The content

Debt Advice Handbook 15th edition

Description

With living costs and unemployment rising, budgets squeezed and problem debt on the increase, no adviser should be without this essential guide to the practice and process of giving money advice in England and Wales.

Who's this book for?
It is essential for debt advisers, welfare rights advisers, lawyers, local authority and housing association staff, social workers and union official.

What does it do?
The handbook provides the most comprehensive information needed by advisers on the key stages of money advice, including interviewing clients, establishing liability, prioritising debts, preparing a financial statement, negotiating with creditors and dealing with bailiffs. Fully indexed and cross-referenced to law, regulations and official guidance, and to court and tribunal decisions Includes tactical guidance and examples

What's new?
Fully updated to cover all recent changes to legislation, caselaw and court procedure and practice Emphasis is placed on taking due care of vulnerable clients and making sure that any payment arrangements agreed are appropriate. There is a focus on sustainable credit arrangements that do not affect a client's abilities to pay essential living expenses and priority debts.

Properties

Author(s):
CPAG

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4. Using the Consumer Credit Act

The Consumer Credit Act 1974 (see here) gives the borrower (and any guarantor) certain rights under a regulated credit agreement. If these are denied, a court may decide that the agreement is unenforceable and, therefore, the creditor cannot require repayment.

The courts also have powers that can assist clients, specifically when the relationship between the client and the creditor is unfair to the client (see here) and through time orders (see here).

Requests for information

To check whether an agreement exists and, if so, its terms and conditions and/or whether or not the amount the creditor claims to be due is correct, you may need to ask the creditor for information. Creditors are required to provide certain information within 12 working days – ie, excluding weekends and bank holidays. If they fail to do so within this time limit, the agreement becomes unenforceable until they provide it. [1]

The client can request that the creditor provide:

- a copy of the executed agreement;
- a copy of any other document referred to in the agreement – eg, a bill of sale (but not a default notice);
- a statement of account containing the prescribed information (see here), not just the amount of arrears.

The request must be in writing and include the prescribed fee of £1 per credit agreement. Keep a record of postage.

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1 ss77 and 78 CCA 1974

When to make a request

A request for information can be made to:

- obtain information which you have been unable to get voluntarily and which is required to deal with the client's case;
- prevent enforcement action from being started while you are investigating liability (but see below);
- halt enforcement action already taking place to enable you to investigate liability (but see below).

In a number of test cases, the High Court has adopted a narrow interpretation of 'enforcement'. In this context, it means:

- repossession of any goods or land;
- termination of the agreement;
- enforcement of any security – eg, a bill of sale;
- demanding early payment;
- treating any right given to the client under the agreement as terminated, restricted or deferred;
- entering and enforcing a judgment.

If a creditor fails to comply with an information request, it can still take the following steps, which are not treated as enforcement: [1]

- report the client's default to a credit reference agency;
- demand payment (but not early payment);
- pass the case to debt collectors;
- threaten legal action;
- issue court proceedings.

The Financial Conduct Authority's (FCA's) *Consumer Credit Sourcebook* says that, where the creditor has not complied with the request, it should not threaten court or other enforcement action or mislead the client about the debt's enforceability. Communications or requests for payment should clarify that, although the debt remains outstanding, the agreement is unenforceable. [2]

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1 *McGuffick v RBS* [2009] EWHC 2386 (Comm); *Carey and Others v HSBC and Others* [2009] EWHC 3471 (QB)

