

Transcript of a conference call between the FCA and market analysts on motor finance, 4.30pm 30 July 2024

NR: Hello. Good afternoon, everyone.

Thank you for joining this afternoon. For those of you who I might have not met before, I'm Nikhil Rathi, I'm chief executive of the FCA, and I'm joined by Mario Theodosiou, who is our Head of Department, who's in charge of the motor finance work here, and also joined by a number of our communications colleagues as well.

Welcome to this call.

And if I just give a bit of context at the outset and then hopefully we'll leave plenty of time for questions. When I spoke at the Morgan Stanley European Financial Conference back in March, I said then that we at the FCA wanted to build a different relationship with the investor and analyst community. That's in recognition of the fact that our regulatory decisions and our approach are an important factor in the operating environment for regulated institutions in the UK, and we want to make sure we explain our approach as openly as we can, especially on significant issues like motor finance, so that you can all do your jobs in terms of analysing UK firms and developing your investment perspective. So that's the spirit with which we've invited you to this discussion this afternoon. It's the first time we've hosted a specific analyst discussion on a topic after a major announcement, we hope it's useful, and we'll certainly appreciate your feedback, either way, afterwards.

The session today, as you'd expect, will be recorded and the transcript will be published on our website later on this afternoon, and certainly before markets open tomorrow.

So turning to the topic of the day, I hope you've all had a chance to review the various announcements we put out at 7:00 o'clock this morning, the key headlines from our perspective.

In January, we paused the requirement for motor finance firms to respond to complaints involving discretionary commission arrangements within eight weeks, and we paused that requirement until 25 September 2024.

We also extended the time that consumers would be able to complain to the Financial Ombudsman Service. That was because we wanted to preserve market orderliness while we established whether there's been widespread harm, and if there has been what we should do about it. Today, we have said that we are consulting on extending that pause further to 4 December 2025 and we will set out our next steps by May 2025.

Now, broadly speaking, and I will refer you to the documents for all the detail, but broadly speaking, there are three reasons for that announcement this morning.

First, we're grateful to firms for their cooperation in providing us extensive data as we conduct this exercise, but this has taken longer and proved harder than we expected. Some firms did not have some of the older data. Data was stored in multiple systems and difficult to extract. Sometimes that data was split between lenders and brokers. Now, while we now have the data we need it is going to take some more time to rigorously analyse it all.

Secondly, you'll be aware the FOS issued two decisions in January. Now, one of the firms that was subject to one of those decisions, Barclays Partner Finance, has launched a judicial review, which they're perfectly entitled to do, and we've always said there may be contested issues of legal importance that we would seek to use the space given by the pause to help resolve. We therefore applied successfully to be party to that judicial review, and we anticipate a hearing in the autumn, and as these things go it may take a little time after that hearing before we receive a judgment from the court. There are also a couple of other cases in the Court of Appeal which have been heard where judgments are pending which might also be relevant to the issues we're considering.

And thirdly, we have not taken any decisions yet, but what I can say based on the work we have done to date is that we think that it is more likely than when we started the exercise that we may need to make a structured intervention to ensure appropriate redress to consumers. I'm not putting a probability on that, simply setting out that it's more likely than it was in January.

If we go down that route, and one option is a structured redress scheme, there are a set of steps we need to go through, including consultation, considering the advice of our newly constituted Cost Benefit Analysis Panel and also considering the logistics of implementation. We aim to decide on whether we are going to propose that route by May 2025 and given the time it would take to implement we have proposed extending the complaints pause on a precautionary basis to 4 December 2025. If we decide that's not the option we're going to pursue we will consult on bringing the end of the complaints pause forward.

I know that you will be keen for me to be more specific on facts and figures and potential levels of redress. I'm afraid I'm going to have to keep asking you to be patient as we haven't taken any final decisions. We need to work through the data and consider the implications of any authoritative guidance we get from the courts in the coming months.

