Reference Nos. UT-2026-000045
UT-2026-000046
UT-2026-000047
UT-2026-000048

IN THE UPPER TRIBUNAL
TAX AND CHANCERY CHAMBER
BETWEEN

(1) CA AUTO FINANCE UK LIMITED
(2) CONSUMER VOICE LIMITED
(3) MERCEDES-BENZ FINANCIAL SERVICES UK LIMITED
(4) VOLKSWAGEN FINANCIAL SERVICES (UK) LIMITED

Applicants

-and-

FINANCIAL CONDUCT AUTHORITY

Respondent

REPLY BY CONSUMER VOICE LIMITED

All page references are to page numbers in the FCA's exhibit (e.g. [FCA1/x-y]) or items of the FCA's disclosure (e.g. [FCA00000001])

A. INTRODUCTION

1. Consumer Voice (**CV**) files this Reply in response to the FCA's Grounds of Response dated 6 July 2026 (**FCA's Grounds**) and pursuant to §10 of the Order dated 1 July 2026.

2. CV has strongly and consistently advocated for an industry-wide consumer redress scheme (**CRS**) which provides fair redress to the motor finance consumers who have been treated unfairly by lenders for many years. However, the proposed Scheme is flawed in the provision of redress and will result in millions of consumers being undercompensated by billions of pounds. The corollary is a windfall for lenders who mistreated them and who now, through the three coordinated and overlapping challenges before the Tribunal, seek to limit their liability further. CV brings this challenge in the interests of consumers so that they can obtain fair redress. If the current redress methodology is implemented, consumers will receive inadequate redress under the Scheme (and those customers who are not legally advised are likely to be unaware that they could obtain higher redress in court) or be forced to go to court to obtain fair redress.

3. CV has already set out its grounds of challenge in its Statement of Facts and Grounds dated 27 April 2026 (**SFG**). Defined terms in the SFG are adopted in this Reply. In this Reply, CV sets out key points in response to the FCA's Grounds, and arising from the

FCA's evidence and disclosure but avoids where possible repeating matters in the SFG. The fact that a particular matter is not addressed in this Reply should not be taken as acceptance thereof. CV will make more detailed submissions in its skeleton argument in due course. This Reply is nevertheless longer than it was hoped would be necessary, due to the FCA's belated disclosure of extensive and significant documents which ought to have been available to CV when it filed the SFG.

4. In summary, the FCA's Grounds, evidence and disclosure significantly strengthen and confirm CV's grounds. There are numerous flaws and limitations in the FCA's decision-making, some of which it has now become clear the FCA itself identified during the design of the Scheme. However, the FCA's approach was not to correct those flaws and undertake the further inquiry needed, but instead to limit redress to the detriment of consumers (and in favour of lenders) and justify its approach as a series of so-called "*bounded regulatory judgements*", which were in fact arbitrary and taken in ignorance of key information.

5. The Reply is structured as follows (addressing, for ease of reference, the issues raised in the SFG by reference to the numbering in the FCA's Grounds):

   5.1 **The application**. This is a focused consumer-facing application which challenges the FCA's approach to redress. This issue affects millions of consumers, many of whom are vulnerable, and impacts their constitutional right of access. The challenge is made in circumstances where the FCA has sought to inhibit scrutiny.

   5.2 **Reviewability**. The FCA's attempts to fall back on what it has variously described as a "*particularly wide*" "*complex*", "*expert*", "*bounded*" "*regulatory judgement*" are overstated and flawed. Its power to make rules on redress is reviewable by the Tribunal on conventional public law grounds, and without heightened deference.

   5.3 **Issue 4: Redress** (i.e. CV's Grounds 2 and 3). The FCA's disclosure confirms CV's case that the FCA has unlawfully treated *Johnson* as the "*high water mark*" for all redress, irrationally declined to extend the CRR to other cases in favour of applying what the FCA itself referred to as an "*arbitrary*" midpoint between the CRR and an APR adjustment remedy, failed to comply with its duties of inquiry and conscientious consideration when calibrating the loss element of that midpoint, and acted irrationally when fixing the APR adjustment for the bifurcated Scheme.

5.4 **Issue 6: Market Integrity** (i.e. CV's Ground 1). The FCA's disclosure confirms that, having chosen to invoke market integrity and market impact as reasons relevant to the calibration of redress, it: misconstrued the market integrity objective; failed to investigate and evaluate the material aspects of that objective; relied upon an inadequate evidential foundation when assessing the countervailing market effects; and lost sight of the statutory purpose and the particular importance of consumer protection in the exercise of the s.404 power.

5.5 **Issue 7: Compensatory Interest** (i.e. CV's Ground 4). The FCA's disclosure reveals that its decision-making on compensatory interest was driven by a desire to minimise the financial burden on firms, achieve operational simplicity and bring the process of establishing a CRS to a conclusion, rather than by a genuine assessment of what was "*just*" for the purposes of s.404A(4). The FCA knew that BoE base rate + 1% would undercompensate consumers, particularly during the prolonged period of abnormally low base rates, and its own analysis showed that consumers' actual borrowing costs were generally much higher. The error was compounded by the removal of the rebuttal mechanism which the FCA had previously described as necessary "*[t]o ensure fairness*".

5.6 **Issue 9: Standing/Candour**. CV has standing to bring this application in the surrogate or public interest. It has complied with its duty of candour. The FCA has performed a *volte face* on this issue: since 2023, the FCA treated CV as a trusted expert consumer body, engaging with CV regularly on motor finance issues and even appointing CV to its CRS Design Panel for the Scheme. However, since CV decided to challenge the Scheme, the FCA changed its position: initially Mr Nikhil Rathi (the FCA's Chief Executive) (**Mr Rathi**) personally sought to dissuade CV from bringing a challenge by suggesting adverse consequences for CV's future engagement with the FCA and adverse press briefings against it; and now the FCA seeks to denigrate CV's activities and motives in bringing this application. The FCA is yet to give a full account of the previous working relationship between CV and the FCA, and relevant disclosure remains outstanding.

6. Alongside this Reply, CV files the Second Witness Statement of Nikki Stopford dated 28 August 2026 which addresses CV's standing (**Stopford 2**), the Second Witness Statement of Darren Smith dated 28 August 2026 which addresses CV's standing and CV's applications for disclosure and permission to rely on expert evidence (**Smith 2**), and the Supplemental Expert Report of Dr Nils Gudat dated 28 August 2026 which relates to Issue 4 (Redress) (**Gudat 3**).

B. THE APPLICATION

(1) Nature of the application

7. At the outset it is important to be clear about the nature of CV's application:

   7.1 *First*, this is the only application which seeks to protect the interests of consumers, rather than those of lenders. Unlike the lender applicants, CV is not responsible for the harm inflicted on consumers which a CRS ought to remedy, nor is it a fox which seeks to guard the henhouse.[1]

   7.2 *Second*, CV is not a lone voice in criticising the Scheme from the perspective of consumers. The Policy Statement (**PS26/3**) confirms that "*consumer voices raised concerns that the amount of redress was not enough*" **[FCA1/1931]**. Indeed, concerns were shared by other consumer groups on every aspect of CV's challenge.[2] However, CV is the only consumer-focussed body that has undertaken the preparatory work required to bring a legal challenge.

   7.3 *Third*, CV does not challenge the FCA's jurisdiction or decision to implement a CRS. To the contrary, CV strongly supports this.

   7.4 *Fourth*, the challenge is limited to the issue of redress and is thus narrow in scope. Even as regards this issue, CV does not challenge the use of standardised remedies

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[1] FCA's Grounds, §132.1

[2] The FCA has not disclosed the consumer documents to CV. However, the documents presently available to CV record concerns relevant to: market integrity (e.g. Technical Annex 2 dated 30 March 2026 at §10 and §40 **[FCA1/2695, 2700]**); failure to extend the commission payment remedy (**CRR**) to other cases (e.g. PS26/3 at §11.15 **[FCA1/2119]**); the defective approach to calibrating the APR adjustment remedy (**AAR**) (e.g. PS26/3 at §§11.31-11.32 **[FCA1/2122]** and Technical Annex 1 dated March 2026, p.25, at §4.28 **[FCA1/2535]**); and the derisory award of compensatory interest (e.g. Paper on redress methodology and market impact dated 11 July 2025 at §2.1 **[FCA1/695]** and PS26/3 at §11.60 **[FCA1/2145]**).

per se.[3] It recognises that such an approach can be justified if it is lawful and not arbitrary. CV's position is therefore distinct from that of the lender Applicants, who wish to be able to exercise far greater discretion (when compared with the standardised remedies under the Rules) to determine whether any remedy is due to each consumer, and if so what remedy.

7.5 *Fifth*, the FCA has internally acknowledged that "*[t]he redress methodology will be a contentious element of this CRS…*",[4] and was alive to the prospect that its approach may be challenged by consumer groups.[5]

7.6 *Sixth*, there are compelling grounds for concluding that the FCA's approach to redress is arbitrary and unlawful. These are addressed in the SFG and below. To provide a stark illustration: the FCA identified in 2019 that undisclosed DCAs (the source of most anticipated breaches under the Scheme) cost the average consumer an additional £1,100 over the lifetime of a typical car loan.[6] Yet, the average redress payment under the Scheme is only £830.

7.7 *Seventh*, this is clearly not a merits challenge, cf. FCA's Grounds, §§5 and 160. The Tribunal is asked to review the rules on redress on conventional public law grounds, including error of law and failures to comply with the duties of inquiry and conscientious consideration, to take into account relevant considerations, and to comply with the *Padfield* principle and published policy.

7.8 *Eighth*, the application has been, and continues to be, pursued expeditiously by CV. It was the *only* applicant which filed a fully particularised SFG and supporting evidence at the outset of its claim, just 28 days after publication of PS26/3. CV expected that the FCA would file its response to the application within 14 days so that the challenge could be determined promptly thereafter. It has not been possible to determine CV's challenge within the space of only a few months, in large part due to the prevarication by the FCA in response to the

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3 cf. the FCA's Grounds, §148

4 **[FCA1/690]** (Paper on Redress Methodology and Market Impact dated 11 July 2025), §1.3

5 For example, the FCA recognised that its Hybrid Remedy "*[m]ay… be challenged by consumer groups*" (Options paper on redress methodology dated 14 August 2025 **[FCA1/752-753]**). It was also aware that the removal of the rebuttal mechanism for compensatory interest "*could… receive significant pushback from consumer groups*" (ExCo paper dated 2 February 2026, §1.31 **[FCA1/1745]**).

6 **[FCA1/310]** (Final Findings dated 1 March 2019), §2.15

challenge (taking 10 weeks to file its Grounds). The ongoing delay is not attributable to CV. It is ready to proceed to a substantive hearing in 2026.

(2) Importance of the application

8. It is critical that the interests of consumers are represented in these proceedings, and ultimately that redress under the Scheme must be calibrated lawfully, because:

   8.1 This is a "*mass redress event*": Gluckman 1, §18. The FCA estimates that 12.1 million agreements are eligible: PS26/3 at §1.25.

   8.2 Millions of consumers are affected by the FCA's intervention, many of whom are vulnerable. According to the FCA's 2024 Financial Lives Survey, around 12% of UK consumers have a low financial capability and around 11% of consumers taking out motor finance products are financially vulnerable.[7]

   8.3 The Tribunal will determine three lender challenges which seek to exclude or limit redress payable to consumers.

   8.4 Moreover, the Scheme clearly engages the constitutional right of access to a court or tribunal (including by pursuing complaints before the FOS):[8] R (UNISON) v Lord Chancellor [2020] AC 869.[9] As recognised in the Civil Justice Council's Report on 'Improving Access to Justice Through Collective Actions' (November 2008), a redress scheme is "*the converse of justice systems, which exist to give proper effect to substantive law and, as a necessarily corollary, ensure compensation is paid to those whose substantive rights have been infringed*". This is not a reason for declining to introduce a CRS but it reinforces why consumers must be adequately protected and the redress under the CRS must not be set too low. It is now clear that the FCA has failed to consider the impact of its proposals on the right of access *at all*. This is a notable omission by a public authority

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7 **[FCA1/2264]** (PS26/3, Annex 1, Cost Benefit Analysis), §253

8 The FOS is a tribunal for the purposes of Article 6 ECHR: R (Heather Moor & Edgecomb Ltd) v FOS [2008] Bus LR 1486 at [42] and Clark v In Focus Asset Management & Tax Solutions Ltd [2014] 1 WLR 2502 at [82]. Whilst consumers have the right to complain to the FOS about matters which fall within the subject matter of the Scheme, the FOS is required to determine such a complaint by reference to what the determination under the Scheme should be or should have been: PS26/3, §6.26 **[FCA1/2039]**.

9 As emphasised in UNISON at [66]-[85], the constitutional right of unimpeded access is inherent in the rule of law. Impediments to the right can constitute a serious hindrance even if they do not make access impossible. Lord Reed went on to emphasise (at [109]) that the recognition in domestic law that the impact of restrictions must be considered "*in the real world*" is consistent with the Strasbourg jurisprudence which emphasises that the right of access must be practical and effective and not theoretical and illusory: see e.g. Golder v United Kingdom (application no. 4451/70) at [26]-[36] and Airey v Ireland (application no. 6289/73) at [20]-[28].

making an intervention of this nature. It is particularly striking in circumstances where:

(1) The FCA knew that the Scheme could provide materially lower redress than consumers might obtain outside it. For example, internal documents record that the Hybrid Remedy involves "*some winners and some losers*", that "*if they went to court, [consumers] might get full commission*", and questioned whether consumers would regard results as fair.[10] It was further recognised that the Scheme would deny consumers the relatively cost-effective route to the FOS and would lead to a potential shortfall: as the FCA acknowledged, average redress would be £864 under the *Johnson* approach, £391 under APR-17 and £627.50 under the midpoint.[11]

(2) The FCA has introduced the Scheme with the specific objective of reducing what it perceives to be the "*risk*" of court claims and FOS complaints,[12] noting the potential "*issues […] if the redress scheme will be underutilised*" and of "*CMCs going to court instead of using the scheme*",[13] and that "*rigour in*" the "*approach […] to law firms*" taken by the FCA and SRA is "*essential for the scheme's success*".[14] This was apparently influenced by the FCA's perception of a risk of "*Law firms 'undermining' a redress scheme*" by advising clients that they could achieve better outcomes in litigation.[15] Indeed, that objective was explicit at an early stage of the Scheme's design. An ExCo Subgroup workshop recorded that providing consumers with a guaranteed amount would make it easier to present "*a bird in the hand is worth two in the bush*" when choosing between joining the Scheme and going through the courts "*to possibly get more in the future*".[16]

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10 **[FCA00000186]** (Options paper on redress methodology – with marginal comments), pp.12-13

11 **[FCA1/757-758]** (Options paper on redress methodology dated 14 August 2025), pp.12-13

12 e.g. Paper on redress methodology and market impact dated 11 July 2025 at §3.3 ("*Taking a different approach would counter the comprehensiveness design principle, which <u>aims to ensure the orderly and cost-effective resolution of claims by keeping them out of the court system</u>*") **[FCA1/696-697]**, Options paper on redress methodology dated 14 August 2025 at p.14 ("*This may serve to <u>persuade</u> consumers against taking claims to court*") **[FCA1/759]**, and Gluckman 1 at §63 ("*… it was important to <u>mitigate the risk</u> that consumers may decide not to participate in the Schemes and <u>would pursue litigation instead</u>*")

13 **[FCA00000466]** (Notes of 'Irwell ED Check in' meeting on 24 March 2026), p.3

14 **[FCA00000134]** (Minutes for ExCo Sub-Committee meeting dated 28 November 2025), §2.5

15 **[FCA00000102]** (Response to ExCo on CMC paper, provided to ExCo in September 2025 **[FCA00000081]**)

16 **[FCA00000092]** (Meeting note for ExCo Subgroup workshop dated 12 June 2025), p.2

(3) This has been combined with a communications strategy – including the use of influencers, radio, digital audio, social media, YouTube and sharing "*a toolkit with MPs and partners*"[17] – which has sought to dissuade individuals from obtaining legal advice (e.g. "*Consumers do not need to use a CMC or a law firm*")[18] and assert that consumers are unlikely to do better and may in fact do worse by exercising their right of access (e.g. "*If you decide to go through the courts, this may cost you more*"[19] and "*many consumers could end up with less*").[20] Indeed, on the day that the Scheme was published, Mr Rathi issued media briefings suggesting that it was "*really unlikely*" that "*all*" consumers would get a better outcome by litigating and that they would be excluded from the Scheme if they did so.[21]

(3) <u>Steps taken by the FCA to inhibit scrutiny</u>

9. Notwithstanding the above, CV's application has been brought in circumstances where the FCA sought to discourage and undermine scrutiny of its decision-making:

9.1 In October 2025, having spent 8½ years investigating the motor finance sector,[22] the FCA departed from its published guidance on consultation periods, stating that waiting 3 more months to consult would be "*prejudicial*" to consumers.[23] It appears that, as early as May 2025, the FCA had internally given itself 2 months to complete the consultation, followed by 3 months to make a decision.[24]

9.2 Having set a compressed 6-week consultation period (from 7 October to 18 November 2025), which was later extended until 12 December 2025, the FCA

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17 e.g. **[FCA00000045]** (Document titled "For Board sub-committee paper", undated) at §4.3 ("*We are currently using influencers to raise consumer awareness that there is no need to use a CMC or law firm to claim compensation*") and **[FCA00000102]** (Response to ExCo on CMC paper, provided to ExCo in September 2025 **[FCA00000081]**) at point 7 ("*consumer comms campaign"* to "*encourage customers to pause before signing up with a CMC"*, to address "*Law firms 'undermining' a redress scheme"*)

18 https://www.fca.org.uk/news/statements/fca-calls-law-firms-cmc-consider-clients

19 https://www.fca.org.uk/news/statements/fca-calls-law-firms-cmc-consider-clients

20 https://www.fca.org.uk/news/press-releases/millions-car-finance-customers-payouts-fca-goes-ahead-compensation-scheme

21 https://www.ft.com/content/1b2db60f-df18-4e39-ba87-a9b9188bbd22?syn-25a6b1a6=1 (*Go to court and lose out on £9bn car finance redress scheme, says FCA boss*) and https://www.lawgazette.co.uk/news/go-to-law-and-youre-out-of-our-scheme-fca-tells-motor-finance-claimants/5126368.article

22 The FCA announced its review of the motor finance sector in 2017. Mr Rathi has acknowledged that "*[t]here are understandable questions about whether… the FCA could and should have acted sooner*" **[FCA1/3065]**

23 CP25/27, §1.49 **[FCA1/1023]** and §3.64 **[FCA1/1042]**

24 **[FCA00000062]** (ExCo Subgroup slides dated 2 May 2025), p.5

abridged time for its consideration of the responses, setting a "*demanding*"[25] self-imposed deadline to publish a final decision by the end of March 2026.[26] When the Board was asked to approve the Scheme, it was acknowledged that "*there is some execution risk in the quality of the final product due to the pace…*".[27]

9.3 When the Scheme was published in March 2026, Mr Rathi announced: "... *we need everyone to get behind it and ensure millions get their money this year. Payouts should not be delayed any longer…*".[28]

9.4 After CV indicated its intention to challenge the Scheme, the FCA informed CV in its initial pre-action response on 17 April 2026 that any challenge had to be supported by an SFG and issued by 27 April 2026, on the alleged ground that it was a "*reference*" under the Tribunal Procedure (Upper Tribunal) Rules 2008. This 28-day deadline was significantly shorter than the 3-month limit for judicial review proceedings, and departed from the approach formerly taken by its predecessor, the FSA.[29] This forced CV to finalise a claim within days, despite the FCA failing to disclose documents which were plainly material to its decision-making. (After CV complied with this deadline, the FCA took 2½ months to serve its response and accepted that the application was *not* a reference after all.[30])

9.5 On the day of FCA's main pre-action response dated 23 April 2026, the FCA issued a news release on its website and a LinkedIn post warning that "*[a]ny law firm… involved in a potential challenge against the scheme that also has clients making motor finance should consider their position… carefully*".[31]

9.6 On 27 April 2026 (i.e. the deadline for the application), Mr Rathi met with the directors of CV via Microsoft Teams and stated (in summary) that: the FCA was unable to collaborate with CV if it challenged the Scheme; the FCA would need to be "*forthright*" in its communications about CV if it challenged the Scheme; and the ambition to get money to millions by Christmas would not be met if there

25 **[FCA1/1782]** (Minutes for ExCo meeting dated 6 February 2026), §8.1
26 e.g. **[FCA1/1647]** (PS25/18), §1.27 ("*in February or March 2026*")
27 **[FCA1/1920-1921]** (FCA Board paper dated 26 March 2026), §5.6
28 https://www.fca.org.uk/news/press-releases/millions-car-finance-customers-payouts-fca-goes-ahead-compensation-scheme. See also PS26/3, §1.11 **[FCA1/1932]**
29 https://www.fca.org.uk/publication/guidance-consultation/guidance10.pdf at §32.2
30 FCA's CMH Skeleton dated 24 June 2026 at [22]-[24]
31 https://www.fca.org.uk/news/statements/fca-calls-law-firms-cmc-consider-clients

was a delay because of CV's challenge: Stopford 2 at §42(c).[32] He did not disclose the intended applications by third parties including the lender Applicants, instead informing CV that the FCA had "*been engaging with the banks*" who "*finally over the weekend [have] decided not to challenge*", such that it was CV's challenge which would "*delay the scheme*".[33] He described CV's challenge as being the "*biggest risk to the scheme*".[34] This was an inappropriate intervention by a public official who was personally involved in the decision-making being challenged.

