



# ***Car loans: the issue, the Supreme Court decision and the FCA redress scheme***

**7 November 2025**

# Ask a question



The screenshot shows a mobile application window titled 'Q&A'. It displays a previous question and answer: 'You asked: What happens when I raise my hand? 18:03' and 'Molly Parker answered: I can take you off of mute. 18:04'. Below this is a large text input area with the placeholder 'Please input your question'. At the bottom, there is a checkbox labeled 'Send Anonymously' and a blue 'Send' button. An arrow points from the 'NOTE' text to the 'Send' button.

## To ask a question

Click on the **Q&A** button in the bottom toolbar to open the submit question prompt.

Type your question and click send

NOTE: If you wish to ask your question anonymously check the **send anonymously** box shown on the illustration.



# Did you know?

ICAEW's revised Continuing Professional Development (CPD) Regulations brought in new CPD requirements, including a minimum number of hours and an ethics requirement.

This webinar could contribute to up to 1 hour of verifiable CPD, so long as you can demonstrate that the content is relevant to your role.

Find out more about how these changes affect you at [icaew.com/cpdchanges](https://www.icaew.com/cpdchanges).



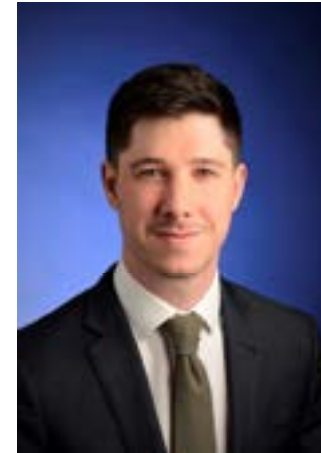
## ***Today's speakers***



**Clare Hughes,  
Partner, Addleshaw Goddard**



**Kirsty Laremore,  
Partner, KPMG**



**Fabian Belassie,  
Senior Manager, KPMG**

# Motor Commissions: What have the Courts decided?

Clare Hughes  
Partner  
7 November 2025



**LEGAL  
TRANSFORMATION  
TEAM OF THE YEAR**

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# THE BASIC FACTS



Customers purchased used cars with finance arranged via dealers.



Dealers sold the cars but also acted as credit brokers for lenders.



Lenders paid the dealers commission for introducing the customers.



Claims: breach of fiduciary, bribery dishonest assistance, and unfair relationship

# THE THREE-CORNERED RELATIONSHIP

1. Customer – seeks to buy a car with finance.
2. Dealer/Broker – sells the car and arranges finance.
3. Lender – provides the finance and pays a commission to the Dealer/Broker.

Key issue: Was the dealer a fiduciary of the customer?

# THE COURT OF APPEAL



A problematic judgment – breach was found



Motor dealers owed both a disinterested duty and fiduciary duty



Conflict of interest – negated by disavowal or disclosure



Secrecy – “problems with “may be payable”  
The need for fully informed consent

Can't assume  
customers will  
read terms

Role of  
vulnerability and  
sophistication

Conflict with  
previous case  
law

No recognition  
of the regulated  
journey

Read across  
risk

# SUPREME COURT – A MORE BALANCED APPROACH

## WHY FIDUCIARY DUTY WAS NOT FOUND

Fiduciary duty = single-minded loyalty, acting only in another's interest (para 90)

Requires express or implied undertaking of loyalty (para 109)

Dealers pursued own commercial interest in selling cars and finance (para 270).

“It is normally inappropriate to expect a commercial party to subordinate its own interests to those of another commercial party” (para 110)

Customer trust alone is not enough (para 87)

“The dealers were not fiduciaries” (para 287)



# WHY THE BRIBERY CLAIMS FAILED



No fiduciary duty = no bribery claim.



Supreme Court:  
Dealers owed no  
fiduciary duty to  
customers.



