

MONEY  
ADVICE TRUST

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Consultation Response:

# FCA Motor finance discretionary commission models

Response by the Money Advice Trust

Date: January 2020

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# Introduction

## About the Money Advice Trust

The Money Advice Trust is a charity founded in 1991 to help people across the UK tackle their debts and manage their money with confidence.

The Trust's main activities are giving advice, supporting advisers and improving the UK's money and debt environment.

In 2018, our National Debtline and Business Debtline advisers provided help to more than 204,000 people by phone and webchat, with 1.7 million visits to our advice websites.

In addition to these frontline services, our Wiseradviser service provides training to free-to-client advice organisations across the UK and in 2018 we delivered this free training to over 820 organisations. Furthermore, Money Advice Trust Training and Consultancy services have worked with over 224 commercial organisations to identify and support their customers in vulnerable circumstances.

We use the intelligence and insight gained from these activities to improve the UK's money and debt environment by contributing to policy developments and public debate around these issues.

## Public disclosure

Please note that we consent to public disclosure of this response.

# Introductory comment

We were extremely surprised to find that such a potentially unfair and harmful model has been operating in this market. We would like to see the ban on discretionary commission models to commence as soon as possible to avoid continuing consumer detriment.

- ✓ This model creates an incentive on brokers to set the highest interest rate possible, irrespective of the harmful effect upon consumers who will have been granted less affordable credit as a result.
- ✓ The lack of transparency in such transactions should be a cause for regulatory alarm and a swift intervention.
- ✓ We would query why the FCA is not looking at a wider ban on commission models. We do not believe that a commission model is a good way of incentivising brokers to behave well and treat their customers fairly.
- ✓ We would therefore suggest a wider review of commission models within the motor finance sector would be appropriate.
- ✓ We support the proposals on disclosure which are intended to clarify the rules on commission disclosure and to increase transparency for consumers. However, we are concerned that such rules will not be sufficient and do not go far enough.
- ✓ There is much debate as to the value of disclosure remedies for assisting consumer detriment, with reports questioning their ability to prevent consumer detriment.
- ✓ Having said this, we are still in support of the FCA's proposals that commission the changes to the disclosure rules should apply across all consumer credit markets.

# Responses to individual questions

## Question 1: Do you agree with our proposed ban on discretionary commission models in the motor finance market?

Yes we agree with the FCA's proposed ban on discretionary commission models in the motor finance market. We were extremely surprised to find that such a potentially unfair and harmful model has been operating in this market. This model creates an incentive on brokers to set the highest interest rate possible, irrespective of the harmful effect upon consumers who will have been granted less affordable credit as a result. The lack of transparency in this transaction should be a cause for regulatory alarm and a swift intervention.

We would query why the FCA is not looking at a wider ban on commission models. We do not believe that a commission model is a good way of incentivising brokers to behave well and treat their customers fairly. We note that the paper suggest that *"brokers would still be able to earn commissions from fixed fees or variable commission models that are not dependant on the interest rate"*.

We are unclear as to why the FCA is content for such practices to continue. The FCA needs to consider whether lenders and dealers react by increasing flat-fee commission payments to compensate for the loss of commission via the current model. Could there be unintended consequences such as a rise in car prices, a hike in the costs of bundled products, or a rise in interest rates on lending across the board?

In the paper, the FCA states:

*"3.26 We have also considered whether it is appropriate for firms in this market to accept commission in any form. However, we consider banning lenders from operating any commission based models in motor finance to be too invasive an intervention and a disproportionate approach to address the harm we have identified with particular commission models in this sector."*

This conclusion does not appear to be entirely compatible with the work the FCA has carried out in its thematic review of staff incentives. This resulted in a strengthening of the CONC rules.<sup>1</sup> In addition, we note that the FCA issued guidance in March 2018 to regulated firms on staff incentives and remuneration.<sup>2</sup> This guidance identifies a variety of different practices to do with commission and staff incentives that the FCA concludes are “high-risk”. This includes paying commission on variables such as interest rates on loans.