9.7 Since the proceedings were issued in April 2026, the FCA has issued negative public statements about the challenges. The FCA's public announcement on 8 May 2026 stated: "*[m]any people will be frustrated that the legal action will delay payments due to begin this year*".[35] In his letter to the Treasury Committee dated 8 June 2026, Mr Rathi stated "*it is disappointing that four commercial parties proceeded with challenges*"[36] and "*[s]ome will reasonably question who is putting their interests first*".[37] He concluded by suggesting: "*Parliament may wish to consider what mechanisms could reduce avoidable delay while preserving legal rights*".[38]

9.8 In addition, the FCA has threatened to withdraw the CRS *in its entirety* if these proceedings go against it.[39] In circumstances where the FCA has decided that it is *necessary* to implement a CRS, and *no one* has challenged this, the basis for and legitimacy of the FCA's stated position is difficult to understand. It would be perverse and a dereliction of its duties for the FCA to abandon a CRS simply because specific aspects of its rules were adjudged to be unlawful.

9.9 On 13 July 2026, the FCA disclosed 538 documents (with certain documents subsequently replaced or supplemented). Inexplicably, these were not provided in chronological (or indeed any) order and had all metadata removed, making it

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32 It appears that Mr Rathi made a similar call to the Finance & Leasing Association.
33 **[FCA00000544-c]** (FCA's note of call between Mr Rathi and CV on 27 April 2026), p.1
34 **[FCA00000544-c]** (supra), p.1. This was seemingly a tacit acknowledgment that the challenge has merit.
35 **[FCA1/3062]** (FCA announcement dated 8 May 2026)
36 **[FCA1/3065]** (Mr Rathi's letter to Chair of the Treasury Committee dated 8 June 2026), p.2
37 **[FCA1/3067]** (supra), p.4
38 **[FCA1/3079]** (supra), p.16
39 e.g. **[FCA1/3061]** (FCA announcement dated 8 May 2026) and **[FCA1/3072]** (Mr Rathi's letter to Chair of the Treasury Committee dated 8 June 2026)

extremely difficult to piece together the dates of many of them or the sequence of events. This remains the position at the time of filing this Reply. Many of the documents were incomplete or unreadable. Many were also important and clearly should have been disclosed by the FCA at the pre-action stage in response to CV's pre-action letter (none of the lender Applicants apparently sent pre-action letters).[40] These deficiencies have made it much more difficult to consider the FCA's response. CV wrote to the FCA on 10 August 2026 seeking further disclosure, but the position remains unresolved at the time of filing this Reply – necessitating a disclosure application by CV.

C. <u>REVIEWABILITY OF DECISION-MAKING</u>

(1) <u>The FCA's position</u>

10. The FCA has advanced the following position on the reviewability of decision-making:

10.1. The power to *make* a CRS under s.404 involves the exercise of a "*complex*", "*regulatory*" discretion.[41] The language used does not admit of "*hard-edged questions of law*" but of "*expert judgement*".[42] It is "*for the authority alone*" to "*consider the economic arguments, weigh the competing considerations and arrive at a judgement*".[43] The Tribunal must avoid the danger of substituting its views for those of the FCA.[44]

10.2. The above principles also apply to the power for making rules under s.404A.[45] When determining what redress would be just, the FCA exercises a "*regulatory judgement*".[46] Its discretion is "*subjective*"[47] and "*particularly wide*".[48]

10.3. The choice of the word "*just*" by Parliament "*deliberately imports an exercise of evaluative, inherently multi-factorial judgement, in particular, having regard to*

40 e.g. **[FCA1/686, 746, 761, 1690, 1704, 1714, 1774, 1801, 1871]**
41 FCA's Grounds, §42
42 FCA's Grounds, §42
43 FCA's Grounds, §42.1
44 FCA's Grounds, §42.1
45 FCA's Grounds, §154
46 FCA's Grounds, §154
47 FCA's Grounds, §148
48 FCA's Grounds, §154

the interests of all affected parties including procedural considerations such as speed, cost-effectiveness, clarity and accessibility".[49]

10.4. The FCA can go beyond that which could be awarded under the "*wide*" remedial power under s.140B CCA.[50]

10.5. Whilst the FCA "*must have regard to*" the nature and extent of the loss or damage, it is not bound by or restricted to that loss or damage.[51] It is a matter for the FCA.[52]

10.6. In discharging "*general functions*" under s.1B(6), the FCA must also "*strike an appropriate balance*" between its statutory objectives in s.1B(2)-(3) and the regulatory principles in s.3B.[53] These may "*pull in opposing directions*" and, applying FCA v BlueCrest Capital Management (UK) LLP [2025] 1 WLR 746 at [83], the FCA has "*a high degree of discretion as to how to strike that balance*".[54]

10.7. It is not even open to an applicant to complain that its method is "*arbitrary*".[55]

11. Put shortly, the FCA comes close to saying that its decision-making is unreviewable when calibrating redress under a CRS.

(2) The correct approach

(a) Introduction

12. The FCA's position is overstated and wrong. The exercise of the FCA's power under s.404A is reviewable and the FCA should not be given particular or special latitude.

(b) Reviewable in principle

13. The exercise of the FCA's power is obviously reviewable on conventional grounds:

13.1. Even where a statutory power is conferred in terms which appear to grant a broad discretion (which, as explained below, is not the case here), it is not "*immune from judicial review*": De Smith's Judicial Review (9th edn) at §1-35. The courts have

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49 FCA's Grounds, §155.8
50 FCA's Grounds, §§155.5, 155.9
51 FCA's Grounds, §155.2
52 FCA's Grounds, §155.2
53 FCA's Grounds, §§223, 226
54 FCA's Grounds, §226
55 FCA's Grounds, §148

rejected the notion of an unfettered public law power: De Smith at §5-007, citing Padfield v Minister of Agriculture, Fisheries and Food [1968] AC 997 at 1060.

13.2. This is *a fortiori* where a statute or rule formulates a set of criteria governing the way in which a discretion will be exercised. Far from shielding an arbitrary exercise of that discretion from review, it is the purpose of such governing criteria to "*ensure that the discretion is not exercised arbitrarily or otherwise unlawfully*": R (Overton) v Secretary of State for Justice [2023] EWHC 3071 (Admin). The FCA is accordingly wrong at §148 of its Grounds. It cannot act arbitrarily.

13.3. These propositions are trite in the context of challenges made to decisions of the FOS: e.g.[56] R (IFG Financial Services Ltd) v FOS [2006] 1 BCLC 534 at [13][57] and R (Heather Moor & Edgecomb Ltd) v FOS [2008] Bus LR 1486 at [80].[58]

13.4. The same is true of discretionary decision-making by the FCA. There need not be "*highly exceptional*" circumstances in order for the Tribunal to displace irrational decision-making by the FCA: R (All-Party Parliamentary Group on Fair Banking) v FCA [2025] EWHC 525 (Admin) at [99]-[100], [103]. Indeed, the FCA has positively asserted that its powers are not "*unfettered*", "*may only be exercised for defined statutory objectives*", and are "*subject to well established public law principles which constrain exercises of discretion*": BlueCrest at [54] and [99].

13.5. Even in the context of prosecutorial or regulatory *investigations* by the FCA (where the Court will only intervene in "*highly exceptional*" cases), Males J emphasised in R (Grout) v FCA [2015] EWHC 596 (Admin) at [37]: "… *a regulatory authority's discretion is "not unfettered": the decision maker "must seek to exercise his powers so as to promote the statutory purpose for which he is given them. He must direct himself correctly in law. He must act lawfully. He*

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56 These principles have been reiterated and applied in other cases. See, for example: Clark v In Focus Asset Management and Tax Solutions Ltd [2014] 1 WLR 2502 at [24] ("*The power to decide a dispute according to what is fair and reasonable is not a carte blanche*"); R (Shawbrook Bank Ltd) v FOS [2023] EWHC 1069 (Admin) at [13]; R (Clydesdale Ltd) v FOS [2025] Bus LR 1323 at [106]; and Linear Investments Ltd v FOS [2025] EWCA Civ 1369 at [104]

57 "*… if in his opinion as to what is fair and reasonable in all the circumstances of the case is perverse or irrational, that opinion, and any determination made pursuant to it, is liable to be set aside on conventional judicial review*"

58 "*The effect of these provisions is not to leave the ombudsman's determination to his entirely subjective views, as though he was operating according to the length of his foot, so to speak… the ombudsman remains amenable, through the ordinary process of judicial review…*"

must do his best to <u>*exercise an objective judgment on the relevant material available to him*</u>*. He must* <u>*exercise his powers in good faith, uninfluenced by any ulterior motive, predilection or prejudice*</u>*...*".

13.6. Relevantly in this case, Males J also identified at [39]: "*One potential form of irrationality may arise where a public body accords differential treatment to persons who are in a materially similar position, without good reason*".

13.7. Indeed, and applying such principles, discretionary redress decisions by the FOS and Financial Services Compensation Scheme (**FSCS**), which decisions turned on a regulatory assessment of what was "*fair*", have been successfully challenged: <u>R (Garrison Investment Analysis) v FOS</u> [2006] EWHC 2466 (Admin) (see [24]-[26]); <u>Emptage v FSCS</u> [2013] EWCA Civ 729 (see [10], [19] and [25]); and <u>R (Chadwin) v FSCS</u> [2021] EWHC 2523 (Admin) (see [33]).

(c) No particular or special latitude

14. Moreover, this is not a case where the Tribunal should be slow to intervene or exercise particular judicial vigilance (cf. FCA's Grounds, §42):

14.1. The relevant statutory provisions are ss.404-404G FSMA. They were not part of the original FSMA but were inserted by the Financial Services Act 2010 (**FSA 2010**) in the "*miscellaneous*" provisions (i.e. not fitting into other categories) of Part XXVIII at the end of the Act. Consistently with their positioning within the Act, they are of a different nature to the other provisions in FSMA.

14.2. The clear purpose of these provisions is to *protect* consumers. This is evident from the wording in ss.404-404G FSMA, and supported by the cross heading[59] in the FSA 2010 ("*Measures* <u>*to protect consumers*</u>") and accompanying Explanatory Notes[60] ("*Measures* <u>*to protect consumers*</u>"). The FCA itself identifies the primary purpose of the power as being to "*protect consumers*": FCA's Grounds, §45.2.

[59] <u>Lipton v BA Cityflyer Ltd</u> [2025] AC 154 at [190] ("… *while I accept that proper interpretation permits ignoring a heading to a section where the meaning of the text is clear and unambiguous, a heading can be of help where, as here, there is some uncertainty as to the meaning of the text*")

[60] <u>Beard v HMRC</u> [2026] Ch 87 at [63] ("*... Explanatory Notes… play a secondary role but 'may cast light on the meaning of particular statutory provisions' as well as providing background and identifying the mischief at which the provision is aimed and its purpose*")

14.3. Within these protective provisions, s.404A does not create a general (e.g. "*may make rules*") or broad (e.g. *"as it considers fit*") discretion to make rules on redress. Instead, s.404A(1)(d) read with (4) and (5) is drafted more prescriptively by reference to specific terms and governing criteria.[61] The FCA may make provision as to the kinds of redress and the way in which redress is to be determined but: (a) it must only do so "*so as to secure… the only kinds of redress to be made are those which it considers to be just*" (s.404A(4)); and (b) it must have regard inter alia to the nature and extent of the losses or damage (s.404A(5)). The FCA accordingly has a discretion to make rules but, if it exercises that discretion, it must comply with the limitations in subsections (4)-(5).

14.4. Whilst the term "*considers*" introduces an element of subjectivity, the term "*just*" is otherwise objective and hard-edged: cf. FCA's Grounds, §42.[62]

14.5. As for the meaning of what is "*just*" in this statutory context:

(1) The term must be construed in accordance with the purpose of the statutory provision: see e.g. News Corp UK & Ireland Ltd v Commissioners for His Majesty's Revenue and Customs [2023] UKSC 7 at [27].[63] Accordingly, what is "*just*" redress must be assessed primarily from the perspective of protecting *consumers*.

(2) The term must also be construed compatibly with fundamental constitutional rights, including the effective right of access to a court (there being no clear Parliamentary intention to override such rights): R v Home Secretary ex parte Simms (2000) 2 AC 115; R (Daly) v Secretary of State for the Home Department (2001) 2 AC 532. §8.4 above is repeated. This is particularly so where the FCA has discouraged consumers from obtaining advice and bringing claims.

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[61] cf. BlueCrest at [83] ("*It is commonplace in regulation of complex market activity to have rules and powers which are expressed in general terms and by reference to high level objectives*")

[62] e.g. see by analogy Waldron v Waldron [2018] EWHC 115 (Ch) ("*The test of fairness and unfairness is objective in the sense that the court is determining that question by reference to a standard derived from principle and authority*") and Roberts v Secretary of State for Work and Pensions [2025] EWHC 51 (Admin) at [68] ("*…there is no room for latitude when asking: 'what process is compatible with legal standards of fairness?' Those standards are objective. They are famously 'hard-edged'*")

[63] See also Clark (supra) in the context of the FOS provisions in FSMA, at [114] ("*… the judge was clearly right to consider the relevant provisions in the context of consumer protection and to seek to further Parliament's purpose in that regard through the judicial process of interpretation*") and [118] ("*The right course… is to interpret the legislation for the purpose of promoting consumer protection within the limits of the scheme*")

(3) Accordingly, the FCA is wrong to suggest that what is "*just*" involves "*evaluative, inherently multi-factorial judgement, in particular, having regard to the interests of all affected parties including procedural considerations such as speed, cost-effectiveness, clarity and accessibility [to the Scheme]*" (FCA's Grounds, §155.8). Such an approach fundamentally ignores the critical importance of protecting consumers and not unduly interfering with the right of access.

(4) Moreover, the FCA is wrong to suggest that it can invoke s.1B FSMA to 'balance out' these core imperatives. The FCA must advance its strategic, integrity and competition objectives "*so far as reasonably possible*" (s.1B(1)). It is not "*possible*" to invoke those competing objectives if doing so will undermine the statutory purpose for making a CRS and/or unduly interfere with the right of access. Applying Emptage at [25] by analogy, those considerations do not have (and ought not to have had) a direct bearing on the question of what is "*just*".

14.6 As identified in R (Heathrow Airport Ltd) v HMT [2021] STC 1203 at [261]: "*All decisions sit on a spectrum which, at one extreme, concern the position of individuals and define with specificity their rights, benefits and obligations… At the other end of the spectrum there are decisions based upon intrinsically political, scientific or social considerations of a broad and often uncertain nature*".

14.7 The present decision is at the first end of this spectrum. It concerns the position of individuals and their rights and benefits. It is not within the class of cases which conventionally require a high degree of deference, such as those which concern: investigations/prosecutions (see above), national security,[64] foreign affairs,[65] politics,[66] resources,[67] and/or risk assessment.[68] The question of what is "*just*" for consumers (having correctly construed the legislation and considered how a court might exercise its remedial power under s.140B CCA) is not a matter on which the FCA has special or exclusive expertise.

[64] R (Begum) v SIAC [2021] AC 765 at [109]
[65] R (Al Rawi) v Secretary of State for Foreign & Commonwealth Affairs [2008] QB 289 at [148]
[66] R (O) v SSHD [2023] AC 255 at [51]
[67] R (MK) v SSHD [2020] 4 WLR 37 at [123]
[68] EK v SSHD [2024] EWCA Civ 1601 at [53]

D. ISSUE 4: REDRESS

D1. COMMISSION REPAYMENT (GROUND 2)

(1) Disclosure

(a) Introduction

15. The FCA's disclosure confirms that the FCA unlawfully used the particular facts and remedy in *Johnson* to define the "*high water mark*"[69] for all redress under the Scheme and irrationally declined to extend the CRR to other cases in favour of an "*arbitrary*"[70] midpoint which resulted in "*some winners and some losers*"[71].

(b) Pre-consultation

16. Before *Johnson*, the FCA was developing a "*blanket approach*"[72] to remedies under which all unfair relationship claims would receive an APR-17 remedy without any CRR.