'If that [fiduciary duty]  
is not established, the  
claim in bribery must  
fail.' (para 113)



A so-called  
disinterested duty is  
not enough (para  
159)

# THE UNFAIR RELATIONSHIP CLAIM (CCA S.140A)

Mr Johnson's claim under s.140A succeeded.

The Supreme Court stressed determining unfairness is highly fact sensitive, there is no checklist for the lower courts to use.

Of particular relevance to this determination on these facts was:

- the size of the commission (in this case 55% of the total charge for credit)
- the failure to adequately disclose the commission, and
- the concealment of the nature of commercial tie between the dealer and lender

The Court held this is not an exhaustive list and a Discretionary Commission Model does not in itself make the relationship unfair.

# AREAS WHERE THE JUDGMENT IS UNCLEAR

Appears to return the law on fiduciary duties to Mothew and related cases but remains to be seen.

What level of knowledge is required by the lender to found a claim in bribery?

What amounts to “dishonesty” for accessory liability

What level of disclosure is required to constitute fully informed consent in practice?

How will courts apply the 'unfairness' test in other finance contexts?

# CHALLENGES FOR A SECTION 404 REDRESS SCHEME



Legal basis: case specific nature of unfair relationships



Challenges of reaching back to 2007



Pressure to deliver a swift solution – push for inclusivity



Risks of challenge



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# Motor Commission Redress Scheme

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# Covering today

- |           |                                      |
|-----------|--------------------------------------|
| <b>01</b> | Proposals and practical implications |
| <b>02</b> | Staged Approach and Cohorts          |
| <b>03</b> | Communications and Customer Journey  |
| <b>04</b> | Implementing the Scheme              |
| <b>05</b> | Next Steps                           |

# Practical implication of the proposals

Deliberately broad in scope, the FCA has cast the net wide. Operationally complex with differing timelines for execution based on whether customers have previously complained and a prescribed redress methodology. The onus is on lenders within a tight timeline

