban would, in theory, delay the realisation of benefits and result in delayed consumer benefit in the first year (approximately £41m, as yearly estimated benefits are £165m). However, the benefits delayed are likely to be less than this because we've estimated these figures in reference to a fully functioning market, and even if activity levels bounce back relatively quickly once the economy restarts, the value and volume of business could remain low in the first year of implementation.

1.19 Although we want to implement the ban as quickly as possible, we also want to allow more time for those firms that need it to implement these changes in a compliant way, without the need for quick and potentially less effective fixes. We have considered the impacts of coronavirus on firms when deciding what is reasonable.

1.20 Further, we can reasonably assume some firms will be able to move

towards other commission models before our deadline – a continuation of the trend we have seen over the last year. More detailed information is available on pages 13-15 of PS20/8.

Why you are unhappy with the regulator's decision

4. You have told me that:

'I would like an official investigation into these failings by the FCA as they have clearly not exercised their regulatory powers accordingly.

The FCA deliberately let the public down, their own investigation found the secret commission was wrong, and yet they sat back and let the public knowingly get ripped off and waited two years before acting on their own investigation results.

The public entrust the FCA to protect them with financial dealings to ensure the industry is regulated and fair and transparent.

The FCA have caused financial loss to the public who have not got to fight for the secret commission back which has then affected the service of the FOS due to the large volumes of claims.

The FCA could have stopped this poor practice in its tracks as the result of their own investigation, this is misconduct and unprofessional actions by the FCA which has financially penalised the public who have purchased cars and been subjected to secret commission like myself, who has purchased a vehicle in good faith.

The FCA should be made accountable for this misconduct and unprofessional approach as they deliberately failed to protect the public, in favour of allowing car dealers to continue charging secret commission to which the FCA found to be bad practice and to ban this secret commission process two years later from the evidence received from their own investigation into secret commission.'

My analysis

5. The FCA has not investigated your complaint, however, it has provided you with information about the actions it took with respect to the matters you raise in your

complaint. You have told me that you believe the FCA should have progressed these matters faster.

6. I appreciate you feel strongly about this, however, in my view the FCA is correct to say that your complaint is excluded from being considered under the Complaints Scheme, as confirmed in paragraph 3.4(c) of the Scheme for the reasons it gives.

My decision

7. I appreciate that you disagree with me and in your view your complaint is not just about the FCA's legislative functions but about 'a lack of care, bias to the public, by putting car dealerships profits before the public protection', and you have continued to express your dissatisfaction with what you consider FCA delays in progressing matters. I have considered your arguments but I do not agree with you. The length of time the FCA took to implement legislative changes falls under the scope of paragraph 3.4 (C), however, the FCA has explained to you its considerations in taking the length of time it did. I appreciate you do not agree with the FCA, however, I cannot help you further under the complaints scheme.

Amerdeep Somal
Complaints Commissioner
24 October 2022