17. The Supreme Court's decision required the FCA to reconsider its approach.[73]

18. The options paper dated 14 August 2025[74] acknowledged that, following *Johnson*, the FCA's blanket APR approach was likely to be seen as providing "*inadequate redress*". It identified that the "*starting point*" for determining redress was the court's remedial power under the CCA and that it would, in the FCA's view, be "*reasonable*" to take the CRR in *Johnson as* "*the 'high water mark' for redress*".[75]

19. The options paper briefly referred to an approach under which the CRR would be the starting point for *all* cases (Option 2). The FCA recognised that such an approach had the benefits of "*being simple and consistent, at least superficially, with consumers' and their*

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[69] **[FCA1/747]** (Options paper on redress methodology dated 14 August 2025), p.2
[70] **[FCA1/759]** (supra), p.14
[71] **[FCA00000186]** (Draft redress methodology options paper dated 14 August 2025), pp.12-13
[72] **[FCA1/747]** (Options paper on redress methodology dated 14 August 2025), p.2
[73] Gluckman 1, §60
[74] **[FCA1/747-748]** (supra), pp.2-3
[75] This was despite acknowledging that: (1) courts might be inclined to award the CRR in "*any unfair relationship case involving either of the factors in Johnson*"; (2) in DCA-only cases, the FCA's ban on DCAs might mean that the courts saw inadequate disclosure of a DCA in a similar light to the factors at issue in *Johnson* and therefore "*lean towards the upper end of remedies*"; and (3) *Johnson* contained "*no legal analysis on the relative influence*" of its individual factors on the remedy and the FCA did not know if the remedy in *Johnson* would have been the same "*if only one factor had been present or if different factors had been present*".

representatives expectations on redress post-Johnson". However, the FCA considered that it was likely to be contentious given "*the absence of legal authority*" on whether the CRR would be awarded by a county court for claims that did not reflect *Johnson* or which did not have at least one of the factors in *Johnson*.[76]

20. The options paper went on to address the alternative Hybrid Remedy (Option 3):

20.1. The Hybrid Remedy was described as a "*policy-driven approach that prioritises consistent outcomes, fairness, and the quick and efficient resolution of claims at claim (by encouraging consumers to opt into the scheme and reducing the burden on courts) over detailed legal or economic analysis*".[77]

20.2. This approach promoted market integrity as it "*[r]educes firm exposure*".[78]

20.3. However, the Hybrid Remedy was acknowledged to be an "***[a]rbitrary midpoint*** *[which] will not reflect actual harm*"[79] and "*[a] key risk is that,* ***fundamentally, the midpoint is arbitrary*** *in the sense that it doesn't derive from a quantitative assessment of harm or a judicial formula and assumes equal weighting between the minimum and maximum remedies. This means it may not reflect the distribution of case severity or consumer detriment…*"[80]

20.4. Moreover: "*given the clear statements in Johnson about the broad range of factors that the Supreme Court considers relevant factors pointing towards unfairness and that the many thousands of pending complaints and claims would be aided by an authoritative ruling by the Supreme Court, we clearly cannot discount the possibility that consumers and professional representatives may consider that the county courts offer the prospect of maximum redress for any claim…*".[81]

21. A draft version of the options paper included a number of internal comments which reveal how the FCA really saw its Hybrid Remedy, including: "*… some winners and some losers but 'just' and avoids windfalls in some cases*"; "*… for the consumer, if they went to court, they might get full commission*"; "*why would consumers see it as a fair outcome? CMCs*

76 **[FCA1/749]** (supra), p.4
77 **[FCA1/750]** (supra), p.5
78 **[FCA1/754]** (supra), p.9
79 **[FCA1/752]** (supra), p.7
80 Bold emphasis added. **[FCA1/759]** (supra), p.14
81 **[FCA1/758]** (supra), p.13

could whip up a fuss and say we are screwing consumers, denying them redress…"; and "*Just dont think we can assume consumers will see it as fair*".[82]

22. The options paper was considered by the ExCo Sub-Committee at a meeting on 14 August 2025 (chaired by Mr Rathi).[83] Less than two weeks after *Johnson*, the FCA decided to reject the option of applying the CRR to all scheme cases: Gluckman 1, §62. The minutes recorded the rationale for preferring the Hybrid Remedy over the CRR:

> "*… the ExCo sub-committee highlighted the following merits for the proposed option 3 as outlined in the paper* [i.e. the Hybrid Remedy]:
>
> a. *That the option could potentially be the most practical solution for the market's overall interest, along with the method being the most expeditious.*
>
> b. *That the option recognised the inherent uncertainty/variability of county court judgements.*
>
> c. *In respect of the subsequent communications approach, the simplicity of the option was highlighted in helping to ensure consumer understanding.*
>
> *The sub-committee highlighted the importance of the following points to keep in mind when developing the options:*
>
> a. *That the agreed option should ensure that consumers feel they are being treated fairly and are incentivised to participate in the scheme.*
>
> b. *Recognise the nuance of the Supreme Court's judgment and to not oversimplify the solution by providing the same remedy to all.*
>
> c. *To ensure that firms deal with complaints in a timely manner…*"[84]

23. On 26 August 2025, the FCA Board Sub-Committee approved this approach.

24. On 29 August 2025, an informal follow-up discussion took place which was attended by two FCA Board members (Ashley Alder and Richard Lloyd):

    24.1. recognised that the Hybrid Remedy had arisen out of "*tensions and trade-offs*" between the seven key considerations/principles and a need to make a "*regulatory judgement*" that accounted for both the FCA's analysis of economic loss and the remedy awarded by the Supreme Court in *Johnson*;

[82] **[FCA00000186]** (supra) pp.12-13
[83] Unless stated otherwise, all of the ExCo Sub-Committee meetings were chaired by Mr Rathi.
[84] **[FCA1/762]** (Minutes for the ExCo meeting on 14 August 2025), §§2.4-2.5

24.2. identified that the FCA should not move "*so far away from the factors present in the Johnson case that it undermines the hybrid approach*";

24.3. noted that "*[i]t was important that they tested the extent to which more cases could receive a remedy akin to Johnson but recognised the challenges in doing so*" (without identifying what those "*challenges*" were) and asked the team "*to continue to consider this*". [85]

(c) Post-consultation

(i) <u>Consultation feedback</u>

25. The consultation feedback emphasised the problem which had already been identified by the FCA internally, with the FCA's analysis of the feedback recording that consumers/consumer groups "*say the hybrid approach dilutes redress, relies on an arbitrary mid-point, and is legally incoherent when compared with Johnson*".[86] They also referred to "*reduced consumer outcomes*" and "*cliff-edge effects*".

26. Despite this, the FCA continued to rely on *Johnson* as the redress ceiling and failed to extend the CRR to other cases in a manner which became increasingly illogical.

(ii) <u>CRR cap for all agreements</u>

27. In or around 2 February 2026,[87] a paper was prepared seeking the ExCo Sub-Committee's decision in principle to cap redress at the CRR plus interest (**C+I**). It identified that a number of lenders had highlighted 'anomalous' cases where remedies would exceed the CRR and that the FCA recognised the force of the lenders' arguments that C+I should represent "*the high water mark for the remedy for an unfair relationship case*". However, the FCA acknowledged at §1.12:

> "*<u>We also recognise there may be arguments it is difficult to maintain the distinction between hybrid cases and Johnson cases in principle</u>, if the FCA's position is that a commission repayment remedy is in fact applicable to hybrid cases, but only where the hybrid remedy is higher, i.e. <u>only to the disbenefit of consumers</u>. That said, having considered consultation feedback, we consider there is merit in retaining the Johnson*

85 **[FCA00000001]** (Minutes of informal follow-up discussion dated 29 August 2025), pp.2-3
86 **[FCA00000154]** (Selected CP response insights for ExCo Subgroup dated 16 January 2026), p.37
87 **[FCA00000147]** (Untitled and undated paper). Whilst the document is undated, the filename is "*20260202 ExCo paper on C+I cap - for decision*"

remedy, <u>as the hybrid remedy should generally produce lower redress than the commission repayment remedy</u>."[88]

28. This internally acknowledged the incoherence identified in CV's Ground 2, revealing the arbitrary nature of the distinction being drawn by the FCA between hybrid and *Johnson* cases. The paper did not resolve it by reference to a legal principle derived from *Johnson*. It retained the *Johnson* (CRR) remedy as a cap on the ground that "*the hybrid remedy should generally produce lower redress than the commission repayment remedy*".

(iii) <u>CRR for all agreements in Scheme 1</u>

29. At an ExCo Sub-Committee meeting on 13 February 2026, the ExCo Sub-Committee considered that a C+I approach for earlier years "*<u>may better reflect consumer harm and aligns with the established Johnson methodology</u>*" and agreed a "*provisional direction of travel*" in favour of the CRR being applied to the whole of Scheme 1.[89]

30. This confirmed that the extension of the CRR to other cases was plainly possible, justifiable, and indeed considered by the FCA to be *appropriate*.

31. Despite Mr Gluckman's evidence that "*[t]he FCA took a transparent approach to its policy development*",[90] the FCA's provisional direction of travel in favour of extending the CRR to the whole of Scheme 1 was never disclosed by the FCA after CP25/27 or in the PS26/3, or in pre-action correspondence, and only became known by CV upon receiving the FCA's Grounds.[91]

32. On 19 February 2026, a status update confirmed that the FCA's direction of travel was still to apply the CRR to the whole of Scheme 1.[92] Minutes for an FCA Board Sub-Committee meeting on the same date also confirmed this, recording that "*the proposed approach* [of extending the CRR to the whole of Scheme 1] *was <u>sensible</u> and aligned with the core principles of grip and pace*".[93]

33. As late as 26 February 2026, a policy note on Modelling Questions (**the MQ Paper**) confirmed that the proposed approach for Scheme 1 remained "*C+I for all*". However,

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[88] **[FCA00000147]** (supra), p.3
[89] **[FCA1/1804]** (Minutes for ExCo Sub-Committee meeting on 13 February 2026), §§3.1-3.3
[90] Gluckman 1, §16
[91] Nor does Mr Gluckman's evidence refer to it either, only recording at §77 that, having considered "*alternative remedy approaches*", "*the ExCo Subgroup decided that the Hybrid Remedy should be used for both schemes*".
[92] **[FCA1/1838]** (Status update paper post-17 February ExCo Subgroup dated 19 February 2026), §3
[93] **[FCA1/1853]** (Minutes of FCA Board meeting on 19 February 2026), §2.23

the document identified that the redress bill for this approach would be £0.47 billion higher than applying the Hybrid Remedy across both schemes.[94]

34. A day after this, at 11am on 27 February 2026, an ExCo Sub-Committee meeting took place.[95] A short policy note prepared after the meeting[96] recorded that the Sub-Committee had changed its mind and had "*provisionally agreed to… [r]etain the hybrid remedy structure for both Scheme 1 and Scheme 2*", with the application of APR-21 to Scheme 1 "*presented as a bounded regulatory judgement*". The note recorded that the hybrid approach was (now) "*considered the most sensible approach, resulting in greater alignment across both schemes*". No further reasons were given. Absent further disclosure, this volte-face is inferred to have been driven by the desire to reduce the redress bill for lenders, which had been identified in the MQ Paper the day before.

35. On 10 March 2026, the FCA Board Sub-Committee approved this change. No reasons were given, save for identifying that "*emphasis in regulatory judgement to deliver fair and principled schemes in the final recommendations was important*".

36. In slides dated 13 March 2026, it was identified that: "*Having investigated the option of commission plus interest (C+I) as the redress methodology for scheme 1, the team was concerned about providing a remedy for non-Johnson type cases that risked over-compensating cases that were less serious than the Johnson type case with the same C+I remedy, noting that Johnson should represent the high-watermark remedy and that a modest uplift to the APR adjustment for Scheme 1 was more coherent with the existing remedies in the scheme (and their underlying rationales) to address greater harm in the earlier period and a more defensible approach overall*".[97]

(2) Reply to the FCA's Grounds

(a) Introduction

37. The FCA's defence of CV's Ground 2 is set out in just two paragraphs at §§169-170 of the FCA's Grounds. It amounts to a bare and unsatisfactory denial of CV's case.

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[94] **[FCA1/1861-1863]** (Policy note on modelling questions dated 26 February 2026), pp.1 and 3

[95] CV has been unable to locate minutes for this meeting. They should be disclosed by the FCA without delay.

[96] **[FCA1/3088-3089]** (Policy note on finalisation of redress framework, undated), pp.1-2

[97] **[FCA00000017]** (Slides on aggregated view of policy decisions, undated), p.17. Whilst the document is undated, the filename is "*Detailed policy decisions slides aggregated version 130326*"

(b) Unlawful reliance on Johnson

38. The FCA's position that it did not derive any general principle from the facts of *Johnson*, but instead used the facts in the decision as a "*ready touchstone*" for considering fairness, is a distinction without a difference and contradicted by its own disclosure including:

    38.1. The options paper on 14 August 2025: "*it would be reasonable to take the Johnson remedy as <u>the 'high water mark' for redress</u> for an unfair relationship*";[98]

    38.2. The remedy framework overview (undated): "*we consider very high commission to be a <u>core component</u> of the harm in Johnson so it must be present*";[99]

    38.3. The ExCo Paper on redress caps (undated): "*we recognise the force in lenders' arguments that <u>C+I should represent the high water mark of a remedy for an unfair relationship case (given how egregious a case Johnson was)</u>*";[100]

    38.4. The minutes of the ExCo Sub-Committee meeting on 8 September 2025, which recorded the FCA's reasons of '*both principle and pragmatism*' for a limited Johnson remedy plus midpoint, including the perceived difficulty of extending the CRR to further cohorts "*without departing from the touch points in Johnson of high commission and ties or picking elements selectively*".[101]

    38.5. The FCA Board paper dated 26 March 2026: "*in designing a just remedy for the motor finance redress scheme we have considered both what a court would do <u>(with particular deference to Johnson)</u>…*".[102]

39. The FCA now seeks to avoid the legal consequences of its unlawful reliance on *Johnson* as a benchmark by denying that characterisation. However, the FCA cannot avoid the substance of that decision-making by redescribing or labelling the same exercise as the use of a "*touchstone*". A touchstone which determines the upper remedial category, fixes the essential factual gateway to that category, and is used to decide that materially

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[98] **[FCA1/747]** (Options paper on redress methodology dated 14 August 2025), p.2
[99] **[FCA00000191]** (Remedy framework overview, undated), p.1
[100] **[FCA1/3084]** (ExCo paper on redress caps, undated), §3.5
[101] **[FCA00000041]** (Minutes for ExCo Sub-Committee meeting on 8 September 2025), p.1
[102] **[FCA1/1881]** (FCA Board paper dated 26 March 2026), §2.19

different cases should receive less redress is precisely the benchmark identified in and challenged by CV in Ground 2.

40. The FCA's attempt at §169 of its Grounds to separate the "*findings of principle*" in *Johnson* from the Supreme Court's insistence upon fact-sensitivity is misconceived:

40.1. The FCA submits that "*[t]he fact-sensitivity emphasised by the Supreme Court's judgment… is not directly applicable to a s.404 CRS*", whereas its findings "*in particular as to the size of the commission, the extent of disclosure and the appropriate remedy*" are said to be applicable. That selectively elevates individual factual features of *Johnson* while discounting the legal framework within which the Supreme Court considered them.

40.2. As submitted at §76 of the SFG, the Supreme Court emphasised that s.140A CCA permits consideration of a "*very broad range of factors*", that its application is "*highly fact-sensitive*" and that no precise or universal test can be stated. The FCA itself made precisely that submission to the Supreme Court. Those propositions are not incidental features. They describe the nature of the statutory unfair-relationship jurisdiction which the FCA itself treated as the relevant legal foundation when designing the Scheme.

40.3. The fact that a CRS requires standardisation does not convert the particular facts of one individual case into legal criteria separating consumers entitled to one form of redress from those entitled to another. CV does not dispute that the FCA could adopt bright-line rules. The point is that the line chosen must itself be lawfully and rationally founded.

40.4. Nor does the FCA's reliance (at §169 of its Grounds) on the operational demands of a mass redress scheme answer that point. CV does not dispute the need for "*objective, common and identifiable criteria*". Those considerations, however, do not explain why VHC derived from the facts of *Johnson* should be an indispensable condition of the CRR.

40.5. Nor does *Johnson* at [338] establish the "principle" on which the FCA now relies. The Supreme Court exercised the very broad remedial jurisdiction under s.140B after determining that Mr Johnson's individual relationship was unfair. It did not hold that the CRR followed because commission crossed a particular numerical threshold, nor that the CRR was reserved for relationships containing a particular combination of features. The FCA's attempt to extract a general remedial dividing line from an order made on individual facts is the misdirection that CV has identified in its Ground 2.

41. The treatment of the DCA feature illustrates the selectivity of the FCA's approach. As submitted at §76(3) of the SFG, although Mr Johnson's agreement formally involved a DCA, the discretion had not been exercised to raise his interest rate. The DCA therefore did not perform the role it would in another consumer's case. Yet, the FCA has simultaneously: (a) treated the other factual features of Mr Johnson's case as defining the upper remedial category; and (b) expanded the category to include VHC + DCA on the basis that DCAs are inherently harmful. That demonstrates why *Johnson* cannot lawfully perform the role assigned to it. A DCA-only case, or a DCA combined with another serious source of unfairness, may involve a form and degree of consumer harm materially different from – and potentially greater than – the harm in *Johnson*. The FCA's own internal analysis expressly recognised that courts might therefore lean towards the upper end of remedies in DCA cases.

(c) Unlawful failure to extend the CRR

42. §170 of the FCA's Grounds does not answer the irrationality limb of the challenge either:

    42.1. The effect of the FCA's decision is that the CRR will apply in a negligible number of cases. CP25/27 estimated that only <u>13,751</u> out of over 14 million agreements, or 0.1% of cases, would "*align closely*" with the facts in *Johnson*.[103] Whilst PS26/3 did not estimate the final number of cases which will attract the CRR,[104] it identified that the expansion in the scope of the remedy following the consultation process would apply to only 0.28% of agreements.

    42.2. The FCA accepts (at §170 of its Grounds) that it was "*legally open*" to the FCA to extend the CRR to more than a negligible number of consumers. However, it says that it simply "*decided not to*" extend the CRR to other cases and that categorisation of cases and remedies is "*a matter for the FCA*". This overstates the nature and reviewability of its statutory power. §§10-14 above are repeated.

[103] **[FCA1/1019]** (CP25/27), §1.26 and Table 2 on p.271
[104] The FCA has not identified the final number and should do so without delay.

42.3. In drawing the line between the thousands of consumers whose cases "*closely aligned*" with *Johnson* and the millions whose cases did not, there had to be a *rational* basis for treating them differently: Matedeen (cited at §77(2)(a) of the SFG) and Grout at [39] (citing Hamble (Offshore) Fisheries Ltd at 722: "*a discretionary public law power must not be exercised arbitrarily or with partiality as between individuals or classes potentially affected by it*").[105]

42.4. The FCA's Grounds and disclosure do not identify any coherent basis for treating the two classes of mistreated consumers differently. What the disclosure shows is that the FCA chose an "*arbitrary*" midpoint in substantial part as a policy compromise, while expressly acknowledging that the midpoint itself "*doesn't derive from a quantitative assessment of harm or a judicial formula*".[106] Contrary to the FCA's position at §148 of its Grounds, it is not open to a public body to exercise a statutory power arbitrarily: Overton at [50]-[51].