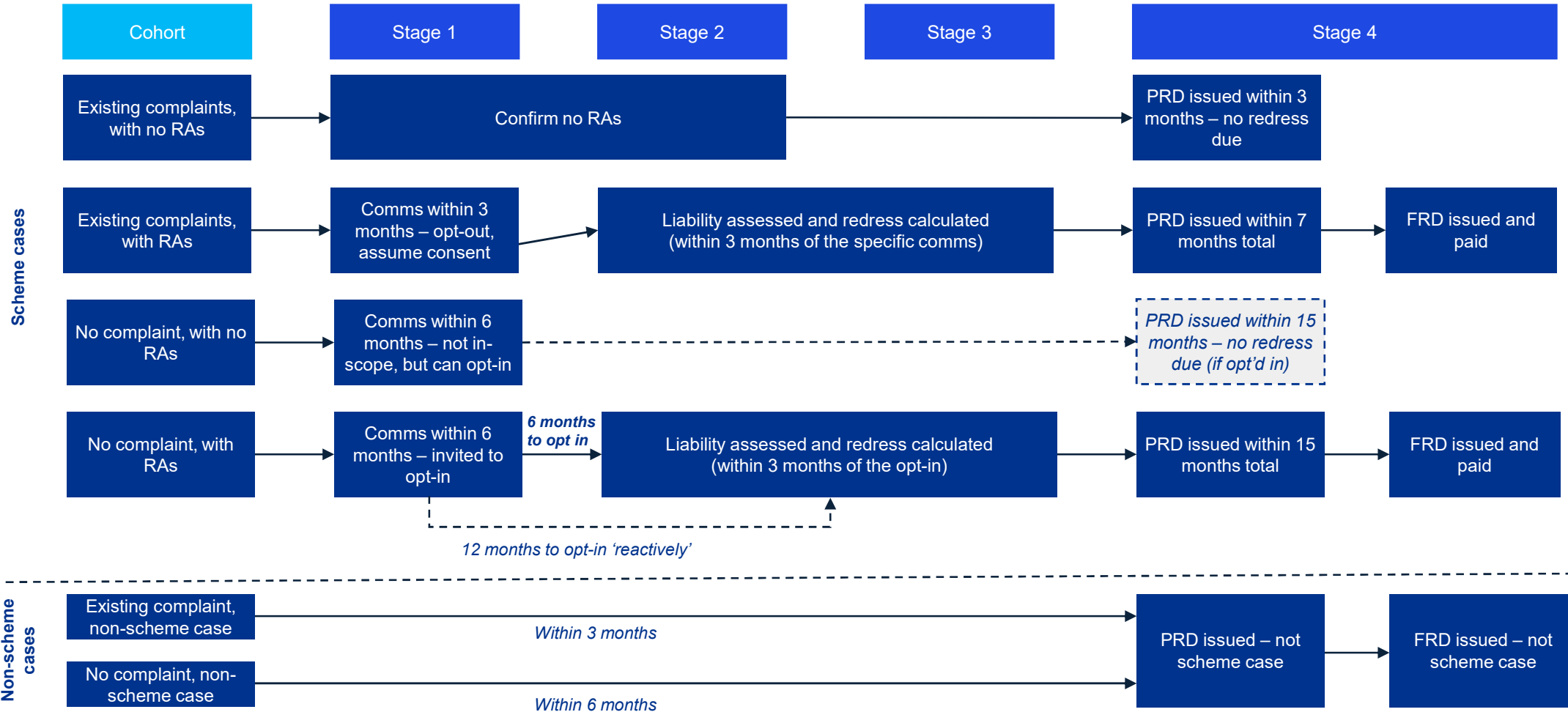
## Proposals

## Implications

BROAD PRE 14 SCOPE	All regulated motor finance agreements taken out between 6 April 2007 and 1 November 2024 where commission was connected to the agreement.	Potential for unavailable historic data at customer, agreement and transaction level
ADEQUACY OF DISCLOSURE	An assessment of fairness and eligibility for redress hinges on whether the lender failed to 'adequately disclose' one of the defined 'relevant arrangements'	Increased scope - all DCAs, Non-DCA where high commissions and tied arrangements
PRESUMPTIONS OF UNFAIRNESS	There is a presumption of unfairness/loss where disclosure is inadequate, adequacy of disclosure must have been clear and prominent with the burden on the lender to rebut this	Adequate disclosure challenging - clarity, nature and prominence, where inadequate limited rebuttal options
LENDER LED 4 STAGE PROCESS	All in-scope consumers must be made aware of the scheme and depending on whether the customer has already complained, invite them either to opt in or opt out.	Mass mailings proposed including to excluded customers with multi cohort comms strategy required
DIFFERING TIMELINES	Implementation is operationally complex both proactive and reactive with differing (3mth/6mth/1yr) & tight timelines based on whether customers have previously complained.	Multi-stage approach, tracking complex as customers can continue to move cohorts throughout
HYBRID REDRESS	For the vast majority of cases a hybrid calculation approach is proposed combining the average of the full commission refund with an APR adjustment.	Adjustments to presumed calculation methodology prev. based on case specific agreement
TIME SENSITIVITY	Challenging timeline, with the FCA clear on wanting to move at pace with a short timeline for delivery and scheme implementation "early 2026".	Limited time to prepare for a start the day after rules are finalised

# Multi-stage approach with differing timelines

RA – Relevant Agreement  
PRD – Provisional Redress Decision  
FRD – Final Redress Decision