2 *FCA Handbook*, CONC 13.1.6G

Possible responses from the creditor

- **The creditor does not reply.** After 14 days, send a reminder that the agreement is now unenforceable unless and until the creditor complies with the request.
- **The creditor says the request must come from the client personally.** People can usually act through agents, and the Consumer Credit Act 1974 does not require someone to act in person in this situation. The FCA says that, provided proper authority is given to the creditor, the request is still 'from or on behalf of the debtor' and should be complied with.
- **The debt has been sold and the new creditor (the 'debt purchaser') says it does not have the information and does not have to provide it because it is not the 'creditor'.** The definition of 'creditor' in section 189 of the Consumer Credit Act 1974 includes someone to whom the original creditor's rights and duties under the agreement have passed – eg, by assignment. Some debt purchasers argue that they only purchase the rights, not the duties, and so do not fit within the definition, but the High Court has held that the 'right' to enforce the agreement carries with it the 'duty' to comply with the Consumer Credit Act. [1] The debt purchaser is entitled to enforce the agreement, including by court proceedings, provided the client has had notice of the assignment. The right to enforce is not an absolute right because, if the client had a defence to any claim brought by the original creditor (eg, that the agreement is unenforceable), they also have that defence to any claim brought by the debt purchaser.
- **The creditor says it does not have to comply with the request because, for example, the loan repayment period is over or the account has been terminated.** The duty to comply with a request does not apply where no sum is, or will be or may become, payable by the client. [2] So, by implication, it does apply if a sum is, will be or may become payable by the client, which is the case if the creditor demands payment.
- **The creditor does not provide a photocopy but only a pro forma agreement with no client signature.** The rules say that the creditor must supply a 'true copy', which can omit any signature and so this *does* comply with the Act as long as it contains the client's individual terms and conditions. [3] The fact that the creditor says it cannot locate a copy does not mean it cannot comply with an information request. The High Court has said that the creditor can supply a reconstituted copy from any source, not just from the original agreement. If a creditor does this, it must state this when the copy is supplied. However, if the creditor is aware that there was never a signed agreement, it cannot hide this fact by claiming it cannot find it or creating an untrue copy (see here).
- **The creditor does not reply and contacts the client for payment.** Seeking payment is not enforcement, but you could point out that the agreement is unenforceable until a statement or copy of the agreement is provided and this means it cannot take any of the above action

(which should be listed), but can comply by providing a 'true' copy which can be reconstituted from any source, provided it is indicated that it is reconstituted. If the agreement has been varied, the creditor must provide the original and the current terms and conditions. Consider complaining about any breaches of the FCA's requirements about information requests or other parts of the *Consumer Credit Sourcebook*. [4]

- **The creditor complies with the request.** To comply, the client's address at the time of the agreement must be included and, if the agreement has been varied, the original terms and conditions must be supplied, as well as the current version. Check the agreement to see whether any other documents are referred to which could help the client's case (eg, a bill of sale), and ask for copies. You should now be able to deal with the client's case.

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1 *Jones v Link Financial* [2012] EWHC 2402 (QB)

2 s77(3) CCA 1974

3 Reg 3 The Consumer Credit (Cancellation Notices and Copies of Documents) Regulations 1983 No.1557

4 For example, *FCA Handbook*, CONC 7.14.1R states that the creditor must suspend any steps to recover a debt if the client disputes the debt on valid (or what may be valid) grounds

If the creditor does not comply

If the creditor does not provide the information requested, this puts the client in a dilemma about whether to pay or not. If the client does not pay or does not come to a payment arrangement, they run the risk of the creditor either locating the original agreement or having sufficient information to provide a reconstituted copy as well as some evidence that originally there was a properly executed agreement signed by the client. In the meantime, unless you have advised the client that it would be appropriate to enter a breathing space (see here), the debt may escalate because of the addition of default interest and charges, and the client remains liable for these. The High Court has recognised this dilemma, but has said that neither the failure to comply nor the fact that there was not a properly executed agreement means there is an unfair relationship (see here). [1]

However, if an agreement was made before 6 April 2007 which was not properly executed, it may be irredeemably unenforceable (see here).

Other arguments can be put to creditors or debt purchasers who do not supply copies of agreements. Both the FCA's *Consumer Credit Sourcebook* [2] and the *Credit Services Association Code of Practice* [3] place obligations on creditors, debt collectors and debt purchasers to provide

information, and any failure to comply could breach the Consumer Protection from Unfair Trading Regulations 2008. If court action is threatened, the pre-action conduct protocols require the parties to act reasonably in exchanging information (see here) and, if a claim is defended, the creditor (whether the original creditor or a debt purchaser) must produce any 'relevant documents'. [4]

You should note that the real issue here is not whether the creditor or debt purchaser can produce a copy of the agreement, but whether a properly executed agreement complying with the Consumer Credit Act 1974 has ever existed. If the creditor takes court proceedings, a client will only be able to defend the case on the grounds that the agreement is irredeemably unenforceable if it was made before 6 April 2007 and either the client did not signed it or it did not contain the necessary prescribed terms (including cancellation notices where required). If the client wants to defend the case on the grounds that the agreement is irredeemably unenforceable, they must put forward a positive case about the circumstances in which the agreement was made and cannot just rely on the creditor's failure to produce a photocopy of the original because this does not necessarily mean that a properly executed agreement did not exist.

