



Nikhil Rathi  
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Financial Conduct Authority  
12 Endeavour Square  
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By email

20 December 2024

Motor finance commission

Dear Nikhil,

I have been asked by the Committee to respond to your letter of 13 November 2024. As I explained at the start of the Financial Services Regulation Committee meeting with you on that day, the Committee needed time to digest your letter. The Committee is considering the implications of the recent decision to grant leave to appeal to the Supreme Court in the cases of *Hopcraft, Johnson, and Wrench*. In that regard, I note the FCA's intention, now that the decision to appeal has been granted, to ask the Supreme Court to allow the FCA to share its expertise with the Court.

Ordinarily, these recent developments would engage Parliament's important rules on *sub judice* which usually require the House to abstain from discussing cases to be decided in the UK's courts. However, given the importance of the issues raised by this litigation, the Lord Speaker has granted a waiver of the *sub judice* rule to enable us to continue this correspondence notwithstanding the active proceedings in the case.

I refer you, therefore, to the transcript of the Financial Services Regulation Committee meeting on 20 November with the Finance & Leasing Association, especially at pp 5-8, and the Treasury Committee meeting of 10 December with the FCA, especially at Q125-Q158.

In your letter you draw attention to the decisions of the Court of Appeal on 25 October 2024 in the cases of *Hopcraft, Johnson, and Wrench* (reported at [2024] EWCA 1282). You say that in two of the three cases the lenders were held to be liable because they had paid a secret commission to the broker to which the borrower had never given informed consent. You point out that these cases concerned both fixed and discretionary commission payments in motor finance agreements, and you say that the latter (DCAs), but implicitly not the former, were banned in 2021 by the FCA.

In his evidence to the Treasury Committee, Mr Braviner Roman, General Counsel and Executive Director of Legal, Risk, Compliance and Corporate Governance at the FCA, helpfully explained (e.g., in answer to Q 125) that the FCA commenced a review of DCAs in 2017, following which, in 2021, the FCA banned them (e.g., Nikhil Rathi, *ibid.* at Q 129).

You also point out in your letter that the focus of the decision of the Court of Appeal is the common law rather than FCA Rules or Principles and the implication of your letter is that the decision of the Court of Appeal (if it is upheld by the Supreme Court) is in conflict with or is in material respects different from the FCA Rules and/or Principles: cf. the evidence of Mr Haddrill and Mr Coombs in the 20 November transcript at pp 5-8.

In the circumstances, the Committee would be grateful to understand/receive from you:

1. The relevant FCA Rules and Principles concerning both discretionary and fixed commissions.
2. Whether the FCA took legal advice both in connection with its decision to ban DCAs (which it did in 2021) and in connection with the Rules/Principles referred to in 1. above? If so, and in each case, when and from whom was that advice sought? And, if it was sought/given, please provide in full the evidence of that advice.

I look forward to hearing from you.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Forsyth', written in a cursive style.

The Rt Hon. the Lord Forsyth of Drumlean PC KT  
Chairman, Financial Services Regulation Committee

Members of the Committee have declared interests in relation to financial services. They are published on the Committee's webpage, [here](#).