# Determining cohorts

## Definition of scheme case – the agreements that will be assessed and determined under a scheme.

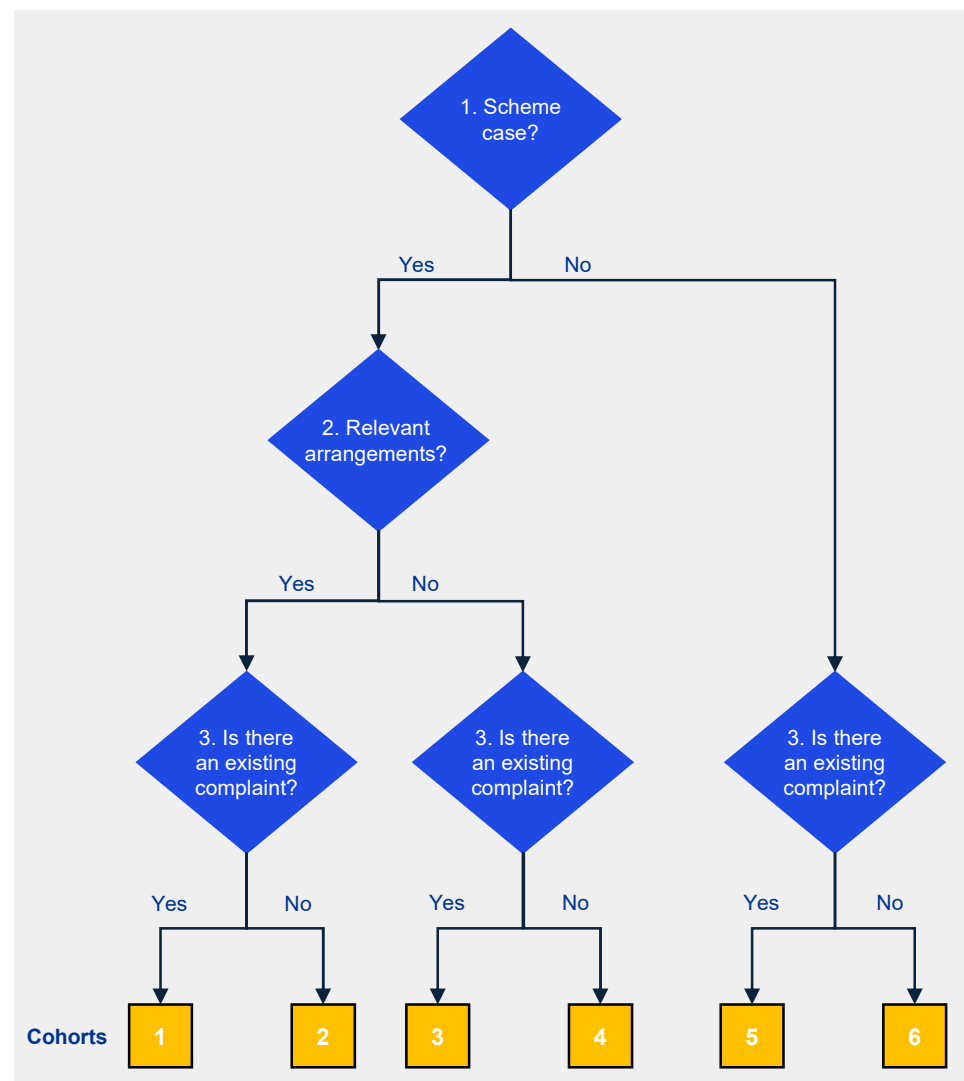
- A regulated motor finance agreement with an FCA-regulated lender
- Must have been a commission arrangement connected to that agreement
- Agreement taken out between 6<sup>th</sup> April 2007 and 1<sup>st</sup> November 2024
- Individuals (including sole traders), partnerships consisting of two or three persons not all of whom are corporate bodies and unincorporated bodies of persons which does not consist entirely of bodies corporate and is not a partnership
- Consumers[...] who [were] resident in the UK at the time of entering into the relevant agreement, even if they are not resident in the UK anymore
- No de minimis

*Excludes cases with FOS, with the courts, have already been determined with redress due etc*

## Definition of relevant arrangements – the arrangements on an agreement that can lead to unfairness & harm

- A DCA – “where the broker had discretion to set or influence the interest rate or other key pricing terms in a way that increased or reduced the commission they received from the lender”
- A high commission arrangement – “35% of the total cost of credit and 10% of the amount financed” (N.B. consideration to ‘Johnson commission’ cases also)
- A tied arrangement – exclusivity or near-exclusivity

