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A consumer credit revolution?

Fred Philpott on why consumer credit law faces its biggest overhaul in 50 years

Changes to consumer credit legislation are set to produce the greatest upheaval in this area of law for more than 50 years.

In July 1974, the Consumer Credit Act 1974 (CCA 1974) received royal assent and transformed the legal framework for consumer credit. Now, much of that framework is to be dismantled.

Before CCA 1974, consumer credit law was piecemeal. Yet it affects almost everyone in the UK. We may borrow money through a loan, hire-purchase agreement, mortgage or credit card; work for a business that provides credit; advise such a business; or encounter CCA 1974 in a corporate transaction involving one.

Few people have no connection with consumer credit. A credit card, for example, gives access to a line of credit through a regulated consumer credit agreement.

CCA 1974 emerged from the Crowther Committee's 1971 report (Cmnd 4596). It was drafted by Francis Bennion, one of the leading parliamentary counsel of the last century. The Act consolidated the law relating to moneylenders, pawnbrokers and hire-purchase. Its time, however, has effectively passed.

The Crowther Committee recommended appointing a Consumer Credit Commissioner. The government instead placed responsibility with the Director General of Fair Trading, a role created by the Fair Trading Act 1973.

Implementation of CCA 1974 was gradual. Consumer-credit licensing and the provisions on extortionate credit bargains came into force first. The Act did not become fully operational until 13 statutory instruments, dealing with matters including agreements, cancellation and default, took effect in 1985. That detailed, black-letter approach is now to be replaced by a more flexible regulatory model.

The distinction is significant. Under the existing system, a breach of a clear statutory requirement can have a prescribed consequence. For example, where a regulated agreement fails to comply with the Agreements Regulations, it may be unenforceable without a court order.Under the proposed model, firms will be expected to comply with rules made by the regulator under statute. A breach may result in a civil claim for damages or regulatory action, including a fine or withdrawal of authorisation.

> *"A detailed, black-letter approach is to be replaced by a more flexible regulatory model"*

In effect, consumer credit is moving almost entirely from the first system to the second. Whether it is preferable to replace a regime in which disputes are generally resolved in the county courts with one in which the regulator determines breaches, imposes sanctions and is subject to appeal to the Upper Tribunal remains an important question.

Somewhat ironically, the Financial Services and Markets Bill 2026 was introduced on 19 May, the anniversary of the date on which much of CCA 1974 came into force. It is a substantial piece of proposed legislation. Although it contains only 53 clauses, its schedules are extensive. The Bill addresses a wide range of issues, including payment services, cryptoassets, consumer redress, ring-fencing and appointed representatives.

Consumer credit appears in Sch 1. There are consequential amendments to terminology, much of which will move into the Financial Conduct Authority's (FCA's) Consumer Credit sourcebook (CONC). Section 18, which concerns multiple agreements and has generated costly litigation over many years, is to be repealed.

More importantly, ss 60 to 68 are to be repealed. As with mortgage regulation under MCOB, the requirements governing the making of a consumer credit agreement—the foundation stone of consumer finance — will become FCA rules.

The repeal of ss 77A and 86B, and related provisions on post-contractual statements and notices, will also be welcome. Their underlying requirements will move into CONC, but without the dramatic statutory sanctions that currently accompany them.

CCA 1974 will survive because some provisions are not suitable for CONC. The courts will retain jurisdiction over important parts of the Act, including: time orders and s 128; s 75, concerning connected-lender liability; and s 140A, concerning unfair relationships. It would be a step too far to give the FCA responsibility for deciding every unfair relationship claim.

The new system should also provide an opportunity to revisit legislation derived from the 2008 Consumer Credit Directive. That Directive has itself been repealed, yet the UK retains the 2010 legislation enacted to comply with it. The UK is now free to develop its own consumer-credit rules.

Much of the cost and difficulty historically associated with consumer credit has arisen from contracts, compliance with detailed regulations and post-contractual statements. These matters will instead be dealt with through CONC: in effect, firms will be told what the FCA expects them to do and warned of the consequences if they fail. The unfair relationship provisions, however, will remain central to civil litigation, including the current motor finance commission disputes.

Because the unfair relationship regime is not being repealed or transferred to CONC, individual claims can still be brought. Claims management companies and their lawyers may also group many thousands of claims, avoiding issue fees, notwithstanding the highly individual nature of each claim. Future commission claims may follow the same pattern.

The FCA may seek to compensate consumers through a redress scheme under s 404 of the Financial Services and Markets Act 2000. But a difficult question remains: what loss has the consumer actually suffered? In the PPI cases, including *Plevin v Paragon Personal Finance Ltd* [2017] UKSC 23, there was a genuine loss. *Johnson v FirstRand Bank Ltd* [2025] UKSC 33 holds that non-disclosure, or partial disclosure, of commission can create an unfair relationship. Even so, many will ask what the customer has lost.

1974 was a long time ago. Crowther, his committee and Francis Bennion could not have foreseen this outcome. NLJ

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