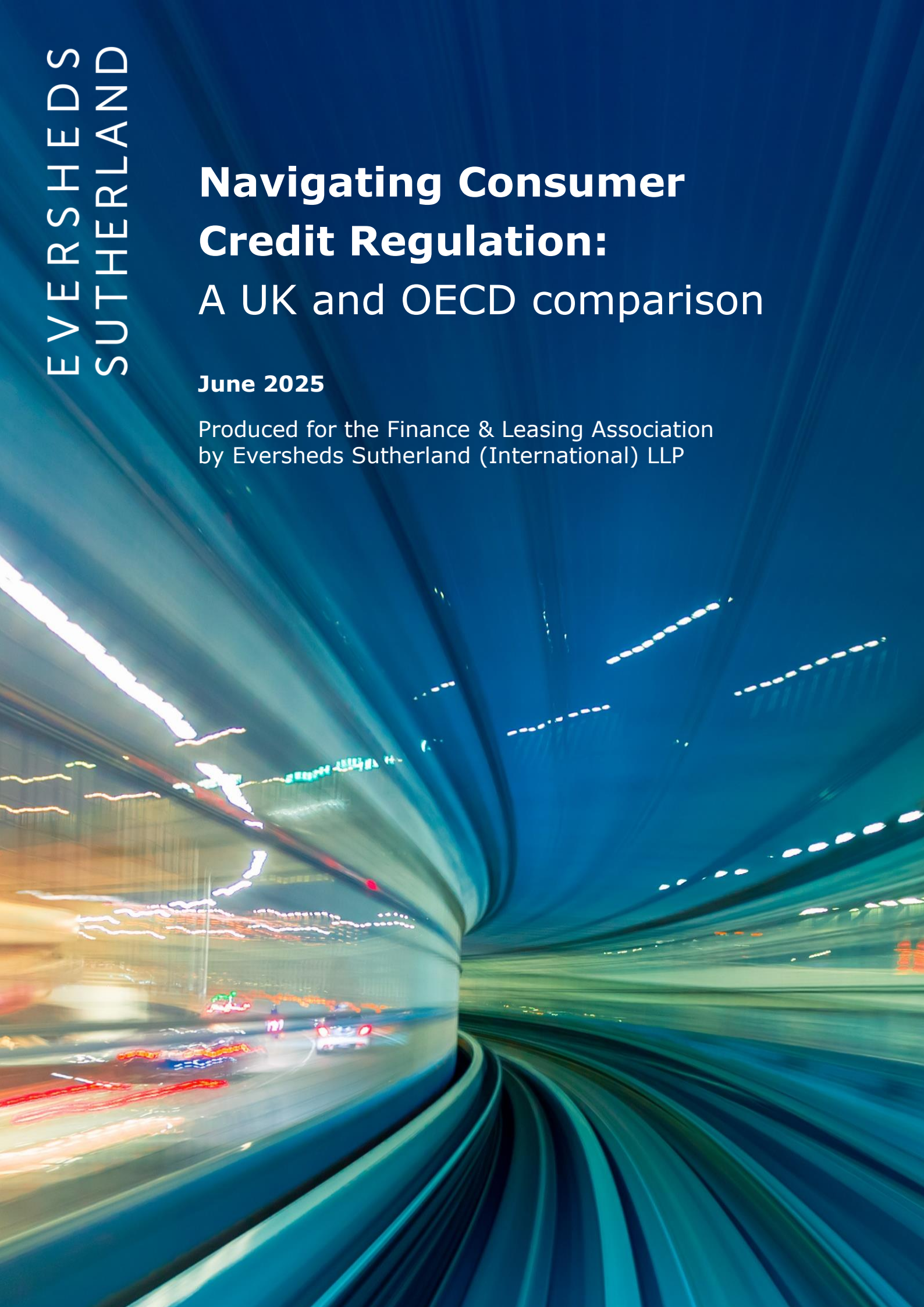
EVERSHEDS SUTHERLAND

Navigating Consumer Credit Regulation:

A UK and OECD comparison

June 2025

Produced for the Finance & Leasing Association
by Eversheds Sutherland (International) LLP



Contents

GLOSSARY 4
1 INTRODUCTION 1
1.1 Foreword 2
2 METHODOLOGY 3
2.1 Assessed Jurisdictions 4
2.2 Rationale for Assessed Jurisdictions 4
2.3 Process of assessment 4
3 EXECUTIVE SUMMARY 6
3.1 The Legal and Regulatory Landscape 7
3.2 ADR 8
4 SECTION 1: THE LEGAL AND REGULATORY LANDSCAPE 13
4.1 Introduction 14
4.2 Comparative overview 14
4.3 Comparative Analysis and Key Conclusions 16
4.4 The Authorisation Regime 16
4.5 The Scope of the Unsecured Consumer Credit Regime 19
4.6 Exemptions from regulation 20
4.7 The legal status and structure of the competent regulator and its powers 21
4.8 The functions and objectives of the competent regulator 22
4.9 Regulatory and rule-making powers of the competent regulator 23
4.10 Supervision and enforcement powers of the competent regulator 24
4.11 Enforcement powers and the most frequent sanctions 26
4.12 Size and headcount of the competent regulator 27
4.13 Funding and authorisation fees 27
4.15 The application process 30
4.16 Approval and supervision of senior managers 31
4.17 Regulatory reporting 31
4.18 The nature of the regime 32
4.21 Other applicable general consumer protections 32
5 SECTION 2: ADR 34
5.1 Introduction 35
5.2 Summaries of analysis 35
5.3 What ADR schemes the different jurisdictions have in place for resolving complaints between consumers and financial services firms about financial services or products 35
5.4 Relevant procedure of each ombudsman scheme, and whether the resulting decisions/recommendations are binding on complainants and respondent firms 36
5.5 Basis for the ombudsman's decision making and whether ombudsman decisions create precedents 37
5.6 Limitation periods for referring complaints/disputes to the financial ombudsman in the various jurisdictions 38
5.7 Types of remedies and resolutions the ombudsmen provide to complainants 39
5.8 Whether the financial ombudsmen decisions, resolutions or recommendations can be challenged or appealed, and if so, the process for doing so 39
5.9 Scale of complaints 40
5.10 Necessity for legal representation when submitting a complaint to the various ombudsmen and whether complainants proceed without legal assistance 41
5.11 How the various jurisdictions handle cases with wider implications, and whether there an established dialogue or procedure with regulators or other bodies to address such cases 41

5.12 Extent to which complaints backed by third-party litigation funding are brought to the financial ombudsman in each jurisdiction 42

Schedules

1 Questions asked to Assessed Jurisdictions 44
2 Further detail on exemptions from regulation 47
3 Further detail on the structure of the competent regulators 49
4 Further detail on the functions and objectives of the competent regulator 50
5 Further detail on the regulatory and rule-making powers of the competent regulator 51
6 Further detail on enforcement powers and sanctions 53
7 Further detail on the application process 56
8 Further detail on approval and supervision of senior managers 57
9 Further detail on regulatory reporting 59
10 Further detail on the nature of the regime 61
11 Further detail on private right of redress 65
12 Further detail on enforceability sanctions 66
13 Further detail on ADR responses 68

GLOSSARY

Term	Definition
ABF	Arbitro Bancario e Finanziario
ACPR	France's Autorité de Contrôle Prudentiel et de Résolution
ADR	Alternative Dispute Resolution
AGER	Tasso Effettivo Globale Medio
AMF	France's Autorité des Marchés Financiers
AML	Anti-Money Laundering
Assessed Jurisdictions	France, Germany, Italy, Poland, UK, and the USA (federal and New York State law)
BaFin	Germany's Bundesanstalt für Finanzdienstleistungsaufsicht
BFOS	Italy's Banking and Financial Ombudsman Service
BGB	Germany's Bürgerliches Gesetzbuch – German Civil Code
BNLP	Buy Now Pay Later
BoI	Bank of Italy
Bundesbank	German Central Bank
CAU	Consumer Assistance Unit
CBA	Italy's Consolidated Banking Act
CCA	The UK's Consumer Credit Act 1974
CCD	The Consumer Credit Directive 2008/48/EC
CCD2	The Second Consumer Credit Directive (EU) 2023/2225
CEO	Chief Executive Officer
CFPA	Consumer Financial Protection Act
CFPB	Consumer Financial Protection Bureau
CJC	Civil Justice Council
CLFs	Claimant Law Firms
CMCs	Claims Management Companies
CONC	The Consumer Credit Sourcebook found in the FCA Handbook
CONSOB	Italy's Commissione Nazionale per le Società e la Borsa
CPUTR 2008	Consumer Protection from Unfair Trading Regulations 2008
CRA 2015	Consumer Rights Act 2015
ECB	European Central Bank
EMI	Electronic Money Institution
EU	European Union
Eversheds	Eversheds Sutherland (International) LLP
FCA	Financial Conduct Authority
FCA Handbook	Financial Conduct Authority's Handbook of rules and guidance

Term	Definition
FILMS	New York State's Financial Condition, Internal Controls and Auditing, Legal and Regulatory Compliance, Management, and Systems and Technology
FinDAG	Act Establishing the Federal Financial Supervisory Authority
FIT	Fit and Proper Test for Employees and Senior Personnel under the UK's SMCR
FLA	Finance and Leasing Association
FSMA	Financial Services and Markets Act 2000
FSMA 2023	Financial Services and Markets Act 2023
FTC	The USA's Federal Trade Commission
FTE	Full Time Equivalent
FOS	The UK's Financial Ombudsman Service
HMT	His Majesty's Treasury
HP	Hire Purchase
ID	Identification
IT	Information Technology
IVASS	Italy's Istituto per la Vigilanza sulle Assicurazioni
LLL	New York's Licensed Lender Law
NMLS	The USA's Nationwide Multi-state Licensing System
NYDFS	New York Department of Financial Services
OECD	Organisation for Economic Co-operation and Development
OFT	Office of Fair Trading
OPCC	Poland's Office for the Protection of Competition and Consumers
PCP	Personal Contract Purchase
PFSA	Polish Financial Supervision Authority
PI	Payment Institution
PLN	Polish Zloty
Polish CCA	The Polish Consumer Credit Act
PRA	The UK's Prudential Regulation Authority
PRIN	Principles for Business
RAO	Regulated Activities Order 2001 (SI 2001/544)
RF	Rzecznik Finansowy
SMCR	The UK's Senior Managers and Certification Regime
SMF	The UK's Senior Management Function
SMR	The UK's Senior Managers Regime
SRA	Solicitors Regulation Authority
SUP	Supervision Manual in FCA Handbook
UK	United Kingdom

Term	Definition
USA	United States of America
WIF	Wider Implications Framework

1. INTRODUCTION

1.1 Foreword

1.1.1 The FLA is the leading trade body for the asset, consumer, and motor finance sectors in the UK. Members include banks, subsidiaries of banks and building societies, the finance arms of leading retailers and manufacturing companies, and a range of independent firms. In 2024, FLA members provided £156 billion of new finance to UK businesses and households. £116 billion of this was in the form of consumer credit, almost a third of total new consumer credit written in the UK in 2024.

1.1.2 In the FLA's view, the regulatory regime for consumer credit regulation in the UK is complex and characterised by a range of often conflicting and overlapping regulatory systems. Lenders face at least four regulatory systems:

1.1.2.1 behaviour or conduct based regulation determined by rules and guidance in the FCA Handbook (e.g. CONC);

1.1.2.2 outcomes-based regulation (e.g. the FCA's 'new' Consumer Duty);

1.1.2.3 principles-based regulation (e.g. the PRIN); and

1.1.2.4 a system of legislation.

1.1.3 Specific laws relating to the regulation of consumer credit are set out in the CCA and its subsidiary statutory instruments. However, firms offering consumer credit in the UK must also comply with more general consumer protection legislation including, for example, the unfair terms regime in the CRA 2015 and the CPUTR 2008. These systems also sit within a common law system under which the courts can impose requirements that differ from those of the regulatory regime. The CCA also provides for court processes that have a similar effect (e.g. through the unfair relationships provisions at s140A of the CCA). There is also a separate system of ADR through the FOS which, at present, appears to effectively operate as a quasi-regulator.

1.1.4 As a result, the FLA wants to test the above assertion and commissioned Eversheds to carry out a comparative survey of the regulation of unsecured consumer credit and the system of ADR for dealing with unsecured consumer credit complaints in the UK with certain other OECD jurisdictions. The purpose is to test the degree to which the UK's approach to consumer credit regulation and ADR is an outlier when compared with certain other key jurisdictions. The FLA identified jurisdictions of interest and appointed Eversheds to carry out this strategically important work.

1.1.5 During the investigation phase, Eversheds undertook a survey of the legal and regulatory regimes for consumer credit in France, Germany, Italy, Poland, and the USA, comparing those regimes against the UK (together referred to in this report as the Assessed Jurisdictions). At the FLA's request, we have prepared this report, which aims to shed light on the complexities and nuances of consumer credit regulation across these key jurisdictions.

1.1.6 Given the current political and economic climate, there has never been a more crucial time to review the way in which consumer credit is regulated and related complaints are dealt with in the UK. The findings of this study have direct relevance, for example, for the current CCA reform process and the current review of UK redress arrangements.

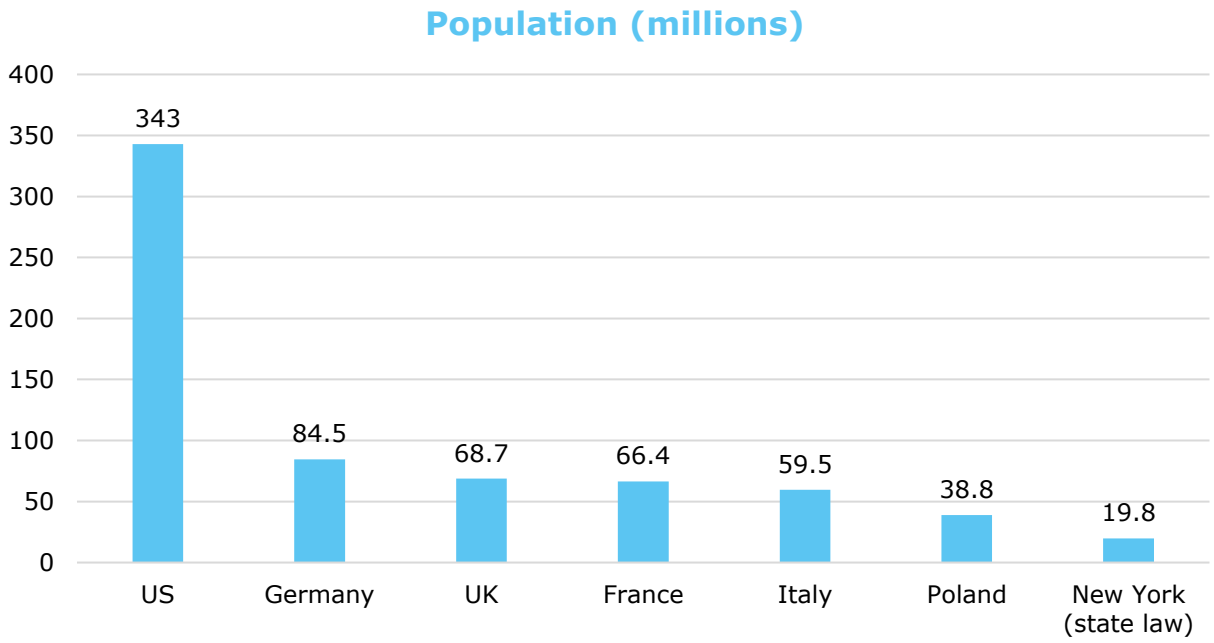
1.1.7 This report provides an in-depth review of the legal and regulatory frameworks and ADR mechanisms for unsecured consumer credit across the Assessed Jurisdictions. It examines the various approaches taken by different countries to regulate unsecured consumer credit and ensure effective dispute resolution.

2. METHODOLOGY

2.1 Assessed Jurisdictions

2.1.1 As part of the comparative study, the FLA decided to examine the Assessed Jurisdictions.

2.1.2 The populations of the Assessed Jurisdictions vary significantly[1] based on the last official data counts in 2023.[2]



2.2 Rationale for Assessed Jurisdictions

2.2.1 European countries were chosen because all the EU Member States were required to implement the CCD. This ensured that their legal frameworks would align closely with those in the UK. The four member states were chosen because they were comparable in scale to the UK and each of the four jurisdictions were derived from a different legal tradition which was reflective of the EU as a whole.

2.2.2 While the state regulation of consumer credit varies across the USA, New York State law was chosen because it was understood that this state had a licensing and supervisory regime applicable to unsecured consumer credit, and New York is otherwise an important financial services centre in the USA.