*N.B. there are further assessment criteria to determine unfairness, liability and whether redress due – not required to determine high level cohorts. These assessments might factor into lower level cohort planning – e.g. contact customers within a cohort redress due first etc.*



# Initial communications & customer journeys by cohort

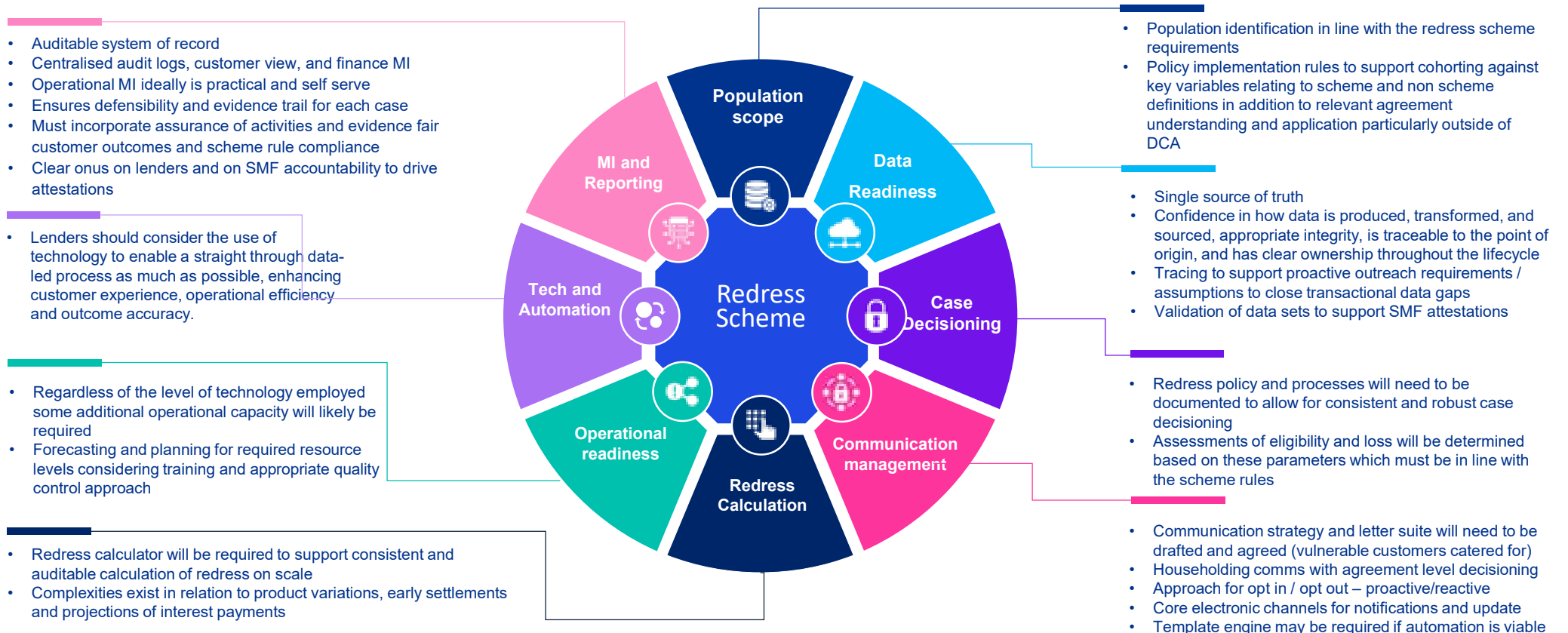
Case category	Existing complaint – proactive contact within 3 months		No Existing complaint – proactive contact within 6 months	
	Initial Comms	Remaining Journey	Initial Comms	Remaining Journey
<b>Scheme case with 1 or more relevant arrangements</b>  <i>(E.g. DCA, high commission, tied arrangement)</i>	<b>1</b> <b>Opt-out letter</b>  <i>Consumer has 1 month to opt out; otherwise assume opt-in and proceed</i>	<b>After letter sent:</b> <ul style="list-style-type: none"> <li>Assume opt-in after a month,</li> <li>Within 3 months after, issue a PRD.</li> </ul> <i>If they opt out, acknowledge within 7 days</i>	<b>2</b> <b>Opt-in invitation letter</b>  6-month window to opt-in  <i>N.B. chaser letter required after 1 month if does not opt-in.</i>	<b>After a valid opt-in:</b> <ul style="list-style-type: none"> <li>Within 7 days send acknowledgment</li> <li>Within 3 months send PRD</li> <li>If accepted, within 1 month after send FRD</li> <li>If objected, follow objection process</li> </ul>
<b>Scheme case with no relevant arrangement(s)</b>  <i>(E.g. Non-DCA with low commission)</i>	<b>3</b> <b>Provisional decision letter</b> <i>“...previously complained – no relevant arrangement – no redress due”</i> <i>1 month to respond</i>	<b>Customer can object to PRD – follow objection process.</b>  <b>Else, final redress determination</b> <i>(after 1 month)</i>	<b>4</b> <b>Opt-in invitation letter</b>  Customer still has right to opt-in within 6 months even though no relevant arrangement identified:  <i>N.B. chaser letter required after 1 month if does not opt-in.</i>	Expectation is customers do not opt-in (as no RAs), but customers do have the option to.  If opt-in, as per cohort 2.
<b>Non-scheme case</b>  <i>(E.g. DCA with 0 commission, lease cases etc)</i>	<b>5</b> <b>Provisional decision letter</b> <i>“Provisional redress decision to customers who have previously complained confirming they are a not a scheme case”</i> <i>1 month to respond</i>	<b>Customer can object to PRD – follow objection process.</b>  <b>Else, final redress determination</b> <i>(after 1 month)</i>	<b>6</b> <b>Provisional decision letter</b> <i>“...have not previously complained confirming they are a not a scheme case”</i>  1 month to respond	<b>Customer can object to PRD – follow objection process.</b>  <b>Else, final redress determination</b> <i>(after 1 month)</i>