The client may only have a temporary defence to any county court claim by the creditor if the creditor has failed to comply with a request for information as described on here. This is because the creditor can always comply by producing a 'true copy' and, in the meantime, the court is likely to 'stay' the case – ie, stop it from proceeding further until the creditor complies. If a client does not dispute the existence of a properly executed agreement, but you are considering defending a claim on the grounds that the original creditor/debt purchaser/collector failed to produce a copy of the agreement, get specialist advice.

You should also check that creditors have complied with sections 77A and 86B of the Consumer Credit Act 1974 (see here). Also consider using a subject access request (SAR) to obtain a copy of the personal information the creditor holds about the client (which should include a copy of any agreement and statements in the client's file). There is no fee, and the creditor has a maximum of one month to comply with the request. See ico.org.uk/your-data-matters. If the creditor has sent a letter before claim, you could also consider using the pre-action protocol for debt claims to obtain any documents you need to investigate liability or the amount of the claim (see here).

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1 *Carey and Others v HSBC and Others* [2009] EWHC 3471 (QB)

2 For example, *FCA Handbook*, CONC 7.4.1R and 7.14.3R

3 *Credit Services Association Code of Practice*, para 2(m)

4 r31.8 CPR

Unauthorised creditors

If a creditor enters into a regulated credit agreement (see here), but did not have the appropriate FCA authorisation to undertake consumer credit activities, or a third party (eg, a credit broker) through whom the agreement was arranged did not have the appropriate authorisation, it cannot enforce the agreement. The client is entitled to recover any money or property they paid or transferred under the agreement and to claim compensation from the creditor for any loss sustained as a result of having parted with the money or property. The creditor also commits a criminal offence. [1]

The creditor can apply to the FCA to issue a notice allowing the agreement to be enforced or allowing money paid or property transferred under the agreement to be retained. The FCA can only agree to this if it is 'just and equitable' to do so. The creditor must establish that it genuinely believed that either it or the third party met the relevant criteria. [2]

If a creditor appears to be unauthorised (eg, because the company is new, badly organised and unprofessional, its documentation is of a poor standard, or you have not heard of it before), check whether it has authorisation by searching the Financial Services Register online at register.fca.org.uk. Creditors who are not authorised sometimes withdraw at this point when the need for authorisation is pointed out to them. In the meantime, advise the client that they need not pay and inform them of their rights concerning harassment (see here) and under the FCA's *Consumer Credit Sourcebook* (see here). If the creditor is a 'loan shark', see here.

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1 ss19, 23 and 26-27 FSMA 2000

2 s28A FSMA 2000

Early settlement of a credit agreement

If the client ends a regulated agreement early, they should pay less than the total amount that would have been payable if the agreement had run to its full term. If the client requests the information from the creditor, the creditor must provide a statement of the amount required to settle the agreement and details of how the amount is calculated. [1]

One or more partial early repayments may be made at any time during the life of the agreement.

There is a formula to ensure that creditors can recoup costs associated with setting up an

agreement; therefore, a lower percentage rebate is given for settlement during the earliest parts of a credit agreement. [2]

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1 ss94, 95 and 97 CCA 1974

2 The Consumer Credit (Early Settlement) Regulations 2004 No.1483

Unfair relationships

The Consumer Credit Act 2006 amended the Consumer Credit Act 1974 to introduce the concept of an 'unfair relationship'. [1] This enables a borrower to challenge a credit agreement on the grounds that the relationship between the creditor and the borrower in connection with the agreement (or a related agreement) is unfair to the borrower. These provisions are in addition to the Financial Ombudsman Service's jurisdiction (see here).

The provisions address situations where the creditor has taken unfair advantage of the borrower, or there has been oppressive or exploitative conduct, but not where the borrower has simply made a bad bargain. They apply to regulated and non-regulated agreements, including exempt agreements, regardless of the amount of credit involved, except if the agreement is exempt because it is a regulated mortgage contract (see here). **Note:** the exemption from the unfair relationship provisions does not apply to consumer credit back book mortgage contracts (see here).

If an agreement has been paid off by a later consolidating agreement (see here), the earlier agreement can still be challenged, even though the relationship has ended.

The provisions also apply to completed agreements (ie, where there is no longer any sum which is or may become payable) and where a judgment has been made.

