Gough Square Chambers' consumer credit column: October 2026

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In the October 2026 column, Lee Finch considers the past 12 years of Gough Square consumer finance columns.

12 years of consumer finance columns

When the columns started almost 12 years ago, consumer credit was still emerging from the shadow of Office of Fair Trading licensing.

The transfer of consumer credit regulation to the FCA promised a more modern, flexible and pragmatic regime. After more than a decade, and nearly 100 consumer finance columns from me and my colleagues at Gough Square, it is tempting to say that those promises have turned to dust. That would be too simple. The better conclusion is that although wholesale reform has eluded the legislature, much has changed through developments in the FCA's rules and approach and a number of significant court decisions.

What has not changed

When regulatory responsibility for consumer credit was transferred to the FCA in 2014, it created a web of primary legislation, secondary legislation and regulatory rules which overlapped and interacted in ways that were difficult for specialist practitioners and all but unfathomable to everyone else. Some difficulties arose from mapping elements of EU law from the Consumer Credit Directive *(2008/48/EC)* onto the domestic regime, but many more were entirely of our own making: notices of sums in arrears, layers of disclosure, automatic sanctions and unfair relationships, to name only the more cheerful examples. Proper reform was required then and remains required now.

Since I penned my first column in July 2015 (Article, Gough Square Chambers' consumer credit column: July 2015), there have been many false dawns in respect of reform but, in broad terms, consumer finance law is still recognisably the same creature:

- The FCA reviewed the retained provisions of the Consumer Credit Act 1974 (CCA) and published a report in 2019. Nothing significant came to pass.
- The FCA published a further report in 2021 following the Woolard Review. Nothing significant came to pass.
- Successive governments, and we all know there have been a lot, promised consumer finance reform. Nothing significant has yet come to pass.

Phase 1 of HM Treasury's consultation on reform of the CCA closed in July 2025, and the May 2026 policy statement explains that the previously planned Phase 2 consultation is not happening as a separate exercise. Reform is still said to be on the way when parliamentary time allows. I am once again hopeful, but I have been hopeful before.

For information on the proposed reforms, see Practice note, Hot topics: reform of Consumer Credit Act 1974 (CCA).

What has changed

Even though badly needed reform has not yet materialised, consumer finance law has far from stagnated. It has been an incredibly busy decade to be a consumer finance lawyer. In November 2014, the Supreme

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Court handed down its decision in *Plevin v Paragon Personal Finance Ltd [2014] UKSC 61*, and for years before and after that decision the focus was PPI:

- Was it missold?
- Was the commission level unfair?
- Quite how much money would the Financial Ombudsman Service (FOS) award each complainant?
- How should the DISP redress scheme be applied?
- Could claimants who had accepted DISP redress seek further sums by bringing a top-up claim in court?

That seems like a long time ago, almost a more innocent time. We are now dealing with more complex commission structures, more nuanced unfairness arguments, existential fiduciary allegations and large-scale group claims which put the years of PPI small claims into perspective. I have only 2,000 words, so what follows is merely a highlights reel from the last 12 years of consumer finance litigation and regulation.

High-cost short-term credit

In 2014, one hot-button topic outside PPI was payday lending, or high-cost short-term credit (HCSTC). Litigation on affordability was already on foot and ultimately resulted in Kerrigan and others v Elevate Credit *International Ltd (t/a Sunny) (in administration) [2020] EWHC 2169 (Comm)*. However, mass claims on payday lending and affordability did not follow in the way some expected, in part perhaps because the FCA had already addressed the issue.

Parliament imposed a duty on the FCA in December 2013 to cap the price of HCSTC, and the cap took effect on 2 January 2015, following risk warnings and restrictions on rollovers and continuous payment authorities. The FCA's 2017 review reported cheaper loans, better affordability assessments and fewer borrowers in difficulty. In September 2026, as recorded in the FCA's update to its HCSTC webpage, it decided not to proceed to the second, data-analysis stage of its cap review, preferring to monitor the market through product sales data: a quiet but telling sign that the payday question is now treated as settled (see Practice note, Consumer credit: areas of FCA focus: FCA review of HCSTC price cap).

By the FCA's own account, its intervention in the market has resulted in more than £900 million of redress and around £150 million a year saved by the cap. While this may have addressed a consumer harm issue, it has also resulted in the contraction if not decimation of an industry: Wonga, QuickQuid, Wage Day Advance, The Money Shop and many more have collapsed since 2015.

As I noted in a 2017 column (Article, Gough Square Chambers' consumer credit column: August 2017), restrictions applied to payday lending risked pushing some debtors towards other forms of credit which could be just as expensive, or worse. The FCA has since taken focused action on credit cards, overdrafts and other forms of credit, and the consumer duty has introduced a more explicit value lens for product development. It is not yet full price control, but there has clearly been a direction of travel away from the fully free market that operated in 2014.

