Gough Square Chambers' consumer credit column: May 2025

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Lee Finch, Sabrina Goodchild, Ann-Marie O'Neil 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 May 2025 column, Lee Finch considers the future reform of the Consumer Credit Act 1974 (CCA) following the recent consultation paper published by HM Treasury.

Reform of the Consumer Credit Act 1974

Background to reform

The law and regulation surrounding consumer credit is complicated. Consumer credit lending is governed by a legislative labyrinth of interconnected acts (namely the Consumer Credit Act 1974 (CCA)), regulations, FCA principles, rules and guidance and, some may say, the Financial Ombudsman Service's (FOS) flights of fancy. Reform has been long mooted and is long overdue.

Over the past 15 years, progress has been made. For example:

- The FCA's report following its review of retained provisions of the CCA, which was published in March 2019 (see Practice note, Review and reform of Consumer Credit Act 1974 (CCA): FCA Final Report on retained CCA provisions).
- The FCA's report following the Woolard Review, which was published in February 2021 (see Practice note, Review of unsecured credit market (Woolard Review)).
- The introduction of the consumer duty in July 2023 (see Practice note, Hot topics: FCA consumer duty).

Unfortunately, more often than not, progress has slowed if not stalled as a result of, among other things, Brexit, COVID-19, changes of government and different legislative priorities. However, there now appears to be light at the end of the tunnel.

On 19 May 2025, HM Treasury launched a consultation paper on the first phase of CCA reform. Responses are due by 21 July 2025.

The intention is the wholesale replacement of the current regime with a "simpler, more agile regime that puts consumers at its heart". The idea is to replace the 51-year-old CCA, which has been rejigged and patched up more times that I care to count and forced to accommodate developments that could barely be conceived half a century ago, with a new regime designed for and fit for the 21st century.

For information on the reforms, see Practice note, Review and reform of Consumer Credit Act 1974 (CCA): Phase 1 of CCA reform.

Structure of review

HM Treasury intends to consult over two closely connected phases. First, a consultation on the government's overall vision for a reformed regime, including its approach to information requirements, sanctions and criminal offences. This has been termed Phase 1 and is the subject of this column.

Second, a consultation that will set out how the government intends to reform the scope of regulation, and rights and protections under the CCA. This has been termed Phase 2 and will no doubt be the subject of a future column.

Repeal and replace with FCA rules

Part of the rationale behind the proposed reform is to align the consumer credit regime more closely

with the wider regime for the regulation of financial services established by the Financial Services and Markets Act 2000 (FSMA).

Consequently, where possible, the intention is to repeal the existing CCA provisions and replace them with new FCA rules (to the extent that it is felt necessary and desirable to replace the repealed provisions). While the consultation enquires as to whether respondents consider that this is the correct approach, it seems that this direction of travel is inevitable (building upon the FCA's review of the retained provisions in 2019) and, in my view, is in principle unobjectionable.

The devil will, of course, be in the detail. Whether or not it is wise to repeal the existing legislative provisions and replace them with FCA rules will, of course, depend on the FCA rules (which will, no doubt, be the subject of further consultation in due course).

A good example of the type of provisions that the government currently intends to repeal and replace with FCA rules are those concerning information requirements. In the government's view, the current information requirements often:

- Require the provision of complex and confusing information.
- Require the duplication of information, which is sometimes further duplicated by FCA rules.
- Require the provision of too much information.
- Are largely incompatible with innovation and digital journeys.
- Do not always assist consumer understanding.

No argument here.

Replacing the information requirements with FCA rules will provide a more joined up regime with greater flexibility that can develop alongside lending practices and technical innovation. For example, giving the FCA control of information requirements would allow rapid changes to be made. This would avoid the perverse situation whereby lenders were required to send notices of sums in arrears (with the associated draconian and threatening language) to customers that they had provided ex gratia repayment holidays as a result of the COVID-19 pandemic.

Of course, the ultimate merit in this approach will also depend on the rules that the FCA puts in place, how they are amended and updated, and how they are enforced. It is no good jumping out of the frying pan into the fire.

Repeal and don't replace

Where it is not possible for a current CCA provision to be replaced by an FCA rule, a decision needs to be made whether to repeal and not replace, or amend. There are two major categories of sections that the government is considering repealing and not replacing:

- Criminal offences (see Criminal offences).
- Civil sanctions (see Civil sanctions).

Criminal offences

The criminal offences within the CCA are historic, esoteric and essentially redundant. They would form the basis of good pub quiz questions, if anybody cared enough about consumer credit. They include criminal offences relating to canvassing off trade premises (*section 49, CCA*), sending circulars to minors (*section 50, CCA*) and failing to provide the details of a credit reference agency consulted (*sections 157 to 160, CCA*). The government is unaware of any convictions of the offences listed out in the consultation.

The argument for repealing the offences and not replacing them is clear: they are obsolete and unnecessary. To the extent that the conduct they cover still requires a deterrent and a sanction, the following is relevant:

- The FCA already has a sufficient toolkit to hold regulated firms, and their senior mangers, to account if they engage in the behaviour covered by these criminal offences.
- Any unauthorised party engaging in the activities would likely be committing a criminal offence under FSMA.

The argument in favour of retaining the criminal sanctions is largely that the lack of prosecutions shows that they work as an active deterrent and that active deterrence is still required. This is unlikely to be a hotly contested area of CCA reform given the limited practical consequence (which probably indicates that repeal is the right way to go).

Civil sanctions

The other category of sections that the government is considering repealing, and not replacing, concern the civil sanctions for non-compliance with the CCA and its subordinate legislation, namely unenforceability without a court order, unenforceability until breach is remedied by the firm and disentitlement to interest and default sums. This is, unsurprisingly, a more hotly contested area given the very significant economic consequences.

Many consumer groups have argued that the sanctions should be retained because they result in self-policing and provide consumers with valuable remedies that can empower them. On the other hand, industry stakeholders have suggested that the remedies are disproportionate, result in poor customer outcomes (for example, the barrage of documentation customers receive from a lender looking to remedy a previous default), and give rise to significant legal uncertainty.

In my experience, the sanctions in question, especially unenforceability until breach is remedied by the firm and disentitlement to interest and default sums, are disproportionate, unnecessary and unduly rigid. They fail to even provide the court or the FCA any discretion to forgive the breaches, however technical and inadvertent.

Removing the sanctions does not mean that firms can ignore documentation or information requirements as failures could still give rise to:

- Regulatory action.
- Claims for breach of statutory duty.
- Unfair relationship claims under section 140A of the CCA.

These alternative remedies do not directly replicate the existing sanctions:

- Regulatory action will be aligned with the FCA's wider principles.
- Breaches of statutory duty require loss.
- Unfair relationship claims require unfairness and result in a proportionate remedy.

However, while these alternatives do not provide the draconian and disproportionate sanctions which would be repealed, they would provide clear and accessible remedies for individuals who have suffered detriment.

Finally, it should be kept in mind that individuals can complain to the FOS who will uphold a complaint and order a remedy when it considers it fair and just to do so, irrespective of whether or not there has been any breach.

Phase 2 of reform

The second phase of the consultation will consider the rights and protections within the CCA including, but not limited to, section 75 connected lender liability and the section 140A unfair relationship provisions. It will also consider the scope of regulation, and the key definitions that will determine who and what falls within the perimeter of consumer credit regulation.

The government has not given a timeline for the release of Phase 2 but, given the other indications within Phase 1, it may appear sooner rather than later.

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.