2.3 Process of assessment and limitations

2.3.1 To test whether the Assessed Jurisdictions have comparable regimes for the regulation of unsecured consumer credit and system of ADR for dealing with consumer credit-related complaints, Eversheds designed a survey to be answered by all Assessed Jurisdictions. We collaborated with colleagues in the Eversheds offices across the UK, Poland, Italy, and the USA. In Germany, we worked with Annerton[3], and in France, with BCLP[4].

2.3.2 These questions assessed the laws and regulations related to the licensing and regulation of unsecured consumer credit, as well as the ADR systems used for addressing consumer credit-related complaints. The list of questions can be found in

---

1 World Health Organization – Population Data

2 New York – Census Bureau Profile (based on 2020 Decennial Census the population was 20.2m; however, estimates by the consensus bureau suggest as of July 2024, the population has decreased to 19.8m)

3 Annerton

4 BCLP

Schedule 1. The survey was divided into two parts. Part one focused on the licensing and regulation of unsecured credit. Part two focused on ADR systems used for resolving complaints relating to such consumer credit.

2.3.3 The UK completed the survey first, sharing its responses and the survey questions with each of the other Assessed Jurisdictions. Meetings were held to clarify answers, and the findings were analysed to compare regimes. This report summarises the results and we draw headline conclusions where possible, summarising the similarities and differences. This analysis allows us to highlight the unique aspects and possible comparative strengths of each of the Assessed Jurisdictions.

2.3.4 Work started on this report in December 2024 and reflects our understanding of the law as of January 2025. This report has been finalised in June 2025. The report may not reflect all developments in the Assessed Jurisdictions since January 2025[5] or announced legislation or guidance prior to that date. Note that European jurisdictions are currently implementing the CCD2 with transposing legislation expected to apply from 20 November 2026. The responses provided outline the existing legal and regulatory position under the CCD and do not reflect any changes mandated by the CCD2.

2.3.5 Also, note that for the purposes of the ADR analysis in this report, in Germany and France, there is no single financial services ombudsman entity. For the purposes of this report, the information provided about the French system is applicable to the in-house and external ombudsman procedure. For Germany, the information given relates to the 'Bundesbank Ombudsman' (the usual ombudsman for consumer credit type complaints if the respondent firm is not associated with a private dispute resolution entity).

2.3.6 In the UK, lenders do not have to be banks, PIs, or EMIs. Therefore, the Assessed Jurisdictions provided responses focusing on non-bank lenders. For France, the regulatory position for banks, PIs or EMIs was addressed separately, as their regulation differs from the UK.

2.3.7 This report is for general information only and does not constitute legal advice nor establish a lawyer/attorney-client relationship. The information contained in this report is not intended to be comprehensive or to include advice on which the FLA or any other party may rely. Eversheds disclaims liability for actions taken based on this report.

2.3.8 This report may not be distributed for commercial gain nor may any elements of it be incorporated into other documents.

---

5 For example, as regards the UK this report does not take account of HMT's 19 May 2025 consultation paper 'Consumer Credit Act Reform – Phase 1' (Phase 1 consultation), or HMT's May 2025 response to the consultation on the regulation of BNPL (BNPL consultation response).

3. EXECUTIVE SUMMARY

3.1 The Legal and Regulatory Landscape

3.1.1 While there are many similarities across the regulatory regimes for unsecured consumer credit, with the Italian regime seemingly being the most similar to the UK, there are also significant differences. For example:

3.1.1.1 Local counsel in all the other Assessed Jurisdictions told us that, while their competent regulators had a consumer protection objective, **the typical sanction where a firm had breached requirements was a regulatory fine**. Very few competent regulators had required consumer remediation or redress on the scale of the FCA. Germany did, however, emphasise the power of consumer protection bodies.

3.1.1.2 In all other Assessed Jurisdictions surveyed, **there was not a general private right of redress directly comparable to that provided by s138D of the FSMA**. Instead, consumers can bring a claim for breach of contract or relevant consumer protection regulation.

3.1.1.3 Whilst all competent regulators aim to protect consumers and ensure financial stability, their objectives and scope vary.

3.1.1.4 **Only the UK has a "limited permission" regime for the authorisation of certain consumer credit-related regulated activities or the "appointed representatives" regime.** All other Assessed Jurisdictions require firms to be authorised by the competent regulator where regulated consumer credit activities were carried on, save in the case of Poland where a registration is required unless the lender is a bank, PI, or EMI.

3.1.1.5 While the European jurisdictions have similar exemptions to the UK, the effect of those is to disapply certain conduct of business requirements rather than disapplying any authorisation requirement. **Only the UK has exemptions which mean that the credit is both exempt from authorisation and consumer credit specific conduct of business requirements.**

3.1.1.6 **The UK was the only jurisdiction that had a specific "unfair relationships" regime for consumer credit in addition to general consumer protection laws relating to unfair commercial practices and unfair terms**. The Italian regime requires firms to act in good faith and with honesty, but this applies to all types of consumer contracts and not just financial services.

3.1.1.7 **Only the UK appears to have a complex and multi-faceted regime that comprises of law and regulation, regulatory rules and guidance, regulatory principles, and outcomes-focused regulation.** In other jurisdictions, such as Germany, where there is a principles-based regime, the competent regulator issues rules and/or guidance to assist firms with the interpretation and implementation of existing laws rather than to introduce new requirements.

3.1.1.8 While Italy has the Legislative Decree 385/1993 (as amended) Consolidated Law on Banking which provides for certain rights and protections of consumers (e.g. full or partial early settlement, withdrawal and cancellation etc.) **only the UK has outcomes-focused regulation that requires the lender to act in the best interests of the borrower (the Consumer Duty).** In other regimes, consumers were afforded protection under general consumer protection laws such as unfair commercial practices and unfair terms, rather than having specific obligations to deliver good outcomes for borrowers under financial services law.

3.1.1.9 While a failure to comply with consumer credit requirements in other jurisdictions could result in sanctions, **only the UK and Italy had provisions that resulted in the unenforceability of the consumer**

credit agreement for such matters. In Germany, consumer credit agreements have to be concluded in writing. If there is non-compliance, agreements are deemed void. In New York, non-bank entities need a licence to issue consumer loans amounting to $25,000 or less with an annual interest rate over 16%. All unlicenced loans above the interest rate cap may be deemed void and unenforceable due to the lack of licence, or the lender may be prohibited from collecting interest. Licenced loans can be issued at an interest rate agreed between the creditor and the consumer not exceeding the state's criminal usury rate of 25% per year. In the event that a licenced loan exceeds the 25% cap, it is automatically void and unenforceable. Otherwise, where a lender had failed to comply with a consumer credit information requirement, the lender would be able to recover the capital but would not be entitled to charge interest (for example, in France) or the interest would be reduced to the usury maximum.

3.1.1.10 **Only the UK had a certification regime for those working in financial services.** This was not present in the other jurisdictions and, similarly, other jurisdictions do not have specific conduct of business rules that apply to individuals within the firm. **While competent regulators in other jurisdictions may be able to take enforcement action against directors and senior managers where the firm was in breach, none of them seem to have regimes that go as far as the UK's SMR**. For example, in Germany, the competent regulator can revoke the director's mandate and install interim managers. In France, the competent regulator is entitled to enforce the following sanctions: temporary suspension for up to 10 years, compulsory retirement, or a financial penalty (applicable only to conducting officers).

3.1.1.11 In light of the changes being made to product sales data reporting in the UK, responses from local counsel suggest that **the UK requirements in terms of agreement-specific product sales data will require more granular data to be reported than those required by other competent regulators**.

3.1.1.12 **The application process is significantly more onerous in the UK in comparison to the other Assessed Jurisdictions**. UK applications must be made online and supported by several documents, including a regulatory business plan, financial forecasts, policies and procedures, sample credit agreements, a quality assurance framework, a conduct risk framework, and a compliance monitoring plan. Additionally, firms must provide documents to help the FCA assess compliance with the Consumer Duty, such as target market analysis, product and service governance frameworks, fair value assessment frameworks, customer understanding assessment and testing frameworks, customer support monitoring policies, and customer outcome monitoring frameworks.

3.2 ADR

3.2.1 The FOS was established by Parliament in 2001 under the FSMA and is integral to the current ADR framework in the UK. It serves as an independent body that helps resolve disputes between consumers and financial service providers and is required by section 228(2) FSMA to determine complaints "*by reference to what is, in the opinion of the ombudsman, fair and reasonable in all the circumstances of the case*".

3.2.2 **In each Assessed Jurisdiction, there exists an ADR system which is similar in some respects to the FOS, where complaints about financial products and services can be resolved by a financial ombudsman[6]. This provides an alternative to bringing a complaint to court.**

3.2.3 **However, operational differences exist. These variations likely stem from each Assessed Jurisdiction's unique culture (including the level of consumer**

[6] Note that, in the USA, at federal level, the CFPB provides a platform for complainants to submit complaints, but it does not itself make decisions on complaints.

protection awareness and appetite for ADR), market conditions, regulatory and legal framework governing financial services, and government and institutional support. These factors influence how financial services disputes are managed and resolved.

3.2.4 **Features in common include:**

3.2.4.1 **The financial ombudsman in each of the Assessed Jurisdictions is independent and impartial.** Further, the ombudsman in each jurisdiction is designed and established on the premise that legal or professional assistance is not required for complainants to refer complaints. If parties obtain legal or professional assistance, it is at their own cost.

3.2.4.2 Generally, complainants should first submit their complaint to the relevant respondent firm to consider.

3.2.4.3 Most ombudsmen decide complaints based on written submissions without a hearing. In the UK and Poland, it is possible for a hearing to be scheduled, although these are rare. In France, the ombudsman can meet with the parties.

3.2.4.4 In all of the Assessed Jurisdictions (save for the USA at federal level), the relevant ombudsman is responsible for reaching a decision or recommendation/proposal regarding the outcome of the complaint.

3.2.4.5 **In all of the Assessed Jurisdictions, if the complainant is not happy with the decision or recommendation, it is not binding on either party, and the complainant is free to pursue a claim via the respective court system.**

3.2.5 **Other observations include:**

3.2.5.1 **In the UK and Italy, if the complainant accepts the ombudsman's decision, it is binding on the respondent firm. This is not the position in the other Assessed Jurisdictions (France, Germany, New York and Poland)[7].** In practice this allows the possibility for respondent firms not to adopt and adhere to ombudsman decisions where they do not agree with them, although there are other measures or pressures that encourage respondent firms to comply.

3.2.5.2 The Italian ombudsman has a unique structure, featuring territorial panels that handle complaints locally and a co-ordinating panel which deals with complaints of significant importance or those with broader implications. None of the other Assessed Jurisdictions have a structure like this.

3.2.5.3 France and Germany do not have a single financial services ombudsman body. In France, financial services firms are required to have an in-house ombudsman procedure or provide complainants access to an external ombudsman. In Germany, the financial ombudsman schemes are organised by sector.

3.2.6 **Basis for decision-making and precedent value:**

3.2.6.1 **The UK and France are outliers when compared with the other Assessed Jurisdictions because in the other Assessed Jurisdictions, their ombudsmen are required to apply only the law in their decisions or recommendations.** The other Assessed

[7] Note that in Germany, where the relevant ombudsman is the Ombudsman Scheme of the Private Commercial Banks (Ombudsmann der privaten Banken) (not covered in detail in this report), the Ombudsman's decision is binding on the bank, but not on the complainant, where the amount involved in the dispute does not exceed €10,000.

Jurisdictions have limited discretion. The position in New York is not clear but it is expected that the CAU applies law and regulation.

(a) The UK FOS decides complaints on what it considers to fair and reasonable in all the circumstances of the case. In considering what is fair and reasonable, the FOS will consider relevant law and regulations, the regulator's rules, guidance and standards, codes of practice and, where appropriate, what the FOS considers to have been good industry practice at the time but it can depart from them. There are concerns raised by firms that the FOS's decision-making process might be overly subjective and discretionary, and whether it is fair to uphold complaints against firms that have adhered to the law, relevant regulations, guidance, and best practices.

(b) In France, ombudsman decisions are based on fairness and equity, taking into account the circumstances of the dispute, as well as applicable laws and regulations, court precedent, regulatory rules, guidance and standards, codes of practice, and good industry practice.

3.2.6.2 In the UK, respondent firms are required to take account of previous decisions by the FOS. In practice, where the FOS takes a particular stance on an issue, the requirement for firms to take account of **this has led to the FOS acting as a quasi-regulator.** In Italy, respondent firms must evaluate complaints received and consider whether a complaint falls within cases similar to those already decided by the ombudsman and consider the solutions adopted in such cases (but there is no requirement to adopt them). **None of the other Assessed Jurisdictions require respondent firms to take account of other ombudsman decisions when dealing with similar complaints.** A reason for this could be that, in most of the other jurisdictions where ombudsmen are required to apply the law, the ombudsman has less discretion. Therefore, the position may be more certain, clearer, and more consistent for both complainants and respondent firms.

3.2.6.3 In none of the Assessed Jurisdictions do the decisions made by the ombudsman establish legal precedent.

3.2.6.4 In the UK, there are criticisms that the FOS's decisions can be inconsistent. This could be due to its wide discretion and the largely principles-based regime that the UK has for financial services, which the FOS must interpret when determining complaints. This might lead to subjectivity of the decision maker in deciding individual complaints. In contrast, the French ombudsman has to take into account applicable laws and regulations etc. when resolving complaints, taking into account fairness and equity, but the regulatory framework for consumer credit in France is also rules-based (rather than outcome or principles based) and therefore potentially leaves less scope for different interpretations or subjectivity to affect individual decisions.

3.2.7 **Limitation:**

3.2.7.1 The UK and France have time requirements regarding when a complaint must be submitted to their financial ombudsman which are linked to when the complaint was made to the respondent firm or when the respondent firm provided a response. In Italy, a complaint can be dismissed if it is not submitted in time. The other Assessed Jurisdictions do not have this type of time-bar.

3.2.7.2 **Some of the Assessed Jurisdictions do have long-stop periods which are linked to the underlying factual circumstances of the complaint itself.** For example, Germany, Italy, and Poland have implemented long-stop dates tied to statutory limitation periods, although the periods are not consistent and are typically no longer than ten years. These measures may help to prevent 'stale' complaints being referred to the ombudsman. However, the other Assessed Jurisdictions

did not report significant issues with handling stale complaints (even where there is no limitation period).

3.2.7.3 There is no long-stop period for referring complaints to ombudsman in the UK[8], France, and New York. Where there is no long-stop date, respondent firms can face uncertainty regarding liability for past events and lack protection. This is something firms subject to the FOS's jurisdiction take issue with and concerns about how time bar works in the UK are the subject of current judicial review proceedings which are yet to be determined[9]. The position in the UK is also at odds with the position in law whereby the Limitation Act 1980[10] prescribes a range of limitation periods for civil claims.

3.2.8 **Remedies:**

3.2.8.1 The types of remedies and resolutions that the various ombudsmen can provide to complainants differ.

3.2.8.2 Only the UK FOS and Italian ombudsman have a cap on compensation, and the cap for the UK FOS at £430,000 is significantly higher than the Italian cap at €200,000.

3.2.9 **Appeal mechanisms:**

3.2.9.1 The UK has a judicial review process for challenging the FOS's decisions. However, judicial review appears to be rarely pursued by complainants and respondent firms, due in part, to the very stringent criteria both to get permission to apply for judicial review and to succeed in any application. The lack of a traditional appeal mechanism on the facts or law to a court or tribunal makes it difficult for complainants and respondent firms to challenge decisions.

3.2.9.2 While other Assessed Jurisdictions also lack appeal mechanisms, this has not been reported as problematic. This may be because the other ombudsmen (save for France) are required to only apply the law and regulation, ensuring greater consistency in decisions. In France, the ombudsman is required to apply law and regulation etc. but also considers what is fair and equitable. Alternatively, the lack of an issue in the other Assessed Jurisdictions may be because the ombudsman decisions are generally not binding on complainants or respondent firms. Consequently, the need for an appeal mechanism may be less pronounced.

3.2.10 **Issues with wider implications and interaction between financial ombudsmen entities and other regulators**

3.2.10.1 In the UK, the FOS is part of the WIF that includes the FCA. The WIF aims to manage matters with wider implications and decide who should lead the approach. However, there is criticism that the WIF is not proactive enough (or does not appear to be), and the FOS often makes decisions on wider implications that should be handled by the FCA or the courts. The other Assessed Jurisdictions have not reported similar concerns, albeit it is noted that in Italy, the ABF has the co-ordinating panel, specifically set up to deal with complaints with wider implications.

