

PUBLIC

FCA Changes

Dealer Health Check

Version 2.0



Introduction

This document is provided as guidance only – you are responsible for ensuring you always meet your individual regulatory obligations.



The FCA's new rules to prohibit discretionary commission models and provide further clarity on commission disclosure came into force on 28th January 2021. As a result of the findings relating to commissions, the FCA have published new rules which sets out their expectations across two key areas. These are:-

1. Banning pricing models linked to commissions.
2. Clarifying commission disclosure rules to increase transparency for customers.

At Evolution, we have made changes to our pricing and commission approach to focus on ensuring the fair treatment of customers and to comply with the new commission rules. As a result, you are no longer be permitted to enter into or have rights or obligations under a discretionary commission arrangement.

As a valued partner of Evolution Funding, we want to help ensure you are meeting your regulatory obligations and we all continue to work towards best practice for the industry.

We have produced the guidance below to help you determine if you need to make any changes to your processes, procedures, communications to customers, websites, promotions etc, in order to comply with the new rules.

Principles to consider and the purpose of the rules

The test of whether a commission arrangement complies with the new rules is to a large extent to be determined in line with the purpose of the rules.

The main reasons that the FCA are making changes:



Prevent credit brokers (including retailers) from being incentivised to set higher interest rates to earn more commission.



Incentivise lenders and credit brokers (including retailers) to create and sell competitively priced loans.



Ensure consumers receive appropriate and timely information on interest charges and commission, to increase customer engagement and see customers' financing costs reduce.



Lenders and credit brokers (including retailers) should therefore consider the incentives a proposed arrangement creates, and how this affects the prices customers receive, in judging compliance with the new rules.

You must ensure that the changes you make to your processes, and the commission arrangements you have in place, are in the "spirit" of the rules and adhere to the FCA principles of integrity (Principle 1) as well as treating customers fairly (Principle 6). You must also work within the SMCR regime, including the individual conduct rules that echo the 11 Principles.

Please note: The FCA will be monitoring this.

Commission disclosure requirements

The rules on commission disclosure are high level - giving you discretion on how to make these - but you should ensure you include details on the nature of all your commission arrangements and if they impact on your impartiality in recommending a product to a customer, which in turn may affect the customer's willingness to transact. The following applies to pre-contractual information, financial promotions and other communications with customers.

Elements you should consider when drafting your disclosures:

- Websites, marketing, emails etc must be considered.
- Are there any limitations in your funder panel? Are you working exclusively with one or more lenders or are you independent?
- The types of rates you can offer customers and ability to explain how these are set.
- What, if any, parameters could change the rate the customer is offered? (For example: credit score, age of vehicle, loan amount)
- Are there different product features that need to be explained?
- How independent are you?
- Do you charge any fees for arranging the finance? If you do charge a fee, is this because you believe you give advice? **Please note: Evolution Funding will not support this practice.**
- Explaining the commission arrangements involved – you do not have to disclose the amount, but you may wish to signpost the customer to where they can get that information.

- What types of commission do you receive? This can be in broad terms.
- Explaining how the commission can differ between credit provider, product, and other factors (e.g., amount of the loan, term etc.). If the customer is eligible for two or more products and your commission varies, you need to disclose this.
- **The existence and nature of any financial arrangement with a lender should be shown prominently. This is really important and applies when you promote or recommend a credit product. You will need to adapt your existing disclosure statements and ensure that in all financial promotions and customer communications the nature of the commission is included, along with a description of the models you are permitted to use. These disclosures may be in general terms.**
- If you are a franchised retailer who has an arrangement with a captive lender you may choose to mention them by name - e.g. "We can introduce you to a selected panel of lenders, which includes ABC Finance" . You can explain your process to introduce customers to that lender first, as well as any specific differences in your commission arrangements with the captive lender.
- If you receive any other types of support, such as unit stocking, marketing, or training from a lender that may influence your decision when placing business, you may also choose to include these details.
- You are still required to include your regulatory status and make it clear that you are a credit broker and not a lender in all of your financial promotions and customer communications.

For further guidance on financial promotions, please refer to our Financial Promotions Guide.

[Click here to view the Financial Promotions Guide](#)

Pre-contractual information

The disclosure must be given to the customer, prominently and in good time before they decide whether to proceed with their agreement.

An initial disclosure document (IDD) can be provided to the customer in writing as evidence that the customer has been made aware of the existence and nature of the commission arrangements you have in place.