42.5. The arbitrariness of the FCA's distinction is reinforced by its willingness to apply the CRR in respect of *all agreements*: (1) where the hybrid remedy resulted in *greater* redress; and (2) in Scheme 1 (with the FCA initially accepting that extending the CRR to all cases in Scheme 1 "*aligns with the established Johnson methodology*"[107] and was "*sensible*"[108]).

42.6. In addition to the FCA's internal acknowledgment that it was acting arbitrarily, and the evidence that it sought to apply the CRR to Scheme 1 and as a cap to redress generally, the following additional factors strengthen the irrationality of the FCA's decision to limit the CRR to a negligible number of cases:

(1) the courts have a broad remedial discretion under s.140B CCA which is not confined to purely loss-based remedies;

(2) the Supreme Court had recently exercised that remedial discretion in favour of awarding the CRR;

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[105] CV does not advance a free-standing common law right to equal treatment. The FCA's reliance upon R (Gallaher Group) v Competition and Markets Authority is therefore beside the point.

[106] **[FCA1/759]** (Redress methodology options paper dated 14 August 2025), p.14

[107] **[FCA1/1804]** (Minutes for ExCo Sub-Committee meeting dated 13 February 2026), §3.2

[108] **[FCA1/1853]** (Minutes for FCA Board meeting dated 19 February 2026), §2.23

(3) the Supreme Court's judgment did not indicate that the CRR was limited to cases which aligned with its particular facts (see SFG, §§76(1)-(2), 77(1));

(4) the FCA accepted that *Johnson* would be "*an important reference point*"[109] for county courts (and even acknowledged that "*the FCA's decision to ban DCAs may mean the courts see inadequate disclosure of a DCA in a similar light to the factors at issue in Johnson and, therefore, lean towards the upper end of remedies*");[110]

(5) to the extent that there was any uncertainty as to how the county courts would approach *Johnson*, this should have been resolved in favour of consumers and not lenders in furtherance of the statutory objective;

(6) as the FCA acknowledged, the extension of the CRR to all cases was "*simple*[111] *and consistent… with consumers' and their representatives expectations on redress post-Johnson*".[112] Indeed, it was far simpler than applying a bifurcated hybrid methodology across two different schemes (which the FCA accepted was "*complex*"[113]).

42.7 The FCA's recent disclosure suggests that the underlying reason for not extending the CRR to other cases was to protect the interests of lenders. For example, the minutes for the ExCo Sub-Committee meeting on 14 August 2025 recorded that the first reason for preferring the Hybrid Remedy was that it "*could potentially be the most practical solution for the market's overall interest*"[114] and the subsequent decision to retain the Hybrid Remedy for Scheme 1 (in place of the CRR) was made 1 day after the MQ Paper which identified that the CRR would result in an additional redress bill for lenders of £0.47 billion.[115] By prioritising the interests of lenders over consumers, the FCA lost

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109 **[FCA1/1101]** (CP25/27), §8.38 ("… *the commission repayment remedy in Johnson will remain an important reference point and is likely to influence the perspective of county court judges in cases involving not only high commission arrangements and tied arrangements, but also undisclosed DCA's*")

110 **[FCA1/748]** (Options paper on redress methodology dated 14 August 2025), p.3

111 The need for simplicity was one of the FCA's key principles **[FCA1/683]** and repeatedly emphasised during the FCA's decision-making process: e.g. **[FCA1/1022]** (CP25/27, §1.47) and **[FCA1/1936]** (PS26/3, §1.36)

112 **[FCA1/749]** (Options paper on redress methodology dated 14 August 2025), p.4. See also CP25/27, §8.63 ("*We recognise that the commission repayment remedy is a simpler remedy than the hybrid remedy and could, therefore, deliver lower administrative costs if applied across the scheme*") **[FCA1/1107]**

113 **[FCA1/1701]** (ExCo paper on redress methodology dated 18 December 2025), §10

114 **[FCA1/762]** (Minutes for ExCo Sub-Committee meeting on 14 August 2025), §2.4

115 **[FCA1/1863]** (Policy note on modelling questions dated 26 February 2026), p.3

sight of the entire purpose of exercising its statutory power and acted unlawfully. §14.5 above is repeated.

D2. APR ADJUSTMENT (GROUND 3)

(1) Introduction

43. The disclosure also confirms CV's case that the FCA: (1) failed to carry out sufficient inquiries to obtain the information necessary for its assessment of loss and/or failed to subject the material arising from the consultation to conscientious consideration; and (2) the FCA acted irrationally in fixing APR-17 for Scheme 2 and APR-21 for Scheme 1.

44. As a threshold matter, the FCA's contention at §161 of its Grounds that CV misstates the purpose of the APR adjustment as a proxy for loss is contradicted by its own published materials, witness evidence and contemporaneous documents. For example, Mr Gluckman describes the APR-x analysis as a "*proxy for consumer loss*"[116]; and Ms Collyer describes it as the "*best proxy available for estimating the loss*" arising from inadequate disclosure of DCA agreements[117]. The AAR is therefore a loss-based component of the Hybrid Remedy, and defects in the reliability of APR-x cannot be answered by redescribing it as merely an assumption or starting point.[118]

(2) Reply to FCA's Grounds

(a) Ground 3(a): Tameside/conscientious consideration

(i) Introduction

45. The FCA's evidence and disclosure amply demonstrate that the FCA failed to carry out sufficient inquiries to obtain the information necessary to undertake its assessment of loss to consumers (contrary to the duty in Secretary of State for Education and Science v Tameside MBC [1977] A.C. 1014)[119] and/or failed to apply conscientious consideration to the consultation responses (including Gudat 1) (as required by the "fourth Sedley principle" in R v Brent LBC ex p Gunning (1985) 84 LGR 168).

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[116] Gluckman 1, §59
[117] Collyer 1, §47
[118] See also Gudat 3, §§2.4.3-2.4.12
[119] See R (Freedom from Torture) v SSHD [2026] EWHC 1278 (Admin) for a recent case where the Court determined that there had been a breach of the *Tameside* duty, holding at [199] that the Secretary of State had "*exercised a wide statutory discretion without having the information necessary to do so lawfully*"

(ii) Awareness that data was problematic

46. In Autumn 2024, the FCA received loan level information from 18 lenders (i.e. the Loan Level Data or **LLD**). This was in response to a Request for Information by the FCA (**RFI**) for agreements dated between January 2018 and August 2024. Five of the lenders only provided data between January 2019 and December 2022, meaning that the FCA restricted the data pool to that period.[120]

47. By April 2025, the FCA had available to it analysis indicating that inflation in DCA APRs was materially higher in the period 2007 to 2017 than in the period 2018 to 2022 for which it mostly had lender data.[121] The FCA was therefore aware that consumer harm was greater in earlier years.

48. On 11 July 2025, the Economics Team warned that "*we lack robust evidence of market-wide loss that could serve as the basis for calculating redress under a CRS*".[122]

49. By November 2025, officials had also recognised more generally that additional "*ground truth data*" would improve the robustness of the FCA's estimates and reduce the risk inherent in "*making broad extrapolations based on assumptions*". [123]

50. In December 2025, consultation responses (including Gudat 1, which was expressly considered by the project committee and senior decision-makers, including Mr Rathi[124] and CV's consultation response at pp.3, 30-38) emphasised the inadequacy of the FCA's data for computing loss over time, including that the FCA's limited data timeframe of 2019-2021: (1) overlapped with the period of the COVID-19 pandemic (when there were unique and severe market distortions); and (2) was a period of regulatory scrutiny and lender behaviour was already changing.[125]

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[120] **[FCA1/1386]** (Technical Annex 1 dated 7 October 2025), §1.21

[121] **[FCA00000225]** (Paper presented by the FCA's Economics team on 8 April 2025). The paper refers to analysis produced by consultants on behalf of lenders which has not been disclosed by the FCA.

[122] **[FCA1/701]** (Paper presented to the ExCo Sub-Committee meeting on 11 July 2025), §4.15

[123] **[FCA00000371]** (Email chain in November 2025), p.7. In an email exchange in November 2025, Haris Irshad (Deputy Chief Economist for the FCA) identified that having additional data "*will clearly improve robustness of the estimates because we will have actual information on market participants to generate liabilities, rather than making scaling up assumptions*". Daniel Treacher (Technical Specialist – Motor Finance Redress for the FCA) responded: "*I agree that having the additional data would be more beneficial for us than not. It would reduce the risk we carry around being attacked for making broad extrapolations based on assumptions. Given that some of the critique we're seeing [redaction] is around our analysis being too temporally narrow and not capturing the state of the world over a sufficiently broad time scale, [redaction] ground truth data would help protect us against that line of attack*".

[124] See, for example, Smith 2, §24(b)(iii); **[FCA00000291] [FCA00000406]**

[125] **[FCA00000012]** (Summary of revised analytical work, undated), p.7. The FCA itself recognised this in CP25/27 at §1.6: "*We previously highlighted disclosure failings in 2019 and asked firms to remedy them*".

51. The FCA's own post-consultation analysis accepted the same point. A redress paper dated 18 December 2025 recorded that the period: *"... might not be representative due to pandemic-related market disruptions and harm could have been greater before regulatory interventions began to change market prices*".[126] Further, an options paper dated 16 January 2026 accepted that the analysis "*...may not fully capture economic loss in earlier periods*".[127] In or around February 2026, the FCA's Economics team also warned: "*Attempting to use later LLD data to extrapolate back over this period is problematic because of known regulatory and market changes over this period rendering the assumption of constant market conditions invalid*".[128]

52. The same issue was highlighted by the FCA's academic reviewer, Dr Kyle Butts, who asked: "*if lenders were already facing regulatory scrutiny, maybe your estimates underestimate harm in earlier years? Lenders on their 'best behaviour' so to speak?*"[129] The same point was also made by the second academic reviewer, Dr John Gathergood.[130]

53. In PS26/3 in March 2026, the FCA acknowledged at p.204: "*After reviewing feedback on the appropriateness of applying the same APR adjustment of 17% over the entire 2007-2024 period covered by our schemes, we acknowledge that this approach could understate harm, and therefore under-compensate consumers, in earlier years. Greater regulatory oversight following the change in regulatory regime in 2014 may have led to changes in market behaviour, and we observed a decrease in the prevalence of more harmful commission models, which likely resulted in reduced harm in later years*".

(iii) Limited additions to data

54. Despite this issue, the FCA made only limited and inadequate additions to the LLD after the consultation period. These were summarised at p.203 of PS26/3: "*we extended the time range of the dataset by incorporating additional data from 2017, limited data from 2018, and a voluntary submission from a firm with significant market share who was not part of our original request for information*". As to this:

54.1. only 14 of the 18 LLD lenders participated in the 2017 dataset;

[126] **[FCA1/1696]** (ExCo Irwell Sub-Committee, TBC Jan 2026: Redress Methodology), §4.3
[127] **[FCA1/1704]** (Paper on Options to extend the APR Adjustment Timeframe dated 16 January 2026), §2
[128] **[FCA00000311]** (Paper on whether to issue an RFI to expand the LLD, undated), p.1
[129] **[FCA00000294]** (Paper on LLD robustness, undated), §11
[130] **[FCA00000299]** (Review of LLD robustness, undated), §27

54.2. some of the missing 2018 information was imputed using later observations, including 2019 data, and therefore did not provide wholly independent evidence of conditions in 2018;[131] and

54.3. the voluntary submission from the additional lender raised a potential self-selection issue because firms by then had visibility of the FCA's model and could assess the effect of their data before submitting it.[132]

55. However, even the inclusion of this limited data was noted by the FCA as being significant: "*We have extended the LLD to 2017 and 2018 and we indeed find evidence of larger harm when those earlier years are added. This suggests that harm could be reducing over time, and the main analysis used data where the harm was already low.*"[133]

(iv) Failure to obtain pre-2017 data

56. On 28 August 2025, it was recorded that 12 out of 14 lenders had told the FCA that they had sufficient records going back to 2007 to identify customers; eight had complete transactional data and a further three had some transactional data.[134] Dr Gudat notes that it is unclear whether all of the variables required for the LLD would have been available, but considers that the references to CRA data make it likely that the exercise included consideration of credit-score information, a particularly important variable for APR-x modelling which is absent from DD1: Gudat 3, §§3.3.17-3.3.18.

57. A redress methodology paper dated 18 December 2025 identified: "*Requesting new data from firms over a longer period would significantly delay publication in 2026 and increase regulatory burden. However, we should consider the potential delay caused by firms challenging the current methodology vs the potential delay from requesting new data to ensure a more robust methodology*".[135]

58. On 9 January 2026, the ExCo Sub-Committee approved the following action: "*Seeking missing 2007-2018 data from firms via an RFI to improve time period analysis*".[136]

59. An options paper dated 16 January 2026:[137]

[131] As confirmed in Collyer 1, §85
[132] See further Gudat 3, §§4.1.2 and 4.2.1-4.2.3
[133] **[FCA00000305]** (Consultation feedback document titled "AoL CP Feedback – Copy", undated), p.7
[134] **[FCA00000149]** ("*Options paper for NR with FK comments + CG comments*" dated 28 August 2025), §14
[135] **[FCA1/1695-1696]** (ExCo Irwell Sub-Committee, TBC Jan 2026: Redress Methodology), §4.2
[136] **[FCA00000099]** (ExCo meeting minutes dated 9 January 2026), p.4
[137] **[FCA1/1704]** (ExCo Paper on Options to extend the APR Adjustment Timeframe dated 16 January 2026)

59.1. considered four options for requesting further data from lenders;[138]

59.2. recommended Option 3 i.e. "*[e]xtending the loan-level dataset back to 2007 with just the original 18 firms covers the full time period of the CRS and addresses CP feedback while remaining proportionate by not involving all lenders*";[139]

59.3. identified that "*[i]ncluding data from 2007 would allow the FCA to calculate the APR adjustment without extrapolating the economic loss to earlier periods. The resulting APR adjustment is more representative of the economic loss experienced by consumers covered in the CRS*";[140]

59.4. anticipated that Option 3 would only take seven weeks[141] (which was, at that stage, still "*within current timelines to publish in March*" i.e. the FCA's internal deadline to publish the Final Rules for the Scheme).[142]

60. The RFI was nevertheless repeatedly deferred. On 16 January 2026, the ExCo Sub-Committee accepted that additional data "*would be valuable… if the scheme design continues to rely on an APR17 based remedy*" and that the consultation responses suggested the need for "*more targeted analysis*".[143] However, it noted legal and operational risks (including the "*potential need for re-consultation should our analysis suggest a material change in the APR-17 figure*") and postponed a decision on whether to send an RFI to lenders.[144] On 19 January, the Economics and Policy Teams described the relevant data as the "*priority*" .[145] On 21 January, the Sub-Committee repeated concerns about the robustness of the 2017 and 2018 data but again deferred its decision.[146]

61. On 30 January 2026, the ExCo Sub-Committee rejected the recommendation to issue an RFI. The final agenda item of the minutes recorded: "*The Sub-Committee confirmed its decision not to seek further data at this point, recognising the material timetable impact.*

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[138] Option 1 involved utilising the current DD1 dataset to improve quality of analysis. Option 2 involved requesting an extension of the LLD back to 2014 (covering the original 18 lenders). Option 3 involved requesting an extension of the LLD back to 2007 (covering the original 18 lenders). Option 4 involved requesting an extension of the LLD back to 2007 (covering 34 firms).

[139] **[FCA1/1706]** (ExCo Options Paper to extend the APR Adjustment Timeframe dated 16 January 2026), §4

[140] **[FCA1/1708-1709]** (supra), §21

[141] The FCA estimated that it would take one week for the FCA to finalise the RFI; two weeks for firms to submit their data; and one month for data cleaning and analysis.

[142] **[FCA1/1709]** (supra), §25

[143] **[FCA1/1715]** (Minutes for ExCo meeting on 16 January 2026), §2.2

[144] **[FCA00000395]** (Email from Edwin Chan dated 16 January 2026), p.9

[145] **[FCA00000318]** (Meeting Note dated 19 January 2026), p.1

[146] **[FCA00000136]** (Minutes of ExCo meeting on 21 January 2026)

The position would be reviewed, once further analysis had been conducted, looking at the totality of the package in the round and the resultant balancing of risks".[147]

62. The significance of the missing data was not in doubt. An undated options paper (which appears to have been presented at an ExCo meeting on 13 February 2026)[148] similarly recorded that requesting additional data and re-estimating the APR adjustment model with new data for the whole period "*would give the most robust answer, but is not feasible under current timelines*".[149] Further, at the meeting on 13 February 2026, the ExCo Sub-Committee noted the "*[d]ata coverage for the 2007 – 2014 period remains incomplete*" and the risks associated with extrapolating the 2019 – 2021 estimate to earlier scheme years. It was at this stage that the FCA decided that the new "*provisional direction of travel*" would be to apply the CRR for 2007 – 2014 (noting that this "*may better reflect consumer harm and aligns with the established Johnson methodology*").[150] As addressed below, the FCA later abandoned this in favour of exercising a "*bounded regulatory judgement*" of applying APR-21. Three days later, a Board paper stated that extending the LLD to 2007 "*... would ensure the APR adjustment reflects the full period and is more representative of the economic loss experienced by consumers*".[151]

63. The FCA nevertheless did not obtain it. The final Board paper dated 26 March 2026 identified that "*[w]e do not have data to conduct further analysis in the pre-2017 period*".[152] This is followed by a series of redactions (on the version available to CV) before the Board was asked: "*Does the Board agree with the decision, [redaction], to prioritise timeliness and not collect further data?*".[153] The FCA Board ultimately decided to prioritise "*timeliness*" over collecting the data.

(v) Conclusion on pre-2017 data

64. The FCA has breached the *Tameside* duty and/or duty of conscientious consideration.

65. *First,* the pre-2017 data was highly relevant:

65.1. The APR adjustment is a central concept in the Scheme.

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[147] **[FCA1/1737]** (Minutes of ExCo meeting on 30 January 2026), §7.1
[148] **[FCA1/1803-1804]** (Minutes of ExCo meeting on 13 February 2026), §3.1
[149] **[FCA1/3094-3095]** (ExCo paper on APR adjustment in light of stakeholder feedback), §5
[150] **[FCA1/1803-1804]** (Minutes of ExCo meeting on 13 February 2026), §3.2
[151] **[FCA00000259] (**Board paper on APR adjustment remedy, undated), §1.18
[152] **[FCA1/1882]** (Board Paper dated 26 March 2026), §2.24
[153] **[FCA1/1883]** (Board Paper dated 26 March 2026), p.13

65.2. It reflects the FCA's statutory duty to take into account the extent of loss.[154]

65.3. It should be based on *the best* evidence available.[155]

65.4. The FCA repeatedly recognised that the historic data would materially improve its analysis of the APR adjustment.

(1) On the one hand, it recognised that reliance on the existing data was "*not capturing the state of the world over a sufficiently broad time scale*", "*might not be representative*", "*may not fully capture economic loss in earlier periods*" and might *"underestimate harm in earlier years*".