---

8 Note that, in the UK, a complaint must be brought before six years from the date of the event the complainant is complaining about or, if later, three years from the date on which the complainant became aware of ought reasonably to have become aware that they had cause for complaint. In practice, the second part of this rule can mean there is no overall long-stop.

9 *R (National Westminster Bank plc, Vanquis Bank Limited, Barclays Bank UK plc and Santander UK plc) v Financial Ombudsman Scheme.*

10 And equivalent legislation in Scotland.

3.2.10.2 While the other Assessed Jurisdictions do not have an exact replica of the UK's WIF, their ombudsmen generally maintain communication with their financial services regulators or relevant entities to provide feedback on complaints. This helps to address issues through supervision or enforcement. The other Assessed Jurisdictions might not need a framework like the UK's because their system is sufficient as it is and/or their ombudsmen apply the law, potentially negating the need for a formal framework.

3.2.11 **Funding:**

3.2.11.1 The ombudsman entities are primarily free for complainants to use. Where the complainant has to pay, the fee is small and is often reimbursed if they are successful. **Only the UK FOS charges professional representatives for referring complaints to it[11] which reflects particular issues identified in the UK concerning the conduct of CMCs and certain law firms.**

3.2.11.2 The ombudsman entities in the UK, France, and Italy are primarily funded via the financial firms which fall under their jurisdiction via annual levies and case fees. In Germany, the Bundesbank Ombudsman funds itself, the Polish ombudsman is publicly funded, and the New York ombudsman is funded through NYDFS's operating budget.

3.2.11.3 **Where respondent firms have to pay case fees (in Italy and Germany the case fee is €200), these are significantly lower than the UK case fee of £650.**

3.2.12 **Involvement of claims CMCs and CLFs and litigation funding**

3.2.12.1 **The inconsistency in UK FOS decisions can be a factor driving complaints and claims management activities.** In the UK, respondent firms face significant issues with the volume of complaints referred to the FOS by CMCs regulated by the FCA and CLFs regulated by the SRA. This often involves mass use of templated and unsubstantiated complaints. The availability of third-party litigation funding in the UK has also facilitated mass complaints by CMCs and CLFs[12]. This monetisation of the financial services complaints handling industry has contributed to the high number of complaints seen at the UK FOS.

3.2.12.2 In contrast, while the other Assessed Jurisdictions reported that many complainants do use legal representatives to pursue complaints, **the issues seen in the UK were not reported in the other Assessed Jurisdictions**. Further, third-party litigation funding does not appear to be used to fund mass complaints in the other Assessed Jurisdictions. It could be that clearer rules, application of law and non-binding decisions in the other Assessed Jurisdictions, make it less feasible for CMCs and CLFs to monetise the financial services complaints industry. As above, the UK is the only jurisdiction which has had to implement charges for professional representatives to seek to address this problem.

---

11 This is a new development since 1 April 2025.

12 We note that this position could change following any changes implemented following the CJC's final report on litigation funding in England and Wales.

4. SECTION 1: THE LEGAL AND REGULATORY LANDSCAPE

4.1 Introduction

4.1.1 This section of the report sets out the key findings of the legal and regulatory regimes for consumer credit in the Assessed Jurisdictions. It includes information about the similarities and differences between those jurisdictions regarding the requirement for authorisation, the competent regulator and their powers, the nature and scope of the regime and the sanctions for breach (amongst other matters).

4.1.2 Further information about each of the Assessed Jurisdictions is included in the relevant Schedules.

4.2 Comparative overview

4.2.1 The table below pulls out the key themes from the survey and highlights briefly which of the Assessed Jurisdictions have each of the below:

Question	UK	USA		Poland	Italy	France	Germany
		Federal	New York State law				
Do firms providing unsecured consumer credit in your jurisdiction need to be regulated by a competent regulator?	✓	✗[13]	✓	✓[14]	✓	✓	✓
Are there alternatives to authorisation, such as relying on a third party's authorisation or registration?	✓[15]	N/A	✗	✗	✗	✗	✗
Is it a criminal offence for anyone to carry on regulated consumer credit activities by way of business unless exempt?	✓	N/A	✓[16]	✓	✓	✓	✓
Does the regulation of consumer credit include outcomes focused regulation?	✓	✗	✗	✗	✗	✗	✗
Does the regulation of consumer credit include principles-based regulation?	✓	✗	✗	✗	✓	✗	✓
Does the regulation of consumer credit include requirements which make senior managers liable for non-	✓	✗	✗	✓	✓	✓	✗

13 Federal financial regulatory authorities regulate consumer credit products and enforce U.S. consumer financial protection laws against lenders, but the U.S. has no federal consumer lending licence or authorisation. Consumer lenders are licensed by the states. The primary federal regulator of non-bank consumer lenders is the CFPB.

14 Although where a person provides the credit other than a bank, PI, or EMI, it is a registration rather than a licensing process.

15 For instance, specific categories of professional firms are exempt from authorisation or certain activities can be carried on where the firm is an 'appointed representative' of a duly authorised principal firm. In such cases, the principal firm is directly accountable to the FCA for compliance with its regulations and must oversee its appointed representative to ensure customer protection.

16 In general, regulated consumer lending (making consumer loans of $25,000 or less at more than 16% annual interest) without a licence is a criminal offence unless the company is either licenced or exempt from licence.

compliance by the firm of consumer credit-related requirements?							
Does the regime include specific consumer credit related reporting to the competent regulator?	✓	✓	✓	✓	✓	✓	✗

Key	✓ Yes	✗ No	

4.3 Comparative Analysis and Key Conclusions

4.3.1 The regulation of consumer credit in the UK was initially established through the licensing and conduct of business requirements outlined in the CCA and its subordinate regulations. The CCA was considered "… *a landmark piece of legislation which replaced a confusing and disparate framework of credit regulation with a new and comprehensive set of protections for consumers*".[17] At the time, the CCA brought about significant reforms in consumer credit in the UK.

4.3.2 Since the CCA was introduced, laws and regulations for unsecured consumer credit have evolved. Additional consumer protection laws have been introduced. In 2011, changes implemented the CCD requirements. In 2014, oversight moved from the OFT to the FCA. CPTUR 2008 and the CRA 2015 prohibit unfair trading practices and unfair contract terms, respectively. Overall, since the CCA was introduced, the general protection of consumers has significantly improved.

4.3.3 Under the FCA regime, the regulation of consumer credit is no longer solely governed by the legislative requirements of the CCA. Lenders must now comply with: statutory requirements in the FSMA and associated FSMA orders; FCA rules, guidance and principles set out in the FCA Handbook, including the PRIN (which contains the Consumer Duty) and specific rules and guidance relating to consumer credit in CONC; and also the SMCR. The FCA Handbook is voluminous and contains sourcebooks of provisions which apply to various financial services firms. There is a perception within the sector that navigating the consumer credit regime is complex and that compliance costs have increased significantly since the introduction of the CCA. HMT states in their policy paper "New approach to ensure regulators and regulation support growth"[18], that, currently, "…*government does not have a robust understanding of the cumulative cost of regulation on business*." The paper highlights feedback from businesses indicating rising compliance costs.

4.3.4 Many now accept that the CCA is "…*struggling to keep pace with the modern world*."[19] HMT has previously consulted on proposals for comprehensive reform of the UK regime, but no substantial changes have been implemented. We note that HMT has published a further consultation on CCA reform. This report aims to examine the key requirements of the UK regime in comparison to the Assessed Jurisdictions. The goal is to assist HMT and other stakeholders in understanding how the UK regime stands relative to others and to identify possible opportunities for change that balance consumer protection with growth.

4.4 The Authorisation Regime

4.4.1 Our study found that lenders providing certain types of consumer credit must be authorised or registered (as appropriate) by their competent regulator. Failure to be appropriately authorised or registered generally resulted in the lender committing a criminal offence and the credit agreement being void or unenforceable.

4.4.2 This approach across the jurisdictions was broadly comparable with the UK. For example:

---

17 See paragraph 1 on page 7 of the Ministerial Foreword of HMT Consultation Response: Reforming the Consumer Credit Act 1974 (July 2023): CCA consultation response

18 Policy Paper: New approach to ensure regulators and regulation support growth

19 See paragraph 3 on page 7 of the Ministerial Foreword of HMT Consultation Response: Reforming the Consumer Credit Act 1974 (July 2023): CCA consultation response

	UK	USA	Poland	Italy	France	Germany
Name of competent regulator	FCA (all firms) PRA (where the lender is also a bank)	USA Federal: N/A[20] In New York: NYDFS.	PFSA	BoI	ACPR	BaFin and/or ECB
Do you have to be a bank (credit institution), PI, or EMI to grant regulated consumer credit?	✗	✗	✗	✗[21]	✓	✓
Is it a criminal offence to provide credit without an authorisation, registration, licence, or exemption?	✓	✓	✓	✓	✓	✓
What is the maximum fine for breach of licensing rules?	Unlimited fine	$2,500 – $75,000 per day[22]	PLN 500,000 (approximately £100,000)[23]	€10,000 for abusive banking activities and €10,329 for abusive financial activities[24]	€375,000 for natural persons and €1,875,000 for a legal entity	€10 million and profits may also be forfeited
What is the maximum sentence that can be imposed?	2 years imprisonment	364 days[25]	2 years imprisonment	4 years imprisonment	3 years imprisonment	5 years imprisonment

20 There is no federal licencing authority for consumer credit. For non-bank consumer lenders, the CFPB, but the CFPB does not control licensing. In New York, NYDFS.

21 However, entities duly entitled to provide regulated consumer credit other than banks must be duly licensed by the BoI (e.g. financial intermediaries pursuant to Article 106 of the Consolidated Banking Act).

22 $2,500 – $75,000 per day per violation, unless the superintendent determines that the violation was engaged in recklessly and as part of a pattern of misconduct that results in pecuniary gain or other benefit to the lender, in which case the maximum penalty is $15,000 per day the violation continues.

If additional aggravating factors are present, the fee may go up to $75,000 per day.

In addition, New York's penal law provides for monetary fines for misdemeanours, which are generally at the discretion of the court.

23 This penalty also applies to members of the management board of entities not registered with the PFSA.

24 In addition to this, in case a legal entity were to commit the crime of abuse of denomination, pursuant to Article 133 of the Consolidated Banking Act, an administrative pecuniary sanction from €30,000 up to 10% of the annual turnover could be applied.

25 For 'unclassified misdemeanours' under the New York Penal Code.

Is the credit agreement unenforceable or void where the lender is not appropriately authorised etc.?	Yes – unenforceable without a validation order	✓[26]	✓	✓	Generally, no*	✗

Key	✓ Yes	✗ No	

26 In New York, an unlicensed loan may be deemed void and unenforceable, but this is not strictly dictated by the statutes. Rather, case law supports the loan being void/unenforceable. However, the NYDFS could prohibit a lender from enforcing an unlicensed loan against the borrower.

4.5 The Scope of the Unsecured Consumer Credit Regime

4.5.1 Different consumer credit products have varying popularity in different regions due to cultural, economic, and regulatory factors.

4.5.2 In the UK, credit cards are commonly used for everyday purchases to earn points and to build credit scores. They also offer protection to the borrower under section 75 of the CCA.

4.5.3 In contrast, many Europeans, especially Germans, prefer debit cards and cash, with only approximately one third of Germans having a credit card and 51% of all point-of-sale transactions being conducted in cash (based on data from 2023).[27]

4.5.4 Under UK law, consumer credit includes the provision of a loan or other financial accommodation to an individual (the debtor) by another party (the creditor). This definition is deliberately broad, capturing various products such as loans, credit cards, hire purchase agreements, point-of-sale finance, conditional sale agreements, and other financial products where the immediate payment of a 'debt' is deferred. The FCA and CCA regimes apply to regulated credit agreements, defined as agreements between an individual or relevant recipient of credit (A) and any other person (B) under which B provides A with credit of any amount. A consumer credit agreement will be regulated if it is not exempt.

4.5.5 Our study identified that the regimes in other jurisdictions also applied to a variety of products. However, some products may have lower popularity in other jurisdictions.

4.5.6 In the **UK**, HP (including PCP) are the most popular car financing products. With HP, consumers make an initial deposit, followed by fixed monthly payments, and they then have the option to purchase the vehicle at the end of the agreement. The lender owns the vehicle until the option to purchase is exercised. PCP requires a larger final 'balloon payment', often resulting in lower monthly payments, covering depreciation. Consumers can choose to own the vehicle, return it, or trade it in for a new one. In other Assessed Jurisdictions, consumers are able to finance the purchase of a vehicle through personal loans, with HP and PCP being less commonly used when compared with the UK.

4.5.7 Similar to the UK, each Assessed Jurisdiction has specific categories of consumer credit that can be offered without requiring the lender to be authorised by, or registered with, the competent regulator.

4.5.8 Outside of the UK these tend to be limited to the provision of credit by the supplier of goods or services. For instance, in **Germany**, **Italy**, and **Poland** merchants selling their goods or services can offer credit associated with those goods and services in the form of deferred payment of the price or remuneration for the purchase of goods and services offered by them without needing authorisation. In Italy, this credit must be provided without interest or other charges. This exemption is also present under UK law and is utilised by unregulated BNPL providers[28]. Further, under the German regime, provided the granting of consumer credit is not intended for income generation and is limited (to fewer than 100 loans and less than €500,000 in total volume), such credit does not require authorisation.

4.5.9 Credit categories exempt from regulation were more limited in Germany and Italy compared to the UK. Further discussions on exemptions are at paragraph 4.6 and Schedule 2. In **Germany** and **Italy**, lenders must be authorised even if regulations for pre-contractual information and creditworthiness checks do not apply. This is different to the UK, where if one of the exemptions in the RAO applies, the credit is "unregulated" and outside of the FCA and CCA regimes.

---

27 https://www.bundesbank.de/en/press/press-releases/payment-behaviour-in-germany-in-2023-934894 and Cash is King: Why Germans Don't Like Credit Cards

28 At the time of writing, the UK government had just announced its intention to progress the regulation of certain types of BNPL products with the new regulation expected to come into force around mid-2026.

4.5.10 Unlike the general situation in the UK, certain places like **Italy**, **Poland**, and **New York State** have specific laws that set maximum allowable interest rates for consumer credit. These laws are known as usury caps and are designed to protect consumers from excessively high interest rates.

4.5.11 Under **New York State law**, banks are exempt from the state's licensed lender law and can make loans of any amount with an annual interest rate of up to 25% (the state's criminal usury rate). Additionally, both banks and non-banks can offer loans of any principal amount without requiring a licence, as long as the annual interest rate does not exceed 16%, calculated in accordance with New York State law.

4.5.12 In **France**, firms must be credit institutions or financing companies to offer consumer credit regularly. Activities requiring authorisation or registration include arranging credit, collecting monies due under a credit agreement or administering a credit agreement on behalf of the lender.

4.6 Exemptions from regulation

4.6.1 Under UK law, there are various exemptions from regulation. However, not all exemptions apply to every credit product. The application of an exemption depends on the following:

4.6.1.1 the nature of the borrower (such as the high-net-worth exemption, where the amount of any unsecured credit[29] exceeds £60,260 and the borrower either earns over £150,000 net per year or has net assets of more than £500,000 (excluding the borrower's home and certain pension assets));

4.6.1.2 whether the amount of credit exceeds £25,000 and is provided wholly or predominantly for business purposes;

4.6.1.3 whether the credit provided is fixed sum and provided free of interest and other charges, where the credit agreement is for no more than 12 months and the credit is repaid by 12 or fewer instalments (used by BNPL providers in the UK);

4.6.1.4 whether the credit is provided by a credit institution or investment firm and is entered into for the purpose of allowing the borrower to carry out a transaction relating to one or more financial instruments;

4.6.1.5 whether the credit is provided with low interest or other charges and to employees;

4.6.1.6 whether the credit is a running account provided without interest or significant charges and the credit is repaid by one instalment in 3 months or less.

4.6.2 While other European jurisdictions have similar exemptions (as many are derived from the CCD), none of them have an exemption for "high net worth" individuals.

4.6.3 The position in the other jurisdictions is summarised in **Schedule 2.**

4.6.4 While the study was focused on consumer credit, the UK regime also regulates the provision of credit to certain types of business customer where the amount of credit is £25,000 or less and the customer is an individual or a "relevant recipient of credit"[30]. In contrast, for example, the German regime does not extend beyond consumers.

---

29 In this instance, this means credit not secured on land.

30 As per Article 60L of the RAO, 'relevant recipient of credit' means – a) a partnership consisting of two or three persons not all of whom are bodies corporate, or b) an unincorporated body of persons which does not consist entirely of bodies corporate and is not a partnership.'