I would stand by what I've said previously, that I don't see this as likely to end up on the same scale as PPI, not least as we've intervened earlier to ensure orderliness, nor do I think we will end up with nothing to report and no issue to deal with at the end of this exercise.

In our submissions to the court on the judicial review, we've conveyed our views on various elements of the FOS's decision and their interpretation of our rules and the Consumer Credit Act 1974. We have not offered a view on the quantum of redress, and I would just note that we operate with different objectives to the FOS, who consider what is fair and reasonable in individual cases. Our work and our objectives involve us taking a market wide view,

including ensuring markets function well, now and in the future, whilst also protecting consumers and ensuring competition. So while the FOS decisions are relevant to our work we do not consider them determinative or binding in terms of any approach we might take.

We also know there are many complex issues we will need to come to a view on if we were to opt for a structured redress intervention, such as the time period it would apply to. While FOS jurisdiction commenced in 2007, as I noted earlier there are significant data issues, both for firms and consumers, when considering agreements from over 15 years ago, there are also a range of fact patterns here with different types of contractual arrangements and disclosures depending on the firm.

We're sometimes asked whether we're expecting firms to make provisions for potential liabilities or take other management actions. What I would say on that is each firm has a different business model, different types of cases, different legal and accounting advice, so we have not provided generalised advice on provisioning. But what we have reminded firms of in a letter in April 2024 is the need to maintain adequate financial resources at all times, consistent with our rules on prudential standards and financial resilience. We're monitoring this closely.

What's not often recognised is that while the PRA in the UK is obviously the prudential regulator for the systemic firms, at the FCA we are the prudential regulator for the rest of the market. So the largest prudential regulator, I believe, in Europe by number of firms. That means we have a range of tools available to us as part of our active monitoring of how firms are approaching these issues.

Finally, there's been some speculation as to whether with the Consumer Duty there would be any retrospectivity in our approach, so it's perhaps worth me setting out our position on that point. What we are assessing and what is relevant in the judicial review is compliance with the laws and regulations in place at the time so we are not applying Consumer Duty standards to contracts in place before our ban or before the Consumer Duty was in force. Where the Consumer Duty is relevant going forwards is in making sure complaints are handled properly, with clear and timely information provided to affected consumers.

So I'll leave it there for my introductory remarks and we will happily throw the floor open to questions and I'll do my best to take them in order.

[Participant], quick off the mark. Good afternoon.

PARTICIPANT: Thanks very much. Thank you so much for hosting the call. I think it's an important step. Two questions. The first, I wonder whether you could help me understand please the importance of measuring the potential cost of redress, all of the data work that you're doing. What role does the potential size of the liability play in what it is you ask the industry to do? One might say that either the rules are breached and monies need refunding or they weren't. And so I just wonder whether you could talk a little bit about that? That thread comes across quite a lot in the podcast that you published.

And then secondly perhaps I could ask you to provide a little bit more colour on the industry level approach that you may go down? Are we to understand that that would involve institutions having to go back to all customers or is it about the standardisation of approach to those who might choose to claim? If you can generalise, what is it that you're trying to describe to the market in saying that that is now more likely than before?

NR: Thanks [Participant], two very pertinent questions. But what I might do is I might take them in groups of three, if that's okay. So I'll go to [Participant] next.

PARTICIPANT: Hi, thank you for taking my question. Is similar to [Participant's] actually. I think in one of your prior reports you've talked about. There was an estimated industry "harm", quote unquote, based on a sampling that was then grossed up to £500 million and I was just wondering if in the process of going through this review over the course of this year, if that number will have changed either way, or what you're thinking is on that number? Thank you.

NR: Thanks [Participant] and [Participant].

PARTICIPANT: Morning — thanks, afternoon. Thanks for taking questions there. Two for me please. You've said now you've got all of the data in respect of this issue. But is that data of a similar quality across the 14 years or when you get back to more of the historic data are you going to have to make some assumptions with that older data in order to extrapolate answers that are similar to more recent data? And then secondly how holistic is the regulator in their approach? So if the number comes in at the top end of expectations do you speak to other parts of the regulator, for example, that deal with Basel and say, well, we can help balance this impact by being a bit softer in other areas of regulation? Thanks.