(2) On the other, it acknowledged that obtaining the earlier data would be "*valuable*", "*clearly improve robustness of the estimates*", "*be more beneficial*", "*ensure a more robust methodology*", "*give the most robust answer*" and mean that the APR adjustment was "*more representative of the economic loss experienced by consumers covered in the CRS*".

65.5. Indeed, the FCA's disclosure has now revealed that the Economics Team specifically <u>recommended</u> that the FCA obtain this data and recognised that this was a "*priority*". The FCA did not follow this recommendation.

65.6. As identified by the FCA, "*it is essential that the fair [APR] adjustment encapsulates an average loss across all relevant dimensions, including the timeframe*". [156] However, its own Economics Team recognised that the LLD did not have adequate time coverage. [157]

65.7. This was not a case of simply failing to obtain information to "*supplement, refine, curate, cross-check and update [existing] data*": cf. FCA's Grounds, §168. It was a fundamental failure to obtain information which was central to the FCA's assessment of loss.

66. *Second*, there was substantial evidence that materially useful pre-2017 data was obtainable or, at the very least, sufficiently likely to be obtainable that the proposed RFI

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[154] **[FCA1/2121]** (PS26/3), §11.26; see also s.404A(5)

[155] e.g. CP25/27, §§8.24-8.34 **[FCA1/1097]**

[156] **[FCA1/3099]** (ExCo Paper on APR-adjustment in light of stakeholder feedback, undated), §25

[157] **[FCA00000314]** (Addressing APR-17 limited time coverage with DD1), §5

warranted pursuit. The FCA had received positive indications from lenders and CRAs, had wide information-gathering powers available to it and had progressed the RFI to the point at which it was ready to be sent subject to ExCo approval.

67. *Third*, there was no coherent, justified or lawful reason for failing to obtain the data. The FCA appears to rely principally on two matters to justify that decision: (1) the delay which further data collection would have caused; and (2) proportionality. Neither provides an adequate justification:

67.1. *As to 'delay'.* It is evident from the FCA's disclosure that the principal reason for not obtaining the relevant data was that this would save time and/or avoid delay, with the relevant contemporaneous documents referring to "*the material timetable impact*", "*not feasible under current timescales*" and the need to "*prioritise timeliness*". However, this is hopeless:

(1) The FCA had been investigating motor finance for some 9 years.

(2) It had known about this problem for months (since April 2025 at the latest).

(3) It estimated that these inquiries would only take a few more weeks.

(4) The FCA's internal timescales could have been met. A recommendation was made to obtain data in January 2026. However, ExCo effectively ran itself out of time to request the data after deferring the making of a decision on multiple occasions.

(5) In any event, the FCA's deadline was self-imposed and arbitrary. There was no requirement to conclude its consultation by the end of March 2026, at the expense of obtaining data which was relevant to its assessment of loss.

67.2. *As to 'proportionality'* (see Collyer 1 at §§61, 65 and 77):

(1) The options paper in January 2026 expressly recorded that obtaining the further data *would* be proportionate.

(2) Further and in any event, the reality shown by the disclosure is that considerations of proportionality were not a decisive factor at all. Rather, the FCA ran out of time after vacillation by the ExCo Sub-Committee and

then prioritised adhering to its publicly announced deadline for announcing the Final Rules over a result which "*is more representative of the economic loss experienced by consumers*". At the very least (insofar as this constituted any sort of proportionality exercise as conventionally understood), the FCA had created its own dilemma in getting to the point where it had to weigh up the need for accuracy of its economic analysis against the need to deliver a CRS according to its internal timescales.

(vi) Additional failures of inquiry/consideration

68. Having failed to obtain the pre-2017 data, the FCA failed to pursue an alternative means of analysis to improve the problems with its existing data:

68.1. As an alternative to issuing an RFI for the historical LLD, the FCA's Economics Team suggested a methodology for using the existing Data Drop 1 (**DD1**) dataset[158] to supplement the LLD and improve the quality of the analysis for the APR adjustment: a so-called "*time debiasing methodology*".

68.2. This was Option 1 in the options paper dated 16 January 2026. The Economics Team identified that such an approach was "*possible*", would not require an RFI and would take only 3 weeks to implement.[159]

68.3. The methodology was similar to that proposed in Gudat 1 and Gudat 2: see also Gudat 3, §3.4.5.

68.4. While the methodology was presented in detail[160] and quality assurance checks were run,[161] it appears that the Economics Team did not recommend this approach on the ground that it was "*based on several strong assumptions that we believe are unlikely to be valid*",[162] instead recommending that the FCA issue an RFI for the historical LLD (Option 3).[163] However, the disclosure indicates that the

[158] DD1 covered 30 million agreements from 2007 but offered a limited set of loan level characteristics.

[159] **[FCA1/1707]** (Paper on Options to extend the APR Adjustment Timeframe dated 16 January 2026), §§8-9

[160] **[FCA00000314]** (Addressing APR-17 limited time coverage with DD1, undated)

[161] **[FCA00000275]** (DD1 Debiasing – QA, undated)

[162] **[FCA1/1707]** (ExCo Paper on Options to extend the APR Adjustment Timeframe dated 16 January 2026), §9 and **[FCA1/3098]** (ExCo Paper on APR-adjustment in light of stakeholder feedback, undated), §§22-23

[163] **[FCA1/1704]** (supra) at §3. In a letter from Bevan Brittan to Courmacs dated 19 August 2026, the FCA stated that the debiasing analysis was explored but rejected and "*not* pursued", and that it was not put before decision-makers in the ExCo Subgroup or used in the FCA's ultimate decision-making. That position appears difficult

debiasing analysis was in fact run and quality-assured: the QA note records an 8.0% output and refers to an 8.2% figure "*cited in the ExCo paper*".

68.5. The FCA's stated concerns about the debiasing methodology did not provide a rational basis for simply preferring its existing approach without further inquiry. Dr Gudat accepts that the proposed methodology depended upon assumptions, in particular as to the stability over time of the distortion caused by omitting variables which were available in LLD but not DD1. However: (1) the relevant question was whether the potential error caused by those assumptions was greater or smaller than the error inherent in using later-period evidence to calibrate harm in materially different earlier market conditions; and (2) it would have been possible to test the stability of the distortion directly over the period for which both the fuller and restricted models could be estimated. There is no evidence that the FCA performed that analysis: Gudat 3, §§3.4.23-3.4.30. Further, the regulatory and market changes relied upon by the FCA as a reason not to rely on DD1 apply equally to its chosen approach of extrapolating later-period LLD data backwards: Gudat 3, §§3.4.26 – 3.4.30. Moreover, the debiasing analysis was capable of informing the anterior question whether temporal variation in harm was sufficiently material to warrant obtaining the historical LLD. The FCA therefore rejected not only a possible alternative methodology, but an available means of informing its own decision whether further inquiry was necessary.

(b) Ground 3(b): Irrationality in fixing APR-17 and APR-21

(i) <u>Introduction</u>

69. The FCA's approach of applying APR-21 and APR-17 to determine the AAR element of the Hybrid Remedy for Schemes 1 and 2 respectively is irrational, because the approach bears no reasonable relationship with the available evidence as to consumer harm.

70. Rather than reflecting "*the culmination of a highly complex policy-making exercise, which involved a series of considered, evidence-led regulatory judgements*" (cf. FCA's Grounds, §93), the decision to apply APR-21 and APR-17 was irrational because it lacked a rational evidential basis. A decision may be irrational where "*there was no evidence to support an important step in the reasoning*", or where the reasoning involved a "*serious*

to reconcile with **[FCA00000275]**, which records an 8.0% output from the code and refers expressly to an 8.2% figure "*cited in the Exco paper*": see also Gudat 3 §§3.4.7-3.4.10.

logical or methodological error": R (Law Society) v Lord Chancellor [2018] EWHC 2094 (Admin) at [98].[164]

(ii) Scheme 1 (APR-21)

71. For Scheme 1, the FCA rightly assessed that applying an APR-17 adjustment would understate the harm to customers (Collyer 1 at §62).

72. However, FCA's selection of the APR-21 rate was not based on data for the period covered by Scheme 1. Rather, it was an arbitrary decision, cloaked as being a "*bounded regulatory judgment*" (which characterisation implicitly accepts it was formed on the basis of a lack of key relevant data). The label "*regulatory judgment*" does not answer the absence of an evidential basis for the figure selected, particularly where the FCA had decided not to make the further inquiries identified under Ground 3(a) above.

73. The arbitrary nature of the decision-making is evident from the following documents:

73.1. The policy note which was prepared on or after 27 February 2026: "*ExCo SG provisionally agreed to apply APR-22* [sic]*, explicitly framed as a bounded regulatory judgement… Whilst additional data collection could, in principle, support a higher APR adjustment for Scheme 1, doing so would materially delay the scheme for a limited marginal benefit to individual consumers…*"[165]

73.2. The presentation to the FCA Board meeting on 19 March 2026: *"… We had indicative evidence that harm was greater in the earlier period… We therefore decided that the benefit of getting more data was outweighed by the harm of delaying the scheme. We decided, using regulatory judgement, that a fair point at which to set the figure for scheme 2 is the mid point between APR -17 and -26*."[166]

73.3. The same presentation exposed a further logical problem with the bifurcated approach. It expressly recognised that "*[t]here… may be an argument… that attaching APR17/21 to each scheme is illogical as the cut off dates for the schemes are driven by reasons unconnected with the assessment of harm*". It also

[164] See also Rose (on behalf of Friends of Mill Road Bridge 2) v Cambridgeshire County Council [2025] EWHC 1715 (Admin) at [41].

[165] **[FCA1/3089-3090]** (Policy note on finalisation of redress framework prepared after the ExCo meeting on 27 February 2026), pp.2-3

[166] **[FCA00000013]** (Presentation to the FCA Board dated 19 March 2026), p.17

recorded that "*the maximum impact of collecting further data could only be to shift the APR adjustment from APR-17 to -26*".[167]

73.4. The FCA Board paper dated 26 March 2026: "*We do not have the data to run a comparable economic analysis for Scheme 1* [redacted for legal advice privilege]. *We are therefore recommending making a regulatory judgement based on the data we do have… We have therefore settled on APR-21, <u>the mid-point between our lower and upper bound</u>, as the appropriate discount for Scheme 1. <u>This is a bounded regulatory judgement</u> based on the analysis described above. As stated above, we took the decision not to get further data given, as described in section 2, this would have compromised the timeliness of the scheme…*"[168]

74. It is not a rational reason for selecting APR-21 for Scheme 1 (which is not even the midpoint of APR-17 and APR-26, as that would be APR-21.5)[169] that the figure chosen lies near the middle of: (a) an APR-17 adjustment (which was known and accepted not to reflect accurately the harm to consumers within Scheme 1); and (b) an APR-26 adjustment (which is said to equate on average to the CRR and which is not said by the FCA to represent an estimate of loss to consumers either).

(iii) <u>Scheme 2 (APR-17)</u>

75. As for Scheme 2, the APR-17 figure (while presented as a "*robust estimate*" of consumer loss: Collyer 1 at §70) is in fact a blunt instrument which is likely to undercompensate the majority of consumers, as set out in §83 of the SFG (with actual APR differences likely equating to between 24.2% in 2017 and 11.1% in 2020, for example).[170] That downward pattern was also identified by Professor Gathergood, who considered the

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[167] **[FCA00000013]** (Slides for FCA Board meeting dated 19 March 2026), p.17
[168] **[FCA1/1902-1903]** (FCA Board paper dated 26 March 2026), §§3.84-3.87
[169] Unusually, the FCA decided to round *down* rather than round up.
[170] **[FCA1/2568]** (Updated TA1, Table 11)

results "*suggestive of a downward trend*" and cautioned that time-invariance of the APR margin should not simply be assumed: see also Gudat 3, §§ 3.6.5-3.6.6.

(c) <u>Ground 3(c): Error of law</u>

76. By reason of the matters above, the FCA erred in law and/or misdirected itself as to the requirements of s.404A(4)-(5) FSMA, as explained in §88 of the SFG.

E. <u>ISSUE 6: MARKET INTEGRITY (GROUND 1)</u>

(1) <u>Disclosure</u>

(a) Introduction

77. The disclosure confirms that the FCA:

77.1. treated protecting future market supply and reducing firm exposure as central to its assessment, and relied upon firm liabilities and market impact to justify materially lower redress;

77.2. adopted an unlawfully narrow conception of market integrity and failed to subject the countervailing market integrity effects of fuller redress, including consumer confidence and compliance incentives, to equivalent inquiry or analysis;

77.3. relied upon market-impact modelling which its own reviewers identified as dependent upon material assumptions, qualitative judgments and limited validation; and

77.4. continued with a CBA which did not compare the consumer protection and redress outcomes of materially different CRS designs despite internal criticism.

(b) The rationale for intervention

78. The Board paper dated 26 March 2026 identified the following rationale for the CRS:

> "*Rationale for intervening*
>
> *In the absence of FCA intervention, we would have no grounds to retain the pause on firms' complaint handling responsibilities. If the pause was lifted without a mechanism in place to manage the situation, we expect that millions of cases would proceed through the process at firms and subsequently be referred to the FOS as well as a large number of cases being litigated through the courts. <u>The volumes involved mean firms, the FOS and the county courts risk being</u>*

overwhelmed. The discretion both the courts and FOS have in determining these cases means there would inevitably be inconsistent outcomes and scope for further litigation damaging consumer confidence and firms and investors' ability to plan with certainty for the costs associated with redress. Costs would be higher for firms including as a result of FOS fees (both case fees and a potential scaling fee as seen in PPI to account for the volume of cases). Given the widespread and consistent nature of the failings across a large number of firms and over an extended period of time, a firm-by-firm approach using supervisory tools would be resource intensive and risk opening up multiple and unmanageable lines of argument and potential litigation.

We have, therefore, considered how we can use our powers under s404 to impose a redress scheme with clear, consistent rules to deal with the issue in an efficient, consistent and orderly manner…"[171]

79. Put simply, the rationale was to *protect lenders* (*"firms and investors"*) from having to deal with claims and the disruption which this would cause to firms and the motor finance industry as a whole. It was not about protecting consumers in any meaningful sense. This is consistent with the position revealed in CP25/27[172] and the FCA's witness evidence.[173]

(c) The steer from HMT

80. Throughout the Scheme's design, it appears that the FCA "*engaged continuously*" with HM Treasury (**HMT**).[174] For example, in May 2025, it was recorded that there would be "*No CP publication without HMT Steer*".[175] The same document included a number of references to HMT, including "*Nikhil/HMT Call*", "*HMT House View*" and "*Follow Up*

[171] **[FCA1/1884-1885]** (FCA Board paper dated 26 March 2026), §§3.4-3.5

[172] **[FCA1/1038]** (CP25/27) at §3.49 ("*If we did not intervene, a very large number of consumers, many with representation, may seek redress through the Financial Ombudsman or the courts. We estimate the administrative cost of providing redress through these routes would be substantially higher than under a redress scheme, due to case fees and other costs. The current Financial Ombudsman fee is £650 for each complaint referred to them…*"). See also **[FCA1/1149]** (Annex 2 to CP25/27) at §4 ("*… this proposed intervention is best placed to: - Ensure timely and consistent redress outcomes for consumers - Reduce the cost and time burden to firms, consumers, the Financial Ombudsman and the courts - Minimise market disruption, maintaining trust and stability - Maintain wider macroeconomic stability and international competitiveness*").

[173] e.g. Theodosiou 1 at §16 ("*The FCA ultimately decided to make the Schemes as it considered that doing so would be the best mechanism to get fair compensation to consumers quickly, in a way that maintains a healthy motor finance market*"), §52 ("*We anticipated at the time that the Court of Appeal's decision [in Johnson] would lead to an increase in motor finance commission complaints more generally, which could lead to an increase in motor finance commission complaints more generally, which would create additional pressures on firms (and the FOS)…*"), §56 ("*Our decision to consult on an industry-wide consumer redress scheme was made having regard to the very large numbers of potential claims which may be brought against lenders and brokers…*") and §57 ("*We concluded… that establishing a redress scheme would be the best way to ensure that consumers who had lost out could receive compensation in an orderly, consistent way, whilst also helping to maintain a well-functioning motor finance market for the millions of consumers who rely on it for the acquisition of motor vehicles*").

[174] **[FCA1/1876]** (FCA Board paper dated 26 March 2026), §1.15

[175] **[FCA00000062]** (ExCo Sub-Group slides dated 2 May 2025), pp.8-11

activities inc HMT requests and amending design". In October 2025, it appears that a "*deep dive on the motor finance CP*" took place between the FCA and HMT, at which HMT asked questions about the FCA's redress methodology.[176]

81. HMT also sought to intervene before the Supreme Court in *Johnson* by reference to the perceived negative economic consequences of the Court of Appeal's judgment on the motor finance market,[177] which gives rise to a reasonable inference that HMT 'steer' received by the FCA in the context of the CRS was to ensure redress payments would be at a level that could readily be absorbed by lenders.

82. The FCA has thus far declined to disclose its communications with HMT. CV has sought disclosure of the relevant communications: Smith 2, §§60-64. Pending disclosure, CV is unable to confirm what views or considerations HMT advanced, how they were understood by the FCA, or whether and to what extent they informed the FCA's assessment of market integrity and the calibration of redress.

(d) Pre-consultation

(i) The FCA's key principles

83. Having decided to intervene on this basis, the FCA designed a set of "*key principles*" which played a pivotal role in its decision-making.[178] Their terms and internal prioritisation paid insufficient regard to consumer protection.

84. Minutes of an ExCo meeting on 31 March 2025 – more than two months before publication of the key principles – recorded that "*<u>timeliness</u>, <u>certainty</u> and <u>simplicity</u> were considered the <u>priority principles</u> by the ExCo Sub-Group, along with a <u>market integrity principle, noting the need for a functioning market in the future</u>*".[179] The FCA has never

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176 **[FCA00000378]** (Email chain between 21 and 27 October 2025)

177 e.g. The Guardian ('Chancellor's attempt to intervene in car finance scandal branded "disgraceful"', 2 August 2025) reported intensive industry lobbying and that the FLA "*had been speaking with the Treasury nearly every week since the court of appeal ruling in October, including about its concerns on the car finance case*". The Financial Times ("Rachel Reeves intervenes in UK car finance mis-selling case to protect lenders", 20 January 2025) referred to lenders' urgent talks with government and HMT's concerns about economic harm.

