FLA

Best Practice

GUIDANCE ON INTERMEDIARY OVERSIGHT

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Issue

As part of its work on the motor finance market, the FCA has highlighted the importance of intermediary oversight. With a very large number of intermediaries (such as dealers or brokers) but relatively few lenders, the way this oversight is carried out is critical to ensuring good customer outcomes. Further potential issues may arise in relation to intermediary remuneration and panel management arrangements.

Increasing diversity in the way lenders distribute their products, or rely on third parties for the provision of services, leads to further questions about how regulatory risk in third party relationships should be managed.

Monitoring and oversight of these third-party relationships is a key requirement for any lender to ensure it proactively identifies and minimises risks, and demonstrates effective controls are in place. Effective oversight also has commercial benefits from the appropriate management of risk and the engendering of trust with partners and customers.

The FCA has emphasised the importance of lender controls in its final findings on the motor finance market, particularly the need for lenders to actively monitor and act on any issues identified. The FCA also raised the importance of lenders monitoring of brokers' CONC compliance on commission disclosure as a 'key concern'.

The introduction of the FCA's Senior Managers and Certification Regime places further emphasis on the conduct and culture of firms, further increasing the need for robust and effective oversight.

Purpose of guidance

This non-binding guidance is intended to assist members in handling the issues described above. As well as describing the legal and regulatory requirements lenders and intermediaries must meet, this guidance also outlines steps lenders may wish to take when appointing intermediaries and defining contractual arrangements. The guidance also gives examples of auditing processes which could be used in order to prevent duplication for intermediaries, and minimise risk for lenders and customers.

This guidance is not intended to prescribe behaviour that firms **must** follow, but rather provide a framework by which firms may include additional elements of oversight where necessary.

It should be noted that intermediaries remain responsible for their own regulated activities for which they are separately authorised by the FCA. This document therefore describes oversight processes lenders may put in place to satisfy lender obligations under CONC 1.2.2R.

Similarly, this guidance recognises that the oversight responsibilities a lender has in a typical lender / intermediary *direct* relationship will not be the same as those it might have where there is an *indirect* relationship between a lender and an intermediary – for example where a lender deals with a broker who themselves have direct relationships with dealers. In the latter scenario, while the lender's oversight responsibilities are lighter, responsibilities do nevertheless exist. A lender might, for example, want to satisfy itself that the broker is exercising oversight in relation to dealers that are analogous to the lender oversight responsibilities described here.

Regulatory requirements

There are a number of obligations placed on both lenders and intermediaries in the FCA Handbook. The most important of these in a lender / intermediary context are summarised here.

PRIN

- Principle 1. A firm must conduct its business with integrity;
- Principle 2. A firm must conduct business with due skill, care and diligence.
- Principle 3. A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems;
- Principle 6. A firm must pay due regard to the interests of its customers and treat them fairly.
- Principle 7. A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.
- Principle 11. A firm must deal with its regulators in an open and cooperative way, and must disclose to the FCA appropriately anything relating to the firm of which that regulator would reasonably expect notice.

SYSC

- SYSC 4.1.1R. A firm must have robust governance arrangements, which include a clear organisational structure with well defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks it is or might be exposed to, and internal control mechanisms, including sound administrative and accounting procedures and effective control and safeguard arrangements for information processing systems.
- SYSC 5.1.1R. Firms must employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them.