A court may make an order if the client applies either as a stand-alone application or as part of court proceedings relating to the credit agreement or a related agreement. If the client alleges that the credit relationship is unfair, the onus of proof is on the creditor to show that it is *not* unfair. It is not sufficient merely to assert that the relationship is unfair; facts supporting the allegation must be set out.

Note: the unfair relationships provisions may be especially useful for clients facing court

proceedings for enforcement of a debt or repossession, or where the restrictions on the ombudsman's jurisdiction mean that a client has no option but to resort to the unfair relationship provisions to challenge the creditor or defend the claim. However, they should be viewed as a remedy of last resort. If you are considering taking advantage of these provisions, get specialist advice.

Relevant dates

The unfair relationships provisions have applied since 6 April 2007 to credit agreements entered into on or after this date.

From 6 April 2008, the provisions have also applied to agreements made before this date, unless the agreement was paid off in full by then.

An agreement made before 6 April 2007 consolidated (ie, paid off) by an agreement made before 6 April 2008 cannot be challenged as a 'related agreement' because this has ceased to have any effect. Such paid-off or consolidated agreements remain subject to the extortionate credit bargain provisions in the Consumer Credit Act 1974. If you are considering arguing that there is a case of extortionate credit, get specialist advice.

The court's powers to make an order under the unfair relationships provisions are not limited to matters arising after 6 April 2007. The court can also take into account matters before this date. In considering a current agreement (whenever it was made), the court can take into account a related agreement made before 6 April 2007, but cannot make an order for repayment of any sum paid under a related agreement if that agreement ceased to be in operation before 6 April 2007. [2]

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1 ss19-22 and Sch 3 paras14-17 CCA 2006

2 *Barnes and Barnes v Black Horse* [2011] EWHC 1416 (QB)

What is an unfair relationship

The Consumer Credit Act 2006 does not define an unfair relationship. It sets out, in general terms, factors that may give rise to an unfair relationship. These are:

- the terms of the credit agreement or a related agreement (see here);

- how the creditor has exercised or enforced its rights under the agreement (or a related agreement);
- anything done (or not done) by or on behalf of the creditor either before or after making the agreement (or a related agreement).

In some cases, unfair contract terms may be sufficient in themselves to give rise to an unfair relationship, but the court can also look at:

- how agreements are introduced, negotiated and administered;
- any other aspect of the relationship it considers relevant.

Both actions and omissions can be unfair (eg, if a creditor fails to take certain steps which, in the interests of fairness, it might reasonably be expected to take). This includes actions or omissions on behalf of the creditor – ie, by employees, associates and agents, such as brokers (but not brokers acting on behalf of the client), suppliers (who are deemed agents of the creditor) and debt collectors. These include:

- pre-contract business practices such as misleading advertisements, mis-selling products, high-pressure selling techniques, 'churning' (see here) and irresponsible lending;
- post-contract actions, such as demanding money the borrower has not agreed to pay and aggressive debt collection practices;
- failing to provide key information in a clear and timely manner or to disclose material facts.

The court must consider all matters it thinks relevant, including those relating to the individual client and creditor. This means that a term or practice may not be unfair in a particular case because of the client's knowledge or experience, but may be unfair in another client's case if they are more vulnerable or susceptible to exploitation. Clients are also expected to act honestly in providing accurate and full information to enable the creditor to assess risk.

Note: in *Kerrigan v Elevate Credit,* [1] which concerned allegations of irresponsible payday lending involving repeat lending, the High Court held that the lender had failed to undertake adequate affordability checks in accordance with CONC 5.2 (and the OFT Irresponsible Lending Guidelines that preceded it), and that these breaches were a relevant factor in determining whether there was an unfair relationship. The appropriate remedy in such cases was a refund of interest and charges paid and of any arrears of interest and charges in relation to the loan and subsequent loans (assuming the unfairness continued) but not the repayment of the money lent. It is considered that this decision should not be confined to only unaffordability complaints but to other breaches of CONC. [2] However, the Supreme Court has held that the creditor does not need to be in breach of any rule, industry guidance or code of practice. The question is whether the creditor's relationship with the client is unfair. [3]

Related and consolidated agreements

A **'related agreement'** is:

– a credit agreement consolidated by the main agreement; *or*

– a linked transaction in relation to the main agreement (or a consolidated agreement); *or*

– a security provided in relation to the main agreement (or a consolidated agreement or a linked transaction). For example, payment protection insurance (PPI) is likely to be a linked transaction.

An agreement is *not* a related agreement if the later agreement is with a different creditor, unless the new creditor is an 'associate' or 'former associate' of the original creditor.