178 e.g. Theodosiou 1 at §68 (*"The FCA considered the evidence it had gathered, relevant data, the principles arising from the case-law, all the feedback received during the CP 25/27 consultation process, the tests under s.404-404G FSMA, and the <u>guiding decision-making principles</u> that we had published in June 2025…*") and Gluckman 1 at §39 ("*… we had regard both to the nature and extent of consumers' loss and to the broader principles identified by the FCA to guide the design of the Schemes as a whole*"). See also **[FCA1/1877]** (Paper for FCA Board 26 March 2026) at §2.2 ("*… the requirement to balance these principles has guided our decision making…*") and **[FCA1/1931]** (PS26/3) at §1.4 ("*We will therefore go ahead with a scheme. From the outset, we said that the design of a scheme would be guided by a set of principles…*")

179 **[FCA00000232]** (Minutes of ExCo Sub-group meeting on 31 March 2025), p.3

identified (in CP25/27, PS26/3 or otherwise) that there was a hierarchy within its design principles. Within this hierarchy, "*market integrity*"[180] was a priority principle (alongside three other considerations which were beneficial for lenders, namely timeliness, certainty and simplicity) whereas fairness was not made a priority principle and consumer protection was not a key principle at all.

(ii) ExCo papers

85. Although the ExCo paper dated 11 July 2025 identified that the proposed redress methodology did not then reflect adjustments which might be made in the interests of "*market integrity, competition, or a broader conception of our consumer protection objective, including future consumers relying on a competitive motor finance market*", it nevertheless recorded that the market impact was "*within a tolerable range*" with the consequence that "*compromising on redress amounts may not be justified on market impact grounds*".[181] It identified other means of mitigating liabilities, including scheme design and giving firms longer to pay, without compromising redress methodology.

86. In the options paper dated 14 August 2025, the FCA assessed each remedial option against its key principles. "Fairness" was framed as whether "*Consumers and firms perceive the redress outcome under the CRS as fair and do not seek redress through other means or challenge the CRS*", while "*Market integrity*" was defined as "*Support long-term motor finance availability. Liabilities do not threaten market integrity*". [182]

87. The Hybrid Remedy scored positively under the market integrity principle because it "*[r]educes firm exposure*".[183] However, an internal reviewer queried the premise of that assessment: "*I'm not sure i follow – why? My understanding is market impact analysis*

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[180] As identified in the SFG, the "*market integrity*" principle was defined narrowly as "*support[ing] the ongoing long-term availability of high quality, competitively priced motor finance*" **[FCA1/683]**.

[181] **[FCA1/692]** (ExCo paper on redress methodology and market impact dated 11 July 2025), §1.7

[182] **[FCA1/752-754]** (Paper on redress methodology options dated 14 August 2025), pp.7-9. They were described primarily in lender-orientated terms, namely: (1) Comprehensiveness: ("*Clear majority of cases dealt with under the CRS, avoids court system and FOS being flooded*"); (2) Fairness ("*Consumers and firms perceive the redress outcome under the CRS as fair and do not seek redress through other means or challenge the CRS*"); (3) Certainty ("*Fair to consumers and firms. Finality for consumers and firms. Consumers have a good idea at the outset of the outcome they are going to get under the CRS*"); (4) Simplicity/Cost Effectiveness: ("*Easy to participate, proportionate cost. Firms are able to calculate redress easily and quickly with readily available data*"); (5) Timeliness ("*Resolve claims quickly. Consumers' claims are processed and resolved quicker than they would be in the courts or by the FOS*"); (6) Transparency ("*Clear decisions and public data. Consumers and wider stakeholders understand the basis for any redress awarded*"); and (7) Market integrity: "*Support long-term motor finance availability. Liabilities do not threaten market integrity*".

[183] **[FCA1/754]** (supra), p.9

suggests there wont be market disruption under any of these options".[184] The document therefore exposes the central problem with the FCA's approach. Market integrity was applied to reduce firms' financial exposure even where the FCA's own market-impact analysis did not suggest that the more generous alternatives threatened market disruption.

88. On 14 August 2025, ExCo approved the Hybrid Remedy, describing it as potentially "*the most practical solution for the market's overall interest*".[185] The contemporaneous analysis therefore did not proceed on the footing now suggested by the FCA's Grounds, namely that market impact was simply one neutral consideration among many which did not affect redress calibration. Reducing firm exposure and protecting the "*market's overall interest*" was used to justify lower redress.

(iii) The CBA Panel's criticisms

89. Just before publication of CP25/27, the FCA's own statutory CBA Panel identified several flaws in its approach. In its advice dated 29 September 2025, the Panel: (1) described the counterfactual as "*incompletely specified*" because consumer benefit from redress was omitted and recommended that it be estimated; (2) warned that the chosen redress methodology could produce adverse selection, with consumers expecting greater redress through the courts or FOS remaining outside the CRS; and (3) recommended closer analysis of the effect of the redress methodology on consumer incentives and alternative methodologies which might mitigate those effects.[186]

90. Those points go directly to the point pleaded by CV in its SFG: the amount of redress cannot lawfully be divorced from the effect of the Scheme on consumer behaviour, confidence, litigation and, therefore, market integrity.

91. Anticipating critical scrutiny from the Treasury Select Committee at an upcoming meeting, the minutes of the ExCo Sub-Committee on 28 November 2025 confirmed the FCA's "*early policy approach*" that the interests of consumers should not be prioritised:

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184 **[FCA00000186]** (Draft redress methodology options paper dated 14 August 2025), pp.8-13. The contemporaneous comments on the same paper demonstrate that the FCA was alive to the other side of market integrity but did not analyse it in any equivalent way. FCA official expressly recognised the possibility that consumers going to court might obtain full commission; questioned why consumers would regard the proposed midpoint as fair; warned that representatives might say the FCA was "*...screwing consumers, denying them redress*"; and stated "*Just dont think we can assume consumers will see it as fair*". Yet those risks to consumer confidence and trust were not modelled or weighed against the benefit to firms of reduced exposure.

185 **[FCA1/762]** (Minutes for ExCo Sub-Committee meeting dated 14 August 2025), §2.4

186 **[FCA00000032]** (CBA Panel report dated 29 September 2025)

"*The Sub-Committee considered the ongoing sensitive issues in preparation for the forthcoming Treasury Select Committee (TSC) session on 16 December 2025. Recognising that TSC members are likely to approach the session **more** from a consumer perspective, the Sub-Committee emphasised the importance of maintaining a balanced discussion that addresses both firm and consumer concerns*".[187]

(e) Post-consultation

92. After the consultation, the FCA's Competition Analyst Team prepared a summary of the feedback which recorded that respondents had raised concerns that consumer trust and confidence were not sufficiently reflected in the FCA's analysis.[188] The FCA response was muted: the FCA would consider whether wider market impacts needed to be reflected "*further in more detail*", but the exercise would be highly dependent on – and secondary to – the eventual scale of redress liabilities.

93. The FCA's disclosure in these proceedings does not identify *any* subsequent comparative assessment of how materially different levels of redress would affect consumer confidence, trust in regulated firms or consumer participation in the Scheme.

94. Moreover, the market-impact analysis was itself materially qualified by the FCA's model-risk work. Validation was undertaken concurrently with ongoing model development and was expressly "*limited to specific aspects*"; key assumptions were not clearly documented, including replacement rates, sub-prime lending contractions, cost-of-capital increases and segment-specific pass-through rates; firm-exit assumptions were subject to a manual override; and uncertainty in upstream models had a "*compounding effect*" upon the Market Impacts Model.[189]

95. On 13 March 2026, the CBA Panel[190] again recorded that the CBA "*does not formally consider redress liabilities under the scheme as a benefit to consumers or a cost to firms*", questioned the consistency of that approach with the FCA's own CBA policy, and continued to regard the counterfactual as unrealistic.

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[187] **[FCA00000134]** (Minutes for ExCo meeting on 28 November 2025), §3.1. See also Treasury Committee, *Work of the Financial Conduct Authority,* 16 December 2025, Q462, where Mr Rathi accepted that consumer confidence was an "*important point*" raised by consumer bodies, said the FCA would take an "*independent, fair and proportionate approach*", and emphasised the importance of public confidence in the Scheme: committees.parliament.uk/oralevidence/16924/html/.

[188] **[FCA00000268]** (Market Impacts – Summary of feedback, undated), p.5

[189] **[FCA00000114]**, pp. 4-6; see also **[FCA00000266]**, pp.5, 31-32 and **[FCA00000267]**, p.10.

[190] **[FCA00000475]** (CBA Panel report dated 13 March 2026)

96. One of the CBA Panel members (Peter Andrews, who was the FCA's Chief Economist from April 2013 until March 2017) raised the following concerns:

> "*So how flawed is this CBA?*
> …
> *a) The FCA's primary objective is to protect consumers not save costs.*
>
> *b) It therefore seems a major defect of the CBA that it says nothing about whether consumers will be more or less protected under its scheme than they would be under the counterfactual. I mean 'protected' in the sense that consumers have been harmed and offsetting that harm through recompense protects them from the harm. The fact that one scheme may be cheaper than another does not seem to be an adequate basis for a decision to favour the cheaper scheme when the main objective of the scheme must be consumer protection in the sense just described? If so, it presumably matters which scheme 'protects' consumers better (it seems unlikely that the FCA's action here is in pursuit of its competition objective or its market integrity – crime and stability – objective).*"

97. Two weeks later, the FCA published the Scheme without addressing these concerns, emphasising that "*[t]his is an opportunity to draw a line under the past and support a healthy motor finance market for the future*"[191] and that "*[i]f we do not intervene, a prolonged period of complaints and litigation would create sustained uncertainty for consumers as well as firms and their investors, and could hinder the sector's ability to move forward, with potential implications for wider market confidence and growth*".[192]

(2) Reply to the FCA's Grounds

(a) Introduction

98. Ground 1 is pleaded at §§58-69 of the SFG. The FCA's response at §§227-241 of its Grounds rests substantially on the assertion that CV is seeking impermissibly to invite the Tribunal to re-strike the regulatory balance and to maximise consumer redress. That is not CV's case. CV does not contend that: (1) the financial effect of the Scheme upon lenders was irrelevant; (2) the FCA was obliged to select the largest redress scheme the market could conceivably withstand; or (3) consumer protection is a "*protection-at-any-cost mandate*": cf. FCA's Grounds, §235.

99. CV's challenge is that having chosen to invoke market integrity and market impact as reasons relevant to the calibration of redress, the FCA: misconstrued the integrity

[191] **[FCA1/1932]** (PS26/3), §1.11
[192] **[FCA1/1963]** (PS26/3), §2.28

objective; failed to investigate and evaluate material aspects of that objective; relied upon an inadequate evidential foundation when assessing the countervailing market effects; and lost sight of the statutory purpose and primacy of consumer protection in the exercise of the s.404 power.

(b) Ground 1(a): Misconstruction of s.1D FSMA

100. At §233 of its Grounds, the FCA accepts that "*…there is no dispute that the integrity objective includes wider interests in consumer confidence, compliance with laws and regulatory standards, and fair and consistent regulatory responses*". That is an important concession. Those are the very matters which were wrongly excluded or marginalised in the FCA's decision-making.

101. The FCA seeks to escape the consequence of that concession by describing consumer confidence and firm compliance as matters within the "*penumbra*" of the integrity objective, while asserting that financial impact is at its "*core*": FCA Grounds, §233. However, that distinction has no foundation in s.1D and is a fundamental misdirection:

    101.1. Section 1D(2) provides that integrity "*includes*" the listed matters. The statutory language is expressly non-exhaustive. It does not create a hierarchy between the matters listed and other matters falling within the ordinary concept of integrity.

    101.2. Nor do the statutory examples support the FCA's proposed hierarchy. Section 1D(2) encompasses not only soundness, stability and resilience, but financial crime, firm compliance with market-abuse prohibitions, orderly markets and transparency. Parliament did not define "*integrity*" as predominantly a question of firms' financial capacity and well-being.

    101.3. The FCA's own published guidance, relied upon at §64 of the SFG, similarly treats trust, fairness, regulatory standards, transparency, conflicts of interest and firms putting consumers' interests at the heart of their businesses as matters of market integrity.

102. The FCA's further contention that CV's construction would "*collapse*" the integrity objective into the consumer protection objective (FCA's Grounds, §234) is also wrong. Statutory objectives are not mutually exclusive. The same fact may bear on more than

one objective.[193] Consumer confidence in whether regulated firms obey the law and whether systemic misconduct attracts a fair and consistent regulatory response is simultaneously capable of bearing on consumer protection and on the integrity of the financial system. Indeed, the FCA's own concession at §233 necessarily accepts precisely that overlap.

103. More importantly, the disclosure confirms that the error was not merely semantic. When the FCA assessed redress options against "*market integrity*", it asked substantially whether liabilities threatened future supply by firms and whether the option "*reduces firm exposure*".[194] That is exactly the narrowed conception challenged by CV. The FCA did not perform an equivalent assessment of whether paying materially fuller redress would increase confidence in the honesty and fairness of the market, reinforce compliance with regulatory standards or reduce the risk that consumers would reject the Scheme.

104. The same point disposes of Ms Collyer's evidence on deterrence: Collyer 1, §135. CV does not contend that the CRS is a penal enforcement mechanism or that the FCA was required to impose a punitive remedy. The point is that the regulatory response to widespread misconduct has consequences for incentives, future compliance and public confidence which are relevant to market integrity. The FCA's Grounds accept at §235 that exercise of the s.404 power "*…acts, inevitably, as a form of deterrent*". Having accepted that effect exists, the FCA cannot exclude it from consideration when calibrating redress by observing that enforcement action has a separate deterrent purpose.

(c) Ground 1(b): Failure to make inquiries / take into account material consideration

105. The FCA's answer to Ground 1(b) (at §§237-238 of the FCA's Grounds) again mischaracterises CV's case. CV does not contend that the FCA had to perform a separate CBA for every individual rule. Nor does the fact that the aggregate amount of redress payable by firms was "*readily calculable*" answer the Tameside challenge. The relevant question was the consequence of different redress calibrations for market integrity. That depended upon matters including firm resilience, market exit, replacement lending, pricing, consumer behaviour, litigation outside the Scheme and consumer confidence. Those matters were neither self-evident nor simply arithmetical.

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193 See by analogy R (Mastercard Europe SA) v Payment Systems Regulator [2026] EWHC 64 (Admin) at [172], where the Court held that use of a single regulatory power advanced two of the regulator's statutory objectives.

194 **[FCA00000186]** (Draft redress methodology options paper dated 14 August 2025), p.8

106. The FCA's disclosure, as set out above, demonstrates why further inquiry was required:

106.1. its own analysis in July 2025 concluded that market impact was within a tolerable range and expressly recognised that this could mean compromising redress was not justified;

106.2. an internal reviewer subsequently recorded the understanding that there would be no market disruption under any of the redress options[195];

106.3. the statutory CBA Panel specifically told the FCA to analyse how the redress calculation methodology affected consumer incentives and to consider alternative methodologies;

106.4. consultation feedback also raised consumer trust and confidence as wider market impacts which were insufficiently reflected in the final determination;

106.5. the FCA's own model-risk process identified material undocumented assumptions, qualitative inputs, manual overrides and compounding uncertainty within the market-impact modelling; and

106.6. shortly before the Rules were published, the FCA's own assessment remained that "*[t]he market remains strong, growing 6% in 2025. New car sales in February reached a 22-year high and bank equity prices remain robust, even with significant provisioning*". [196]

107. Against that evidential background, it was not sufficient for the FCA simply to assert that lower exposure for firms advanced market integrity.

108. The FCA's reliance upon its CBA does not fill the gap. The CBA compared the proposed Scheme principally against a "do nothing" counterfactual. It did not compare the market consequences of the chosen redress calibration against a materially fuller-redress CRS of the kind addressed by Ground 1. Indeed, the CBA Panel repeatedly criticised the exclusion of redress benefits and the failure adequately to account for different consumer responses. A comparison which asks whether a CRS is preferable to no CRS cannot

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[195] **[FCA00000186]** ("Redress Methodology Options Post-07/08/25 ExCo Subgroup Discussion": "*My understanding is market impact suggests there wont be market disruption under any of these options*."), p.8

[196] **[FCA00000013]** (Presentation to the FCA Board dated 19 March 2026), p.5

answer whether this materially lower-redress CRS is preferable, by reference to market integrity, to a CRS providing fuller redress.

109. Nor does §204 of the final CBA provide an answer. At most, it identifies as an unquantified benefit of a CRS, as against the counterfactual, that fair and consistent case handling may enhance reputation and consumer trust. It does not address the materially different question whether the chosen redress calibration, as compared with a CRS providing fuller redress, would itself undermine confidence in the fairness and consistency of the regulatory response, encourage litigation and/or otherwise damage market integrity.

110. Nor is the gap filled by the witness evidence. Mr Gluckman says that the FCA never concluded liabilities were outside the tolerable range and therefore the question of changing redress to address market impact *"never arose in practice"*: Gluckman 1, §54. Ms Collyer similarly describes market impact as a *"check"* performed after the principal parameters had been selected: Collyer 1, §§137-139. Those *ex-post* descriptions are difficult to reconcile with the contemporaneous record. The redress-options analysis expressly treated reduction of firm exposure as a market-integrity benefit; ExCo selected the Hybrid Remedy as serving the "*market's overall interest*"; and the contemporaneous decisions on CRR and compensatory interest expressly refer to firm liabilities and market impacts when selecting lower-redress options. The contemporaneous documents are the better evidence of the considerations which in fact informed the decisions.

(d) Ground 1(c): Consumer protection

111. The FCA's answer to Ground 1(c) (at §§227-229 and 239 of the FCA's Grounds) is likewise misconceived. It is not enough that a CRS is capable, in general terms, of advancing consumer protection. The question is whether this particular exercise of the rule-making power, and the rules determining the redress consumers actually receive, lawfully promotes the statutory purpose for which the power was conferred.

112. In particular:

112.1. Section 404 is not simply a binary power *whether or not* to create a Scheme. Section 404A expressly empowers the FCA to make rules concerning the kinds of redress and how redress is to be determined. The Padfield principle therefore applies to the exercise of that rule-making discretion, including the terms on which redress is provided.

112.2. CV's case is not that consumer protection necessarily trumped every other statutory consideration. It is that the FCA could not lawfully exercise a statutory power directed to securing consumer redress by treating the protection of firms from liability as a governing constraint and limiting compensation accordingly.

112.3. The FCA's own CONRED 1.3.22G identifies its operational objectives, "*particularly its consumer protection objective*", as relevant when determining whether the s.404 power should be exercised. The FCA's suggestion that this guidance becomes irrelevant once the threshold decision to establish a scheme has been taken is artificial (since the decision whether a CRS is "*desirable*" cannot sensibly be detached from the rules which determine what that CRS actually provides to consumers) and contradictory (see e.g. FCA's Grounds at §§45.3, 86.1 and 154 which suggest that s.404A must be read with s.404).