CONC

- CONC 1.2.2R. A firm must ensure its employees and agents comply with CONC; and take reasonable steps to ensure that other persons acting on its behalf comply with CONC.
- CONC 2.3.4R. A firm must take reasonable steps to satisfy itself that any credit brokers it deals with are properly authorised or appointed representatives.
- CONC 2.5.8R. A credit broker must not carry out a number of specified unfair business practices, including (12A) not securing credit for a customer at a higher rate of interest than was requested, where the object of doing so is for, or can reasonably be concluded as having been for, the personal gain of the firm or of a person acting on its behalf, rather than in the best interests of the customer; and (13) not giving particular preference to the credit products of a particular lender where the object of doing so is for, or can reasonably be concluded as having been for, the personal gain of the firm or of a person acting on its behalf, rather than in the best interests of the customer.[1]
- CONC 3.7.3R. A firm must, in a financial promotion or a document which is intended for individuals which relates to its credit broking, indicate the extent of its powers and in particular whether it works exclusively with one or more lenders or works independently. The FCA has clarified that this obligation to declare prominently the existence of a commission arrangement applies irrespective of the method of commission employed.
- CONC 4.5.2G. A lender should only offer to, or enter into with, a firm a commission agreement providing for differential commission rates or providing for payments based on the volume and profitability of business where such payments are justified based on the extra work of the firm involved in that business.
- CONC 4.5.3R. A credit broker must disclose to a customer in good time before a credit agreement or a consumer hire agreement is entered into, the existence of any commission or fee or other remuneration payable to the credit broker by the lender or owner or a third party in relation to a credit agreement or a consumer hire agreement, where knowledge of the existence or amount of the commission could actually or potentially (1) affect the impartiality of the credit broker in recommending a particular product; or (2) have a material impact on the customer's transactional decision. The FCA has now clarified as part of its work on motor finance that the existence of DiC and similar commission arrangements **must** be disclosed to customers in good time before an agreement is entered into.
- CONC 4.5.4R. At the request of the customer, a credit broker must disclose to the customer, in good time before a regulated credit agreement or a regulated consumer hire agreement is entered into, the amount (or if the precise amount is not known, the likely amount) of any commission or fee or other remuneration payable to the credit broker by the lender or owner or a third party.

[1] See also paragraphs 4.26e and 4.41k of the OFT's 2011 Credit brokers and intermediaries guidance.

It is noteworthy that the provision in CONC 1.2.2R for firms regarding employees, agents and other persons acting on their behalf is unique to CONC. There are no analogous provisions in Sourcebooks for other products.

It is also worth recalling that intermediaries can be deemed to be 'acting on behalf' of the lender for the purposes of the unfair relationships provisions at section 140A of the Consumer Credit Act.

Identifying suitable intermediary firms

Taking into account the principles and rules set out above, members may wish to consider the following 'due diligence' guidance when identifying and bringing on board suitable intermediary firms.

Product Range and Distribution

- Consider the product range and the appropriate means of distribution for each product. Will the lender's product range reach the target audience by working with a particular intermediary firm?
- Decide whether to approach firms which have national or regional coverage, and what size of firm(s) provide the right 'fit' for the lender and the products it offers.

Initial checks recommended for the onboarding process

- Depending on level of risk, firms may wish to conduct proportionate background checks on one or more of the following features of the intermediary firm:
    - registration on the FCA's Financial Service Register to confirm that they have the relevant permissions in respect of the regulated activity they are undertaking and whether any disciplinary action has been taken (see below);
    - company registration with Companies House, including filed accounts and other Companies House information such as the People with Significant Control ('beneficial owners') register;
    - credit status to ascertain, for example, whether there are any county court judgments or risk of insolvency;
    - criminal record checks on key directors, and
    - Data Protection Registration with the Information Commissioner's Office.
- Undertake due diligence in respect of the intermediary's level of compliance. Again, the level and extent of this will be a matter for each individual lender and what is proportionate may vary depending on a number of factors – for example, the profile of customers likely to be introduced, and the nature of the intermediary. Checks such as those suggested below may be appropriate either as part of the onboarding process or as part of the ongoing monitoring process.

- Ascertain the nature and extent of the intermediary's compliance function. Is a member of staff at the intermediary firm responsible for compliance on a day to day basis? Is a compliance plan in place?
- Seek information about the training and competence arrangements of the staff of the intermediary. Are they SAF Approved? Do they use the Motor Finance Specialist Apprenticeship Standard?
- Seek information about complaints levels and category types. Is a member of staff at the intermediary firm responsible for handling complaints?
- Seek information about whether the intermediary has written policies and procedures in place. These might cover, for example, a compliance policy, financial promotions, data protection, anti-money laundering and complaints handling. How often are these updated?
- Carry out a high-level review of the intermediary's website to check whether there are any obvious and serious breaches of the financial promotions rules (for example, does the firm suggest or state that credit is available, regardless of the customer's financial circumstances or credit status?).

Permissions required

CONC 2.3.4R requires a firm to take 'reasonable' steps (as appropriate to the level of risk posed) to satisfy itself that any credit intermediaries it deals with are properly authorised or are appointed representatives. 'Reasonable' in this context implies verification both at the on-boarding stage and periodically thereafter to ensure that the permissions have remained in place.