4.7 The legal status and structure of the competent regulator and its powers

4.7.1 The constitution and status of the competent regulator in each jurisdiction is summarised in the table below.

Jurisdiction	Legal status of competent regulator and from where it derives its powers
UK	The FCA is an independent public body structured as a company limited by guarantee. It is accountable to HMT, and to Parliament. The FCA derives its powers from the FSMA, and the FSMA 2023. It is worth noting that some consumer credit providers such as banks and building societies find themselves "dual regulated" by both the FCA and the Bank of England through the PRA.
Poland	The PFSA is a separate administrative body within the governmental authority of Poland. It is responsible for supervising the financial sector in Poland. Established by the PFSA Act, the Prime Minister supervises it.
France	The ACPR is an administrative body without legal personality. It is operationally attached to the French central bank, the Banque de France, which provides it with the necessary resources for its operations, including human means, property management, IT, HR, accounting, etc. The ACPR is financially independent within the limits of the contributions for supervisory costs collected from reporting entities. The Banque de France may allocate additional funds to the ACPR. An audit committee ensures that the ACPR's resources are used appropriately. The ACPR derives its powers from the legal provisions of the French Monetary and Financial Code and, as it is also responsible for supervising the insurance sector, the French Insurance Code.
Italy	The BoI is an independent public law institution that performs functions of general interest. It is also Italy's central bank. Initially created with a private association structure similar to a joint stock company, it has evolved mechanisms to ensure its public functions are carried out without external influences. One key mechanism prevents shareholders from intervening in decisions related to institutional activities.
Germany	BaFin is a federal agency under the legal and technical oversight of the German Ministry of Finance. Its legal status and powers are defined in the FinDAG. BaFin is primarily supervised by the Ministry of Finance and publishes annual reports and statistics for public scrutiny.
USA	The CFPB derives its authority from the CFPA, part of the Dodd-Frank Act. It operates independently of the Federal Reserve Board, which funds it. The CFPB's structure and funding have faced legal challenges, but the U.S. Supreme Court upheld its funding mechanism in May 2024. The CFPB submits semi-annual reports to Congress and testifies before Congress twice annually.
New York State Law	The NYDFS derives its authority from the New York Financial Services Law. The head of the NYDFS (the Superintendent) is appointed by the governor of New York State, who collaborates with the agency on various consumer protection initiatives.

4.7.2 In summary, while the FCA, BoI, and CFPB operate with significant independence, the PFSA and BaFin are more closely tied to their respective governmental authorities. The ACPR's unique structure allows it to leverage the resources of the Banque de France while maintaining financial independence. The NYDFS consolidates the functions of its predecessor agencies, ensuring a streamlined regulatory approach within New York State.

4.7.3 The structure of financial regulators varies significantly across different countries as detailed in **Schedule 3.**

4.8 The functions and objectives of the competent regulator

4.8.1 In the **UK**, the FCA has a strategic objective to ensure that relevant markets function well, with three operational objectives:

4.8.1.1 securing an appropriate degree of protection for consumers;

4.8.1.2 protecting and enhancing the integrity of the UK financial system; and

4.8.1.3 promoting effective competition in the interests of consumers.

4.8.2 The FCA's approach aims to balance consumer protection with market integrity and competition, although recent initiatives like the Consumer Duty suggest a stronger emphasis on consumer protection. Additionally, since August 2023, the FCA has also had a secondary objective to facilitate the international competitiveness and growth of the UK economy in the medium to long term.[31]

4.8.3 While the FCA, BaFin, ACPR, BoI, CFPB, and NYDFS all aim to protect consumers and ensure financial system integrity, their specific objectives and scopes vary as further detailed in **Schedule 4**. The FCA and CFPB have broader mandates that include promoting competition and financial education respectively, while BaFin, ACPR, and the BoI focus more on financial stability and overall compliance with the relevant requirements.

---

31 Our approach to competition | FCA

4.9 Regulatory and rule-making powers of the competent regulator

4.9.1 **Schedule 5** sets out in detail the regulatory and rule-making powers of the Assessed Jurisdictions. The table below sets out at high level the comparative analysis between the Assessed Jurisdictions:

	UK	USA	Poland	Italy	France	Germany
Power to vary, withdraw or cancel permissions	✓	?	✓	✓	✓	✓
Power to take enforcement action against the firm	✓	✓	✓	✓	✓	✓
Power to take enforcement action against directors or other senior managers	✓	✓	✓	✓	✓	✓
Binding rulemaking powers	✓	✓	✓	✓	✗ 32	✓
Power to issue or change binding instructions, recommendations or guidance	✓	✓	✓	✓	✗	✓
Product intervention powers	✓	?	✓	✓	✓	?
Powers to approve changes of controllers	✓ 33	USA – ✗ New York – ✓	✗	✓	✓	✗
Power to require information and documentation from the firm	✓	✓	✓	✓	✓	✓
Power to appoint a third party to report to the competent regulator or otherwise conduct an audit	✓	?	✓ 34	✓	✓	✓
Power to require remediation	✓	?	✓	✓	?	?
Power to require consumer redress	✓	✓	✓	✓	?	✗
Power to enforce consumer protection laws	✓	✓	✓	✗	✗	✓

Key	✓ Yes	✗ No	? Information not provided by local jurisdiction

32 In France, the ACPR can issue rules, recommendations, and guidelines which are not legally binding. However, breach by a credit institution of good conduct rules could be sanctioned by the Sanctions Committee of the ACPR.

33 In the UK, once a firm is authorised, the FCA requires firms to tell them about significant events relating to their controllers, as well as changes of control, and to submit an annual report about their controllers. Controllers or potential controllers of authorised firms are subject to criminal sanctions if they fail to notify the FCA about proposed acquisitions, increases or decreases of control before such acquisition etc. takes place. Whilst surveying the other jurisdictions, we found other countries that had similar requirements in place (as illustrated by this graph).

34 In Poland, the PFSA may conduct an audit but is not authorised to appoint a third party to report to the competent regulator.

4.10 Supervision and enforcement powers of the competent regulator

4.10.1 In the **UK**, the FCA has a statutory duty to supervise the firms that it regulates. This involves monitoring firms' activities, providing warnings, monitoring compliance and taking disciplinary action. The FCA states that it takes a "proportionate" and evidence-led approach to supervising firms.[35] The FCA obtains information on firms through the authorisations process, engagement with firms, and regulatory reporting (see section below). The FCA also uses information and data from a wide range of other sources, including consumer feedback, engagement with consumer bodies, data and intelligence from trade associations, information shared with other regulatory organisations, and information from members of Parliament and whistleblowers. The FCA coordinates with other competent regulators, including the PRA and it also liaises with the FOS.

4.10.2 A key aspect of the FCA's supervisory approach focuses on the governance and culture of firms. The FCA uses various tools to diagnose harm. These include desk-based reviews, meetings with the management of the firm, on-site inspections, reviews of periodic regulatory returns and notifications, transaction monitoring, thematic reviews, monitoring and engaging with firms about their marketing material and past-business reviews persons.

4.10.3 The FCA also has powers to make rules:

4.10.3.1 prohibiting authorised firms from: entering into regulated credit agreements that provide for the payment by the borrower of certain charges; imposing specified charges on a borrower that exceed a prescribed amount; or entering into agreements that are capable of remaining in force for longer than a specified period.[36] The FCA used this power in the case of high-cost, short-term credit to impose a cap on the amount of interest and charges that a borrower could be required to pay;

4.10.3.2 relating to specific product interventions which can be used on a temporary or permanent basis. Such powers can be used to ban the sale or marketing of certain products to all or certain groups of customers[37];

4.10.3.3 prohibiting persons, or persons of a description from being remunerated in a specified way[38];

4.10.3.4 relating to the form and content of financial promotions[39].

4.10.4 The FCA has significant power under the FSMA to obtain information and to conduct or order investigations. For example, the FCA can require authorised firms or its staff to provide the FCA with information or documentation. The FCA also has the power to require a firm to provide a report by a skilled person, or to itself appoint a skilled person to produce such a report, on any matter that the FCA requires. The FCA can also appoint investigators. As of 13 September 2024, there were no published skilled person reviews for the consumer finance sector between 1 April and 20 June 2024. However, there were 16 skilled person reviews for the consumer finance sector between January and March 2024.

4.10.5 The FCA can also ask for firms to provide attestations. No attestations have been sought from the retail lending sector in the period January to March 2024. Six had been sought in the period Q1 2023/2024 to Q4 2023/2024. This was up from three in the same period of the prior year.

4.10.6 The FCA also has the right to enforce the provisions of the CCA, although only the court can determine whether the relationship between the customer and the lender is unfair.

---

35 Our approach to supervision | FCA

36 See section 137C of the FSMA

37 See section 138D of the FSMA

38 See section 138H of the FSMA

39 See section 138R of the FSMA

Breach of the CCA could therefore result in the FCA taking enforcement action against a firm and requiring that firm to provide remediation and redress.

4.10.7 In **Poland**, local counsel informed us that the PFSA takes a similar approach to supervision, except for a right to require the supervised entity to provide a report prepared by a skilled person.

4.10.8 In **France**, the ACPR's powers include taking individual decisions, such as withdrawing licences or approving changes in control, conducting on-site and off-site controls, and taking administrative police measures, such as issuing injunctions to implement corrective measures or warnings in cases of practices that do not comply with clients' interests. Additionally, the ACPR can take enforcement measures. To effectively supervise credit institutions, the ACPR collects information through various reports, including anti-money laundering surveys, internal control reports, and prudential requirements reports, which cover aspects such as own funds, liquidity, and leverage.

4.10.9 In **Italy**, the BoI supervises firms by monitoring activities, providing warnings, ensuring compliance, and taking disciplinary action. The approach varies based on the firm's business model and sector. Information is gathered through authorisations, firm engagement, regulatory reporting, consumer feedback, trade associations, other regulators, and whistleblowers. Coordination occurs with Consob, IVASS, and the Banking and Financial Ombudsman Service.

4.10.10 For the BoI, a key focus is on governance and culture. Tools used include management meetings, on-site inspections, regulatory returns reviews, transaction monitoring, and thematic reviews. The BoI can intervene in product sales and marketing and has significant powers under the CBA to obtain information and conduct investigations, requiring firms to provide necessary documentation.

4.10.11 In **Germany**, BaFin is supported in its supervision by the Bundesbank. The institutions are required to file monthly reports with the Bundesbank, and to share their annual reports, internal audit reports, and AML and Compliance reports with the Bundesbank and BaFin. Usually, the focus of the supervision is on the regulatory requirements (e.g. capital requirements, AML, IT security requirements etc.). However, BaFin will investigate if it receives consumer complaints regarding a specific institution.

4.10.12 Although the **USA** has federal rulemaking and enforcement authority over all providers of consumer financial products and services (with narrow exemptions), the CFPB only supervises certain entities. These include banks with more than $10 billion in assets, participants in markets specifically identified in the CFPB's authorising statute, CFPA, "larger participants" in regulated markets identified by CFPB rulemaking, and non-bank providers the CFPB deems to present a risk of consumer harm. Risk-based supervision requires a formal determination by the CFPB that the entity poses risks to consumers, which the entity can then challenge.

4.10.13 Similar to the UK, the CFPB gathers information from external sources, including other regulatory agencies. Furthermore, the CFPB's examination and enforcement priorities are also driven in part by data from its consumer complaints portal.

4.10.14 Supervised entities are subject to examinations by the CFPB, which may be comprehensive or targeted. Examinations may include both virtual and on-site components, as well as document production requests and interviews with management and key personnel. The CFPB's exams consider the firm's compliance management system, including board oversight, compliance program, service provider oversight, and compliance with law and consumer harm. CFPB exams include specific modules relating to each of the federal consumer financial protection laws.

4.10.15 Similar to the CFPB at the federal level, **New York** has an examination-based supervisory approach. The NYDFS exams focus on compliance with applicable state and federal laws and regulations, as well as areas likely to affect the safety and soundness of the licensee. The NYDFS assigns licensed consumer finance entities a FILMS rating based on an assessment of financial condition, internal controls and auditing, legal and regulatory compliance, management, and systems and technology.

4.10.16 The evaluation of financial condition considers balance sheet composition, including the level of past due and non-performing loans, asset quality, the adequacy of capital to absorb losses and support growth, the level and quality of earnings, and the adequacy of liquidity. Internal controls and auditing are evaluated based on the effectiveness of accounting, financial, operational, and systems controls, and the audit program. The assessment considers adherence to established policies and procedures, the independence, frequency, scope, and adequacy of the internal audit function, the severity of internal control and audit exceptions, the extent to which exceptions are tracked and resolved, the adequacy of management information reports, and whether the system of controls keeps pace with changes in the licensee's business plan.

4.10.17 The evaluation of legal and regulatory compliance is based on adherence to applicable state and federal laws and regulations, the effectiveness of the written compliance program and training of personnel, the ability to submit regulatory reports in a timely and accurate manner, and management's ability to identify and correct compliance issues promptly. The management rating considers the overall performance of the licensee, the capability of the governing board and management, management depth and succession, soundness of credit administration, the adequacy of risk identification processes, and responsiveness to recommendations from auditors and supervisory authorities. The evaluation of systems and technology is based on assessments of IT audit, management, development and acquisitions, and support and delivery.

4.11 Enforcement powers and the most frequent sanctions

4.11.1 The enforcement tools and sanctions across Assessed Jurisdictions exhibit both similarities and differences as detailed in **Schedule 6.**

4.11.2 As shown in the table below, in the UK, the FCA employs a range of enforcement tools including public censure, fines, prosecution, redress, supervisory letters (including prior to Spring 2025, "Dear CEO" letters), portfolio strategy letters, and court applications.

4.11.3 Common sanctions across Assessed Jurisdictions include final notices, financial penalties, prohibition, cancellations, and public censures. While financial penalties are a common sanction across all jurisdictions, the specific enforcement tools and the severity of sanctions vary significantly.

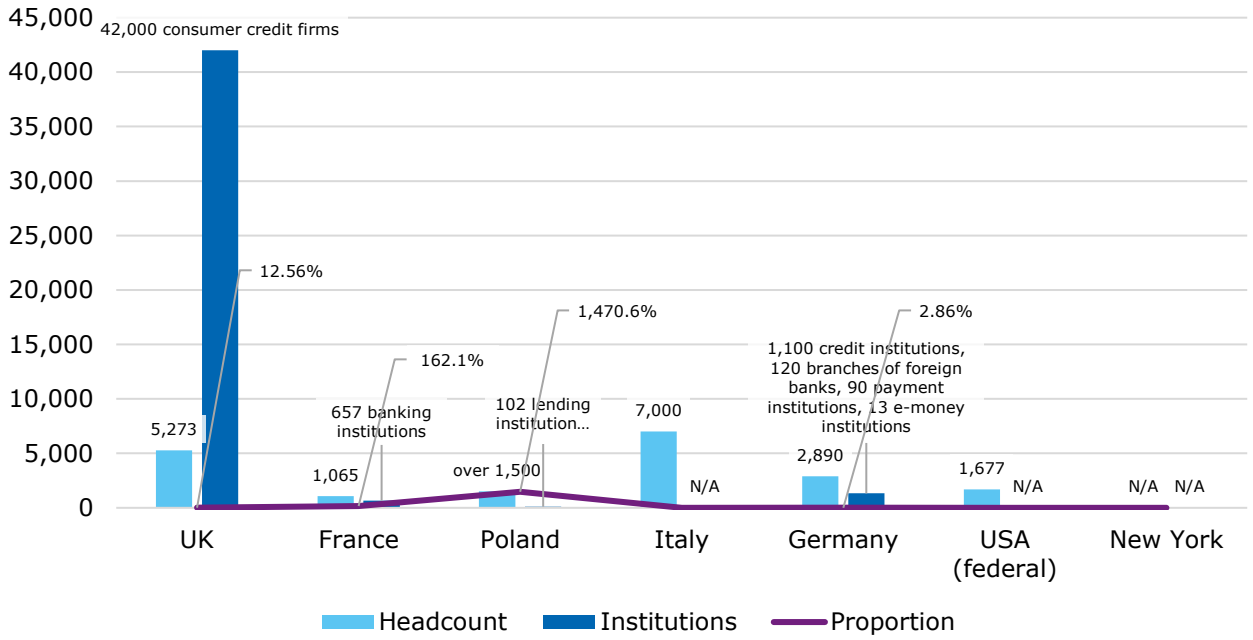
Country	Regulatory Authority	Enforcement Tools	Common Sanctions
UK	FCA	Public censure, fines, prosecution, redress, supervisory letters, portfolio strategy letters, court applications	Final notices, financial penalties, prohibition, cancellations and public censures[40]
Poland	PFSA	Fines, dismissal requests, activity suspension, de-registration, compliance summons	Financial penalties
France	ACPR	Warnings, bans, activity restrictions, suspensions, resignations, licence withdrawal	Financial penalties
Italy	BoI	Violation elimination orders, crisis management measures, permission cancellation	Financial penalties
Germany	BaFin	Licence withdrawal, management approval withdrawal, inspections, activity suspension	Public warnings, Financial penalties

[40] FCA Enforcement data 2023/24 | FCA As part of any Final Notice, the firm may have been required to provide redress. The FCA can also use its powers under section 166 of the FSMA to appoint a Skilled Person as a precursor to any enforcement activity.