112.4. In any event, the contemporaneous evidence demonstrates the practical sidelining of consumer protection: it was absent from the seven design principles; market integrity was elevated internally as a priority before consultation; and the CBA did not formally assess redress as a consumer benefit or compare the degree of consumer protection produced by different redress outcomes. The FCA's own CBA reviewer regarded that as a "*major defect*": see also §96 above.

112.5. Nor does s.1B assist the FCA. The fact that the FCA is required, so far as reasonably possible, to advance "*one or more*" operational objectives does not license it to disregard the statutory objective or to exercise a particular statutory power inconsistently with the purpose for which Parliament conferred it.

113. The FCA's response at §240 addresses a different case from that pleaded by CV. CV does not seek damages or other relief under s.7 HRA on behalf of individual consumers, nor does Ground 1 depend upon establishing that every application of the Scheme rules will itself constitute a substantive breach of a Convention right. The reliance upon the "*victim*" requirement is therefore beside the point.

114. CV's case is an ordinary public-law challenge to the FCA's rule-making. The practical effect of the redress rules upon consumers' existing claims and their ability and incentives

to obtain determination of those claims through the courts was capable of engaging interests protected by Articles 6 and 8, and A1P1 and was, at the least, a material consideration to the FCA's exercise of discretion. Begum and Miss Behavin' do not establish the wider proposition for which the FCA appears to cite them – namely that a public authority exercising a broad statutory rule-making discretion may simply fail to consider the impact of its decision upon fundamental (including constitutional) rights. §69 of the SFG, including the authorities relied upon therein, is maintained.

F. ISSUE 7: COMPENSATORY INTEREST (GROUND 4)

(1) Disclosure

(a) Introduction

115. The FCA's disclosure shows that its decision-making on compensatory interest was principally driven by the desire to: (1) limit firms' financial strain; (2) promote operational simplicity; and (3) reach a final decision quickly.

(b) Pre-consultation

116. On 11 July 2025, the FCA modelled two interest rates: base rate + 1% and 8% per year. It recognised that "*[t]he choice of rate significantly impacts redress liabilities and will, therefore, be contentious*" and considered "*an alternative moderately higher rate (e.g. 5%) to balance rationality and consumer protection and/or consider if the rate should be rebuttable in certain circumstances*".[197] It also noted Government guidance that county courts usually award 8% interest, and the Consumer Panel's strong objection to the FOS moving away from that rate.[198] At the meeting itself, ExCo asked the team to undertake further modelling of different interest rates and their effect on the redress bill, and also to consider the communications explaining why the rate should not be 8%, noting that "*…these arguments would need to be strong*".[199]

117. An internal memo prepared after the meeting on 11 July 2025 recorded that the FCA:

 117.1. rejected a "*pragmatic midpoint*" of 5.5% (equivalent to BoE base rate + 4%), which "*balances the interests of firms and consumers*".[200] The proposed 5.5% rate

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[197] **[FCA1/688]** (ExCo paper on redress methodology and market impact dated 11 July 2025), p.3
[198] **[FCA1/695]** (supra), p.10
[199] **[FCA00000079]** (Minutes for ExCo Sub-Committee meeting on 11 July 2025), §2.1(f)
[200] **[FCA00000194]** (Note responding to ExCo Subgroup actions after the meeting on 11 July 2025), §§20-21

was described as "*reflect[ing] a compromise between the lower end of judicially accepted commercial rates (i.e. BR+1%) and the 8% rate commonly applied in small claims*". The FCA rejected the midpoint as "*arbitrary*";

117.2. relied on the FOS's analysis that "*the 8% interest rate could potentially lead to overcompensation (which is a key point given that any redress awarded under a CRS must not give the consumer a windfall)…*", without explaining why 8% interest would overcompensate consumers or give rise to a windfall;[201]

117.3. selected the time-weighted average of base rate + 1% (2.57%), rather than the arithmetic mean (3.96%) or median (4.25%),[202] without giving any proper reason for doing so[203] despite the fact that a time-weighted average – which gives disproportionate weight to the extended period of ultra-low base rates – does not reflect true consumer borrowing costs, as the FCA acknowledged;

117.4. proposed a rebuttal mechanism so that consumers could demonstrate deprivation-of-money losses not captured by base rate + 1%.[204]

118. On 21 September 2025, the FCA's independent CBA reviewer (Mark Freeman) noted the inadequacy of the chosen rate.[205] He observed that, if a consumer would otherwise have repaid debt, the appropriate compensatory interest rate "*would have been higher*" than base rate +1% and that "*compounding of interest across years*" could be justified on a loss-based approach. This expert view, commissioned by the FCA itself, was not addressed in the FCA's decision-making on compensatory interest.

(c) Post-consultation

119. By 18 December 2025, the FCA acknowledged that base rate + 1% "*was* *<u>one of the areas with the highest proportion of negative sentiment from respondents</u>*"[206] but maintained

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201 **[FCA00000194]** (supra), p.3, §10
202 **[FCA00000194]** (supra), pp.3-4, §11
203 **[FCA00000194]** (supra), p.4, §12
204 **[FCA00000194]** (supra), p.4, §13: "*Consistent with the FOS's approach (and the Law Commission's recommendations), we think we should also give consumers an opportunity to make representations that being overcharged under the credit agreement caused them to incur losses from deprivation of money that are not accounted for by interest at BR+1%*"
205 **[FCA00000032]** (CBA Panel paper dated 29 September 2025), p.16
206 **[FCA1/1690]** (ExCo Sub-Committee paper on redress methodology dated 18 December 2025), §1.1

that it struck an appropriate balance between fair compensation and preventing "*undue financial strain on firms*".[207]

120. Despite alignment with the FOS and Law Commission's position of base rate + 1% having been advanced as a key justification for the FCA's chosen rate, Charlie Gluckman (the FCA's Head of Department for Project Irwell) identified that these "*should be secondary considerations, rather than the primary ones*".[208] In reply, James Tallack (a Manager at the FCA working in Redress Policy) agreed, noting "*FOS have told us several times that we should not rely on their policy as justification for ours*" and suggesting that it was "*better to remind ExCo*" of the "*balancing*" rationale.[209]

121. In an ExCo paper dated 2 February 2026, the FCA again framed the issue as one of balancing fairness to consumers and firms with simplicity and cost-effectiveness.[210] It accepted that an 8% rate would address concerns about under-compensation and better reflect consumers' financing costs, but said that it would "*significantly increase total redress costs for firms (by £3.96bn compared to base rate + 1pp), significantly increasing the risk of challenge from firms and the potential for market impacts*".[211] The same paper identified a "*compelling argument*" for removing the rebuttal mechanism because of its operational burden, while acknowledging that this "*may also be hard to justify against the position we set out in the CP that base rate + 1pp may be inadequate in certain circumstances which, for reasons set out above, there is likely some merit*".[212]

122. On 6 February 2026, the ExCo Sub-Committee noted that several lenders had secured county court outcomes of approximately 2-3% and decided that this "*benchmark should be properly reflected in the scheme design*".[213] It also recognised that removing the rebuttal mechanism could increase the risk of under-compensation, but was concerned about its operational complexity.[214] It requested options for a floor of 3% and 3.5% for Board consideration, alongside further analysis of the potential removal of rebuttal.

[207] **[FCA1/1691]** (supra), §1.4
[208] **[FCA1/1691]** (supra), Comment CG1
[209] **[FCA1/1691]** (supra), Comment JT2R1
[210] **[FCA1/1741]** (ExCo paper on compensatory interest dated 2 February 2026), §1.14
[211] **[FCA1/1744]** (supra), §1.27
[212] **[FCA1/1745]** (supra), §1.31
[213] **[FCA1/1779]** (Minutes for ExCo meeting dated 6 February 2026), §5.1
[214] **[FCA1/1779]** (supra), §5.2

123. On 8 February 2026, James Tallack identified that the FCA "*[n]eed[ed] a stronger legal rationale supporting why any particular number is chosen*".[215] He also identified that ExCo "*strongly favoured*" a floor rather than raising the rate.

124. The ExCo paper of 13 February 2026 then recorded that:

124.1. base rate + 1% was still considered to be appropriate as it ".... *strikes an appropriate balance between compensating consumers fairly and preventing undue financial strain on firms from the accumulation of interest on redress liabilities that may stretch back many years*";[216]

124.2. base rates had nevertheless been "…*abnormally low (sitting below 1% from March 2009 to May 2022), and [were] not closely linked to consumer borrowing costs*"; the FCA's own BoE data on £10k personal loan rates showed that consumers would have faced "*higher borrowing costs than base rate plus 1ppt over most of the life of the scheme*" and "*many consumers, particularly those with weaker credit profiles… would be likely to do so [i.e. borrow] at higher rates*";[217]

124.3. applying a "*regulatory judgement*", a 3-3.5% floor was considered to balance likely borrowing costs and court awards against the impact of redress liabilities;[218]

124.4. a higher floor was regarded as potentially unfair to firms and liable to have significant market impacts, while an 8% rate would "*significantly increase total redress costs for firms*" and "*has the potential for significant market impacts*";[219]

124.5. removal of the rebuttal mechanism was recommended on grounds of operational simplicity, notwithstanding the acknowledged difficulty of reconciling removal with the FCA's earlier position that base rate + 1% might be inadequate, particularly alongside other proposed changes reducing average redress.[220]

125. On 13 February 2026, the ExCo Sub-Committee decided to apply a compensatory interest floor of 3% or 3.5% for each year (subject to the Board's direction on the precise

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[215] **[FCA00000352]** (Email from James Tallack dated 8 February 2026), p.10
[216] **[FCA1/1788]** (ExCo paper on compensatory interest dated 13 February 2026), §1.23
[217] **[FCA1/1788-1789]** (supra), §§1.23-1.26 and fn4
[218] **[FCA1/1790]** (supra), §1.31
[219] **[FCA1/1790, 1792]** (supra), §§1.34, 1.48
[220] **[FCA1/1793-1794]** (supra), §§1.52, 1.54

level), to set the default interest rate at the actual average base rate + 1% and to remove the rebuttal mechanism in its entirety.[221]

126. In a presentation to the Board Sub-Committee dated 19 February 2026, it was repeated that "*[i]mplementing a compensatory interest rate at too high a level (such as a flat 8%) could be perceived as unfair to firms and carry significant market impacts*". The Board Sub-Committee was asked to agree to the floor at 3% or 3.5%, and it was confirmed that ExCo's "*preferred option was to apply a floor at 3%*".[222] There was no explanation as to why 3% was chosen. It was recorded that the removal of the mechanism was "*linked to*" the introduction of the 3% floor i.e. the FCA treated the 3% floor (which did not reflect true borrowing costs to consumers) as a substitute for the mechanism it had previously described as necessary "*[t]o ensure fairness*".

127. On 19 February 2026, the Board approved ExCo's proposal but noted: *"consumers may… perceive the amended proposal as not going far enough*".[223]

128. The arbitrariness of the 3% figure was confirmed by an internal assessment of the Board's choices on or around 24 February 2026, which recorded that "*[t]here is no strong policy justification for choosing 3% rather than 4% as the floor*" and "*[n]either can be grounded in a precise analytical rationale*". It was considered that both figures could be justified "*as a level that we consider appropriately balances consideration of a variety of factors including personal borrowing rates, what consumers may obtain in court… and the need to balance what is reasonable for consumers individually vs the impact of market wide liabilities on the existence of a competitive motor finance market of the future*".[224]

129. On 26 February 2026, the FCA's MQ Paper identified that the redress bill would be £9.89 billion (if 3% was applied), £10.3 billion (4%) or £10.75 billion (5%).[225]

130. In the final Board paper dated 26 March 2026, it was identified that the proposed rate with 3% floor "*strikes a fair balance between ensuring consumers are properly compensated and avoiding undue strain on firms*". In light of the rate changes, and

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[221] **[FCA1/1810]** (Minutes of ExCo meeting on 13 February 2026), §6.1
[222] **[FCA00000011]** (Slides on motor finance redress policy proposals dated 19 February 2026), pp.4-5
[223] **[FCA1/1853-1854]** (Minutes of ExCo meeting on 19 February 2026), §§2.25-2.29
[224] **[FCA00000183]** (Paper on outstanding scheme design choices relating to remedies, undated), p.11. Whilst the document is undated, the filename is "*2026-02-24- Outstanding scheme design choices for ExCo SG*".
[225] **[FCA1/1870]** (Policy note on modelling questions), p.10

"*concerns about how feasible it would realistically be*" for a consumer to rebut the rate, the Board was invited to remove the rebuttal mechanism.[226]

(2) Reply to the FCA's Grounds

(a) Issue 7(a): The interest rate

(i) Unlawful reliance on lender interests to reduce rate

131. The FCA (at §§244-246 of the FCA's Grounds) has misconstrued and misunderstood the nature and breadth of its discretion in s.404A FSMA:

131.1. §§14 above is repeated. Section 404A does not enable the FCA to operate according to the length of its foot. The provision must be construed in a manner which promotes the statutory purpose of protecting consumers and upholds the right of effective access to a court. Concerns such as "*undue financial strain on firms*", "*operational simplicity*" and "*market viability*" cannot be invoked to 'balance out' those imperatives: e.g. Emptage at [25] and cf. FCA's Grounds, §246. Nor do they relieve the FCA of the obligation to have proper regard to loss.

131.2. §§116-130 above are repeated. The disclosure demonstrates that the FCA did not merely have regard to firm impact "*among other things*". It made firm impact and operational simplicity the *dominant* consideration in its decision-making, outweighing the requirements under subsections (4)-(5). Whilst the FCA recognised that an 8% rate would directly address consumer concerns, it rejected this on the basis that it "*would significantly increase total redress costs for firms*", the risk of challenge by lenders and market impacts. In choosing a significantly lower rate, the FCA Board paper on 26 March 2026 identified that the proposed rate "*strikes a fair balance between ensuring consumers are properly compensated and avoiding undue strain on firms*".

131.3. That was not a lawful application of ss.404A(4)-(5). It resulted in the inversion of the statutory priorities by treating the minimisation of firm liabilities as the constraint and consumer loss as a secondary factor to be accommodated within those self-imposed parameters.

(ii) Unlawful failure to give "*proper regard*" to loss

[226] **[FCA1/1905]** (FCA Board paper dated 26 March 2026), §§3.93-3.95

132. Further or alternatively, the FCA's contention (at §247 of the FCA's Grounds) that it "*clearly demonstrated*" (in CP25/27 and PS26/3) that it had proper regard to the nature and extent of consumer loss under s.404A(5) does not withstand scrutiny:

132.1. First, the FCA's own analysis identified that consumers would have faced "*higher borrowing costs than base rate plus 1ppt over most of the life of the scheme*" and that many consumers "*would borrow at even higher interest rates*".[227]

132.2. Second, the 3% floor has been described by the FCA as a "*conservative estimate of consumer borrowing costs*".[228] The FCA acknowledged that it aligns only with "*the lower end of the interest rates available for consumers following an unsecured £10k personal loan*" which many consumers would be unable to access.[229] The FCA therefore knowingly set the floor below the actual borrowing costs of most consumers.

132.3. Third, the FCA's own internal assessment acknowledged that "*[t]here is no strong policy justification for choosing 3%... as the floor*" nor is it "*grounded in a precise analytical rationale*".[230]

132.4. Fourth, the FCA's reliance on the FOS's change of policy as justification for the rate is undermined by the FCA's own recognition that "*FOS have told us several times that we should not be relying on their policy as justification for ours*".[231]

132.5. Taking these matters together, the FCA cannot credibly maintain that it had "*proper regard*" to the nature and extent of consumer loss.

(iii) Unlawful failure to consider and weigh up other material considerations

133. As for the FCA's position (at §248 of the FCA's Grounds) in respect of failing to consider the additional material factors at §98(4) of the SFG, none of its answers are adequate:

133.1. Higher borrowing rates: As to the likelihood that consumers would have borrowed at higher rates, the FCA asserts that the 3% floor "*addresses this concern*". It does not. The FCA's own data showed that unsecured personal loan rates exceeded 3%

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227 **[FCA00000532]** (ExCo paper on compensatory interest, undated), pp.5-6, §§1.26 and fn 4
228 Gluckman 1, §95
229 **[FCA00000532]** (supra), p.7, §1.32
230 **[FCA00000183]** (Paper on outstanding scheme design choices relating to remedies, undated), p.11
231 **[FCA1/1691]** (ExCo paper on redress methodology dated 18 December 2025), p.2

for almost the entire scheme period, and that many consumers – particularly those with weaker credit profiles – would have borrowed at materially higher rates.[232]

133.2. Other schemes: As to the 8% interest awarded in IRHP and PPI complaints, the FCA's answer is that these "*were not dealt with by s.404 redress schemes, and provide only an analogy which the FCA was under no obligation to follow*". This is flawed. As recognised in Grout at [39] (supra), it is irrational to accord differential treatment to persons who are in a materially similar position, without good reason. It is noted that the FCA *accepts* that consumers under those schemes were in an "*analogous*" position. It appears that the FCA never considered their analogous position and accordingly whether there was good reason for treating them differently. This was an error. Had the FCA considered those comparators, it would have appreciated that there was no coherent reason for the Scheme producing materially inferior outcomes for consumers in a comparable position.

133.3. Other cases: As to the significantly higher interest awarded in Clydesdale (8%), Johnson (c.6.3%) and Kent v Apple (8%), the FCA maintains that it was appropriate to rely on Clydesdale for liability and causation but not for interest and the decisions in Johnson and Kent v Apple were "*expressly taken into consideration*" and weighed against "*competing evidence that courts had awarded 2-3% in other cases*". However, in deciding to use those "*other* cases" as the "*benchmark*" for the 3% floor,[233] the FCA failed to consider and explain why it was appropriate to rely on those unreported, unparticularised and seemingly lender-selected[234] county court cases[235] (where the full details are unknown e.g. whether the consumer was represented and/or even argued for a higher rate) instead of following the approach of the Supreme Court, High Court

[232] **[FCA00000532]** (ExCo paper on compensatory interest, undated), pp.5-6, §§1.26 and fn 4

[233] **[FCA1/1779]** (Minutes of the ExCo Sub-Committee dated 6 February 2026): "*It was noted that several lenders had secured outcomes of approximately 2-3%, and that this benchmark should be properly reflected in the scheme design*". Gluckman 1 at §91: "*The ExCo Subgroup considered it highly relevant that the courts had awarded rates of approximately 2 – _3% in cases, and that this should be reflected in the scheme design*".

[234] Gluckman 1, §88: "*firms also provided evidence that other legal cases that had been decided in the favour of the consumers attracted a low rate of 2-3% of compensatory interest. However, in another vein, professional representatives had also flagged that a rate of 8% for compensatory interest was awarded in the Competition Appeal Tribunal, and one incident where a firm reported an award of 8% in a County Court claim*".