An IDD should contain the following information:

- Commission disclosure statement;
- Company information, e.g. legal name of the firm, registered address and company number;
- Regulatory status;
- Whether you offer independent financial advice, or if you don't give any advice or recommendations to customers;
- How personal data is used, and where customers can find your privacy notice;
- How customers can contact you should they have a question;
- How customers can contact you if they wish to make a complaint;
- That customers have the right to refer any unresolved complaint to the Financial Ombudsman Service and provide their contact details.



Example disclosures

Below are some example disclosures for both pre-contract and financial promotions. These may not be suitable for all situations. You must make sure your own disclosures meet the requirements by clearly and adequately describing your arrangements with your panel of funders.

The sections shown in red need to accurately describe your individual business arrangements, including around the rates customers are offered and the commission you receive.



1. Recommendation given

<Dealer trading name> is a trading style of <dealer legal name>. <Dealer legal name> are authorised and regulated by the Financial Conduct Authority. FCA number <FCA number>. We are a credit broker and not a lender. Finance subject to status. Terms and conditions apply. A guarantee may be required. Over 18s only.

PLEASE ENSURE YOU CAN AFFORD THE REPAYMENTS FOR THE DURATION OF A LOAN BEFORE ENTERING INTO A CREDIT AGREEMENT.

We can introduce you to a limited number of lenders and their finance products which may have different interest rates and charges. We are not an independent financial advisor. We may advise you on the products, subject to your personal circumstances, though you are not obliged to take our advice or recommendation.

We do not charge you a fee for our services. Whichever lender we introduce you to, we will typically receive commission from them **(Give details e.g. either a fixed fee or a fixed percentage of the amount you borrow).**

The lenders we work with could pay commission at different rates. However, the amount of commission that we receive from a lender does not have an effect on the amount that you pay to that lender under your credit agreement.

2. No recommendation given

<Dealer trading name> is a trading style of <dealer legal name>. <Dealer legal name> are authorised and regulated by the Financial Conduct Authority. FCA number <FCA number>. We are a credit broker and not a lender. Finance subject to status. Terms and conditions apply. A guarantee may be required. Over 18s only.

PLEASE ENSURE YOU CAN AFFORD THE REPAYMENTS FOR THE DURATION OF A LOAN BEFORE ENTERING INTO A CREDIT AGREEMENT.

We can introduce you to a limited number of lenders and their finance products which may have different interest rates and charges. We are not an independent financial advisor. We will provide details of products available from the lenders we work with, but no advice or recommendation will be made. You must decide whether the finance product is right for you.

We do not charge you a fee for our services. Whichever lender we introduce you to, we will typically receive commission from them **(Give details e.g. either a fixed fee or a fixed percentage of the amount you borrow).**

The lenders we work with could pay commission at different rates. However, the amount of commission we receive from a lender does not have an effect on the amount you pay to that lender under your credit agreement.

FCA CONC requirements

The FCA has changed its rules to reflect PS20/8, including some sections of CONC 3 and 4.

[Click here to view FCA handbook](#)



CONC 3.7.4

[Click here to view CONC 3.7.4](#)

- You should consider the language you use so that all your customers would understand it (avoid jargon etc.)
- State the existence and nature of any arrangements that impacts your impartiality in promoting or recommending a product.
- State to what degree you have independence.
- Ensure your disclosures are prominent, fair, and not misleading.

CONC 4.5.6

(Prohibition of discretionary commission models)

[Click here to view CONC 4.5.6](#)

You must ensure you meet all the requirements on CONC 4.5. This section of the handbook has been significantly altered and extended for the new rules introduced by PS20/8, so we recommend you become familiar with the changes.

The rule 4.5.6. specifically states that you must not:

- Enter into or have rights or obligations under a discretionary commission arrangement;
- Seek to exercise, enforce or rely on rights or obligations under a discretionary commission arrangement, including any rights or obligations to receive or tender payment of commission, fee or other financial consideration.

CONC 2.5.8 (12A and 13)

[Click here to view CONC 2.5.8](#)

Although this rule has not changed, we think it is now even more important to make sure your business practices are fair to customers (relating to Principle 6 as previously described).

We mention this with particular reference to points 12A and 13 of this rule, that highlight you should not secure business at higher rates or give preference to products for the gain of your business, rather than in the best interest of your customers.

Summary

- You must ensure all your customers get a copy of your IDD and you can evidence, if challenged, that they received it.
- You must ensure that your processes and commission arrangements adhere to the new rules under CONC 4.5. You should also consider your obligations under the FCA principles and SMCR regime.
- Your disclosures must be clear, fair and not misleading for customers.
- You must make it clear the existence and nature of any financial arrangements you have in place with lenders, and how this may affect the amounts payable by the customer.
- This applies to your pre-contractual information, financial promotions and other customer communications.

If you need any assistance, please contact your Account Manager.

Regards

The Evolution Compliance team

