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Gough Square Chambers' consumer credit column: December 2025

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Lee Finch, Sabrina Goodchild, George Spence-Jones and Ann-Marie O'Neil 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 December 2025 column, Sabrina Goodchild considers the FCA's approach to limitation in the context of its proposed motor finance consumer redress scheme, as set out in CP25/27.

FCA's proposed motor finance consumer redress scheme: limitation spotlight

Introduction

Much has been written since the FCA published its consultation paper (CP25/27), in October 2025, on its proposed motor finance consumer redress scheme (see Legal update, FCA consults on motor finance compensation scheme). Following an extension to the consultation period to 12 December 2025, and a current timeframe for final rule publication of February or March 2026, the FCA is, no doubt, now in the throes of furiously processing and considering numerous and lengthy responses, most likely polarised in their proposals.

Despite its work on the consultation response having come to a close, the industry has no time to rest. Not only will consideration be given to potential challenges to the finalised scheme, but a multitude of issued claims, many with expired stays, still need to be processed, either to a final hearing or a further stay. In the relative lull (from the industry's perspective, at least), this column focuses on one part of the FCA's consultation: its proposed approach to limitation.

FCA's proposal on limitation

Within its redress scheme, the FCA proposes to include agreements taken out between 6 April 2007 (when the unfair relationship provisions came into force) and 1 November 2024 (one week after the judgment in *Johnson v FirstRand Bank Ltd (London Branch) t/a Motonovo Finance [2024] EWCA Civ 1282*).

The FCA's rationale for extending the scheme to agreements made before 2014 (that is, before the FCA assumed responsibility for consumer credit), is that if the scheme did not so extend, firms' liability would still exist. Effectively, it considers that the remediation costs will be lower if everyone is dealt with within the scheme, rather than older cases being carved out and left either to the FOS or the courts. But, of course, those cost calculations presumably rest on the assumption that historic consumers, many of whom may not even recall the identity of their finance provider, consider themselves aggrieved and would complain.

The FCA does, however, recognise that limitation might be an issue given that limitation expires, at the latest, six years from the end of the agreement. But it has section 32(1)(b) of the Limitation Act 1980 (LA 1980) at its fingertips, referencing it in two short paragraphs of the consultation paper, supported by one paragraph of the KC's opinion helpfully annexed to CP25/27. The KC writes:

> "I have considered the approach taken to limitation in the [Consultation Paper], and in particular the discussion of section 32(1)(b) of the Limitation Act 1980. The relevant case law [footnoting Potter [2023] UKSC 41] suggests that where any of the Relevant Arrangements

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[defined as a DCA, high commission or tied arrangements] were not adequately disclosed to a consumer in the terms of the proposed scheme, that would amount to deliberate concealment of a relevant fact for a s.140A claim, which a consumer could not with reasonable diligence have discovered until adequate disclosure of that feature took place. In my view, the approach taken by the Proposed Scheme is in accordance with that which would be taken by a court or tribunal."

Treatment of limitation by courts to date

Whether it is due to the limited numbers of issued historic claims, or the fact that before the Supreme Court decision in *Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd [2025] UKSC 33*, limitation was unlikely to be dispositive of claims, in my experience, and unlike the previous PPI bulk litigation, limitation in motor commission court cases has not been a key battleground.

If, however, limitation was put in issue and section 32 of the LA 1980 inevitably raised, one could be relatively confident that a "may pay commission" documentary disclosure would be sufficient to prove that a consumer could with reasonable diligence have discovered any proved concealment either by the date of the agreement or soon thereafter. Particularly where consumers regularly accepted under cross-examination that they could have read the papers and, if they had done so, they would have seen the disclosure and could have made the necessary enquiries thereafter. The FCA's proposed approach therefore creates obvious difficulties for industry, shining a new light on limitation in the context of motor commission.

Relevant considerations for the FCA

The focus of the FCA's concern in including agreements going back to 2007 appears to be the availability of the necessary data to support redress in historic cases. Such a concern will, no doubt, pose a greater or lesser problem for firms depending on their internal systems. However, the FCA will also, in my view, need to consider (and if already considered, detail their reasoning on) issues such as:

- Whether the discretionary commission arrangement, commission amount and tied arrangements are "facts relevant to the right of action" triggering section 32 of the LA 1980. If, indeed, the "relevant fact" is the fact of commission, rather than the amount, model and tie, reliance on section 32 is far less likely to be successful.
- Whether blanket treatment of deliberate concealment under section 32 is appropriate, particularly given:
  - differing levels of commission disclosure over time;
  - changing regulatory guidance and rules on commission disclosure over time; and
  - the possibility of firm-specific evidence on their decision-making in respect of commission disclosure.
- Whether, in circumstances where there is some documentary disclosure of commission, a customer is able to prove that they could not have discovered the concealment without exceptional measures that they could not reasonably have been expected to take, applying *Paragon Finance v DB Thakerar and Co [1999] 1 All ER 400*. Particular note may in this respect be given to paragraph 336 of the *Johnson* decision where the Supreme Court acknowledged that had Mr Johnson read the documentation, he was likely to have discovered the amount of commission. Is it truly exceptional to read the documentation and make resulting enquiries?

Conclusion

While we await the FCA's final position on limitation, which will hopefully include detailed responses to at least some of the issues flagged above, County Courts around the country progressing with motor commission claims are now likely to have to start dealing with limitation with increased frequency. With unfair relationship claims likely to be the only remaining cause of action standing post-*Johnson*, limitation is due to become a key battleground.

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.