A reasonable way of doing this is to check the intermediary's status on the FCA Financial Services Register, and the FCA's Directory (when available) of individuals within the SMCR.[2]

The FCA provides checklists and a set of 'common misconceptions' on how it authorises consumer credit lenders and brokers, which may be useful for both lenders and their intermediaries in this process.

Lenders should ensure that any dealers or brokers operating on their behalf hold the correct permissions and limitations in relation to the activities being carried out on their behalf.

This is an essential step in assessing the suitability of appointing any intermediary to lender panels. However, lenders should be mindful that the FCA expressed "particular concern" in its final report on motor finance that some firms deemed FCA authorisation to be sufficient proof that a broker would therefore be compliant with FCA rules.

[2] The FCA have committed to making improvements to the Register, improving search functionality and providing clearer information, including by making it easier to identify whether the FCA has taken action against a firm.

In addition to the **credit broking** permission (Article 36A of the Regulatory Activities Order), the FCA requires one or both of the following debt permissions when settling agreements between consumers and another lender:

- **Debt Adjusting** (Article 39D), which involves negotiating terms for discharging a debt with the lender on behalf of a debtor, or taking on responsibility for settling outstanding finance on behalf of the debtor in return for payment, or any other activity in connection with the liquidation of consumer credit or hire debts.
- **Debt Counselling** (Article 39E), which is advising a debtor on the liquidation of debts due under creditor or consumer hire agreements.

There are, however, two exceptions to this:

- The **Article 39H** exclusion, which relates to debt adjusting or debt counselling in respect of agreements which the firm is a party to. In this context, this applies primarily to the lender and supplier connected to a specific agreement.
- The **'limited to the settlement of vehicle finance'** limitation, which assumes that the firm is not conducting any other form of debt counselling and / or debt adjusting.

This latter limitation was introduced by the FCA to distinguish between genuine debt management activities and incidental debt management[3]. Any dealer or broker offering to settle outstanding finance on a vehicle given in part exchange, including refinancing any negative equity, but not otherwise engaging in wider debt management activities, should consider obtaining this limitation. However, they should also be mindful of any other wider debt management activities they carry out in order to ensure the correct permissions and limitations are held.

PERG 2.7 provides an overview of the scope of regulated activities and permissions required. There is also guidance in PERG 5 on the additional permissions required where an intermediary is also **distributing insurance products** as well as credit products.

In addition to satisfying itself that the intermediary has the right permissions in place for the *activities* it carries out, the lender should also satisfy itself that the intermediary has the right *level* of permission, namely:

- Full permission: credit broking where introducing customers to lenders or brokers is a main business activity.
- Limited permission: credit broking where the sale of goods or non-financial services is the main business, and broking is a secondary activity designed to

[3] The FCA defines debt management as being: '*the activities of debt counselling or debt adjusting, alone or together, carried on with a view to entering into a particular debt solution or in relation to any such debt solution, and activities connected with those activities.*' The FCA in turn defines a debt solution as being: '*an arrangement, scheme or procedure, whether statutory or not, the aim of which is to discharge or liquidate a customer's debt*'.

help finance the purchase of those goods or services (such as a vehicle), and credit broking in relation to consumer hire or hire purchase agreements.

- Appointed representative: where a separate 'principal' firm is accountable for the range of activities appointed representatives carry out.
- Introducer appointed representative: an appointed representative whose scope of appointment is limited to effecting introductions to the firm or other members of the firm's group; and distributing non-real time financial promotions which relate to products or services available from or through the firm or other members of the firm's group.

Confirm Lender Expectations

- Explain how the lender handles its intermediary operations e.g. via panel management groups, business relationship managers, etc.
- Outline how often the intermediary firm can expect to be monitored, what management information it will be required to submit, and frequency.
- Explain the behaviours / standards expected from intermediary firms and the performance measures that will be applied to assess whether these are being met.
- Outline expectations with regards to complaints handling, perhaps referring to the FLA / NFDA Best Practice on the Consumer Rights Act for guidance.
- Indicate what performance measures could lead to disciplinary action and what form such action might take.