An agreement is **'consolidated'** by a later agreement if:

– the later agreement is entered into, in whole or in part, for purposes connected with debts owed under the earlier agreement; *and*

– at any time before the later agreement is entered into, the parties to the earlier agreement included the client under the later agreement and either the creditor or an associate or former associate.

This addresses the practice (known as '**churning'**) of creditors entering into successive agreements with a client (often before the earlier agreement has been paid off) and which usually involves not only refinancing the earlier agreement, but also providing extra finance, charging additional fees and selling further PPI, and which may, in itself, give rise to an unfair relationship.

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1 *Kerrigan & others v Elevate Credit International t/a Sunny* [2020] EWHC 2169 (Comm)

2 [2020] EWHC 2169 (Comm). See also Shelter's SDAS ebulletin, August 2020.

3 *Plevin v Paragon Personal Finance* [2014] UKSC 61

Payment protection insurance

Many loans are covered by insurance against sickness and unemployment, known as PPI. If the

insurance policy's terms are met, it makes repayments towards contractual instalments. You should always check to see if repayments of a credit debt (secured or unsecured) are covered by insurance. Some policies only cover a set period and, in the case of joint agreements, for only one of the parties, often the first person named in the agreement.

The insurance may be paid for through the monthly repayments under the credit agreement, but it is not part of the credit provided under the agreement. If the client defaults, the policy often provides for it to lapse after, say, three missed payments.

In the past, PPI was often paid for with a single premium, which was then funded as part of the credit agreement and so interest was charged on it. If the client defaulted, they could still claim under the policy because the premium had already been paid. Single premium PPI was invariably purchased at the same time as the credit agreement was entered into. There was considerable evidence of PPI being mis-sold and the sale of single premium payment protection policies on unsecured loans was stopped in February 2009.

If a client suggests that taking out a single premium insurance policy was a condition of being given the finance, the whole agreement may be unenforceable if it was taken out before 6 April 2007 and it was a regulated credit agreement. If the agreement was taken out on 6 April 2007 or later, the creditor may need special permission from the court before being able to enforce the agreement (see here).

In some cases, insurance companies refuse to pay – eg, if the client has an illness that started before the insurance policy began (a 'pre-existing condition') or was not employed when the policy was taken out. Some policies only cover people under 65 or exclude certain situations altogether – eg, voluntary redundancy. In other cases, delays in processing claims result in creditors applying default interest/charges and/or threatening enforcement action.

Many of the unfair relationships cases that have come before the courts relate to allegations of mis-sold PPI. If the client can establish that they were told that the finance was conditional on the insurance being taken out, the court will likely find the relationship unfair.

Sellers of PPI were usually paid a high rate of commission. The court can consider the seller's failure to disclose this commission to the client, even though this is not a requirement of the FCA's *Insurance: Conduct of Business Sourcebook*. [1] Following the Supreme Court's decision in *Plevin v Paragon Personal Finance* (which held that an undisclosed commission of 71.8 per cent gave rise to an unfair relationship), the FCA ruled that when a creditor assessed a complaint about an undisclosed commission, failure to disclose receipt of a commission of more than 50 per cent of the PPI premium, it should result in the client being compensated. [2] This should be the amount of commission over the 50 per cent figure plus interest already paid by the client and a further 8 per cent a year simple interest. (The courts tended to award repayment of the entire commission. [3]) Creditors should have contacted all clients whose complaints about the sale of

PPI were rejected and who were eligible to complain about undisclosed commission in the light of the *Plevin* decision.

Note: the final deadline for making new complaints about PPI to the Financial Ombudsman Service was 29 August 2019.

Clients who wish to complain about the misselling of PPI may still be in time to bring an unfair relationship claim against the creditor. In *Patel v Patel,* the High Court decided that the client's cause of action was a continuing one which accrued from day to day until the relationship ended. It followed that an unfair relationship claim could be made at any time during the currency of the relationship arising under the credit agreement until the expiration of the limitation period after the relationship had ended. [4] However, in *Canada Square Operations Ltd v Potter* (in which the claim was issued more than six years after the loan had been repaid) the court found that the lender 'deliberately concealed' how much commission it received on the sale of a PPI policy to the borrower with the result that, under section 32 of the Limitation Act 1980, the limitation period did not start to run until the borrower found out the amount of the commission. [5] In *Smith & Burrell v RBS*, which concerned a credit card agreement, the Court of Appeal held that the limitation period began on the date the PPI agreement was cancelled and the last payment made (2006) even though the credit card agreement was not cancelled until 2015. An unfair relationship claim brought in 2019 in respect of the PPI policy was, therefore, statute barred. This decision has, however, been overturned by the Supreme Court which confirmed that the limitation period only begins to run when the credit relationship ends. This did not end when the PPI was cancelled. The limitation period did not begin to run until the credit card agreement was cancelled and so the claim was brought in time. [6]