NR: Thank you. Right. So let me let me take that group.

Firstly, measuring the total potential cost of redress and what work we do, and I think [Participant], you had a similar theme and [Participant] your last question goes to that that point as well, absolutely, we're interested in that topic. And so part of the reason we have spent a lot of time on the data and why we need to be rigorous about it, is to understand the potential scale of the issues where there have been potential breaches of the law, and obviously the judicial review and the other court cases are relevant to our interpretation of that question, so we'll see, as I said, what authoritative guidance the courts give us on that topic. And then of course if there have been potential breaches of the law what the appropriate redress options are. And I've said, clearly we, in considering that, consider our objectives. And our objectives are to ensure markets function well now, and in the future, and that does involve taking a market wide view, and alongside that protecting consumers and ensuring competition in the interests of consumers.

So we will look at the entire picture and if we get to that position, as I say, no decisions have been taken, we'll want to judge any intervention against all of those objectives. And we recognise there's an important balancing approach that we will need to take and need to explain as to how we have judged any outcome we propose against those against those objectives.

On the second question, [Participant], around industry level approach, it was a very different set of circumstances, different context, but last week we published the outcomes of some work we did on the British Steel pension scheme redress, which was the most recent use by us of our section 404 powers, and what, if we were to go down that route, that would involve. And hence why we have gone all the way to December is we would need to consult on all the questions you just put to me. We would need to consult on scope, on timeframe, on methodology, on some of the logistics, and there will be some debate and discussion around templates if we went down that route. So all of those things would be part of a structured consultation, which is why we have, on a precautionary basis, extended the pause all the way to December, such that we then would have time to work out all those issues, and I'm sure we'll get representations from many different vantage points on those questions, [Participant].

[Participant], I don't have an update for you on estimate of industry harm. I'm thinking that you've taken that from some work we did in 2021. Obviously as part of this exercise, we're looking at all of the data and we're looking at the range of scenarios and understanding what the potential quantum could be. But I'm not able to give you anything new at the moment.

[Participant], on your first question, one of the issues has been there's been different quality of data and that's on a number of dimensions. In older cases it is sometimes quite a lot harder for firms to provide the same level of consistency of data. Within firms, some contracts have been written with data provided on one system versus another system, and then between firms as well there has been a degree of difference, and there's been a lot of to and fro. We have a skilled person appointed and there's a lot of to and fro with the firms to get to an adequate position.

I would say in any exercise of this scale, as we think about the next steps, ultimately there may need to be some regulatory judgements made and assumptions made about how we're dealing with potentially imperfect data sets, and of course we would want to explain all of that if it came to us consulting on redress scheme and explaining the evidence base that we're using to underpin any proposals we make.

I hope that addresses all of those points.

If I turn now to [Participant]

PARTICIPANT: Hi, thank you very much for doing this. Two questions from my side. So the first one is maybe just to follow on from what you've been saying. How should we think about your decision making around proactive and reactive redress schemes? Obviously acknowledging that you're not at the point of deciding there might be a redress scheme here, but how does your reaction function change between those two options and what role do you consider for claims management companies within that? And then my second question is just on trying to understand how you incorporate the lessons from what's happened in motor finance and the impact of that, the actions that you will take on historical business for new business, and the way firms price new business? And I guess the reason I'm asking the question is, is there — how would you

stop the industry from raising prices for new business to pay for redress on old business?

NR: Thank you.