Appointing intermediary firms to the panel

- There should be a written contract between the lender and all intermediary firms appointed to its panel, which should usually include the following items:
    - the expected levels of service, including the lender's expectation that the intermediary will comply with all relevant laws and regulations. It should also describe the scope of the intermediary's activities;
    - control provisions e.g. oversight rights for the lender to check intermediary compliance;
    - commission arrangements and when payments will be made should be detailed (see also below on Intermediary Remuneration);
    - a provision that, where the customer has been introduced to the intermediary by another introducer, the intermediary will be required to ensure that the introducer has the relevant regulatory permissions required for the activity undertaken (where applicable);
    - where fees are charged to the customer by the intermediary (irrespective of whether commission is also received), a provision that these must not be excessive and reflect the cost of the work undertaken;
    - process for submitting and approving credit applications – including requirements for intermediaries to use up-to-date paperwork provided by the finance company;

- process for refunds if product is cancelled or terminated by customer;
- agreed complaints handling process;
- the process for handing intermediary indemnities;
- anti-money laundering process, and
- data protection and GDPR privacy notice process.

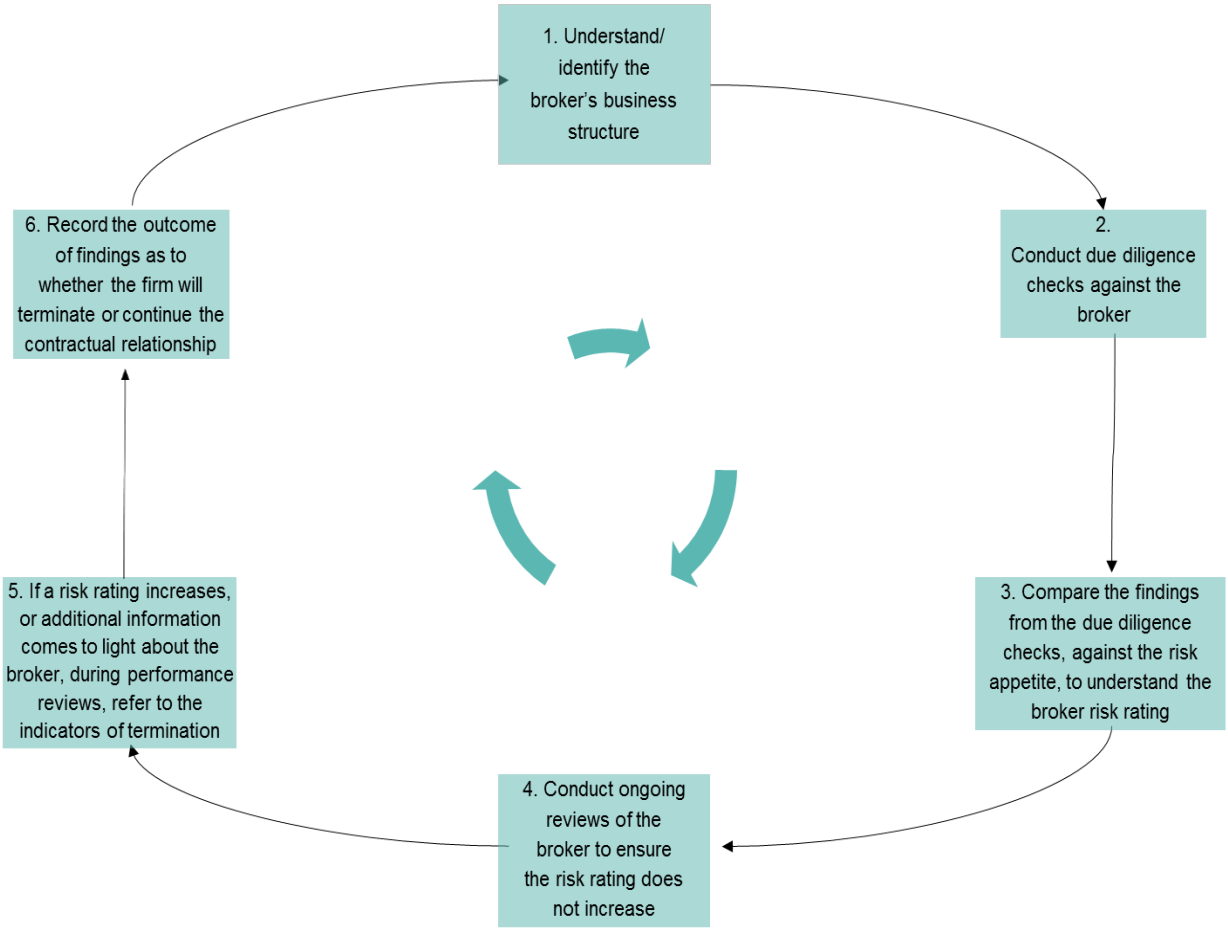
Performance management and oversight

Once a lender has identified and brought on board an intermediary, CONC 1.2.2R requires that the lender then take 'reasonable' steps to ensure that the intermediary complies with CONC **when it is acting on the lender's behalf**. The lender's obligations under SYSC mean that it must do this by taking 'reasonable' care to establish and maintain such systems and controls as are appropriate. What is 'reasonable' in these circumstances will vary, depending on, for example, the nature, scale and complexity of the lender's or intermediary's business models and the degree of risk associated with these. This may require the lender obtaining sufficient data and other information from the intermediary, as well as drawing on its own internally produced MI, to enable it to identify, measure, manage and control risks to consumers in a timely way. At all times the lender should ensure that it has effective governance and oversight over these systems and controls, enabling emerging risks to be identified and mitigated and policies reviewed and, if necessary, amended at an appropriate level of seniority, up to and including Board level.

There are many ways in which this can be done effectively, and the purpose of this guidance isn't to recommend any one particular way.

The diagram overleaf[4] illustrates how FCA requirements essentially mean that good intermediary oversight involves a self-reinforcing 'virtuous circle' of processes.

[4] This is a model developed by FLA Associate Member, Addleshaw Goddard.



One way of enacting processes such as these could be by using systems and controls based on an *Assess, Assure, Act* model[5], as described below.

Assess

A desk-based assessment of risk posed by each intermediary could be carried out, for example by:

- Collating a dashboard with key risk indicators (see an example below).