USA	CFPB	Consent orders, warning letters, supervisory authority, civil investigative demands	Financial penalties, restitution
New York	NYDFS	Investigations, consent orders, fines, corrective actions	Financial penalties, restitution

4.12 Size and headcount of the competent regulator

4.12.1 The table below captures the headcount of each competent regulator vs the number of institutions it manages:



4.12.2 As shown above, the proportionate percentage of headcount vs institutions suggests that, in the UK, the FCA has a relatively low headcount compared to the number of institutions it supervises, potentially indicating a high workload per headcount. However, the portfolio of consumer credit firms authorised by the FCA will vary greatly in terms of their size and resource. For example, many of the firms authorised will comprise small credit broking businesses which include retailers and dealers with authorisation to carry on credit broking on a limited permission basis. Such firms will not have a dedicated, fixed portfolio supervisor but will instead be managed through the FCA's Supervision Hub. These firms will contact that hub with queries and otherwise be supported by the FCA through workshops and regulatory communications to highlight expectations and risks.

4.12.3 In contrast, **Poland**'s PFSA has over 1,500 staff members and supervises 102 lending institutions, resulting in, seemingly, ample headcount to service and monitor its institutions. **France**'s ACPR proportionate percentage is higher than the UK but lower than Poland, suggesting a moderate workload for ACPR.

4.12.4 It is difficult to draw a direct comparison for **Italy, USA** and **New York** due to the lack of specific data on the number of institutions. However, the high headcount in **Italy** (7,000) suggests that it may have a substantial workforce dedicated to financial supervision.

4.12.5 Overall, the comparison highlights that resources vs institutions varies significantly across the Assessed Jurisdictions.

4.13 Funding and authorisation fees

4.13.1 In all Assessed Jurisdictions, the competent regulator is funded in whole or part by the financial services industry. In the **UK**, the FCA is funded by the financial services

industry and firms have to pay ongoing fees each year. The amount of that fee varies, and is calculated by reference to the permissions needed, the total "consumer credit income" and the value of the loans made. For example, a firm with consumer credit permission with "consumer credit income" of £10,000,000 (interest and charges) and a loan value of £50,000,000 would have to pay an annual fee of around £42,000.[41]

4.13.2 The FCA's budget is set to cover the cost of the FCA's core operating activities along with its capital expenditure and any exceptional projects it undertakes. The budget will determine the annual funding requirement. This is met through the fees charged to firms net of rebates from financial penalties the FCA has collected.

4.13.3 In **France**, the ACPR is funded by the firms it supervises through annual contributions for control costs, as well as by the Banque de France. The calculation of the annual contribution depends on the type and size of the firm, with fees for banking and financial institutions based on their paid-up initial capital or the regulatory own funds required. The ACPR does not disclose the specific portion of its budget allocated to authorising and supervising consumer credit firms.

4.13.4 In **Poland**, the PFSA is also funded by the financial services industry. In the non-banking consumer credit sector, annual contributions for covering the costs of supervision payable by lending institutions are calculated based on the total income of the lending institution from consumer credit lending activities in the calendar year preceding the year for which the payment is due. The calculation rate cannot exceed 0.5% of the above-mentioned income.

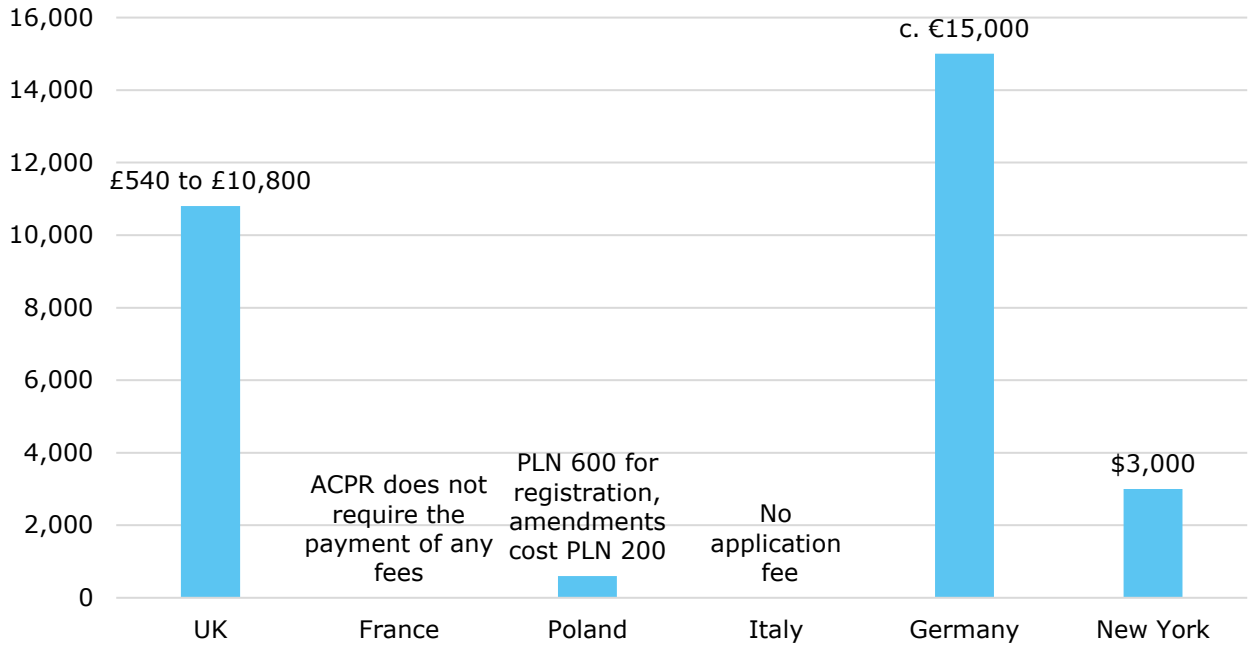
4.13.5 In **Italy**, the BoI's main sources of income are the proceeds connected with the exercise of monetary policy, as well as by the returns deriving from the management of the Italian official reserves and the investment portfolio. Less consistent, but of increasing importance, are the revenues represented by the fees for the services offered, in particular, in the management of payment systems.

4.13.6 In **Germany**, BaFin is funded by the financial services industry. Fees are calculated in accordance with the German Federal Fee Act in conjunction with the German Financial Services Supervision Fee Regulation depending on the actual time effort. Separate reimbursements are foreseen for particularly laborious tasks. To the extent that BaFin's costs are not covered by fees or separate reimbursements, the deficit is split among BaFin's divisions and allocated to supervised entities.

4.13.7 In the **USA (federally)**, the CFPB is funded through transfers from the Federal Reserve, not through the traditional congressional appropriations process that applies to most other administrative agencies. The CFPB can request funds from the Federal Reserve that are deemed necessary to carry out its functions, up to 12% of the Federal Reserve's total operating expenses (adjusted annually for inflation). In **New York**, the NYDFS is primarily funded from fees and assessments paid by regulated institutions.

4.13.8 The application fees vary across the relevant jurisdictions. The following graph shows the amount of the application fee. For all non-UK jurisdictions, we have converted the fee from the local currency into British Pound Sterling.

41 Fee calculator | FCA



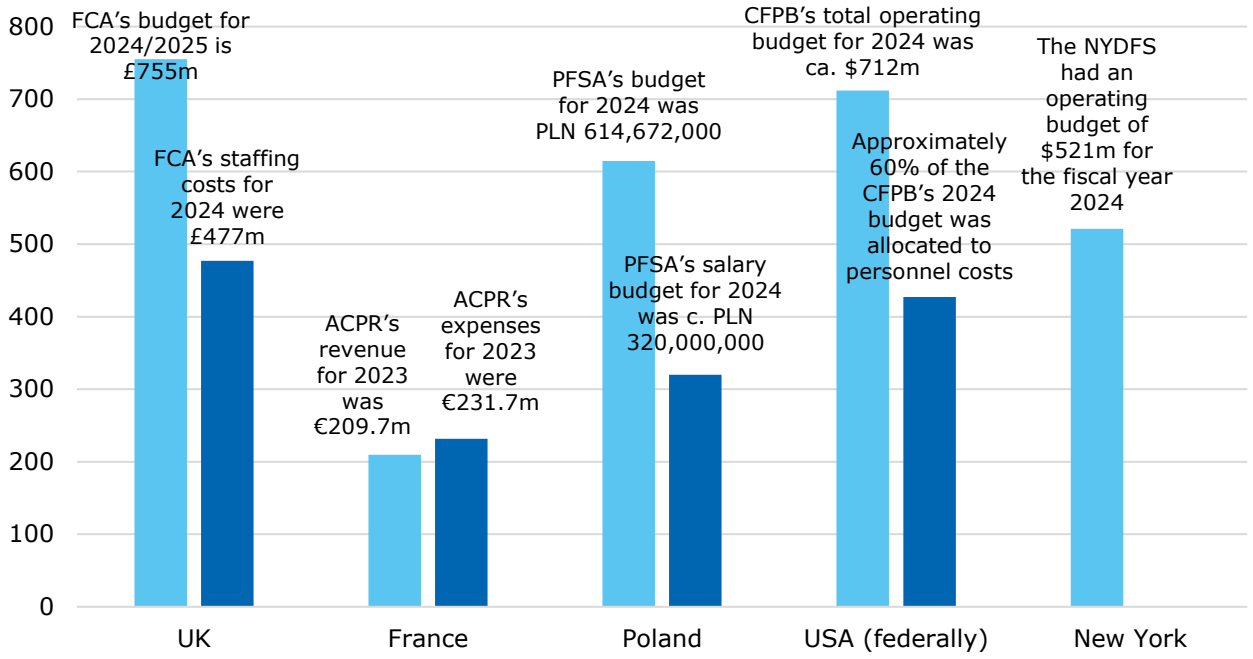
4.13.9 In the **UK**, application fees for consumer credit can range from £540 for limited permission, to £10,800 for complex full permission applicants. In contrast, the ACPR in **France** does not require an applicant to pay any fees to apply for a licence, and in Poland it is PLN 600 (approximately £120) for registration, with amendments costing PLN 200 (approximately £40). Germany had the most expensive application fee at approximately €15,000.

4.14 **Budget for authorising and supervising consumer credit firms**.

4.14.1 The graph below shows the differing budgets held by the competent regulator in the Assessed Jurisdictions vs the staffing costs. The data does not capture the same time periods because of the differing reporting periods for the Assessed Jurisdictions.

4.14.2 The budget allocations and staffing costs reveal significant differences. For example, the FCA in the **UK** has a budget of £755 million, with staffing costs of around £477 million. **France**'s ACPR had a revenue of €209.7 million and expenses of €231.7 million, resulting in a deficit. **Poland**'s PFSA has a budget of approximately PLN 614 million (approximately £123 million), with PLN 320 million (approximately £64 million) allocated to salaries. The CFPB in the **USA** had an operating budget of $712 million, with 60% allocated to personnel costs, while the NYDFS operated with a budget of $521 million.

4.14.3 These varying funding mechanisms and budget allocations highlight the diverse regulatory landscapes and financial priorities across the Assessed Jurisdictions.



4.15 The application process

4.15.1 Generally, applications for authorisation (and registration in Poland) are submitted online and require a prescribed set of information to be provided to the competent regulator. The competent regulator requires information about the business structure, financial status, governance arrangements, compliance history, and the details of controllers (identity, financial soundness, professional background etc.). Where credit can only be provided by banks, PIs, or EMIs, the nature and type of information differs (e.g. information necessary to comply with prescribed capital requirements) based on legal requirements. Further details of each Assessed Jurisdiction application process are covered in Schedule 7.

4.15.2 All competent regulators require information about the controllers of the lending firm as part of the application process. Generally, such competent regulators wanted to ensure that the controllers were fit and proper persons and would not otherwise impact the lender's compliance with applicable requirements.

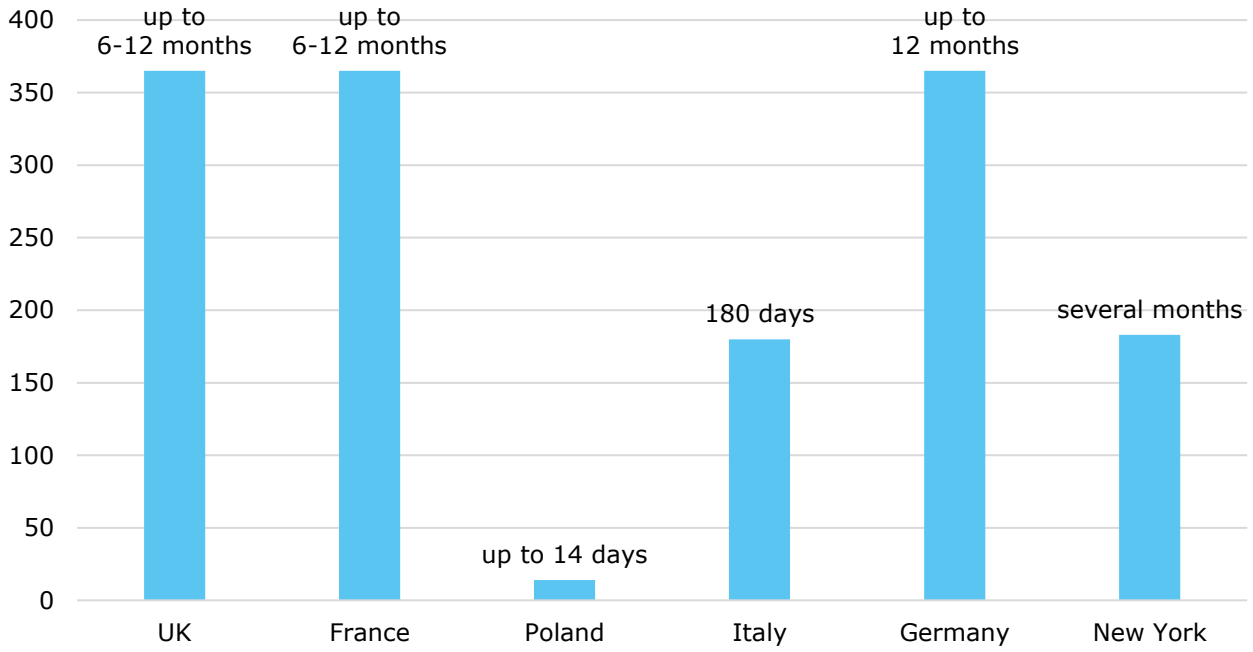
4.15.3 Comparing these jurisdictions, the **UK** and **Italy** have similar application processes, requiring extensive documentation and professional support, with fees and preparation times reflecting the complexity of the applications. In the **UK**, the application must be made online and supported by several documents, including a regulatory business plan, financial forecasts, policies and procedures, sample credit agreements, a quality assurance framework, a conduct risk framework, and a compliance monitoring plan. Additionally, firms must provide documents to help the FCA assess compliance with the Consumer Duty, such as target market analysis, product and service governance frameworks, fair value assessment frameworks, customer understanding assessment and testing frameworks, customer support monitoring policies, and customer outcome monitoring frameworks.

4.15.4 **France**'s process is also detailed but does not require an application fee, although the review period can be extended. **Poland**'s process is simpler and quicker, with lower fees and less documentation required. **Germany**'s process involves significant fees and a detailed application assessed by both BaFin and the ECB, with professional support often necessary. In the **USA**, the federal system does not apply to non-banks, but state-level processes like those in **New York** involve substantial financial and experience requirements, with varying costs and processing times.

4.15.5 The time taken to deal with an application varied across the jurisdictions as shown in the graph below. Other than for registration in **Poland**, lenders would generally engage the support of local counsel to help them prepare their application. While it is difficult to ascertain such fees with any certainty (as this would depend on the local counsel

appointed, the nature of the firm and the complexity of its business etc.), the survey responses suggest that the legal fees varied from jurisdiction to jurisdiction.