This guidance states:

*“2.1 Part of our thematic review considered whether the way firms paid their staff increased the risk of customer harm. Incentive schemes where staff receive higher pay or commission for additional sales can increase the risk that those staff might cause consumer harm by breaching their regulatory obligations. Similarly, schemes that reward collections staff for the amount they collect can increase the risk of poor practice such as aggressive collections or inappropriate lack of forbearance.”*

We would therefore suggest a wider review of commission models within the motor finance sector would be appropriate.

## Question 2: Do you agree with a 3-month implementation period?

We would like to see the ban on discretionary commission models to commence as soon as possible to avoid continuing consumer detriment. Swift intervention is required. However, if this is the earliest practicable implementation period that can be put in place, then we would support it.

## Question 3: Do you agree with our proposed commission disclosure clarifications?

We support the proposals which are intended to clarify the rules on commission disclosure and to increase transparency for consumers as set out in the paper. However, we are concerned that such rules will not be sufficient and do not go far enough. As we have said, we are not convinced that the use of commission incentives is a sensible model for firms to follow.

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<sup>1</sup> <https://www.handbook.fca.org.uk/handbook/CONC/2/11.html>

<sup>2</sup> Staff incentives, remuneration and performance management in consumer credit  
<https://www.fca.org.uk/publication/finalised-guidance/fg18-02.pdf>

We understand that the FCA hopes that these provisions will assist consumers in the following ways.

*“4.13 Clarifying these provisions to better reflect their intention should help consumers make better informed decisions, consider alternative options, find a cheaper deal or negotiate on the finance or other costs associated with the deal (e.g. part exchange values).”*

More information at key stages will be helpful to a limited extent. However, providing additional information does not always have the desired effect on influencing consumer behaviour. If the information is complex then it can cause greater confusion. We believe that there is a strong risk that customers will not be treated fairly as they are generally unaware of the way in which commission operates, or that it has been applied, or the amount of commission that has been paid. If they are already invested in their choice of car deal, it seems unlikely that they will seek alternative options. It would require them to be presented with a clear statement showing a negative financial impact for that individual consumer as a consequence of the firm’s commission arrangements. Otherwise we cannot see that there would be a substantial incentive for the consumer to find alternative options.

As you will be aware, there is much debate about the value of disclosure remedies as a consumer protection tool.<sup>3</sup> We would reference the recent report from the Australian Securities and Investments Commission and the Dutch Authority for Financial Markets, looking at Australian, Dutch, American and British case studies in credit, insurance, banking, pensions and investments.<sup>4</sup> The report summary says:

*“Moreover, when disclosure is used to address problems it is ill-suited to solve, it can place an unrealistic and onerous burden on consumers – for example, expecting them to overcome complexity and sophisticated sales strategies.”*

The report concludes:

*“Disclosure is not then the silver bullet it was once believed to be. It places a heavy burden on consumers to, for example, overcome complexity and sophisticated sales strategies. Some research suggests that disclosure may be used more often by those of us who are already more informed and engaged. And it can be less effective than intended or ineffective in solving regulatory problems – or even backfire, creating new, unanticipated risks for consumers.”*

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<sup>3</sup> [https://www.regulation.org.uk/library/2016-CCP-Demand\\_Side\\_Remedies.pdf](https://www.regulation.org.uk/library/2016-CCP-Demand_Side_Remedies.pdf)  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/744521/UKCN\\_consumer\\_remedies\\_project\\_-\\_lessons\\_learned\\_report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744521/UKCN_consumer_remedies_project_-_lessons_learned_report.pdf)  
<https://www.fca.org.uk/insight/dont-look-here-do-risk-warnings-really-work>

<sup>4</sup> [Disclosure – why it shouldn’t be the default.](#)

## Question 4: Do you agree our proposed commission disclosure clarifications should apply across all consumer credit markets?

We are firmly in support of the FCA's proposals that commission disclosure should apply across all consumer credit markets. The proposed clarifications to rules and guidance should not be limited to the motor finance sector. However, as we have said in our response to question 3, we do not have high hopes that these disclosure proposals will be sufficient in themselves.

## Question 5: Do you agree our proposed commission disclosure clarifications should take effect on the day the rules are made?

We agree that the changes to the CONC rules to clarify how commission should be disclosed should come into effect at the same time the rules are made.