- Considering as many possible relevant sources of information about each intermediary, such as average and spread of APRs for agreements sold, average length of agreements sold, customer satisfaction and retention rates, loan performance and arrears / default rates, net promotor scores, the number and uphold rate of complaints to FOS, intelligence from Section 75 disputes, press and social media coverage, and information about enforcement action by e.g. Trading Standards, Advertising Standards Authority or FCA.
- Ranking by order of risk / outcome, for example through a scoring or 'RAG' (red / amber / green) status approach.
- Reviewing the assessment of each intermediary to consider what (if any) further action is appropriate. Such action might include, for example:

[5] This is based largely on a model developed by FLA Associate Member, Huntswood.

- field visit;
- requirement for further training and reporting;
- *ad hoc* (focussed) visit;
- sector review;
- mystery shopping;
- FCA notification[6];
- restriction of future business;
- reduction or clawback of commissions, or
- removal from the lender's panel.

Average APR	APR spread	Satisfaction (point of sale)	Satisfaction (end of agreement)
PCP agreement length	HP agreement length	Customer retention	Net promotor score
Arrears rate	Default rate	Field assessment	Enforcement action
FOS complaints	In-house complaints	Social media profile	Media / other intelligence

The above is an example of a dashboard which could be adapted as appropriate to assess the current status and performance of an intermediary using a 'RAG' status approach. A wide range of other metrics including withdrawal rate, early termination rate or mileage limit exceeded rates could be included depending on the firm's own KPIs and processes, and the number of criteria checked against may vary similarly.

For some lenders, however, a dashboard of this complexity may be disproportionate or unachievable. They might therefore choose a different framework to ensure they are collecting appropriate KPI data. This could take the form of an agreed feedback process, documented by a formalised flow of information and action taken.

[6] The FCA has extended its Information From Lenders scheme to the consumer credit. IFL is a voluntary scheme that enables lenders to report intermediaries they suspect of committing fraud to the appropriate FCA team for further investigation.

Assure

Field visits could be undertaken as appropriate and proportionate, in line with a risk-based approach. The frequency would be a matter for the lender, based on their assessment of relevant risks posed by each intermediary. Information could be collected via a prescribed return completed by the intermediary and sent to the lender or via on-site field visits. One advantage of a prescribed return could be that the intermediary is able to complete a standard attestation for each lender on its panel.

Other information should be already held by the lender. Once collated, this information should be actively reviewed, for example using a dashboard approach as described above, with each intermediary's performance benchmarked against the panel as a whole, and judged against policies set by the lender's governing body which describe the intended outcomes and standards sought. Some lenders support this by operating an intermediary panel management group, with representation from across the lender's business, for example from risk, compliance, fraud, sales and service functions.