**7**

**‘Reactive Opt-in’:** In addition, customers can continue to complain (i.e. “reactive opt-in”) from Day 1 of the scheme go live. The characteristics of these customers will form part of one of the above cohorts, but they will undertake a different journey if they reactively opt-in before comms. Interpretation is they will need to be responded to with a PRD within 3 months of ‘opt-in’.

# Key components for implementing the redress scheme

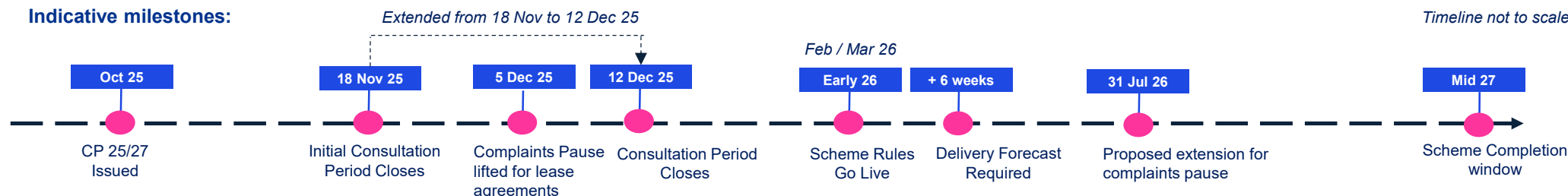
The FCA has set out a short timeframe for delivery to bring this matter to conclusion, proposing the launch of the scheme as soon as the rules are finalised. Firms are expected to use the consultation period to assess data integrity, broker relationships and redress-calculator readiness.



# Next steps

Many lenders have already been preparing for a Redress Scheme in 2026 and should build on this momentum given the shortened consultation period and readiness timelines.