## Question 6: Do you agree with our analysis of the costs and benefits of the proposals?

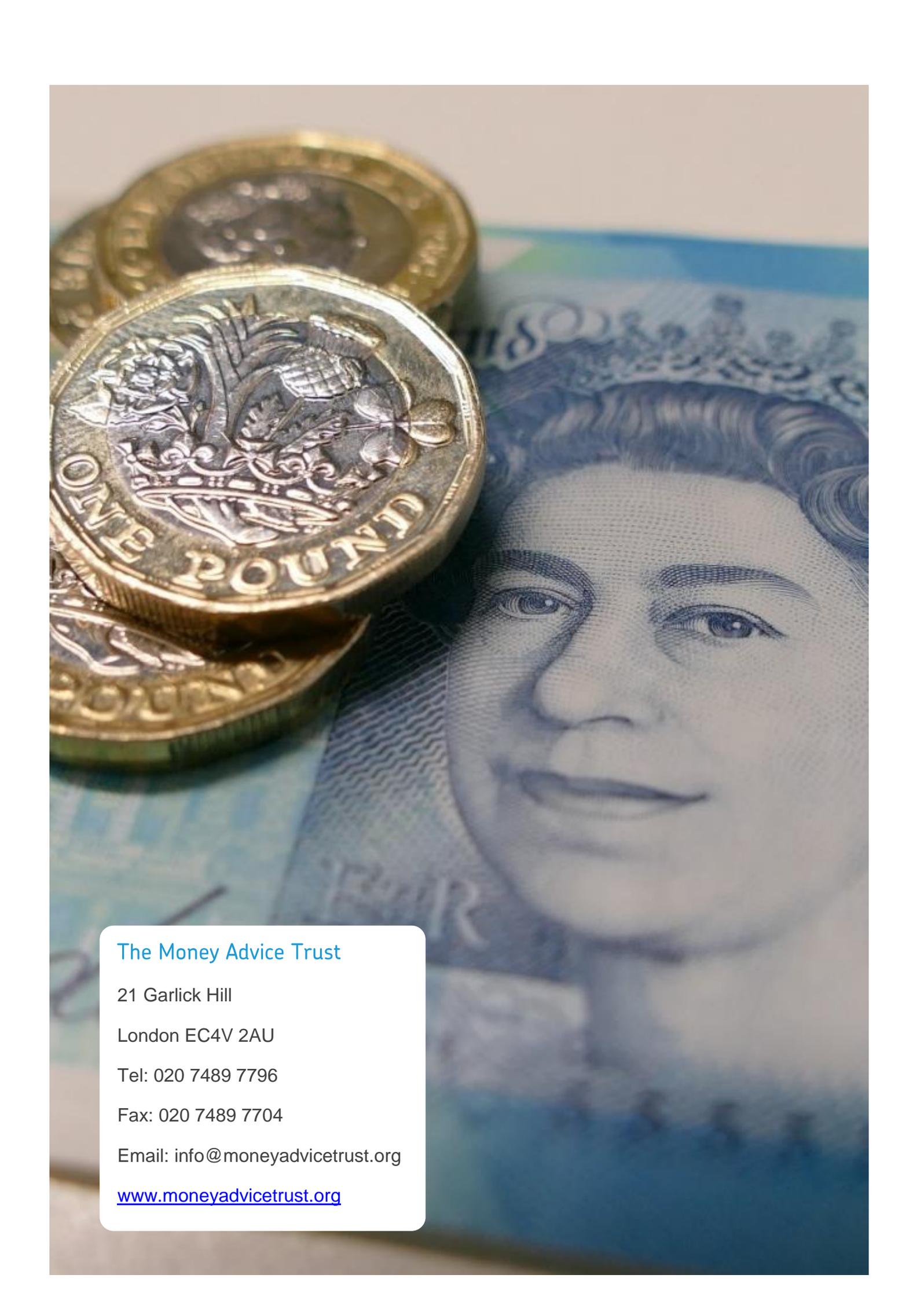
We are unable to evaluate the costs and benefits of the proposals in relation to the costs for either lenders or credit brokers. However, the FCA's analysis of the relative benefits to consumers appears to be well made. We note in particular that the measures are expected to benefit those consumers who have relatively poor credit scores and are likely to have to pay a higher cost for credit.

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