- Field visits could include, as appropriate and proportionate, documented review of items such as those listed below, in accordance with the risk-based approach agreed:

    - Business performance. Does the intermediary over- or under-perform against targets and is this indicative of a wider risk?
    - Quality. The quality of cases introduced by each intermediary: are the loans performing well and are arrears / delinquencies within acceptable limits?
    - Churning. Are cases introduced by any particular intermediary being refinanced quickly (for example within six months), and might this be indicative of poor creditworthiness and affordability policies?
    - Governance. Do management have clear oversight and control over business functions and staff, including keeping policy and procedures updated and performing internal monitoring?
    - Introducer network. Can the intermediary demonstrate their introducer network is compliant?
    - Regulatory checks. Are relevant FCA permissions and authorisations in place, along with any limitations?
    - Sales staff remuneration. Are commission structures incentivising inappropriate behaviour? Are appropriate systems and controls in place?
    - Treating Customers Fairly. Can the intermediary demonstrate and evidence the delivery of fair outcomes for consumers, including in relation to commission arrangements?
    - The customer journey. Can the intermediary demonstrate and evidence its sales processes and regulatory disclosure?
    - Affordability assessments. Does the intermediary follow lender requirements and FLA best practice?
    - Vulnerable customers. How are vulnerable customers identified and protected? Is information shared with the lender with consent?

- Complaint handling. Does the business follow FLA / NFDA best practice? Do you have a contractual agreement in place which is adhered to?
- Fraud prevention and anti-money laundering. Does the intermediary comply with the FLA industry standard for financial crime prevention in motor finance credit application processing?
- Advertising and Financial Promotions. Are financial promotions in line with FCA and ASA rules?
- Client and staff training. Can the intermediary demonstrate and evidence a training record and quality of training? Are they working towards obtaining SAF Approved status and / or taking on Motor Finance Specialist Apprentices?
- Record Keeping. Are full and appropriate records maintained and retained?

- There are a number of practical considerations firms should be mindful of when planning a field visit, including:

  - The timeframe in which a field visit should be undertaken, dependent on the level of risk identified by the assessment.
  - The period of time between field visits.
  - Contract issues: issues of customer consent.
  - Business spikes: spikes in consumer demand during March and August for the motor trade, and spring for the leisure vehicle trade.
  - Availability of key intermediary staff.
  - Interaction with third party compliance providers.
  - Cost and logistics associated with planning a visit.
  - Resource: skills, knowledge and experience of staff to conduct effectively.

Lenders could also employ one of the following checks, depending on the level of risk identified in the earlier assessment:

- *Ad hoc* (focussed) visit: to examine specific issues identified through desk-based research or field visit for specific issues only.
- Review of specific intermediaries where wider concerns are suspected.
- Mystery shopping
- FCA notification: in certain cases it may be appropriate to refer an intermediary to the FCA.

Act

If the assurance activity reveals or confirms issues with the intermediary's processes, practices or conduct, prompt action should be taken, following the steps below:

- Remedial actions agreed, including client contact where necessary, as soon as possible after issues identified. Remedial action tasks should have clear ownership and resolution timeframes, and be tracked and reported.
- Results and issues discussed and tracked in senior leadership meetings.
- Ongoing monitoring and tracking of improvements via MI and monitoring reports.

- It is for lenders to decide the appropriate course of action whilst issue resolution is in progress, but this may include suspending acceptance of business from the firm pending resolution of the issue.
- An open and transparent appeals process should be adopted.
- If fraud by the intermediary is suspected or proven, the lender should report the details to their own FCA supervisor.
- Consequence management if no improvement seen within an agreed timescale, which may result in giving notice that the firm is to be removed from the Panel, subject to any appeal.

Audit collaboration

A key feature of the motor finance market is that many dealers themselves use a panel of lenders, in order to ensure that a variety of finance options are available for their customers. It is possible, therefore, that such dealers could be subject to multiple, and overlapping, oversight systems and controls by their lenders – in some cases to a degree that could be considered disproportionate.

These are circumstances, therefore, where it might be considered 'reasonable' (in the sense of CONC 1.2.2R) for lenders to pool resources in exercising their oversight functions – for example by employing an independent third-party auditor to carry out functions on behalf of a group of lenders. If this is done, a number of related issues will need to be considered carefully and taken into account, such as:

- competition: nothing should be done that hinders competition between lenders or otherwise does not comply with competition law;
- scope: to the extent that each lender's policies and requirements are likely to differ, lender-specific systems and controls are likely to have to retained in part in order to cover all potential risks adequately, and
- confidentiality: care must be taken to ensure that the confidentiality of commercially sensitive data is strictly respected.

