

Central Bank of Ireland Dear CEO letter on Discretionary Commission Agreements for motor finance hire purchase – Wider conduct learnings and ramifications for all Compliance Professionals



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Author's note: After this article was originally written, there has been a recent further material development via a Court of Appeals ruling. More details are available here: <https://www.fca.org.uk/news/statements/fca-consult-extending-time-motor-finance-firms-handle-commission-complaints>

Discretionary Commission Agreements (DCAs) have been common arrangements in place in the motor finance industry for several decades. At a high level, under these agreements, brokers (often car dealers) selling motor vehicles maintain a discretion to adjust the interest rate offers to customers for relevant credit (often hire purchase), with levels of commission under these arrangements also typically varying depending on interest rate set.

For those in the motor trade, hire purchase industry, the recent instruction on the 12th of June from the Central Bank of Ireland ('Central Bank') by way of 'Dear CEO' letter to cease the practice of Discretionary Commission Agreements (DCAs) was not a surprise in light of the prevailing wind in the United Kingdom where:

- many Irish lenders have sister or parent companies engaged in the motor finance trade;
- the UK's regulator in this matter; the Financial Conduct Authority [announced a review](#) in January 2024 into whether motor finance customers have been overcharged because of the past use of DCAs (the findings of the review, and whether the FCA plan to introduce an alternative way of dealing with DCA complaints, are planned to be published by end of May 2025) - the FCA having [banned DCAs outright](#) in 2021;
- the [FCA extended a pause on DCA-related complaint resolution by firms](#) until after 4 December 2025, to provide the FCA time, if

necessary, to design, consult on and introduce an alternative way of dealing with DCA complaints (such as a consumer redress scheme like that previously conducted for Personal Loan Protection Insurance, or more recently in Ireland the Tracker Mortgage Examination)

- Barclays Partner Finance has started judicial review proceedings of the UK Financial Ombudsman Service's decision to uphold a complaint relating to its use of a DCA (which will address the main issues relevant to the FCA's review).

DCAs with Hire Purchase are a niche product in a specific industry, so rather than focusing specifically on the letter and what is expected of the firms that received their own letter, it is useful to consider the wider ramifications flowing from the letter for Compliance professionals and financial services in general.

Accelerating application of scope changes during a live consultation period

In Ireland in 2022, following the enactment of the Consumer Protection (Regulation of Retail Credit and Credit Servicing Firms) Act 2022, the provision of indirect credit such as Buy Now Pay Later (BNPL) agreements, along with Hire Purchase agreements, Personal Contract Plans (PCP), and consumer hire agreements, became activity regulated by the Central Bank. The Central Bank subsequently

applied Chapter 2 (General Principles), Chapter 5 (Knowing the Consumer and Suitability) and Chapter 9 (Advertising) of the Consumer Protection Code (CPC) to providers of these indirect credit products.

A major proposal being consulted on in CP158 is for the revised Code to apply in full to these indirect credit activities, to ensure that customers of these credit providers are afforded the same protections as customers of other regulated credit providers.

Whilst recognising that this proposal is still in the consultation phase, the Central Bank nonetheless chose in the Dear CEO letter to effectively accelerate the application of one of the requirements of the CPC (Provision 3.25A) that is not currently in scope for these providers, to effect the immediate prohibition of these products.

No legal power is explicitly referenced in doing this.

This sets an interesting and potentially concerning precedent for all regulated financial services providers, particularly those currently outside of scope (fully or partially) from the CPC or other consumer codes, and where the Central Bank has indicated a future intent or requirement to bring their activities within scope (e.g, Credit Union's lending and savings activities, or certain cryptocurrency-related activities).

Accelerating application of proposed rule changes during a live consultation period

While a scope extension of existing rules during a live consultation period is unusual, given the existing rules have been through several years of application to other products in other providers it is a linear horizontal extension. After all, the scope of some of the existing CPC rules had already been extended to the providers of these products when they became regulated by the Central Bank.

What the Central Bank required in the commission disclosure space was more surprising and sets a more significant and complicated precedent for the regulated financial services industry more generally.

Rather than just requiring a review of current practice exclusively against existing Code provisions based on an extended scope (and any necessary consequential amendments to be conducted thereafter), the Central Bank explicitly required a review against *both current and proposed Code requirements*.

While the proposed requirements to commission disclosure largely mirror the existing requirements, there are some related collateral changes around conflicts of interest management (including commissions) and a strict interpretation of the Central Bank letter could read that changes may be needed in light of the revised proposed

“ While Provision 3.25A does not currently apply to the activity of hire-purchase/PCP/consumer-hire, as set out in CP158 –Consultation Paper on the Consumer Protection Code, we are proposing to apply the full Code, including Provision 3.25A, to these activities. We therefore expect that regulated firms take steps now to cease the practice of DCAs in anticipation of Provision 3.25A coming into force for these activities immediately but no later than 31 July 2024.”

“ Confirmation that a review of your Firm's disclosure on commission to customers, in relation to motor finance provided through hire-purchase agreements via credit intermediaries, will be undertaken in accordance with *both current and proposed Code requirements* to ensure that there is appropriate disclosure of commission arrangements to customers about commission arrangements and that any necessary amendments are made to documentation, as soon as possible but no later than 30 August 2024. The outcome of this review is to be provided to the Central Bank, by 30 September 2024.”



requirements, during the consultation window in advance of the rules being finalised, where gaps against the new requirements emerged.

Alternatively, it may be the case that the Central Bank merely wished to articulate the review required against the new Code was to the extent the scope was extended to these providers for these products.

Retrospective remediation – will it be necessary and how might it be calculated?

The question of whether any historic practice was unclear and / or unfair, and if so whether retrospective remediation would be required, is not addressed by the Central Bank in the letter.

According to the [Irish Independent](#)¹ the Central Bank has no current plans to conduct a look-back probe into the practice, however political pressure (as witnessed by Sinn Féin finance spokesman Pearse Doherty's unequivocal call for an investigation) and the ultimate outcome of the UK review may raise significant pressure in this space.

Managing complaints

It is unclear at this stage whether any complaints have been raised to the Irish Financial Services and Pensions Ombudsman (FSPO) on this, however as and when complaints come in and are resolved, given the wider read-across any finding could have (by virtue of the standardised nature of many of these agreements and arrangements at a retail level), firms, the FSPO and the Central Bank may consider how best to manage complaints in this area.

Potential implications for other regulated products / customers

One thing which I would recommend all financial services providers do (and which firm's own risk management / Customer Protection Risk Assessment frameworks may specifically require) whenever a Dear CEO / Thematic Review letter issues to any specific industry segment is some level of assessment of potential logical read-across into other products and / or other customer cohorts.

Given the widespread (at least historically) use of this product in the motor finance industry, compliance and risk professionals and product owners could benefit from considering to what extent the factors inherent in the Central Bank effecting the ban on DCAs might have relevance elsewhere.

Closing thoughts

The recent Central Bank letter poses a lot of interesting philosophical, legal and regulatory considerations for compliance professionals and risk managers, and it will be interesting to see where things go from here in the coming months.

At present, in an Irish context at least, it is not in any way certain or clear that anyone has ever done anything wrong historically, never mind whether any such wrong may necessitate remediation.

The UK developments and the FCA's regulatory approach should be monitored by regulated firms, particularly given the size of the industry, the potential for customer detriment and the financial / reputational risk potentially involved.

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REFERENCE

1. <https://www.independent.ie/business/personal-finance/thousands-may-have-paid-inflated-interest-rates-in-suspected-car-sales-scandal/a1029139803.html>