

Shoosmiths FS Hot Topics Webinar

Commission Disclosure 16 March 2022

Roger Potgieter

E: roger.potgieter@shoosmiths.co.uk

M: 07525 731 155

Dan Bennett

E: daniel.bennett@shoosmiths.co.uk

M: 07720 949 429

SH ∞ SMITHS

FS HOT TOPICS: COMMISSION DISCLOSURE – AN UPDATE

Your hosts

Connect with your hosts on LinkedIn by scanning the QR codes below.



Roger Potgieter, Partner
Roger.Potgieter@shoosmiths.co.uk



Daniel Bennett, Principal Associate
Daniel.bennett@shoosmiths.co.uk



Context

- 1 April 2014: FCA takes over regulation of consumer credit firms
 - CONC 4.5.3R
 - CONC 4.5.4R
 - CONC 1.1.2 R
- 4 March 2019: FCA publishes its final findings on motor finance

“The way commission arrangements are operating in motor finance may be leading to consumer harm on a potentially significant scale”
- 31 March 2021: Court of Appeal hands down judgment in Wood and Pengelly
 - No longer necessary to establish a fiduciary duty in fully secret commission cases
 - *“Did the agent (broker) owe a duty to be impartial and to give disinterested advice, information or recommendations?”*

CMC Activity: Complaints

- CMC strategy
- Lender response
- Numerous active cases with complaints teams
- c650 currently with FOS
- What next?

CMC Activity: Litigation

- Claimant law firm strategy
- Lender response
- Outcomes
- What next?
- Good case v bad case
- Strategic considerations

Future Developments

- Intervention by the regulator
- Industry self-regulation
- FOS adjudications / Ombudsman decisions
- Court decisions
- Wood and Pengelly

What can you do?

- Simplify commission structures if at all possible
- Ensure financial promotions meet the commission disclosure requirements
- Ensure commission disclosure requirements are fulfilled throughout the customer journey
- As far as possible, include commission disclosure information in the journey / agreement documentation
- Where possible, move to full commission disclosure in financial promotions and agreement documentation
- Consider impact of the proposed Consumer Duty, both generally and on commission disclosure