4.15.6 The following graph demonstrates the average time taken to approve:



4.16 Approval and supervision of senior managers

4.16.1 **No other jurisdiction has a regime comparable to full nature and extent of the UK SMCR.** While most Assessed Jurisdictions can act against managers where the firm is in breach of applicable requirements, the regimes do not include certification processes that go beyond controllers or directors and do not include conduct rules aimed at individuals.

4.16.2 While most Assessed Jurisdictions can take enforcement action against senior managers and directors, the UK stands out with its comprehensive SMCR. This regime includes the SMR, the Certification Regime, and the Conduct Rules, which set high-level requirements for individual accountability. Other jurisdictions, such as Poland, France, Italy, Germany, and the USA, have varying degrees of supervision and enforcement powers as detailed in **Schedule 9**, but do not have a system comparable to the UK's SMCR.

4.16.3 For example, in **Germany**, the competent regulator can revoke the directors' mandate and install interim managers. In **France**, the competent regulator is entitled to enforce sanctions such as temporary suspension for up to 10 years, compulsory retirement, or a financial penalty (applicable only to conducting officers). While most jurisdictions have some form of fitness test or assessment for senior managers, none have a regime as comprehensive as the UK's SMCR.

4.17 Regulatory reporting

4.17.1 As detailed in **Schedule 9**, all competent regulators require firms authorised by or registered with them to provide some form of regulatory reporting. While not all jurisdictions have identical requirements, cooperation with competent regulators is a fundamental aspect of all surveyed regulatory frameworks.

4.17.2 **In light of the changes being made to product sales data reporting in the UK, responses from local counsel suggest that the UK requirements will require more granular data to be reported than those required by other competent regulators.** Further, this annual reporting is only one of the ways in which the FCA collects data from firms. The FCA is also able to collect data through thematic and supervisory work as well as data shared by others, including for example, the FOS. While **Poland** requires specific information about the credit granted (see further below)

the nature of this data is not as granular as the new data requirements in the UK. In general terms, the non-UK competent regulators are focused on data relating to the overall financial health of the institution, compliance with prudential requirements, and consumer protection measures.

4.18 **The nature of the regime**

4.18.1 The consumer credit regime varied across the Assessed Jurisdictions as shown at high-level in summary table at paragraph 4.1

4.18.2 In the **UK**, the regulatory regime for consumer credit is complex and characterised by a range of often conflicting and overlapping regulatory systems. Lenders face at least four regulatory systems: behaviour or conduct-based regulation determined by rules and guidance in the FCA Handbook (e.g., CONC), outcomes-based regulation (e.g., the FCA's 'new' Consumer Duty), principles-based regulation (e.g., the PRIN), and a system of legislation. Specific laws relating to the regulation of consumer credit are set out in the CCA and its subsidiary statutory instruments. The legal position is further complicated by the application of common law evolved from the accumulation of historical precedents.

4.18.3 Whilst all other Assessed Jurisdictions, as further detailed in **Schedule 10**, are mainly governed by a system of legislation in the same way one of the UK regimes is rules-based, **Germany** is primarily governed by the BGB which relies on principle-based law.

4.19 **The existence of private rights of redress**

4.19.1 The **UK** provides consumers with a private right of redress for certain regulatory rule breaches under section 138D of the FSMA. Other jurisdictions, such as **Germany** and **France**, do not have a comparable private right of redress, although all Assessed Jurisdictions do have some form of consequence for breach, even where that was not through a private right of redress. **Schedule 11** details each Assessed Jurisdiction.

4.20 **Unenforceability sanctions**

4.20.1 In the **UK**, we have strict provisions in the CCA that determine when a credit agreement will be unenforceable. Similarly, in **Italy**, certain obligations relating to the origination of regulated credit agreements which are not duly fulfilled can render the credit agreement unenforceable.

4.20.2 By contrast, in **France** and **Germany**, a consumer credit agreement granted in violation with applicable laws and regulations is not unenforceable against the consumer. Similar to France and Germany, federally in the **USA**, breaches of consumer financial protection laws do not automatically render a consumer agreement unenforceable or voidable by the consumer unless the contract is unenforceable under general USA contract law.

4.20.3 **Schedule 12** provides more detailed discussion on the enforceability sanctions for each Assessed Jurisdiction.

4.21 **Other applicable general consumer protections**

4.21.1 Based on the survey responses, no other jurisdiction has an "unfair relationships" regime that is identical to the regime in the **UK**. Broadly, general consumer protection laws relating to unfair contract terms and unfair commercial practices are relied on by consumers to deal with any unfairness in their agreements or dealings with the lender.

4.21.2 In the **UK**, the unfair relationship regime, outlined in sections 140A to 140C of the CCA, provides additional consumer protection by allowing courts to re-open credit agreements if the relationship between the creditor and debtor is deemed unfair. The court may find a relationship unfair based on the terms of the agreement, the creditor's enforcement of their rights, or any other actions by the creditor. The term "unfair" is not defined, giving the court broad discretion to consider the credit agreement and any related agreements, such as insurance contracts.

4.21.3 If an unfair relationship is found, the court has wide-ranging powers to remedy the situation. These powers include requiring the creditor to repay sums paid by the debtor, ordering the creditor to take or cease specific actions, reducing or discharging sums payable, directing the return of property provided as security, setting aside duties imposed on the debtor, altering the terms of the agreement, and directing accounts to be taken.

4.21.4 The regime applies to both regulated and exempt credit agreements made with individuals, including those made with sole traders for business purposes. If a customer claims the relationship is unfair, the lender must prove on the balance of probabilities that the relationship was fair. Since its introduction in 2007, there have been numerous cases before the courts where customers have sought the reduction of sums payable under the agreement and/or damages arising from allegations of an unfair relationship. One would typically see unfair relationship allegations raised alongside other allegations relating to a breach of the CCA and/or CONC.

4.21.5 This is not the case in **France** or **Germany**, which have no comparable regime. As regards Germany, our survey responses suggest that complaints or cease and desist letters for unfair trade practices brought by the consumer protection associations have the biggest influence on lenders in this jurisdiction.

4.21.6 In **Poland**, under the Civil Code, the terms of an agreement with a consumer, including consumer credit agreements, which have not been individually negotiated are not binding if they are contrary to good practices and grossly violate the consumer's interests (unfair contractual terms). This being said, this does not apply to provisions specifying the main performances of the parties, such as price or remuneration, if they are clearly and intelligibly stated. If an unfair contractual term does not bind the consumer, the rest of the contract remains in effect. However, a consumer credit agreement may be entirely ineffective if an abusive clause specifies the main benefit of a party, and its content cannot be determined under the Civil Code provisions.

4.21.7 **Italian** law does have a focus on unfairness, but this is more focused on unfair terms in consumer contracts, misleading advertising, and unfair commercial practices. Similar to **Italy**, **Poland** has requirements in place to combat unfair commercial practices and unfair contract terms. In **France**, **Germany, Italy** and **Poland**, fairness is dealt with by general consumer protection laws relating to unfair commercial practices and unfair contract terms. All such matters derive from European Directives. Unlike the UK, none of the other European regimes have specific fairness protections that apply only to consumer credit, and which apply in addition to the unfair terms regime under the CRA 2015 and the unfair commercial practices regime under the CPUTR 2008.

4.21.8 Federally in the **USA**, the CFPB prohibits unfair, deceptive, or abusive acts and practices in consumer credit transactions. These flexible standards enable the CFPB and FTC to address harmful creditor practices that may not explicitly violate the law. An "*unfair*" practice causes substantial, unavoidable consumer injury that is not outweighed by benefits to consumers or competition. An "*abusive*" practice interferes with a consumer's understanding of terms or takes unreasonable advantage of their lack of understanding, inability to protect their interests, or reliance on the service provider. These standards are enforced by regulatory agencies, not individual consumers, although state statutes may allow private enforcement of unfair or deceptive practices.

4.21.9 **New York** consumers can enforce the state's consumer protection law through a private right of action. The statute broadly prohibits deceptive practices in business conduct, and the attorney general of New York can seek injunctions against such practices.

5. SECTION 2: ADR

5.1 Introduction

5.1.1 The FOS was established by Parliament under the FSMA and is integral to the current dispute resolution framework in the UK. It serves as an independent body that helps to resolve disputes between consumers and financial service providers in a fair and impartial way.

5.1.2 Since the establishment of the FOS, the regulatory, consumer, and legal landscapes in the UK have undergone significant transformations. Reform of the FOS and changes to the way the FOS operates are currently being considered[42]. To help inform change, this section of the report looks at the Assessed Jurisdictions to understand any similarities and differences.

5.1.3 The key metrics of our analysis include:

5.1.3.1 the nature of the ADR system for disputes/complaints about financial products and services, funding and procedural workings;

5.1.3.2 the extent to which ADR decisions are binding;

5.1.3.3 the basis of the decision-maker's decision;

5.1.3.4 the remedies available to the decision-maker and any limitations that apply;

5.1.3.5 limitation or time bar period;

5.1.3.6 the extent to which ADR decisions can be appealed;

5.1.3.7 the scale of the ADR operation;

5.1.3.8 the dialogue or relationship between the ADR operation and regulators; and

5.1.3.9 the availability of third-party litigation funding.

5.1.4 This section of the report summarises the key components outlined above. Further detail on each section is set out in **Schedule 13.**

5.2 Summaries of analysis

5.3 What ADR schemes the different jurisdictions have in place for resolving complaints between consumers and financial services firms about financial services or products

5.3.1 Each Assessed Jurisdiction acknowledges the advantages of ADR systems as effective alternatives to traditional court proceedings, offering simpler, cost-effective, and efficient methods for resolving conflicts[43].

5.3.2 Furthermore, each Assessed Jurisdiction recognises the necessity of having an ADR system specifically tailored to address and resolve complainants related to financial services and products. Consequently, **each Assessed Jurisdiction has established a system akin to the FOS**, though operationally they differ:

5.3.2.1 **UK**: the FOS

5.3.2.2 **Italy**: the ABF

---

42 See Call for Input: Modernising the Redress System | FCA and New approach to ensure regulators and regulation support growth (HTML) - GOV.UK. Further news on next steps is expected by the FCA, the FOS and HMT in the summer 2025.

43 Note that under the ADR Directive (Directive 2013/11/EU), European countries are required to ensure that consumers can submit their disputes with traders to an ADR entity. The Directive mandates that ADR entities must meet certain quality requirements, including transparency, independence, fairness, and effectiveness.

5.3.2.3 **Poland**: the RF

5.3.2.4 **New York**: the CAU (at federal level, the CFPB provides a platform for complainants to submit complaints about financial products and services. The CFPB facilitates communications but does not itself make decisions on complaints); and

5.3.2.5 In **Germany** and **France**, there is no single financial services ombudsman entity. In both jurisdictions, there are a number of financial services ombudsman entities:

(a) In **Germany**, the ombudsman scheme used depends on the sector. Financial firms are usually members of private dispute resolution entities, but the Bundesbank also provides a dispute resolution function for consumer credit type complaints if the respondent firm is not associated with a private dispute resolution entity. The information provided about the ADR system in Germany therefore concentrates on the service provided by the Bundesbank Ombudsman.

(b) In **France**, financial firms have the choice of establishing an in-house mediation service, or they can refer the consumer to an external ombudsman. For the French banking sector, there are several competent ombudsmen and not a unique ombudsman. The information provided about the ADR system in France therefore provides the general position.

5.3.3 The ombudsmen in each Assessed Jurisdiction operate independently and are impartial.

5.3.4 The ombudsmen entities are primarily free for consumers. However, in **Italy** and **Poland** complainants are also required to pay a nominal case fee when referring a complaint to their ombudsmen. In **Italy,** this fee is usually reimbursed if the complaint is upheld. Since 1 April 2025, in the **UK**, the FOS has charged professional representatives (subject to limited exceptions) who refer complaints to the FOS to help combat a specific issue that the UK has in professional representatives driving masses of complaints to the FOS.

5.3.5 The ombudsman entities are primarily funded via the financial firms which fall within their jurisdiction via annual levies and cases fees, save for the **Polish** ombudsman which is funded by public funds and the **New York** ombudsman which is funded through the NYFDS's operating budget.

5.3.6 Where respondent firms have to pay cases fees (in **Italy** and **Germany** the case fee is €200), these are significantly lower than the UK case fee of £650.

5.4 **Relevant procedure of each ombudsman scheme, and whether the resulting decisions/recommendations are binding on complainants and respondent firms**

5.4.1 Each Assessed Jurisdiction has a different procedure for handling complaints, which has likely developed as a result of European requirements (to the extent a jurisdiction is part of the EU), its own regulatory system and issues that have developed, and its unique culture.

5.4.2 Features in common include:

5.4.2.1 It is generally a pre-requisite for the complainant to first submit their complaint to the respondent firm, allowing the firm an opportunity to consider and respond.

5.4.2.2 Most ombudsmen decide cases based on written submissions without a hearing. However, it is possible for the ombudsman to schedule a hearing in some jurisdictions, such as the **UK** and **Poland** (although hearings are rarely utilised). In **France**, the ombudsman can meet with the parties.

5.4.2.3 In all of the Assessed Jurisdictions, the relevant ombudsman is responsible for reaching a decision or recommendation/proposal regarding the outcome of the complaint.

5.4.2.4 **In all of the Assessed Jurisdictions, if the complainant is not happy with the ombudsman decision or recommendation, it is not binding on either party, and the complainant is free to pursue a claim in the respective court system.**

5.4.3 Other observations include:

5.4.3.1 In **New York**, the procedure followed is akin to a mediation, but the CAU still makes a decision.

5.4.3.2 In the **UK** and **Italy**, if the complainant accepts the ombudsman's decision, then it is binding on the respondent firm. In both the UK and Italy, ombudsman decisions are published on the relevant ombudsman website.

5.4.3.3 In contrast, in **France, Germany**[44], **New York and Poland**, if the complainant accepts the decision or recommendation and the respondent firm does not, it is not binding on the respondent firm. This means that, in practice, respondent firms can ignore the decision or recommendation, leaving the complainant with the only option of pursuing the complaint through the courts. Although, in some jurisdictions, there are other measures or pressures that encourage respondent firms to comply with ombudsman decisions. For example:

(a) In **Germany,** consumer protection agencies (e.g. Verbraucherzentrale Bundesverband) have standing in court to initiate claims on behalf of complainants and cause a nuisance.

(b) In **Poland**, the RF can report issues to the OPCC which has various powers to help combat bad behaviour by financial institutions.

(c) General deterrents include the reputational consequences for non-compliance and that the relevant court will have wider powers than the ombudsman (including to set legal precedent) which may render an even more unfavourable decision.

5.4.3.4 The **Italian** ABF has a unique structure, featuring territorial panels that handle individual complaints locally and a co-ordinating panel which deals with complaints of significant importance or those with broader implications. This structure ensures that complex and impactful cases receive the appropriate level of scrutiny and expertise. Further, the coordinating panel can bind the territorial panels ensuring consistency of decision-making. Another unique feature is that the panels feature individuals who represent the interests of both consumers and financial firms. This balanced representation ensures that all perspectives are considered in the resolution of disputes, promoting fairness.

5.5 Basis for the ombudsman's decision-making and whether ombudsman decisions create precedents

5.5.1 In the **UK**, the FOS decides complaints on what it considers to be fair and reasonable in all the circumstances of the case, **even if this involves a departure from the law or regulation.** This has led to concern that the FOS's decision-making process might be overly subjective and discretionary, and whether it is fair to uphold complaints against firms that have adhered to the law, relevant regulations, guidance and best practices.

---

44 Note that, where the relevant ombudsman is the Ombudsman Scheme of the Private Commercial Banks (Ombudsmann der privaten Banken), the Ombudsman's decision is binding on the bank, but not on the complainant, where the amount involved in the dispute does not exceed €10,000.

5.5.2 In **France**, ombudsman decisions are based on fairness and equity, taking into account the circumstances of the disputes, as well as applicable laws and regulations, court precedents, regulatory rules, guidance and standards, codes of practice, and good industry practice.

5.5.3 **The UK and France are outliers when compared with the other Assessed Jurisdictions because, in the other Assessed Jurisdictions, their ombudsmen are required to apply only the law and/or regulation in their decisions or recommendations.** They have limited discretion. The position in **New York** is not clear, although it is expected that the NYDFS would apply the law and its own regulations, which implement the New York consumer financial protection statutes.

5.5.4 In **Poland**, **Italy**, and **Germany**, the ombudsmen decisions/recommendations are designed to assist the complainant in determining whether to pursue their complaint through the courts if the respondent firm does not comply with the ombudsman's decision or recommendation.

