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Gough Square Chambers' consumer credit column: September 2023

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Lee Finch, Sabrina Goodchild and George Spence-Jones are all specialist consumer credit counsel at Gough Square Chambers. On a regular basis, they share their views with Practical Law Financial Services subscribers on topical developments or key issues relating to consumer credit.

In the September 2023 column, Lee Finch considers the potential issue of having multiple claimants on one claim form under CPR 7.3. This is particularly relevant given attempts to bring group litigation in consumer finance disputes are increasing and, in most cases, multiple claimants are included on a single claim form.

CPR 7.3: Multiple claimants on one claim form

Under CPR 7.3, a claimant may use a single claim form to start all claims that can be conveniently disposed of in the same proceedings.

This column considers key cases involving CPR 7.3, particularly in the context of consumer finance disputes, which can often involve multiple claimants.

Relying on CPR 7.3

It is common for claim forms to include more than one claimant and, certainly in my experience, it is rare to give the point much thought. Two claimants will regularly have the same claim against the same defendant, for example couples or business partners. Further, it is not uncommon for three or four claimants to have very similar claims against the same defendant, for example where they are all passengers in the same road traffic accident. In those scenarios, the claims are regularly and properly brought on the same claim form and little consideration is given to the rule, CPR 7.3, which allows claimants to do so.

Whilst the rule uses the singular for "claimant", when combined with CPR 19.1 (which provides "any number of claimants or defendants may be joined as parties to a claim"), it is clear that multiple claimants can bring their individual claims in one claim form provided they meet the test in CPR 7.3, that is to say provided that the claims can be conveniently disposed of in the same proceedings.

There is very little authority on CPR 7.3 and it appears the point is rarely taken in defence, even where it would have been available. For example, in *Weir v Secretary of State for Transport [2005] EWHC 2192 (Ch)*, over 48,000 shareholders of Railtrack plc brought claims against the government in one claim form and in *Bao Xiang International Garment Centre v British Airways plc [2015] EWHC 3071 (Ch)*, over 65,000 claimants brought claims against British Airways in one claim form. From the reported decisions, it would appear that the CPR 7.3 point was taken in neither case, albeit both were dismissed for other reasons and there may have been good tactical reasons for not taking the point.

This brings me to the attempted motor dealer commission group litigation in Birmingham County Court (which would become known as *Angel v Black Horse Ltd*).

In November 2022, eight finance companies were each served with a single claim form alleging that the failure to sufficiently disclose the commission paid by the finance company to the motor dealer for broking hire-purchase agreements had given rise to an unfair relationship between each claimant and the finance company. A number of issues arose in the litigation, including whether the County Court had exclusive jurisdiction to hear and determine unfair relationship claims. However, for present purposes, the important point is that in each individual claim form multiple claimants were bringing their unfair relationship claim; ultimately, across the eight claim forms there were over 5,000 claims. It was therefore necessary to consider whether this was permitted by CPR 7.3: could hundreds or thousands of unfair relationship claims be conveniently disposed of in the same proceedings?

First authorities

As at November 2022, there were two reported cases dealing with CPR 7.3.

In *Abbott and 3,499 others v Ministry of Defence [2022] EWHC 1807 (QB),* Master Davison was faced with 3,500 military noise deafness cases brought on one claim form. The Master held at paragraph 6:

> "The 3,500 claims joined in these proceedings plainly cannot be conveniently disposed of in the same proceedings. Indeed, it seems to me that the contrary is not seriously arguable. The claims are far, far too disparate in terms of the periods and circumstances in which each claimant sustained his or her [noise induced hearing loss]. They have a common defendant and a number of common themes. But that is all. They otherwise present a huge variety of unitary claims...
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> There obviously could not be a trial of 3,500 claims at one sitting. Mr Steinberg met this point by saying that the intention was to select 16 "lead cases" for trial. Leaving on one side the question whether even 16 could be dealt with at one time, that does not meet the objection. It is not realistic to suppose that the other 3,484 cases would be resolved or fully resolved by the outcome of the lead cases. The other cases, or a great many of them, would still have to be litigated and ultimately tried. Thus this one claim, if allowed to proceed on the basis proposed, would generate or would, at the very least, be capable of generating multiple tracks and multiple trials...".

The Master further supported his conclusion by reference to the mandatory requirement in formal group litigation orders for a claim form to be issued and the relevant court fee paid for every claim on the register (paragraph 7), and the impossible strain that 3,500 separate claims on one claim form would put on the court's computerised case management system (paragraph 8).