Limitation period

One legal issue that has repeatedly returned to the Supreme Court in consumer finance is limitation. That is unsurprising. Legacy consumer credit litigation is often economically viable only if the claimant can get round the primary limitation period and the PPI cases provided a near-perfect laboratory for testing the point.

In *Smith v Royal Bank of Scotland plc [2023] UKSC 34*, the Supreme Court held that a claim for a remedial order under section 140B of the CCA can be made while the credit relationship alleged to be unfair continues, and that the six-year limitation period begins to run only when that relationship ends. That conclusion made a huge practical difference to PPI top-up litigation and to any credit product where the related unfairness may have occurred years before the main credit relationship came to an end.

Then came *Canada Square Operations Ltd v Potter [2023] UKSC 41*. The Supreme Court held that a PPI commission claim under sections 140A and 140B of the CCA was not time-barred because section 32(1)(b) of the Limitation Act 1980 postponed the start of time where the existence and amount of commission had been deliberately concealed. The decision is important because the claimant did not need to show a freestanding legal duty to disclose, and because it set out the Supreme Court's approach to what amounts to "deliberate" concealment in this context.

Arguably both of those cases are now irrelevant because of *THG plc v Zedra Trust Company (Jersey) Ltd [2026] UKSC 6*. Zedra is not a consumer credit case, but it matters because it is the latest Supreme Court word on limitation and discretionary statutory remedies. In *Zedra*, the Supreme Court found that *Rahman v Sterling Credit Ltd [2001] 1 WLR 496* was wrongly decided and, at the very least, suggested that no limitation period will apply to unfair relationship claims.

Fiduciary duties

One legal concept that, before 2014, occasionally arose in relation to mortgage broking but rarely more broadly in the credit context was fiduciary duty. From about 2021, however, some enterprising claimant lawyers advanced the much larger proposition that any credit intermediary was the debtor's fiduciary and that an entire industry had been built on bribes. That ambitious argument was largely

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rejected as absurd in the County Court but was endorsed in a surprising judgment of the Court of Appeal in *Johnson v FirstRand Bank Ltd [2024] EWCA Civ 1282*. The result was Hopcraft, Johnson and Wrench in the Supreme Court: *FirstRand Bank Ltd v Johnson [2025] UKSC 33*.

The Supreme Court's answer was orthodox and important. Motor dealers, acting as credit brokers in the typical hire-purchase transaction, did not owe fiduciary duties to customers and the bribery and dishonest assistance claims therefore conclusively failed.

Group claims (CPR 7.3)

PPI claims were mass litigation, but they were generally mass litigation in small, repetitive units. Motor finance and the second wave of PPI claims have forced courts to confront the machinery of aggregation much more directly. In my September 2023 column on CPR 7.3 (Article, Gough Square Chambers' consumer credit column: September 2023), I considered whether thousands of consumer finance claimants could properly be placed on a single claim form. The issue has been argued in court on multiple occasions since.

In *Abernethy v Barclays [2025] EWCC 1*, the court refused a PPI group litigation order and required individual claim forms. In *Angel v Black Horse [2026] EWCA Civ 831*, the County Court reached a similar decision, the High Court reversed that decision on a technicality and the Court of Appeal declined to overturn the High Court judge's exercise of his case management discretion (albeit stopping short of endorsing multi-claimant claim forms more generally).

Looking ahead

The future is unlikely to be a clean break with the past. The government's current reform programme promises to move much of the remaining prescriptive machinery into the FCA rulebook, particularly information requirements and certain sanctions. That may deliver on previous promises of greater flexibility, a more digital focus and the removal of absurd technicalities. However, it may also make it harder to identify, in advance, the consequences of getting things wrong, especially with a regulator which occasionally changes its mind as to what its rules mean and is keen to mark its own homework.

In terms of litigation, the seminal cases I have highlighted in this column will not be the last word:

- A test case on whether *Zedra* can properly be read across to consumer credit is working its way through the courts.
- The Supreme Court may yet weigh in on *Angel*.
- Fiduciary duty arguments are still being advanced in mortgage broker and other intermediary cases (the Court of Appeal was due to hear a second appeal in *Holden v Specialist Motor Finance (unreported) (County Court at Manchester)* in February 2027, but that appeal has now been abandoned).
- *Abernethy* will return to the County Court at Birmingham for further argument on CPR 7.3 in 2027.
- The FOS is starting to depart from *Steiner v National Westminster Bank [2022] EWHC 2519 (KB)*, which may result in a judicial review.

All of this is taking place while the FCA's £12 billion motor finance redress scheme remains up in the air because of multiple challenges in the Upper Tribunal (due to be heard in February 2027) (for more information, see Practice note, Consumer redress schemes: FCA powers: Motor finance redress scheme).

At Gough Square we have been privileged to be involved in many of the seminal cases of the past 12 years, and we look forward to playing our part over the next 12. This will, however, be my final column, and I shall leave you in the capable hands of my colleagues who will guide you through whatever comes next.

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.

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