I will go to [Participant]

PARTICIPANT: Hey, Nikhil. Thank you so much for this, by the way; it's actually really helpful. I wanted to, I just wanted to drill into your comment today and your update. If you could elaborate a bit more about your considerations around balancing customers being compensated appropriately, but more specifically this comment around ensuring that the market continues to work well with effective competition. Could you elaborate on that? Because I think I've sensed a bit of a shift in some of the various releases from the FCA in recent days and weeks around adopting a somewhat more dynamic approach to regulation, things like the effective functioning of markets and things that you're alluding to in today's release. I mean, can you kindly drill into that? Because it's quite a vague statement that part of the sentence, but I think it's quite powerful and quite important here and my sense is that you're probably being far more sensible and pragmatic than you get credit for in the market around your intervention here. So please, can you drill into that?

Relatedly, is there any insight that you can give us around the new government's potential interest in the outcome of this process? My understanding was that the prior government were very interested in ensuring some kind of orderly outcome here and I'd be interested to know if (a) that's a fair characterisation and (b) whether that's carried over in terms of the new government, please?

NR: Thank you. [Participant]?

PARTICIPANT: Thank you. I'll just stick to one. I guess some market participants may point to the fact that, post the ban, actually prices for consumers, if you take rates out the picture, haven't really fallen so maybe harm in the period you're looking at is actually relatively limited. Is that a dynamic you would recognise? Is it a dynamic you would look at in consideration of a redress scheme? Thank you.

NR: Thank you. So let me let me take those questions in order, and I'm conscious actually, [Participant], maybe I didn't fully answer your last question about is there a trade-off with Basel in other parts of the regulatory landscape, so I'll try to try and take that first.

First of all, as we are thinking about our approach here we obviously consult with all our regulatory partners, and that includes the PRA, a number of the firms impacted by this work are dual regulated, but I wouldn't want to guide you to suggest that somehow a decision here would lead to a direct adjustment of a separate policy process on an international standard like Basel 3.1, but we are all always looking at the overall functioning of the market and the overall impact of regulation.

On proactive versus reactive role and the role of CMCs, I don't really want to guide you there beyond what I've already said. So one of the reasons we

intervened was to avoid inconsistent and inefficient outcomes for consumers as far as we could and to bring orderliness to this whole issue and we will be judging, if we get to having to make a judgement on that point, the choice set there between proactive and reactive, we'll be judging it against those objectives. And as I've as I've already said there's different experiences based on the timing questions, as well, and different levels of data, as well, which will all be relevant for our consideration as to what's realistically possible for different cohorts of consumers. We have said I think in our consumer communications, on CMCs, that consumers don't need to go to CMCs to lodge a complaint. That remains the position we've put. We're not giving — I'm not going to give generalised consumer advice on this call because we want people to go to our website and they can look at what their specific situation might entail for them. But that's the position on CMCs.

You asked then about lessons from this, and then you also said about the impact on future functioning of the market, and that's all part of the work we're doing. We are looking at how significant this issue may be in the past, we have to also understand what the courts may say on aspects of this, and we have objectives. The market functions well objective is obviously making sure that consumers are treated fairly. And we need to make a judgement that that is done in a way that ensures effective functioning of the market in the future and continued competition in the interests of consumers in the market in the future.

This is a very significant market for households up and down the country. So we are very mindful of that and that is part of the balancing discussion that we need to have. We will have representations on that if we go down this route and we will want to share the evidence and the judgements that we come to.

In terms of lessons, I don't want to make this a Consumer Duty call, but obviously we have introduced a very significant shift in our regulatory approach on consumer issues. Our outcomes-based regulation, Consumer Duty is fully into force tomorrow actually for closed book products, having come into force on sale products at the end of July last year. Part of that, and I think we've been very explicit about it, is to encourage a shift in culture in organisations to make sure that such issues and levels of complaints don't arise in the future.

One thing I'd point you to, and we published earlier in this week, our Secondary International Competitiveness and Growth Objective first report. You'll see in there that we also point fact the FSCS levy has come down to its lowest level for 10 years, and I think part of that will be through the work we've been doing on prevention and tackling historic issues.