5.5.5 **The UK is unique in requiring respondent firms to take account of previous decisions by the FOS,** but the FOS is not required to take account of its own previous decisions. In practice, where the FOS takes a particular stance on an issue, the requirement for firms to take account of this has led to criticism that the FOS is acting as a quasi-regulator.

5.5.6 In **Italy,** respondent firms must evaluate complaints received and consider whether a complaint falls within cases similar to those already decided by the ABF and consider the solutions adopted in such cases (but there is no requirement to adopt them).

5.5.7 **In the other Assessed Jurisdictions, there is no requirement for respondent firms to take account of other ombudsman decisions when dealing with similar complaints. A reason for this could be that, in other jurisdictions where ombudsmen are required to apply the law, the ombudsman has less discretion. As a result, the position may be clearer and more consistent for both complainants and respondent firms.**

5.6 Limitation periods for referring complaints/disputes to the financial ombudsman in the various jurisdictions

5.6.1 Limitation periods ensure claims are made promptly, provide legal certainty, promote fairness by protecting defendants from old claims, and help manage the court's workload efficiently.

5.6.2 The current position in the **UK** presents several issues:

5.6.2.1 Lack of long-stop date: respondent firms can face uncertainty about liability for past events and lack protection against 'stale' complaints. This is inconsistent with the legal position and can lead to situations where firms, due to the General Data Protection Regulation's requirements, may not have the necessary evidence to defend against old complaints.

5.6.2.2 Unclear limitation rules: the FOS's limitation rules can be ambiguous, requiring interpretation by the FOS. This can lead to uncertainty for both complainants and respondent firms.

5.6.3 The limitation periods for the ombudsman across the Assessed Jurisdictions are not consistent:

5.6.3.1 **France**, **Italy** and the **UK** have time requirements regarding when a complaint must be submitted to their financial ombudsman which are linked to when the complaint was made to the respondent firm or when the respondent firm provided a response. For example, in **France**, a complaint must be referred to an ombudsman within one year from the date of the written complaint to the firm. In the **UK**, the complaint must be submitted to the FOS no more than six months from the date on which the respondent firm's final response was sent to the complainant.

Further, in **Italy**, the ABF may dismiss a complaint without considering the merits if it has been submitted to the ABF more than 12 months after the complaint was submitted to the respondent firm. The other Assessed Jurisdictions do not have these types of time rules.

5.6.3.2 **Germany**, **Italy** and **Poland** all have some form of long-stop, but it varies. The long-stop is tied to the position under law/statute and is typically no longer than ten years.

5.6.3.3 The position in **New York** is not known.

5.6.4 The issue of stale complaints was not reported to be an issue in the Assessed Jurisdictions (save for the UK). This may be attributed in part to the long-stop provisions in those jurisdictions that have them.

5.7 Types of remedies and resolutions the ombudsmen provide to complainants

5.7.1 Over the years, the compensation cap in the **UK** that the FOS can award has increased significantly, now reaching £430,000 (and increasing in line with inflation). This substantial amount has drawn criticism, particularly because the FOS is not required to strictly apply law and regulation. Additionally, the FOS typically awards 8% simple interest, which aligns with the court judgment rate, but this rate is often considered excessive, particularly in periods of low interest rates and is out of kilter with what the court often awards[45].

5.7.2 All of the ombudsmen in the Assessed Jurisdictions can suggest that respondent firms pay a monetary award as compensation or restitution for financial loss. In **Italy**, there is a maximum award like the **UK**, but the cap is significantly lower at €200,000.

5.7.3 In the **UK**, the FOS's awards can wield significant financial influence and impact on firms. This is particularly notable given that the FOS's processes are designed to be informal and aim to achieve what the FOS deems a fair and reasonable outcome, which may not always align with the strict legal rights of the parties involved. This issue was not reported by the other Assessed Jurisdictions.

5.8 Whether the financial ombudsmen decisions, resolutions or recommendations can be challenged or appealed, and if so, the process for doing so

5.8.1 Appeal mechanisms are important because they: correct errors, ensure fairness, promote consistency, build public confidence, and ensure accountability.

5.8.2 Courts in the **UK** can consider challenges to final FOS decisions by judicial review because the FOS is a public body. A complainant or a respondent firm may apply for judicial review if either considers that the FOS failed to follow a fair procedure or has acted irrationally. It is a high threshold which means that such applications are rarely granted permission by the court or are successful substantively[46]. Even if permission is granted, judicial review has limited practical applications as an appeals mechanism because the court is limited to reviewing the process by which the decision was reached in order to assess whether the decision was flawed. If successful, the court simply sends the complaint to the FOS to decide again. Additionally, as judicial reviews are usually limited to the specific facts of the case, they can be ineffective at setting precedents for other similar cases.

5.8.3 The FOS also has a test case procedure where a complaint can be referred to the courts for a decision if: it involves an important and novel issue, the FOS agrees, and the respondent firm agrees to pay the complainant's legal costs in the court case. Parties

---

45 Note that, on 4 June 2025, the FOS published a consultation on compensation interest levels. The consultation proposes a new rate of interest on certain compensation awards. The consultation closes on 2 July 2025 and further news is expected in September 2025.

46 For example, Eversheds made a Freedom of Information request of the FOS who confirmed that, between 1 January 2018 and 30 September 2024, there were 111 applications for judicial review made against the FOS. Of those, only 21 applications were granted permission (even less were substantially successful).

are not able to appeal the FOS's decisions to court. To our knowledge, this procedure has never been used despite being available since 2015.

5.8.4 None of the other Assessed Jurisdictions reported a mechanism in which ombudsman decisions may be challenged at court either via judicial review or a test case procedure. This may be attributed to the fact that:

5.8.4.1 Their ombudsmen are required to apply the law, and/or their regulatory systems are not principle or outcome-based in the same manner as the UK's. Consequently, there may be less inconsistency in their decisions, and therefore, a lesser need to challenge them.

5.8.4.2 Their decisions are generally not binding on respondent firms – even if the complainant accepts the decision or recommendation, the respondent firm is not bound and so appeals are usually not necessary.

5.8.5 The lack of an appeal mechanism or court test case procedure was not reported as an issue in the other Assessed Jurisdictions.

5.9 Scale of complaints

5.9.1 The population size and number of complaints submitted to the ombudsmen in each of the Assessed Jurisdictions is set out below. It can be difficult to make a true comparison because of the data published in each of the Assessed Jurisdictions and the fact that **France** and **Germany** do not have a single financial ombudsman.

Assessed Jurisdiction	Population size (millions)	Number of complaints submitted to ombudsmen entity
UK	68.7	330,000 (2024/25 figures) Around 267,700 related to banking and consumer credit.
Italy	59.5	15,816 (2023 figures) Around 370 related to consumer credit complaints.
Poland	38.8	1,606 (2023 figures)
France	66.4	170,000 (noting that there is no single ombudsman entity in France) (2020 figures) Around 40,000 related to consumer credit complaints.
Germany	84.5	1085 (Bundesbank Ombudsman) (noting there is no single ombudsman entity in Germany) (2024 figures) Around 33 related to consumer credit complaints.
New York	19.8	35,000 (2023 figures) Around 12,000 related to licensed consumer lenders.

5.9.2 **The scale of complaints in the UK handled by the FOS is notably larger than the other Assessed Jurisdictions.** This may reflect the unique regulatory environment, the significant decision-making discretion afforded to the FOS, the general appetite for ADR in the **UK** (particularly given the considerable strains the court system faces, particularly at County Court level), heightened consumer awareness and the greater prominence of CMCs/CLFs (including those backed by third-party litigation funding).

5.10 **Necessity for legal representation when submitting a complaint to the various ombudsmen and whether complainants proceed without legal assistance**

5.10.1 All ombudsmen in the Assessed Jurisdictions are designed and established on the premise that legal or professional assistance is not required for consumers to bring claims. If parties obtain legal or professional assistance, it is at their own cost.

5.10.2 In the **UK**, a significant number of complaints are referred to the FOS by professional representatives. For example, 25% of cases were referred to the FOS by CMCs or other professional representatives in 2023/24. This trend is largely due to the growth of a claims management industry that seeks to monetise complaints related to financial services and products. The fact that the FOS does not have to apply law or regulation when making decisions can make it a more attractive forum than the courts for professional representatives and funders looking to bring mass complaints at low cost which have a good prospect of some redress being awarded.

5.10.3 In the other Assessed Jurisdictions, it is understood that many consumers do use legal representatives to pursue complaints. It is noted that, in Italy, the ABF has seen a high number of complaints referred to it by professional representatives, for example, in 2023, it was reported that 72% of the cases were referred to the ABF by professional representatives. However, it is understood that this has been historically linked to a certain type of complaint (salary-backed loans), **and there is no indication that a claims industry is developing in Italy or any of the other Assessed Jurisdictions to the same extent as in the UK.** This is also evidenced by the lower volume of complaints generally.

5.10.4 In the other Assessed Jurisdictions, it was reported that, where legal representation is used, it is usually because the complaints are complex and difficult for consumers to understand, particularly due to the application of law to these cases. If the ombudsman's decision is not favourable, having legal representation from the start can help in preparing the case for potential court proceedings (in **Italy**, complainants have to exhaust the ombudsman procedure first before bringing court proceedings).

5.10.5 The other Assessed Jurisdictions did not report that CMCs and CLFs are creating issues that would necessitate the introduction of fees for them, as has been done in the **UK**.

5.11 **How the various jurisdictions handle cases with wider implications, and whether there an established dialogue or procedure with regulators or other bodies to address such cases**

5.11.1 In the **UK**, the FOS is part of a WIF which requires its members (including the FCA) to agree the most appropriate approach to managing matters with wider implications and decide who should lead this approach. However, there has been concern that the WIF does not appear to be proactive enough and the FOS often appears to make decisions on wider implications matters, which should initially be handled by the FCA or, where appropriate, the courts. Similar concerns have not been reported by the other Assessed Jurisdictions.

5.11.2 Although none of the Assessed Jurisdictions have an exact replica of the system in the **UK**, it appears that the ombudsmen in most of the other Assessed Jurisdictions maintain some level of communication with their jurisdiction's financial services regulator or other relevant entities to provide feedback on complaints. This allows issues to potentially be addressed through supervision or enforcement. For example:

5.11.2.1 Registered ombudsmen services in **Germany** have to inform BaFin of any business practices of which they become aware during their work, and which could significantly impair the interests of a large number of consumers. This ensures that BaFin is aware of potentially harmful practices and can take appropriate regulatory action to protect consumers.

5.11.2.2 In the **US**, at a federal level, the CFPB analyses the complaints its receives and firms' responses to monitor trends and identify potential issues in the financial marketplace. Neither the CAU or CFPB has published a "broader/wider implications" framework, but both

collaborate with other state and federal regulators to address consumer risk and bring enforcement actions. The CFPB has made a particular effort to recruit state regulators and attorneys general to its enforcement agenda.

5.11.2.3 As above, in **Poland**, the RF can report issues to the OPCC which has various powers to sanction financial services firms.

5.11.2.4 In **Italy**, there is a particularly close connection with the courts to share information and the ABF has the co-ordinating panel, specifically set up to deal with complaints with wider implications to ensure consistency and coherence in the decision-making process.

5.11.3 It is possible that the other Assessed Jurisdictions may not require a wider implications framework similar to that of the **UK** regulatory family. This may be because their systems are sufficient as they are and/or ombudsmen are mandated to apply the law directly, resulting in decisions that are inherently more consistent.

5.12 Extent to which complaints backed by third-party litigation funding are brought to the financial ombudsman in each jurisdiction

5.12.1 In the **UK**, there is an increasing trend of complaints being brought on a mass basis by CMCs and CLFs, often funded by third-party litigation funding[47]. This trend is a significant driver behind the large number of complaints seen in the **UK** at the FOS.

5.12.2 In contrast, this issue has not been reported in the other Assessed Jurisdictions and/or there is not much public data. In countries like **France, Poland** and **Italy**, third-party litigation funding is not widely used. In **Germany**, it was reported that it is common for private households to have legal expenses insurance.

[47] Note that litigation funding is being reviewed in the UK (see the CJC's final report dated June 2025 whereby a number of recommendations have been made).

SCHEDULES

SCHEDULE 1

Questions asked to Assessed Jurisdictions

Legal and Regulatory Landscape

- Do firms providing unsecured consumer credit in your jurisdiction need to be authorised by a competent regulator?
    - If yes, who is the competent regulator? What authorisation and/or permissions do firms carrying on regulated consumer credit related activities need?
    - Is there a way for firms to provide credit on an exempt or excluded basis (i.e., without needing authorisation)?
    - Do firms involved in arranging credit, collecting monies due under a credit agreement or administering a credit agreement on behalf of the lender also need authorisation?
- What type of unsecured consumer credit products are within scope of the competent regulator's regime?
- What is the legal status of the competent regulator and from where does it derive its powers?
- What are the functions and objectives of the competent regulator and the scope of its activities?
    - At high level, what are the powers of the competent regulator? For example, can the competent regulator issue rules and guidance?
- What size is the competent regulator's organisation compared to the size of the consumer lending industry in your jurisdiction? For example:
    - Do you know how many FTEs it has?
    - How does this compare to the number of people working in the consumer lending industry?
    - How is the competent regulator organised? Does it have different divisions/teams for authorisations, supervision and enforcement etc.?
- How is the competent regulator funded?
    - How much are the ongoing fees to remain authorised? Does this differ depending on the products offered and/or the size of the firm?
    - What is the competent regulator's budget for authorising and supervising consumer credit firms?
- How do firms apply for authorisation from the competent regulator?

    How detailed or complex is the authorisation process? For example:
    - How long does it take a firm to prepare their application for authorisation?
    - Would they need to seek legal advice to prepare the application?
    - How much would a firm, on average, spend in preparing their application?
    - At high level, what type of information has to be provided in support of that application?
    - How much are the application fees? Does this differ depending on the products offered and/or the size of the firm?

- Does the competent regulator have the right to approve 'controllers' of authorised firms providing unsecured consumer credit?
- How does the competent regulator supervise authorised firms providing unsecured consumer credit?
- What enforcement powers does the competent regulator have?
    - What are the most frequent sanctions?
- Please describe, at high level, how unsecured consumer credit is regulated. For example, please explain the laws and regulations that apply.
    - Is your regulatory regime based on, or include, principles-based regulation?
    - Is your regulatory regime based on, or include, outcomes-focused regulation?
- Do consumers have a private right of redress against a firm if they breach one of the competent regulator's rules? If yes, what is the nature of that claim and do consumers have to prove that they have suffered loss or evidence that the breach is 'material'?
- If a firm breaches the laws and regulations, can that render the credit agreement unenforceable against the consumer?
- What other protections (other than those included above) apply to consumers under consumer credit laws and regulations?
- Does the competent regulator have the right to approve, supervise, and take enforcement action against senior managers and directors involved in the running and operation of an authorised consumer credit firm?
- Where applicable, please describe at high level, the regulatory reporting requirements in your jurisdiction
    - Do you have to carry out specific consumer credit reporting to the competent regulator? If yes, please provide a high-level description
- Are there any other key significant features of your regulatory regime that is not otherwise covered in your responses to the above questions?

ADR Questions

- Is there an ADR system/scheme in your jurisdiction for resolving complaints/disputes about financial services or products between consumers and financial services firms?
- What rules govern the process of the relevant ADR system in your jurisdiction?
- Is the ADR system in your jurisdiction independent?
- Is participation in the ADR system in your jurisdiction mandatory for financial services firms?
- What is the procedure for the ADR system in your jurisdiction?
- On what basis does the ADR system in your jurisdiction make decisions?
- Linked to question 7 above, is it possible for the ADR system in your jurisdiction to arrive at a different conclusion when dealing with a complaint than the relevant competent regulator(s) in your jurisdiction?
- What remedies are available under the ADR system in your jurisdiction and do any limitations apply?
- Are decisions by the ADR system in your jurisdiction binding on either or both the complainant and the respondent firm?
- Is the ADR system in your jurisdiction bound by its decisions? For example, do they set a precedent?
- Can decisions by the ADR system in your jurisdiction be appealed?
- How does the ADR system in your jurisdiction relate to any judicial system?
- Are there any limitation periods for referring complaints/disputes to the ADR system in your jurisdiction?
- Does either party have to have legal representation to refer a complaint/dispute to the ADR system in your jurisdiction?
- How is the ADR system in your jurisdiction funded?
- What is the cost and scale of the ADR system in your jurisdiction?

  For example:

  - How many complaints/disputes per annum does it receive and resolve? Specifically, how many relate to consumer credit?
  - What proportion are cases are brought by professional representatives (e.g. CMCs, CLFs?
  - What is the size of the relevant organisation? E.g. FTE and annual budget?
  - What is the fee per complaint/claim and who pays that fee?
- To what extent complaints are brought to the ADR system in your jurisdiction are backed by third-party litigation funding?
- How transparent is the ADR system in your jurisdiction? Are individual complaint outcomes, regular reports or reviews of the ADR system's performance published?
- How does the ADR system in your jurisdiction work with financial services regulators?