## Indicative milestones:



The FCA will monitor delivery through quarterly management-information returns and expects all remediation to start within 12 months of go-live, with extensions only allowed in exceptional cases.

## Complaints pause and alignment

- The pause on commission-related complaints will remain until the scheme is operational, extending to 31 July 2026.
- During this period, firms must continue to log and acknowledge new complaints, progress non-scheme issues under DISP, and maintain full audit trails for migration once the scheme begins. Q4 2025 should be treated as the mobilisation phase for data, tracing and communications readiness.

## Considerations for new sales and read across

The FCA has stated clearly that the industry-led practices introduced following the Court of Appeal judgment in October 2024 (for example, fully informed consent) were welcomed and leading to better customer outcomes under the Consumer Duty. However, lenders should consider:

- Validating the forward-looking changes implemented in October 2024 and consider whether any further action may be required to strategically embed the new practices with effective oversight.
- Other lending products with commission arrangements and whether similar practices may need to be put in place to achieve consistently good customer outcomes, applying the feedback from the FCA.
- Be alert to expectations in relation to general customer understanding, fair value and pricing.

# How KPMG can help

## Regulatory & Remediation expertise

We have extensive regulatory and remediation expertise that we can either deploy into your programmes to work hand-in-hand with you or provide support more independently through the provision of ongoing check & challenge and market insights. We can support with:

- Policy & procedure design and development
- Customer journey design
- Process design and technology requirements
- Internal and external stakeholder engagement
- Design and approach validation, including front book change

## Operational Readiness & Planning

With the likelihood of a redress scheme increasing, our operational SMEs can support you in preparing for potential execution. We can support across the planning lifecycle including:

- Operating model design
- FTE modelling to inform operational resourcing requirements
- Skills requirements definition
- Operational ramp up planning
- Training design and delivery
- Communication plan development
- MI design covering operational, financial and exec/external stakeholder requirements

## Scenario modelling & financial planning

We can bring the best of our regulatory, audit, tax and deals capabilities to support:

- Scenario modelling to estimate potential impact and support capital planning, strategic decision-making and regulatory engagement
- Accounting advice, including provision quantification and disclosure wording.
- Tax advice, including an assessment of which rules apply and what aspects of any provision / expense could be tax deductible.

## Population analysis & Data readiness

An effective and operationally efficient response to the outcome of the FCA review of DCA and commission disclosure will be driven by accurate and complete data. Our Data SMEs are on point to help you with the:

- Design and deployment of data enrichment strategies to enable greater automation in complaints handling / proactive redress.
- Design and development of a strategic data source to ensure it is robust, auditable and tested and includes all required loan, customer and complaints data.
- Test and validate population ID and/or developed datastore to provide independent assurance.

## Legal support

The legal position will continue to evolve throughout the year. Our lawyers can support with:

- Legal advice on the remediation programme as an integrated part of the KPMG team
- Contract negotiation with third party support providers of remediation support to capture regulatory obligations
- Other legal advice services around the design and operations of your response with legal privilege

## Resource Augmentation

We can also augment your existing resources across both your programme and operations, bringing our capacity and capability. This could include:

- Remediation SMEs
- Operational support, including Complaint Handlers, QC, TLs etc
- PMs experienced with remediation programmes
- Data analysts and BAs

## Technology & automation

Leveraging technology and automation will be crucial for any redress scheme –getting money due back to customers at pace and reducing operational costs. We have developed an E2E digital-first and straight-through technology solution. We can either provide our solution to you as a service, develop it within your own infrastructure or provide SME input and advice into your internal development.



Data Asset



Complaints database



Redress calculator



Outbound Comms



Customer Portal



Workflow & MI

## E2E Managed Service

Once the requirements for any redress scheme are clear, we can deliver the execution of this scheme on your behalf through our tried-and-tested managed service capability. Our global operations can provide scalable, cost effective solutions, using our integrated technology solution to deliver on quality and throughput.



**Q&A**

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