[235] Since Johnson and Kent v Apple, county courts have awarded compensatory interest of 8%. For example, in Zada Geeson v Stellantis Financial Services UK Limited (County Court at Doncaster, judgment dated 27 January 2026), the court awarded repayment of the commission of £1,825, together with interest at 8%. See also Smith 1, §22.

and CAT (in a decision where the CAT specifically had regard to unsecured loan rates for private individuals).

133.4. Government guidance: Finally, the FCA's disclosure has revealed that the FCA's Consumer Panel "*strongly objected*" to moving away from an 8% rate and referred to the government guidance on money claims (which identified that county courts will "*usually*" award interest at 8%).[236] The FCA did not consider or explain why this guidance and the Consumer Panel's concern was sidelined.

(b) Issue 7(b): The rebuttal mechanism

134. The FCA's defence (at §§250-251 of the FCA's Grounds) of its decision to remove the rebuttal mechanism is misconceived:

134.1. The FCA's reliance on "*difficult trade-offs*" (at §250.3 of the FCA's Grounds) serves to underline the real reason for removing the mechanism, namely the desire to protect the interests of lenders. This is evident from the ExCo papers dated 2 and 13 February 2026 which recorded that lenders had raised "*significant concerns about the operational burden*" of the rebuttal mechanism. As identified above, it was not lawful to rely on such trade-offs to dilute redress for consumers.

134.2. As for the other justifications advanced by the FCA:

(1) The fact that the FCA originally *proposed* the rebuttal mechanism (as a way to "*[e]nsure fairness*") does not demonstrate that the FCA had proper regard to the nature and extent of consumer loss when *removing* it: cf. FCA's Grounds, §250.1. In fact, it suggests the contrary.

(2) The fact that the mechanism was not "*widely supported*" is irrelevant: cf. FCA Grounds, §§250.2, 252.1. Hardly any of the FCA's proposals were widely supported. The issue is not whether the mechanism was popular but whether its removal was lawful in circumstances where the FCA accepted that the standardised rate would undercompensate consumers and that no other mechanism would be available.

(3) Concerns about potential *procedural/practical difficulties* for vulnerable consumers in using the mechanism (at §§250.2 and 252.1 of the FCA's

[236] **[FCA1/695]** (ExCo paper on redress methodologies, firm and market impacts dated 11 July 2025), §2.1

Grounds): (a) were not raised as significant by the FCA before the consultation; (b) conspicuously fail to reflect the fact that a large proportion of consumers are *represented*;[237] and (c) are not a reason for removing the mechanism in its entirety (but a reason to ensure that the nature of the mechanism is clear and communicated to consumers).

134.3. The weakness of the FCA's position was acknowledged internally, with the FCA recognising that the removal of the rebuttal mechanism was "*hard to justify against the position we set out in the CP that base rate + 1pp may be inadequate in certain circumstances*" and would be even harder to defend given "*other changes we are considering to remedy (caps at the 'realised' total cost of credit and commission plus interest) will result in a reduction in average redress awards for consumers*".[238] The FCA thus proceeded with the removal in full knowledge that it compounded other reductions in consumer redress.

134.4. The result is a scheme in which consumers who suffered the greater financial detriment from deprivation of money have no route to adequate compensation: the standardised rate is conclusive and below actual loss, and the only mechanism for correction has been removed.

(c) Issue 7(c): Vulnerable consumers

135. The FCA's position (at §252.3 of the FCA's Grounds) that there was "*no conceivable breach*" of its guidance on vulnerable consumers is also wrong:

135.1. The starting point is that the FCA has offered no meaningful analysis of how its decision complied with its published guidance on vulnerable consumers.

135.2. The FCA's guidance at FG21/1 §1.2 provides that "*[e]nsuring consumers have an appropriate degree of protection is central to what the FCA does. This includes protecting vulnerable consumers*".

135.3. Similar statements have been made by the FCA in other contexts. For example, in its Business Plan 2017/18, the FCA confirmed that:

(1) Consumer vulnerability was a "*cross-sector priority area*";

[237] e.g. **[FCA1/747-748]** ("*... that is enhanced by the significant number of cases with professional representation*") and **[FCA1/1038]** ("*... a very large number of consumers, many with representation...*")

[238] **[FCA00000532]** (ExCo paper on compensatory interest, undated), p.11, §1.54

(2) *At any one time, there are substantial numbers of vulnerable consumers in the UK, and we need to ensure markets work well for them*";

(3) *We want to see harm to consumers reduced by… A more flexible and tailored response being provided for consumers when they become vulnerable*";

(4) "*…* *we will prioritise consumers who are unable to shop around over consumers who can shop around but choose not to do so.*" In particular, it reiterated that: "*Understanding vulnerability should be part of our intervention framework, not a separate process*…".[239]

135.4. These are published statements about the FCA's commitment to protecting and prioritising vulnerable consumers which, absent good reasons to depart from them, should be followed: R (Hemmati) v SSHD [2019] 3 WLR 1156 at [50].

135.5. Notably, the FCA does not advance a case that the removal of the rebuttal mechanism protects or prioritises vulnerable consumers. That is unsurprising in circumstances where PS26/3 records that the FCA recognised that removing the mechanism would "*disadvantage some consumers, arguably particularly those who are vulnerable, who could have shown increased borrowing costs*" and that such consumers were "*likely to be least equipped to take legal action and for whom lower net redress after legal fees would be most impactful*" (p.225).

135.6. Instead, it appears that the FCA's case is that there was "*good reason*" for failing to protect or prioritise vulnerable consumers on the ground that "*the FCA initially proposed a mechanism with the protection of consumers in mind which was not ultimately supported, workable, or proportionate*". These were not good reasons. Absent disclosure, it is inferred that it was principally *lenders* who favoured an approach of base rate + 1% and no rebuttal mechanism. Concerns about "*workability*" overlook the fact that many consumers are legally represented and, in any event, are not a reason for prejudicing the interests of vulnerable consumers

239 **[FCA1/175-176, 191-193]** (FCA Business Plan 2017/18), pp.34-35 & pp.50-52

who can and wish to rely on such a mechanism.[240] The reference to proportionality appears to be another oblique reference to the interests of lenders.

G. ISSUE 9: STANDING/CANDOUR

G1: STANDING

(1) Introduction

136. Save in a simple case or where the applicant is undoubtedly a mere 'busy-body', the issue of whether an applicant has "*sufficient interest*" (under s.404D(4) FSMA, as under s.31(3) of the Senior Courts Act 1981) is to be determined at the substantive stage (including at a rolled-up hearing) (cf. FCA's Grounds, §263; this was also common ground between the FCA and CV at the first CMH). This is because the sufficiency of an applicant's interest cannot be determined "*in the abstract, or as an isolated point: it must be taken together with legal and factual context*", which includes the merits of the claim: Inland Revenue Commissioners v National Federation of Self-Employed and Small Businesses [1982] A.C. 617 at 630; R (McCourt) v Parole Board [2020] EWHC 2320 (Admin) at [31]; R (Good Law Project Ltd) v Prime Minister [2022] EWHC 298 (Admin) at [17]. CV thus confines itself at this stage to making preliminary observations in response to the FCA's challenge to CV's standing, which it will amplify in due course.

137. Whilst an applicant always requires a sufficient interest in the issues raised by the application, the interest required is sensitive to the context of each individual case: AXA General Insurance Ltd v HM Advocate [2011] UKSC 46, [2012] 1 AC 868 [170]-[171].

(2) The FCA's *volte face*

138. The Scheme was introduced by the FCA pursuant to its s.404 rule-making power. Before exercising that power, the FCA was required to engage in a pre-consultation which "*actively [sought] to engage in discussions with […] consumer groups about the issue*", to assist the FCA's understanding and to enable visibility for these "*key stakeholders*": CONRED 1.2.4G–1.2.5G. As explained in Section C of Stopford 2 (in particular §§31-32), the FCA included CV in this pre-consultation process: it invited CV to the roundtable discussions for consumer groups, and appointed CV as a member of its Consumer Redress Scheme Design Panel. The FCA did so on the basis, CV infers (absent any

[240] Concerns as to "*workability*" were raised in CV's consultation response at p.36.

disclosure on this issue by the FCA), that CV was regarded as a trusted consumer representative, as it had been treated by the FCA since CV's founding in 2023. The FCA's interactions with CV during and after the consultation period continued in that same spirit.

139. The FCA's treatment of CV as a trusted consumer representative ended only when CV announced its intention to challenge the Scheme. As identified above, the FCA's Chief Executive met with CV via Microsoft Teams on 27 April 2026 seeking to dissuade CV from challenging the Scheme by saying that: (a) the FCA would no longer be willing to work with CV, whereas absent a challenge it "*would have wanted to work more closely with organisations like [CV], Fairer Finance and MoneySavingExpert*"; and (b) if CV challenged the Scheme, the FCA "*will need to be forthright in its communications about [CV]*" (Stopford 2, §§42(b)-(c)). The implication was clear: the FCA's willingness to engage constructively with CV was contingent on CV not challenging the Scheme, and would give way to hostility if it did. As is recorded in the FCA's own note of the call, Mr Rathi stated that in the event of a challenge, the FCA would "*need to be quite forthright in our comms and do [its] best to work with those consumer groups who support the scheme*", and that it would "*[leave] the door open to working more closely together to implement the scheme, should CV decide not to challenge*".[241] What has followed is negative FCA press briefings against CV (identified in Stopford 2, §46) and the challenge to CV's standing and candour in these proceedings.

(3) Recent communications

140. Notwithstanding the FCA's criticism of CV in the context of these proceedings, the FCA has continued to seek CV's expert input in relation to motor finance consumers. On 17 July 2026, Mr Theodosiou invited CV to attend a call to discuss how, if settlement offers are made by lenders outside the Scheme, the FCA can ensure that they are communicated clearly and fairly to consumers. A meeting took place on 20 July. On 13 August, Mr Theodosiou contacted CV again and sought its feedback on the FCA's final position in relation to settlement offers, stating that this was "*without prejudice to arguments around standing in the litigation on the scheme*".

(4) Summary reply on standing

[241] **[FCA00000544-c]** (FCA's note of call between Mr Rathi and CV on 27 April 2026).

141. Notwithstanding CV's clear interest in the Scheme, addressed in Section B of Stopford 1 and formerly recognised by the FCA itself, the FCA questions: (1) the public importance of the issues raised by CV (FCA's Grounds, §266); (2) CV's motives for bringing the challenge (§§266-268, 271); (3) whether CV is best placed to bring the challenge (§§268-270); and (4) the relevance of CV's expertise (§272).

142. These are all bad points:

142.1. As for public importance of the issues raised, CV challenges the sufficiency of redress afforded by a CRS. This is clearly "*a serious issue of public interest which needs to be addressed*": <u>R (Luton Landlords & Letting Agents Ltd) v Luton BC</u> [2026] HLR 20 at [46]. Adequacy of compensation is at the heart of consumers' interest in a CRS. The FCA's assertion that the Scheme is a matter of considerable public importance, but that the issues raised by CV are not, is illogical. It also prejudges the merits of CV's challenge (which is one reason why CV's standing should only be resolved at the rolled-up hearing).

142.2. CV's sole purpose in bringing the challenge is to represent the interests of consumers. As identified in Stopford 1 (at §22), and reiterated in Stopford 2 (Sections A, F and G):

(1) CV is a consumer organisation and its mission is to help consumers understand when companies may have broken the law, whether compensation may be due, and how to pursue it. Its founders have two decades of experience in consumer advocacy, research, media and policy, and, importantly, in raising industry standards for consumers. CV's motive, frankly, is obvious, as conceded by the FCA when it initially indicated, in a letter from its solicitors dated 17 April 2026, its intention not to challenge CV's standing.

(2) CV has no financial interest in the outcome of any particular motor finance complaint or claim and does not stand to gain from any delay to the Scheme. Indeed, it has actively sought to minimise any delay in redress being paid to consumers: CV issued a focused and fully particularised challenge limited to redress rather than eligibility, for which it sought and continues to seek expeditious determination (unlike the lender Applicants).

142.3. CV is best placed to bring the challenge, whether on a surrogate or public interest basis (Good Law Project at [20]). No individual consumer is better placed to lodge a complex statutory review challenge in the Tribunal, within the timescales directed by the FCA, requiring consideration of complex economic and econometric material. Nor is any other consumer group better placed to challenge the sufficiency of redress (Stopford 2, Section E). That CV is not a consumer group designated by HM Treasury is nothing to the point: designation affords a group a power to make a 'super-complaint' to the FCA, and has no bearing on its interest in the particular Scheme being challenged (which Scheme was not itself the product of any super-complaint by those entities). In any event, the absence of other appropriate challengers is not an essential prerequisite: R (Hammerton) v London Underground Ltd [2002] EWHC 2307 (Admin) at [201].

142.4. CV is an expert in the subject matter of its challenge, as was recognised by the Court of Appeal when CV intervened in the Clydesdale judicial review (see Order of Dingemans LJ dated 21 May 2025; Stopford 1, Sections A and B; Stopford 2, Section B). The same was recognised by Mr Rathi on the call on 27 April 2026, stating "*[w]e value CVs consumer engagement and expertise supporting vulnerable customers*", and that the FCA would thus, absent the challenge, "*ideally [...] ask CV for help implementing the scheme: to encourage mass awareness, mass take up*".[242] CV does not suggest that its expertise is determinative of its standing or that the tests for standing and intervention are the same. Nevertheless, a representative's expertise is of significance when determining its standing: see, for example, R v Ministry of Agriculture, Fisheries and Food Ex p Greenpeace Ltd [1994] 4 All E.R. 329, R (on the application of ClientEarth) v Financial Conduct Authority [2023] EWHC 3301 (Admin), [2024] 2 CMLR 42 at [7], and the case law cited in the FCA's Grounds, §265.

G2: CANDOUR

(1) The FCA's candour

143. The FCA, as the regulator whose rule-making is subject to review, owes a duty to the Tribunal to assist it with full and accurate explanations of all the facts relevant to the

[242] **[FCA00000544-c]** (FCA's note of call between Mr Rathi and CV on 27 April 2026).

issues to be determined, and to draw its attention to relevant matters ("*the good, the bad and the ugly*": R (Hoareau) v Secretary of State for Foreign and Commonwealth Affairs [2018] EWHC 1508 (Admin).

144. The FCA has put in issue CV's standing, and thus the Tribunal's jurisdiction to determine its challenge to the Scheme. In doing so, the FCA has challenged CV's independence, motivations, and identification as a consumer group, going so far as to deem CV's characterisation as a "*consumer organisation*" inaccurate because CV merely "*purports to provide a service to consumers"* (FCA's Grounds, §267).

145. The FCA's Grounds and witness statements (including those of Messrs Theodosiou and Gluckman who met and dealt with CV in relation to motor finance redress) omit to refer to the working relationship that previously existed between it and CV over the course of c.3 years, the FCA's treatment until recently of CV as a trusted consumer group, the role which it invited CV to play in the design of the Scheme, and its reasons for doing so. These omissions are particularly stark in circumstances where the FCA simultaneously relies on the fact that it benefitted from representations from "*consumer groups"* and "*Consumer Panels"* (Theodosiou 1, §38; Gluckman 1, §29).

146. In Sections C and D of Stopford 2, Ms Stopford identifies the relevant context so far as she is able. However, (i) it was for the FCA to identify these matters itself when putting standing in issue, and (ii) CV is unable to provide the totality of the relevant context, as it was not privy to, for example, the FCA's internal consideration of CV's expertise and the FCA's decision to include CV within the select group of persons engaged in its pre-consultation. Accordingly, reasonable grounds exist that the FCA has failed to conduct itself "*with all cards face upwards on the table"* (R v Lancashire County Council, ex p Huddleston [1986] 2 All ER 941, at 945), in breach of its duty of candour. However, given the FCA is yet to complete its disclosure, CV reserves its pleaded position on the FCA's candour, for the time being.

147. CV raised the absence of disclosure and requested rectification of the position in correspondence to the FCA dated 10 August 2026. On 19 August 2026, the FCA indicated that it "*is in the process of carrying out further searches*".[243] This is a further reason why CV's standing should only be resolved at the rolled-up hearing, noting that an absence of

[243] Letter from Bevan Brittan to Courmacs dated 19 August 2026, §3(a)

candour by the respondent can be taken into account by the Tribunal in deciding whether to grant permission (and that the Tribunal "*will not permit public bodies to withhold crucial information or documents and then submit to the court […] that the applicant for judicial review has consequently failed to establish an arguable case*" or, CV submits, a sufficient interest): National Bank of Anguilla (Private Banking and Trust) Ltd (in Administration) v Chief Minister of Anguilla [2025] UKPC 14 at [93].

(2) CV's candour

148. Notwithstanding its own failings, the FCA has accused CV of an absence of candour in relation to: (1) its relationship with Courmacs; (2) its motives for bringing this challenge; and (3) the basis on which CV and Courmacs have satisfied themselves that the challenge does not present a conflict of interest.

149. CV strongly disputes the allegations that it has breached any duty of candour:

149.1. CV has been explicit throughout these proceedings about the fact that it has no commercial interest in the outcome of this challenge or in any particular motor finance complaint or claim, about its relationship with Courmacs and the funding for its costs of this challenge, and about why it considers its challenge is in the interests of consumers, who stand to lose billions in redress under the Scheme as it presently stands: Stopford 1, §22; Stopford 2, Sections F and G.

149.2. The FCA chose not to articulate clearly its concerns over CV's standing prior to service of the FCA's Grounds, required CV to bring its claim within 28 days of the Scheme being published, and recognised on the day CV filed that claim that "*CV's motivations are different to Courmacs'*".[244] Now that the FCA's Grounds have been served, it reveals that the FCA's complaints over CV's standing are speculative and based on factual misapprehensions, which have been corrected in Stopford 2.

149.3. As to the allegation of conflict of interest or improper motivation, CV's sole motivation for bringing this challenge is to harness its expertise to challenge a CRS which fails to serve the interests of consumers. As identified above, CV does

[244] **[FCA00000544-c]** (FCA's note of call between Mr Rathi and CV on 27 April 2026).

not stand to profit from any delay to the Scheme. CV's targeted challenge would have allowed the Scheme to progress while these proceedings are pending, if the lender Applicants had not brought their own, much wider ranging challenges which have yet to be fully particularised. There is therefore no conflict of interest, including between Courmacs' clients and CV and/or Courmacs, as confirmed in Smith 2, §§19-21 and Stopford 2, §§70-74. CV firmly believes that it is in the interests of all consumers to obtain fair redress, rather than settling for substantial under-compensation under the Scheme.

H. CONCLUSION

150. The Tribunal is respectfully invited to grant the relief sought by CV and quash the Rules on redress to the extent sought.

FARHAZ KHAN KC

TOM RAINSBURY

JAMES POTTS

DEVON JANE AIREY

AMELIA-ROSE EDWARDS

3 Verulam Buildings

28 August 2026