In *Thurrock Council v Stokes and others [2022] EWHC 1998 (QB),* Mr Justice Nicklin, having conducted a trial of Thurrock's claim against 107 named defendants in relation to encampments within Thurrock's administrative area, held at paragraph 22:

> "CPR 7.3 provides that "a claimant may use a single claim form to start all claims which **can be conveniently disposed** of in the same proceedings" (emphasis added). Having conducted the trial, and written this judgment, I am convinced that the procedure of investigating claims against 107 named Defendants, in respect of different incidents of alleged encampment on land is the antithesis of "convenient". On the contrary, it seems to have the several significant disadvantages that I have identified.
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> It is one thing to bring a claim against several defendants who are alleged to have been party to the same encampment, it is quite another to bring a single claim in respect of a series of encampments by different people. The evidence in respect of each is different. The trial of this action took five days even when no Defendant participated. Had a substantial number of Defendants participated in the proceedings, disputed the claims made against them, and called evidence, the trial would quickly have become unmanageable and would have been lengthy".

That remained the status of the authorities when the point was argued in *Angel* in May 2023. However, before HHJ Worster handed down his judgment, the Divisional Court heard an appeal against Master Davidson's decision in *Abbott*.

Abbot appeal

In the *Abbott* appeal, the Divisional Court (Dingemans LJ and Baker J) engaged in a detailed analysis of CPR 7.3 and held, inter alia:

- Whether claims can be conveniently disposed of in any given proceedings is a fact specific enquiry.
- Disposed of means finally determined.
- Convenience is an ordinary word conveying usefulness or helpfulness. Consequently, what is required for CPR 7.3 is that it would be possible and useful or helpful to have the claims finally determined in the same proceedings rather than in two or more separate proceedings.
- CPR 7.3 does not require that it is practicable for all claims to be finally determined at one trial.
- The burden is on the claimants to show that the convenience test is met.
- The fact that claims can be case managed together does not establish that their common disposal is convenient.
- The question was whether the cohort of claims had sufficient commonality of significant issues of fact that it would be useful or helpful, in the interests of justice, that any determination of those issues in proceedings by any claimant against the defendant would also be binding as between the defendant and any other claimant.
- The degree of commonality between the causes of action, including as part of that the significance for

each individual claim of any common issues of fact or law, will generally be the most important factor in determining whether it would, or would not, be convenient to dispose of them all in a single set of proceedings.

- The fact that there may be difficulties for the court in dealing with thousands of claims on one claim form does not affect the proper construction of CPR 7.3.
- The impact on the court's fee income of many claims being brought on one claim form does not affect the proper construction of CPR 7.3.

Applying the forgoing to the facts of *Abbott*, where the parties had agreed a list of significant common issues, the Divisional Court was satisfied that it would be convenient for the claims to be disposed of in the same proceedings and the test in CPR 7.3 was met. The appeal was allowed.

Decision in *Angel v Black Horse*

Prior to the Divisional Court handing down its decision in *Abbott*, HHJ Worster had circulated a draft judgment. However, following the handing down of the Abbott appeal, further written submissions were made to HHJ Worster and the judgment was re-written to take account of that appeal decision.

HHJ Worster summarised the decision in *Abbott* and the arguments that had been made to him and concluded that, on the facts of *Angel* there were not "common issues of sufficient significance that their determination would constitute real progress towards the final determination of each claim in a set of claims".

The judge noted:

- Whether or not the conduct of a motor dealer/credit broker in any particular instance amounts to a breach of CONC is:
  - not a complex matter; and
  - will turn on the particular facts of the individual case.
- Whether a breach of CONC, arising from the non-disclosure of a discretionary commission arrangement, may in principle give rise to a finding of unfairness is by no means a difficult or even controversial question (referring back to *Kerrigan v Elevate Credit International [2020] EWHC 2169 (Comm)* and *Plevin v Paragon [2014] UKSC 61*).
- In any event, the determination of the common issue is unlikely to be useful or helpful. The question of unfairness will turn on a wide variety of factors (18 had been identified in argument before HHJ Worster), but the breach of CONC (or the compliance with it) was only one of those factors.
- It was questionable whether a decision in a test case would be binding on other parties to the claim form, at least without some case management direction to that effect. However, even if it were to be binding, that would have limited effect given the "in principle" nature of the question and the fact specific nature of unfair relationship claims.

Impact of *Abbot* and *Angel*

The Divisional Court's decision in *Abbott* makes it clear that whether CPR 7.3 is satisfied in any given case is a fact specific enquiry and it will not be fulfilled in every case. However, if and to the extent that it is necessary to demonstrate that the *Abbott* appeal decision does not provide claimants and their solicitors with carte blanche, HHJ Worster's decision in *Angel* does so.

Attempts to bring group litigation in consumer finance disputes are increasing and, in most cases, multiple claimants are included on a single claim form. Careful consideration should therefore be given to CPR 7.3 and whether the claimants were permitted to bring their claims in that way.

In some cases, claimants may be able to demonstrate that it is possible and useful, or helpful, to have the claims finally determined in the same proceedings. However, where there are a large number of claimants bringing unfair relationship claims which will turn on their own disparate facts, it is difficult to see how the claimants can meet that threshold.

Gough Square Chambers' consumer credit columns

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