# Gough Square Chambers' consumer credit column: March 2025

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In the March 2025 column, Sabrina Goodchild considers the judgment in *Angel and others v Black Horse and others [2025] EWHC 490 (KB)*, in which the High Court considered the permissibility of allowing multiple claimants to use a single claim form in the context of motor finance commission claims.

## Permissibility of multiple claimants on a single claim form: Angel v Black Horse

### Introduction

The last few years have marked a shift towards mass consumer claims generated litigation. This shift appears to have coincided with the increased familiarity of claims management companies (CMCs) with consumer protection legislation. In particular, the realisation of the extent of the protection and flexibility afforded by the likes of the unfair relationship provisions in the Consumer Credit Act 1974 (CCA) and claims under the Consumer Protection from Unfair Trading Regulations 2008 (*SI 2008/1277*).

With this has come the inevitable satellite litigation on how best to case manage such claims. Possible options include:

- Group litigation orders (*CPR 19.21*).
- Representative actions (*CPR 19.8*).
- Collective actions before the Competition Appeals Tribunal (section 47B of the Competition Act 1998).
- Bringing multiple claims on a single claim form (*CPR 7.3*).
- Requiring the separate issue of individual claims to be determined on a case-by-case basis.

Each option, of course, has its drawbacks and advantages, with the qualifying conditions for each differing.

The most recent decision on group litigation procedure is in *Angel and others v Black Horse and others [2025] EWHC 490 (KB)*. This case considered the permissibility of allowing multiple claimants to use a single claim form in the context of motor finance commission claims, the key benefit for claimants (and, in reality, their CMCs), being savings in court fees. In theory, the Civil Procedure Rules permit any number of claimants or defendants, and any number of claims, to be covered in one claim form where such claims can be "conveniently disposed of in the same proceedings" (*CPR 7.3*).

### Background

In *Angel*, eight so-called "omnibus" claim forms were issued, which covered over 5,800 claimants bringing unfair relationship claims arising out of the alleged non-disclosure of commission paid in relation to motor finance agreements against eight finance companies.

At first instance, HHJ Worster decided that the claims could not be "conveniently disposed of in the same proceedings" and required each claimant to issue a separate claim form (see Article, Gough Square Chambers' consumer credit column: September 2023). In reaching his decision, the

judge relied upon *Abbott v Ministry of Defence [2023] 1 WLR 4002*, which, by the time of the High Court appeal in *Angel*, had relevantly been overruled by *Morris and others v Williams and Co Solicitors [2024] EWCA Civ 376* [at 27 and 42].

## High Court analysis

In permitting the use of a single claim form against each finance company, the High Court held the following:

- Applying *Morris*, the test under CPR 7.3 should be given the normal meaning of the words used in the rule. Although whether the claims had sufficient significance so that their determination would involve real progress or would bind all the parties were relevant considerations, they were not determinative.
- The factors relevant to the decision, which are wider than the criteria for making group litigation orders, are:
  - whether there are multiple claimants suing the same defendant or multiple defendants;
  - the number of claimants;
  - whether the claims relate to the same matters or different matters;
  - whether the claims involve the same causes of action;
  - whether the issues as set out in the generic Particulars of Claim are likely to be common issues;
  - whether the case specific claims and defences do, or are likely to, raise common issues of fact or law;
  - whether decisions in lead or test cases will be significant for the disposal of following cases so that they will either bind the parties (issue estoppel) or be persuasive in the disposal of issues in the following cases;
  - whether the overriding objective is better met by separate claim forms or an omnibus claim form; and
  - overall, whether all or some of the claims will more conveniently be disposed of together.
- Taking each of the above factors in turn, the test in CPR 7.3 was met. This conclusion was reached, despite the judge considering that it was premature to determine whether the convenience test was met at a stage prior to completion of pleadings and necessary disclosure.

Of particular note to readers will be Mr Justice Ritchie's comments, when applying the CPR 7.3 test, that generally for unfair relationship determinations to usefully form part of group litigation, lead cases would need to tried on all of their facts, rather than reaching decisions "in principle" on standalone issues [at 73]. Further, the judge confirmed that the precise common issues need not be formulated before a decision is made on CPR 7.3 [at 76]. These could be formulated after selection of the lead cases and following early disclosure and case-specific pleadings [at 89(v)].

Finally, there was a clear focus on courts encouraging settlement of group claims rather than the creation of strictly binding precedents. The judge commented that whilst the case management judge could order that the decisions in test cases bind the specific cohort of following cases on the specific common issues, the decisions in lead cases may be persuasive (even if not binding) to facilitate/promote "mass multi case settlement" [at 77 & 80]. As put by the judge at [79]:

> "If a circuit judge decides that the Black Horse brokerage agreement in *Angel* complied with CONC and that Black Horse were not liable (under section 56 of the CCA) for any breaches of duty by their dealers under that agreement, it would be a remarkable and brave decision for a claimant in a following case to wish to climb that wall and relitigate those issues again on the same brokerage agreement, without some specific evidence of different verbal statements by the dealer."

## Comment

It remains to be seen whether the decision, which shakes up the previous reluctance of courts to subject unfair relationship claims to group litigation given the fact sensitive nature of the analysis (see, for example, the recent decision in *Abernethy and others v Barclays and others [2025] EWCC 1*), will be appealed. If allowed to stand, the decision will undoubtedly by viewed by some as giving the green light to bulk unfair relationship claims. It will also be of specific significance to motor commission claims after the Supreme Court gives its ruling later in the year in the appeal from *Johnson and others v FirstRand Bank and others [2024] EWCA Civ 1282*.

What is clear though is that group litigation in the context of consumer disputes is, for now, here to stay. This means that decisions on how best to case manage such claims are likely to be delayed until

after the conclusion of pleadings. In particular, see the judge's following comments:

- "R.7.3 and r.19.1 issues might better be decided after a generic particulars of claim and a generic defence is served and limited disclosure of key documents is provided" [at 2].
- The decision should be put off "until the issues are clearer" [at 37].
- "....why dealing with a r.7.3 application without a generic defence and relevant crucial disclosure is, in my judgment, precipitous and unnecessarily difficult or inconvenient, particularly when the defendants are not putting their cards in the table" [at 74]).

Given the above, even if claims are ultimately separated out, defendants will need to be ready to deal with group claims at the earliest stage, giving careful consideration to how best such claims should be case managed.

## Gough Square Chambers' consumer credit columns

For previous consumer credit columns written by barristers at Gough Square Chambers, see Practice note, Gough Square Chambers' consumer credit column.