I'm going to hope what I've said there has addressed your first question on balancing. You know, we will no doubt be getting a lot of representations on this from all quarters and all of that evidence will go into our thinking here.

The — your second question, sorry, just remind me your second question again.

PARTICIPANT: About conversations that you may or may not be having with the new government around this issue.

NR: So these are independent decisions for the FCA using our regulatory powers. This is obviously a significant issue and we keep the government appropriately apprised of our work here given the broader public policy issues involved, but all of the decision making here is independent decision making by the FCA under the oversight of our Board.

[Participant], on your point around the impact of our intervention, clearly the period between 2021 and 2024 has been a particularly unusual period for these markets. You've had COVID, you've had a significant shift in the interest rates. You've had significant inflation in the supply chain in labour markets. So I think it's probably too early for us to give you a conclusive view on how we can disentangle the impact of our intervention on pricing in the market.

What this exercise is about is judging whether the laws and regulations in place at the time were complied with, and if they were not complied with what the appropriate approach to redress for consumers is. And part of that obviously is thinking about what the level of harm has been. And there are different considerations that may feature in there. And as I said, FOS has articulated one approach, but obviously we look at that, we also look at our wider objectives as well and how this applies market wide and not just on individual circumstances.

[Participant]?

PARTICIPANT: Thank you. Good afternoon. I'd like to echo everyone else's comments that this is a very helpful thing to do. I had a couple of questions, please. The first was in your introductory comments you talked about a range of outcomes I think ranging from there not being nothing to report, i.e., there is definitely something to report, through to full redress. Can you help us understand a little bit better what the graduation of outcomes is between those two extremes that you sort of set the parameters for?

And then secondly, just in terms of the timing, I'm just wondering how you balance pushing back the timing in order to make sure that everything runs in an orderly way with full data, and how you balance that with the disruption that's potentially caused to the firms that are trying to deal with this? And I think particularly some of the smaller players where, it is quite a drain on resources and this extended period of uncertainty is potentially quite damaging to some of them. So how do you balance those two things, please?

NR: Thanks, [Participant], on your first question I'm afraid I'm not going to be able to give you much more than what I've already said, and we've talked about how if we ever get to a redress scheme there are different elements we would have to consult on, and you can probably discern from that how some of the graduation might be considered there, but I'm not able to say more than I've said already.

On the timing point, this is always an issue that's front of mind. It's a significant intervention to pause a complaints process when we're thinking

about the rights that consumers have. And that's very much on our mind. And then you're also quite rightly describing to us the impact on firms, in particular, smaller firms. What we are quite concerned to ensure is that when we come out, if we do come out with proposals, that we can then draw this matter to an orderly conclusion, and we therefore think that awaiting the outcome of the judicial review, where courts may give us a degree of authoritative guidance on certain topics which are currently disputed, as well as a couple of other Court of Appeal judgments that we're waiting for, and taking the time to properly and rigorously analyse the data that we have received will enable us we hope to have more chance of bringing this to an orderly conclusion when we set out next steps by May 2025. It wouldn't be in the interests of either consumers or firms for there to be continuous disputes about key elements of this running for multiple years, so to an extent we're using the time of the pause to try to get clarity on key components of this to enable us to get to an orderly conclusion at what we judge to be the earliest possible opportunity. And part of that is also taking into account should we go for a redress scheme the logistics of implementation and the administrative mechanisms that would need to be put in place, and that, for something that affects so many consumers, is something we need to be quite thoughtful about.

I can't see any more hands, so thank you very much indeed for joining. I'm sure we'll get a chance to talk again at some point in the future. But I'd also point you to a rule review document we put out yesterday where we've asked for open feedback from the market in terms of the Consumer Duty and what that might mean in terms of us being able to adjust the rule book and streamline the rule book in the future, so very interested to hear your feedback on that, and any feedback on this session as well please feedback back through to the team. Hope you found it useful.

PARTICIPANT: Thank you.

NR: Thanks very much.

ENDS