In many cases, however, such collaboration is unlikely to be viable: the constraints of competition law and confidentiality obligations place a particularly **high bar** in this context.

Vulnerable customers

It can be difficult for both intermediaries and lenders to identify and support vulnerable customers, frequently due to lack of disclosure from customers. Firms could therefore follow the BRUCE protocol as outlined in the FLA guidance document Vulnerability: a guide for lending.

This means that the party (intermediary or lender) that identifies a difficulty or decision-making limitation should provide the required support to overcome this, and

when consent has been provided, share this information appropriately with the other party (lender or intermediary) as appropriate. Chapter 7 of the guidance offers practical advice on how this can be done in a sensitive and compliant way.

Some lenders have chosen to train a pool of dealer services agents in vulnerability (a 'vulnerable customers hotline') so providing an additional layer of support in identifying and supporting vulnerable customers.

Intermediary remuneration

The FCA does not argue in principle against the use of incentives by firms (such as commission for intermediaries), but notes that commission structures can involve risks and may lead to adverse outcomes for consumers if adequate systems and controls are not in place. The FCA believes that commission-based models within consumer credit firms can operate in a way that complies with the rules, however it has reiterated an expectation that where harm, or **potential harm**, is identified, this should be addressed.

The FCA has done extensive work looking at intermediary remuneration in the motor finance market and published an update on this work in March 2018 in which it outlined its concerns that Increasing DiC and Reducing DiC commission arrangements, and other similar commission arrangements, may create incentives for the dealer, since the dealer commission may increase with the interest rate that the consumer is charged.

In its final report on the market, the FCA identified that DiC models in particular could cause incentives for brokers to arrange finance at a higher interest rate for consumers, due to the strong association between interest charged and commission earned.

It found that, in comparison to other models, such as flat fee, DiC and scaled commission models appear to break the link between credit risk and interest rate, with higher commission as a percentage of charges typically more prevalent in the prime market.

The FCA has identified particular concern around wide broker discretion on interest rates, which it found may lead to potential for significant consumer harm. It therefore expects lenders to review their systems and controls to ensure this risk is adequately managed.

Whilst recognising that there may be instances where broker discretion allowing them to achieve a higher interest rate may be justified – for example where an intermediary has carried out extra work – the FCA states that the onus is on the *lender* to show that any differences in commission rates are justified, based on the work involved for the broker.

The nature, extent and intensity of the lender's systems and controls will therefore depend on, and need to be proportionate to, the risk of the intermediary remuneration models that are used. These would need to be particularly intense where, for example, Increasing DiC and Reducing DiC models are used, and careful

consideration given to the intensity of oversight required for scaled arrangements. As with all systems and controls, the lender should obtain sufficient data and other information from the intermediary to enable it to identify, measure, manage and control risks and potential risks to consumers in a timely way. The FCA notes that relying on contractual arrangements and standard procedures is unlikely to allow lenders to monitor brokers sufficiently closely. Whilst the framework of controls most lenders have in place are “broadly reasonable”, the FCA is keen to ensure lenders implement these controls in practice.

The lender should therefore ensure that it has effective governance and oversight over these systems and controls, enabling emerging risks to be identified and mitigated and policies reviewed and, if necessary, amended at an appropriate level of seniority, up to and including the lender’s governing body as necessary.

There are many ways in which effective systems and controls can be designed in this context, including where these are based on an *Assess, Assure, Act* model, as described above.

FCA’s next steps on intermediary remuneration

The FCA has set out a clear direction of travel in its final report on motor finance, which includes considering the case for policy intervention, namely:

- banning DiC
- limiting broker discretion
- strengthening CONC rules.

The FLA will continue to work with members and the FCA as it carries out its policy work on the new rules to be introduced. In the meantime, the FCA has said that it expects all firms, including both lenders and brokers, to review their policies, procedures and controls to ensure they are complying with all relevant regulatory requirements and are treating customers fairly. In this context, it is strongly recommended that lenders cease offering DiC and similar commission arrangements that lead to the adverse consumer effects that the FCA has identified.

May 2019