FCA
Financial Services Consumer Panel

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By email: motorfinance@fca.org.uk

Dear FCA,

Financial Services Consumer Panel response to the Key considerations in implementing a possible motor finance consumer redress scheme

The Panel welcomes the opportunity to respond to the FCA's request for feedback on the key principles the FCA would use to design a redress scheme, or aspects of its scope.

Overview

- In the Panel's view, the FCA should be approaching the development of any redress scheme from the perspective of trying to maximise the number of consumers who were mis-sold obtaining the full value of redress to which they're entitled. The Panel would strongly oppose an approach, recommended by some, with a focus on limiting the number of claims and amount of redress provided in order to protect the market. While such an approach may on its face be attractive to the market, we consider it would be unlikely to draw the desired line under the issue. It is also likely to lead to the erosion of consumer trust in the market, the FCA and financial markets more generally (at precisely the time when developing increased consumer trust is of paramount importance for delivering the growth agenda).
- The Panel would also recommend the FCA proceed on an opt-out basis. Properly constructed, we consider this is likely to lead to a swifter and more efficient redress process, and one that is more predictable for consumers, firms and investors. We are not convinced an opt-out regime would necessarily be more expensive than proceeding on an opt-in basis. An opt-out regime, while more comprehensive is generally

more homogenous and predictable in nature and uncertainty is often a key driver of costs. Further, a comprehensive marketing campaign is usually needed to deliver a successful opt-in regime, and this can carry significant costs.

The FCA's proposed principles

Overall, we support the 7 principles set out. However, the devil is in the detail and how these various principles are balanced and implemented is critical to developing a successful scheme.

Some specific initial comments on the 7 principles are set out below:

- **Comprehensiveness**: we agree that a redress scheme should seek to cover as wide a range of complaints (and consumers) as possible. However, the perfect should not be the enemy of the good and effective redress for the large majority of affected consumers should not be unduly delayed by attempts to include <u>all</u> affected consumers. We consider it appropriate that some consumers (outlier cases) will need to seek compensation via FOS notwithstanding the redress scheme.
- **Fairness**: the primary focus should be on identifying a fair outcome for consumers as this should also be a fair outcome for firms. The aim should be for consumers to be put back in the position they would have been in but for the unlawful behaviour. Participation in the redress scheme should be free for consumers.
- **Certainty**: we agree that a redress scheme should aim to bring finality to the issue for the vast majority of consumers and firms. However, if a consumer does not consider the scheme outcome is appropriate for their individual circumstances, they should not be precluded from seeking appropriate redress via FOS. While we consider this to be an important and necessary safeguard in any redress scheme, reliance upon it should be extremely rare if an effective redress scheme is established.
- **Simplicity and cost effectiveness**: the effectiveness of the scheme will be undermined if consumers are not able to properly understand it or participate in it. While false claims need to be rooted out, the participatory burden on consumers must be as low as possible, not least to reflect the length of time since the cause of action arose and the limited paperwork many consumers will still have as a result. Preferably, however, the majority of consumers would be compensated proactively by firms. In terms of costs to firms, we recognise the desire for firms to identify the 'correct level of redress' for any particular

group of consumers, but note the time and associated costs that come with precisely identifying the right answer. There is a balance to be struck, and the FCA needs to pay close attention to this. We note that generally speaking consumers will prefer to receive near-perfect redress today rather than perfect redress in the future.

- **Timeliness**: this is essential, particularly given the length of time affected consumers have already been waiting. We note that there will be different groups of affected consumers, and that it will be easier to resolve redress for some groups, than for others. Generally speaking, we think redress should be provided for a particular group of consumers as soon as possible – delays should not be introduced to allow for more complex cases to 'catch up'.
- **Transparency**: this is important to help ensure high levels of consumer engagement and the overall effectiveness of the scheme. It is also important to ensure consumers understand they can participate in the scheme directly themselves. The more complex and opaque the redress scheme process, the more likely it is for consumers to migrate to CMCs and other paid representatives and thereby lose a significant proportion of their redress.
- **Market integrity**: we agree that the implementation of a redress scheme must leave consumers with long-term access to high quality, competitively-priced motor finance. However, we do not consider this means the FCA needs to ensure the car finance market continues in its current form, structure or with a similar number of providers. We accept that in some markets, a reduction in the number of providers could lead to increased prices. However, this is not necessarily the case. A market with a small number of well-regulated providers can deliver better outcomes than a market with lots of choice and complexity and a reliance on competition through customer switching.

CMCs and paid representatives

- We agree with the FCA that consumers should be aware that by signing up with a CMC or law firm, they may end up paying for a service they do not need and having to pay up to 30% in fees out of any award they may receive.
- However, we do not think that just applies to consumers who sign up now. We are conscious that CMCs and other paid representatives have been proactively recruiting consumers for some time, including since the FCA made it quite clear that they would likely implement a redress scheme in the event that a large number of consumers have lost out.

- We consider that where consumers have been signed up by such firms without being made aware that the FCA would likely implement a redress scheme (since the FCA stated its intention to do so) there is a real risk that consumers have been misled into signing up. We would urge the FCA to consider this point carefully and consider the steps it can take to help ensure such consumers are able to participate in any redress scheme without losing a significant proportion of the redress owed to them.

Yours sincerely,

Chris Pond

Chair, Financial Services Consumer Panel