Clients may also benefit from the more generous compensation currently being awarded by the courts – ie, the refund of the full PPI premium (as in the *Doran* case) as opposed to only the excess above 50 per cent of the premium in accordance with FCA guidance.

However, the courts do not appear to be willing to allow a client to accept a lender's offer of settlement and then make an unfair relationship claim to the court in order to re-open the settlement. In a recent case, the clients had made a claim for repayment of all PPI payments they had paid. In each case, the creditor offered a smaller sum, calculated by reference to the FCA rules and guidance discussed above, on the basis that acceptance of the offer would settle the clients' claims. After accepting the offers and receiving payment, the clients brought unfair relationship claims in the County Court. The clients argued that there had been no binding settlement of their claims so that the court retained jurisdiction to consider the unfairness of the relationship. The County Court disagreed and the Court of Appeal dismised the clients' appeals. Although the court agreed that it retained jurisdiction to consider the unfairness of a relationship, it was important that the courts should enforce compromises agreed in good faith between the parties. If the court was satisfied that the terms were fair and reasonable, then the compromise

should be held binding. It could not be re-opened uness there was evidence that the creditor had taken undue advantage of the client's situation. Further, FCA rules and guidance did not oblige the payment or offering of a specific sum. Rather they provided a process that was intended to lead to an offer of redress, if appropriate. Neither did they say or imply that a creditor could not attempt to achieve a binding settlement of potential or future claims when making an offer in accordance with those rules and guidance. [7]

Motor car finance commission arrangements

Alert: In a 109-page ruling, the Supreme Court has given its judgment on the three combined appeals *Hopcraft v Close Brothers*; *Johnson v FirstRand Bank t/a MotoNovo Finance*; *Wrench v FirstRand Bank t/a MotoNovo Finance* [2025] UKSC 33. The Supreme Court has held that the Court of Appeal was wrong to find there was a fiduciary obligation of undivided loyalty on the part of the dealer when selecting and negotiating a finance package for a customer. The lenders' appeals in the cases of Ms Hopcraft and Mr Wrench were, therefore, allowed (see paras 285-288). Mr Johnson's case also included an allegation of an unfair relationship and this allegation was upheld by reason in particular of the size of the commission (55% of the total charge for credit), the failure to disclose the commission and the concealment of the commercial tie between the dealer and the lender (see para 340). The lender was ordered to pay the amount of the commission plus interest at an appropriate commercial rate from the date of the agreement.

Following the ruling, the FCA has said that it will be consulting on running a compensation scheme starting in 2026 and going back to 2007. The average amount of compensation awarded is estimated to be about £950. The FCA has also said that clients who have already complained do not need to do anything, but those who have yet to complain should contact their car loan provider rather than using a claims management company.

For more information about car finance commission arrangements, see the link below.

The operation of the motor finance market has been a subject of concern to the FCA for several years. An area of particular focus has been firm's compliance with rules as to disclosure of commissions in CONC 3 and 4, in particular CONC 4.5.3R. Before the practice was banned by the FCA with effect from 28 January 2021, some lenders offering car finance allowed brokers (-ie, the person arranging the loan -eg, car dealers) to adjust the interest rates offered to clients. The higher the interest rate, the more commission the broker received from the lender. This practice was known as a Discretionary Commission Arrangement (DCA) and may have been applied to a client's car loan without their knowledge. The FCA is currently investigating whether some car finance customers were charged too much for their loans and may, therefore, be entitled to compensation. In the meantime, the FCA has announced that firms' time for responding to complaints about DCAs has been extended to 4 December 2025.

