

- 3.17** Similarly, the obligation to provide an adequate pre-contractual explanation under FCA rules falls on the lender, unless a broker or other intermediary has taken on responsibility for providing the explanation and the lender is satisfied that an explanation has been provided and is compliant.
- 3.18** The pre-contract disclosure, in the form of the SECCI (the Standard European Consumer Credit Information form), must be provided 'in good time' before a credit agreement is made. The information must include key details of the credit and its cost, including the total amount payable, the interest rate, APR (annual percentage rate of charge), default charges and any other costs. In the case of PCP and other HP, this would include the cost of acquiring ownership of the vehicle at the end of the agreement. It must also state the cash price of the vehicle.
- 3.19** If the SECCI is not provided in good time, or is deficient, the credit agreement is improperly-executed and so is unenforceable against the customer without a court order. The FCA also has powers to take enforcement action.
- 3.20** The pre-contractual explanation must be provided before the agreement is made, and should enable the customer to make a reasonable assessment of whether they can afford the credit and to understand the key associated risks. In particular, the explanation must cover any features of the agreement which may make the credit unsuitable for particular types of use, or which may operate in a manner which could have a significant adverse effect on the customer in a way they are unlikely to foresee. It must also cover how much the customer will have to pay periodically and in total under the agreement (the total amount payable).
- 3.21** In addition, the firm must advise the customer to consider the pre-contract credit information (and that they can take it away), and how to ask for further information or explanation. The customer must have an opportunity to ask questions.
- 3.22** In general, we found that – where key features of ownership and end-of-contract options for PCP, including final balloon payments, were explained during the mystery shopping – this was usually clear and transparent. However, only 31% of brokers in our sample explained that, for PCP and other HP, customers do not own the goods until all sums have been paid, including any option-to-purchase fee, and any other conditions have been satisfied; and that goods can be repossessed without a court order in the event of default (unless the customer has paid a third or more of the total amount payable).
- 3.23** In addition, only 28% of brokers in our sample explained the total amount payable, the principal consequences arising from a failure to make payments under the agreement, and the effect of withdrawing from the agreement.
- 3.24** We expect lenders and brokers to review their policies and procedures, to ensure that customers are treated fairly and with appropriate transparency. In particular, firms should satisfy themselves that any required disclosures and explanations are clear and easy to understand, and are provided sufficiently early in the process to enable the customer to make an informed decision.

Commission disclosure

- 3.25** We found that only a small number of brokers disclosed to the customer, during the mystery shopping visit, that a commission may be received for arranging finance. This

was the case for only 1 out of 37 franchised retailers, 4 of 60 independent retailers, 2 of 14 car supermarkets and 4 of 11 online brokers.

- 3.26** As above, it is possible that disclosures would have been made later in the process but it is not clear to us that this would be sufficiently early to effectively alert the customer to the potential conflict of interest or that there may be scope to negotiate on the finance as well as the vehicle and other price elements.
- 3.27** We were also concerned that, where disclosures were made, they were often not prominent and were unlikely to be noticed by the customer. For example, they may be difficult to find in a document, without being drawn to the customer's attention.
- 3.28** Our rules in CONC 4.5.3R require brokers to disclose, in good time before a credit agreement is entered into, the existence of any commission or fee or other remuneration payable to the broker by a lender (or a third party) if knowledge of the existence or amount of the commission could actually or potentially:
- affect the broker's impartiality in recommending a particular product; or
 - have a material impact on the customer's transactional decision
- 3.29** This would include DiC and similar commission arrangements which allow the broker discretion to adjust the interest rate, to earn more commission. This is a conflict of interest that may affect the broker's impartiality. It may also affect the customer's decision on whether to deal with the broker or to proceed to an agreement. If the customer is aware of the existence of such arrangements, they can take this into account, and probe further if they want or request an indication of the amount or likely amount of the commission (which the broker must provide upon request).
- 3.30** It may also apply in other cases, where the broker does not have discretion but the amount of commission may vary by lender or product, as the customer may be unaware of this and so may not factor it into their decision making.
- 3.31** In accordance with CONC 3.3.1R (and Principle 7), such disclosure should be clear, fair and not misleading. As above, it should be sufficient for, and presented in a way that is likely to be understood by, the average customer, and the firm must not disguise, omit or diminish important information.
- 3.32** Separate provisions in CONC 3.7 require brokers to make clear, in financial promotions and other documents, their status and the extent of their powers. This includes whether they work exclusively with one or more lenders or independently. Accompanying guidance makes clear that communications with customers should indicate prominently the existence of any financial arrangements with a lender that might impact on the broker's impartiality in promoting a credit product.
- 3.33** Unlike CONC 4.5, this is irrespective of whether knowledge of the existence or amount of the commission might have a material impact on the customer's transactional decision. It is also irrespective of whether the broker is recommending a particular product. In addition to such disclosure being prominent, the guidance makes clear that it must also be clear and easily comprehensible.
- 3.34** Credit brokers in the motor finance market should review their policies and procedures to ensure they are complying with the CONC rules, and are treating customers fairly. They should take steps to address any deficiencies identified. We also remind lenders

6 Next steps

- 6.1** We are publishing this report on our website, and are taking steps to draw it to the attention of relevant firms and trade bodies.
- 6.2** All firms acting as lenders or brokers in the motor finance sector should read this report and consider whether they need to review or amend their policies and procedures and associated systems and controls.
- 6.3** Where we have identified concerns through our findings, we will follow up with the individual firms. Where necessary, we may consider supervisory or enforcement action. We may also ask firms to report to us on progress in addressing issues.
- 6.4** As noted above, we have particular concerns in relation to commission arrangements, including the structure of commissions (and whether and to what extent they allow broker discretion over the interest rate) and relevant disclosures by brokers. We have started policy work with a view to consulting, subject to cost benefit analysis, on changes to CONC to strengthen existing provisions and to explore other policy interventions such as banning DiC and similar commission models or limiting broker discretion.

Appendix 1

Key CONC provisions

CONC 2.5	Conduct of business: credit broking
CONC 3.3	The clear fair and not misleading rule
CONC 3.7	Financial promotions and communications: credit brokers
CONC 4.2	Pre-contract disclosure and adequate explanations
CONC 4.4	Pre-contractual requirements: credit brokers
CONC 4.5	Commissions
CONC 4.8	Pre-contract: unfair business practices: consumer credit lending
CONC 5.2A	Creditworthiness assessment
CONC 5.4	Conduct of business: credit brokers