Johnson v Firstrand Bank t/a Motonovo Finance (a decision concerning non-discretionary car finance commission arrangements), concerned three linked cases involving motor cars bought on hire purchase. In each case, the dealer acted as a credit broker and earned substantial commission from the finance company. The Court of Appeal decided that it was unlawful for the dealers to receive a commission from the finance companies without obtaining the client's informed consent to the payment. This in turn required the client to be told all material facts, including the amount of the commission and how it was to be calculated. In the case of Mr Johnson, the court ordered the finance company to pay compensation of the commission plus interest. **8**

Following the Court of Appeal's decision in the Johnson case, the FCA also extended firms' time to respond to complaints about types of car finance commission arrangements other than DCA until 4 December 2025 (this is likely to be extended further as a result of the recently announced FCA consultation). The lenders appealed to the Supreme Court which gave the FCA permission to 'intervene' (-ie, for permission to appear and assist the court) in order to explain its intentions when drawing up its CONC rules in the context of motor finance commission, in particular CONC 4.5 which concerns commissions. CONC 4.5.3R requires a credit broker to prominently disclose to the client, in good time before any agreement is entered into, the existence and nature of any commission payable by the lender to the broker where its existence or amount could affect the impartiality of the broker or, if made known to the client, could materially affect the client's decision to enter into the agreement.

Read about complaints about car finance commission arrangements on the FCA website.

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1 *Plevin v Paragon Personal Finance* [2014] UKSC 61

2 *Plevin v Paragon Personal Finance* [2014] UKSC 61

3 *McWilliams v Norton Finance* [2015] EWCA Civ 18; *Nelmes v NRAM* [2016] EWCA Civ 491

4 [2009] EWHC 3264 (QB). *Patel* was considered in the county court at Manchester in *Doran v Paragon Personal Finance Ltd,* 1 May 2018. In that case, the claim was issued more than 13 years after the credit agreement and PPI policy were entered into but less than five years after the loan was repaid. The judge held that the claim had been brought within the six-year limitation period. The judge awarded a refund of the full amount of the PPI premium plus the interest repayments relating to that part of the loan.

5 [2021] EWCA Civ 339. See also, L Charlton, 'PPI claims deliberate concealment will extend the limitation period', *Adviser* online, 19 March 2021

6 [2023] UKSC 34

7 *Harrop v Skipton BS; Self v Santander Cards* [2024] EWCA Civ 1106

8 [2024] EWCA Civ 1282

Remedies

If the court decides that the relationship is unfair to the borrower, it can make an order:

- requiring the creditor to repay (in whole or part) any sum paid by the client;
- requiring the creditor to do, not to do, or to cease anything specified in the order;
- reducing or discharging any sum payable by the client;
- setting aside (in whole or part) any duty imposed on the client;
- altering the terms of the agreement or any related agreement.

If security is provided by a third party (eg, a guarantor) in connection with a credit agreement or linked transaction, the third party can also apply to the court under the unfair relationships provisions. In addition to the above orders, the court can order any property provided as security to be returned to them.

Procedural irregularities

Certain specified procedures must be followed for a regulated credit agreement to be properly executed (see here–here). [1] An improperly executed regulated agreement can only be enforced by a court order. [2]

Note: the court has no power to order enforcement (ie, it is 'irredeemably unenforceable') if the agreement was made before 6 April 2007, and: [3]

- it has not been signed by the client(s); *or*
- it has been signed by the client(s), but does not contain or contains inaccurate prescribed information (see here); *or*
- in the case of a cancellable agreement, the client was not given a copy before the creditor took court action, or told of their cancellation rights.

If a creditor has an unenforceable agreement with a client, it should apply to the court for permission to enforce it. When making an order, the court must consider the creditor's responsibility for the improper execution and its effect on the client. [4] The court can allow enforcement on such terms as it thinks fit – eg, reducing the amount owed by the borrower, making a time order (see here) and reducing or freezing interest/charges. [5]

If a loan is secured and if the agreement is unenforceable, so is the security. [6] The creditor should arrange to discharge the security – eg, remove any entries relating to a secured loan from the Land Registry.

A creditor may sue a client for payment of a debt without informing the court that the agreement is unenforceable. If this happens and judgment is entered against the client, they may be able to get the judgment 'set aside' (see here). [7] Obtain specialist advice in these circumstances.

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1 ss60-64 CCA 1974

2 s65 CCA 1974

3 s127(3) and (4) CCA 1974

4 s127(1) CCA 1974

5 See *National Mortgage Corporation v Wilkes* [1993] CCLR 1, *Legal Action*, October 1991

6 s113 CCA 1974

7 See *In the matter of London Scottish Finance (in administration)* [2013] EWHC 4047 (ChD)