SCHEDULE 2

Further detail on exemptions from regulation

The **UK** position is set out in **paragraph 4.6**.

In **France** the following are exempt from the French Consumer Code:

- credit agreements involving amounts less than €200 or more than €75,000;
- credit agreements granted for the purpose of financing a real estate project;
- overdrafts repaid within one month;
- credit agreements repaid within three months with no interest and no charges or only negligible; ones
- advances on salaries or exceptional loans granted to employees;
- credit or loans granted to an investor to enter into a transaction relating to a financial instrument;
- contracts that are part of an agreement with a jurisdiction or household debt commission;
- contracts granting a payment period for the settlement of an existing debt without additional cost; and
- credit cards with a deferred debit not exceeding forty days and incurring no other charges.

Under French law, there is no exemption applicable that would apply to the granting of consumer credit on a regular basis. Among the credit agreements subject to the consumer credit regime, the French Consumer Code lists specific types of consumer credit, including overdrafts, revolving credit, crédit affecté (credit linked to a specific purchase), and leasing and rental transactions with an option to purchase.

In **Poland**, a consumer credit agreement is defined as an agreement on credit up to PLN 255,550 (approximately £50,000) or its equivalent in other currencies, granted by a creditor within their business activity. This includes unsecured credit for house renovations, even if the amount exceeds the limit. Poland has extended the definition of consumer credit to include small loans, regulated maximum interest and non-interest costs, and imposed bans on granting credit without positive creditworthiness and on transferring or enforcing credit receivables under certain conditions[48].

The Polish definition of a consumer credit agreement therefore encompasses loan agreements, credit agreements under the Banking Law, and agreements to postpone monetary performance with costs, subject to Polish law but not PFSA supervision. Additionally, it covers credit agreements involving third-party obligations and open-end credit agreements.

Contracts relating to the deferred provision of a non-monetary service, where the object is the permanent or successive provision of services or the supply of goods of the same kind, and where the consumer is obliged to pay for the service provided or the supply of goods at predetermined intervals during the duration of the contract, are not regarded as consumer credit agreements under Polish law. For example, where a lender provides credit of more than PLN 255,550 (approximately £50,000) then the loan falls outside of the scope of the Polish CCA and will therefore have fewer consumer protections.

In **Italy**, the consumer credit regime applies to credit agreements, defined as contracts granting a consumer credit in the form of deferred payment, loan, or other financial facility. Consumer credit involves

---

48 Poland has introduced a ban on granting loans to those who have restricted their PESEL number (personal identification number) in a special government database which has to be checked by a creditor before granting any loan. Poland has also introduced a requirement for 'borrower assistance' in the event of overdue consumer loan debt, which consists of the obligation to consider the consumer's request for debt restructuring. Additional obligations have also been introduced for lenders regarding an intention to amend the terms of a loan agreement.

both banks and non-bank financial institutions granting credit to individuals for personal use, not related to business or professional activities.

While the BoI's conduct of business requirements provisions do not apply to credit of less than €200 or higher than €75,000, except for unsecured credit agreements for renovating residential property, the lender must still be authorised. The same is true for the other exemptions including: the provision of credit without interest or charges, credit repaid within three months without significant charges (used by BNPL providers in Italy), and credit to finance property rights. Additionally, the following types of credit are also exempt under Italian law:

- credit guaranteed by a mortgage;
- credit to finance financial instrument transactions;
- credit based on judicial agreements;
- deferments of pre-existing debt granted free of charge;
- overdrafts;
- credit guaranteed by a pledge on a movable asset; and
- microcredit initiatives for loans granted to a limited public with general interest purposes where the loans do not provide for interest or offer more favourable conditions than market rates.

In **Germany**, all types of consumer credit products fall within the scope of BaFin's regulatory regime and require authorisation. However, there are exemptions to the strict provisions of consumer credit laws. These exemptions apply if the consumer credit is below €200 or more than €75,000 is granted at no or very low cost and is to be repaid within three months, is designed so that the borrower's liability is limited to a pledged item, or is a credit granted by an employer to an employee at an interest rate below the market rate. These exemptions limit the applicability of pre-contractual information requirements, creditworthiness checks, and written form requirements under consumer credit laws, but do not exempt firms from needing a regulatory licence to grant credit, except for sales finance.

Federally in the **USA**, the CFPB holds rulemaking and enforcement authority over certain products and services, including various forms of unsecured consumer credit such as student loans, credit cards, personal loans, title loans, and payday loans. Additionally, the CFPB has supervisory authority over certain entities, including banks with assets exceeding $10 billion, participants in markets specifically identified in the CFPB's authorising statute (the CFPA), "larger participants" in regulated markets identified by CFPB rulemaking, and non-bank providers deemed to present a risk of consumer harm. These supervised entities are subject to CFPB examination and reporting requirements, alongside the agency's rulemaking and enforcement authority. However, the CFPB does not have a licensing remit over consumer credit.

In **New York**, the NYDFS supervises licensed lenders, which are non-bank consumer lenders making loans of $25,000 or less at an annual interest rate of more than 16% to New York residents, under the LLL. A licence is required for a non-bank wishing to make auto loans and other secured and unsecured loans that meet the principal amount and interest rate thresholds of the LLL. Except for certain regulated entities, such as banks, no other exemptions from regulation or supervision apply under New York State law if the loan meets the interest rate and principal thresholds for regulation.

SCHEDULE 3

Further detail on the structure of the competent regulators

In the **UK**, the FCA is governed by a board (the Board) that includes a Chair, a Chief Executive, and other members appointed by HMT. This Board provides strategic leadership and ensures the FCA has the necessary resources to meet its objectives. The FCA is divided into several divisions, including Supervision, Authorisations, Enforcement and Market Oversight, Strategy and Competition, and Corporate Services, each focusing on various aspects of financial regulation.

The ACPR in **France** is organised around three main bodies: the Supervisory College, the Resolution College, and the Enforcement Committee. It has various operational directorates, such as those dedicated to resolution, anti-money laundering, insurance supervision, business practices, authorisation, and more.

Poland's PFSA operates with a more streamlined structure, with a dedicated Department of Lending Institutions managed by a director. The PFSA is overseen by a commission of 13 members, including the chair and deputy chairs, and representatives from key financial authorities. The PFSA's office is divided into departments and teams responsible for specific sectors.

Italy's BoI has a complex structure with governing bodies including the Directorate, the Assembly of Participants, the Superior Council, and the Board of Statutory Auditors. The Directorate handles external measures, while the Assembly of Participants appoints members to the Superior Council and the Board of Statutory Auditors, which oversee compliance and financial statements.

Germany's BaFin is governed by an Executive Board comprising the President and six Chief Executive Directors. The Board is supported by committees like the Administrative Council and the Consumer Advisory Council. BaFin's divisions include Banking Supervision, Insurance and Pension Funds Supervision, Securities Supervision/Asset Management, and others, each focusing on specific regulatory areas.

In the **USA**, the CFPB is led by a single director appointed by the President and organised into several divisions, including Consumer Response and Education, and Supervision, Enforcement and Fair Lending. The CFPB also has several advisory committees, reflecting its broad mandate and focus on consumer protection. However, it was highlighted in our survey responses that, during the last Trump administration, the CFPB decreased its supervision efforts.

In **New York**, the NYDFS is led by the superintendent, nominated by the governor and confirmed by the New York Senate, with advisory boards specialising in areas such as insurance and consumer protection. This state-level regulation contrasts with the broader federal oversight of the CFPB.

SCHEDULE 4

Further detail on the functions and objectives of the competent regulator

In **Germany**, BaFin shares similar core objectives with the FCA, focusing on consumer protection, financial system integrity, and stability. However, BaFin does not appear to have an express objective to promote competition.

In **Poland**, although the PFSA was established nearly 20 years ago, it only began regulating consumer credit providers more recently. This change was implemented in 2024 and, prior to this, it was just a case of a simple registration where providers submitted details and were entered onto a list. Additionally, this supervision of consumer credit differs to that which exists for banks, PIs, and EMIs.

In **France**, the ACPR aims to maintain financial system stability and protect customers, insurance policyholders, and beneficiaries. The ACPR also ensures compliance with anti-money laundering and counter-terrorist financing regulations and acts as the prudential supervisor for both banking and insurance entities. This dual focus on stability and compliance sets it apart from the FCA's broader market objectives.

In **Italy**, the BoI's actions and decisions aim at pursuing monetary and financial stability, covering currency, financial system, research and statistics, and public services. While it shares the FCA's independence, its broader scope includes monetary policy, distinguishing it from the FCA's more focused regulatory role.

In the **USA**, the CFPB has a broad mandate that includes enforcing consumer financial protection laws, enhancing financial education, and monitoring financial markets for consumer risks. The CFPB operates independently of the Federal Reserve Board and submits semi-annual reports to Congress. The CFPB's focus on consumer protection and financial education is comparable to the FCA's but appears to have a broader mandate.

In **New York**, the NYDFS works to protect New Yorkers from financial harm, foster economic growth, ensure the safe operation of regulated financial firms, and promote financial system resiliency. The NYDFS's state-level regulation and specific lending thresholds contrast with the broader federal oversight of the CFPB.

SCHEDULE 5

Further detail on the regulatory and rule-making powers of the competent regulator

In the **UK**, the FCA has a wide range of powers to regulate and oversee firms carrying on regulated activities. These powers include authorising firms and individuals under the SMCR (as discussed below), with the ability to vary, cancel, and withdraw permissions. The FCA also issues regulatory rules, guidance, and principles under various sections of the FSMA. These rules and guidance are detailed in the FCA Handbook and non-Handbook guidance. Additionally, the FCA supervises firms, issues waivers, approves controllers of authorised firms, takes enforcement action under the FSMA and other consumer protection laws, takes action to counter financial crime, and raises fees.

When issuing new rules or changing existing ones, the FCA must follow a statutory process that includes consulting with key stakeholders, reviewing feedback, and making final decisions on the proposed rules. The FCA then issues policy statements to explain the rule changes. However, in urgent situations where there is a significant risk to consumers or the financial system, the FCA can issue rules without prior consultation.

As part of its supervisory role, the FCA reviews published financial promotions for compliance with its financial promotions rules and reports on unregulated activities. The FCA encourages the reporting of misleading, unfair, or unclear financial promotions, as well as scams or activities by unauthorised persons. The FCA publishes quarterly data, and the report for the period from 1 July 2024 to 30 September 2024 shows that FCA interventions during this period resulted in 3,697 promotions being amended or withdrawn, involving 53 authorised firms. Of these cases, 31% were in the retail lending sector.[49]

Additionally, the FCA issued 584 alerts on unauthorised firms and individuals. The number of financial promotion interventions has significantly increased compared to the same period in 2023, where only 1,004 financial promotions were amended or withdrawn. The number was 3,973 for Q4 in 2022. However, in both Q4 2022 and Q4 2023, financial promotions related to retail lending activities constituted the largest percentage of the FCA's interventions, which was not the case in Q4 2024.[50]

In **France**, the ACPR's powers include conducting on-site and off-site inspections of firms under its supervision, imposing administrative police measures, and imposing financial and/or disciplinary sanctions. Furthermore, the ACPR may issue recommendations, instructions, positions and guidelines, and good practice rules, although these have no regulatory value.

In **Poland**, the PFSA can issue recommendations to lending institutions to ensure that their consumer credit activities comply with the Polish CCA. Additionally, the PFSA can require lending institutions to submit or periodically provide information, documents, or data that is necessary for effective supervision. Beyond these specific functions related to consumer credit, the PFSA performs several general functions that also apply to consumer credit issues. These include overseeing the financial market, taking measures to ensure its proper functioning, and promoting its development and competitiveness. The PFSA also encourages innovation within the financial market and works to counteract threats to the security of information and communication systems used by supervised entities.

In **Italy**, the BoI's powers encompass authorising firms to carry on regulated activities, issuing regulatory rules, guidance, and principles under the CBA, supervising firms, approving controllers of authorised firms, taking action to counter financial crime, and raising fees.

In **Germany**, financial supervision is delegated to BaFin, but this is limited to regulated business activities. If a firm uses an exemption, it will not fall within BaFin's supervision. BaFin can issue administrative acts which are legally binding. These acts can be individual or general and require a statutory provision allowing for the individual measure. Such measures must be proportionate regarding purpose and intensity of intervention. Therefore, individual rights of parties concerned as well as constitutional and European provisions must be considered. Formal requirements for the involvement of stakeholders varies depending on the extent of those affected. However, BaFin regularly carries out surveys with key stakeholders before issuing administrative acts.

---

49 Financial promotions quarterly data 2024 Q4 | FCA

50 Financial promotions quarterly data 2024 Q4 | FCA

After the implementation of the CCD2, BaFin is highly likely to be tasked with the supervision of businesses offering unregulated services to ensure that these businesses act honestly, fairly, transparently, and professionally, considering the rights and interests of consumers.

Federally in the **USA**, the CFPB's mandate includes writing rules, supervising covered entities, enforcing consumer financial protection laws, enhancing financial education, and monitoring financial markets for consumer risks. It issues rules and guidance to implement these laws and maintains a public examination manual for supervised firms. The CFPB's rulemaking follows the Administrative Procedures Act and the CFPA, requiring a public notice and comment period, consideration of comments, a cost-benefit analysis, and consultation with small entities.

Beyond rulemaking, the CFPB enforces financial protection laws, supervises specified entities, and promotes consumer education. It also collects and analyses market data through exams, complaints, and industry information requests to monitor market competitiveness and emerging consumer risks.

In **New York**, the NYFDS has the authority to implement regulations, conduct supervisory exams, and enforce compliance with the New York financial services laws.

SCHEDULE 6

Further detail on enforcement powers and sanctions

In the **UK**, the FCA has a wide range of disciplinary and enforcement tools under the FSMA. These powers range from public censure, the imposition of fines, the cancellation of a firm's permission, or the withdrawal of the approval of an approved person. The imposition of financial penalties is the most frequent sanction used but this is often accompanied by a requirement for the firm to provide customer remediation and redress. As earlier mentioned, the FCA also has the power to prosecute a number of criminal offences and the power to secure redress for affected customers, either by requiring a statutory redress scheme, issuing new rules and guidance, engaging directly with the firm or by working with other authorities such as the FOS.

The FCA can also issue "Dear CEO" letters about significant issues that require quick action. Additionally, the FCA can also issue portfolio strategy letters setting out key risks or potential or actual harm and require firms in that portfolio to ensure that their board takes note of the letter and reviews the matters covered by it, fixing any shortcomings.

The FCA can also apply to the court to stop traders from breaching a wide range of consumer protection legislation where such breaches harm the collective interests of consumers. This means that the FCA can take enforcement action for a breach of the CPUTR 2008 and can take enforcement action under the UK's unfair terms regime in Part 2 of the CRA 2015.

In just four FCA recent interventions, the cost of non-compliance has been close to £1bn, with approximately £107 million in fines and £858 million in redress being ordered by the FCA.[51] What is more, the FCA's 2023/2024 Annual Report stated that they had intervened with almost 100 lenders to ensure they were supporting borrowers in financial difficulty, and that they expect that around 270,000 customers will receive close to £60 million in compensation as a result of this intervention.[52]

Notably, authorised firms in the UK cannot take out insurance to pay FCA fines imposed on them or their senior managers. As per the FCA Handbook, firms are prohibited from entering into, arranging, claiming on or making payments under a contract of insurance that would indemnify any person against all, or part of a financial penalty imposed by the FCA. However, insurance can cover the costs associated with defending FCA enforcement action.

In **Poland**, if a lending institution fails to meet its Polish obligations, does not implement the PFSA's recommendations, or operates in violation of the Polish CCA, the PFSA can take various actions. These include imposing fines up to PLN 150,000 (approximately £30,000) on responsible management board members, pecuniary penalties up to PLN 15,000,000 (approximately £3,000,000) on the institution, requesting the dismissal of the responsible board member, suspending their activities, and de-registering the institution from relevant registers. These sanctions are applied through administrative decisions.

For foreign entities violating the Polish CCA or operating contrary to its conditions, the PFSA can summon the entity to comply with Polish law and set a time limit for rectifying irregularities. Additionally, the PFSA can prohibit the entity from conducting consumer credit activities in Poland.

In civil cases related to financial market activities, the chair of the PFSA has the powers of a public prosecutor and can initiate civil law proceedings. The chair also has the rights of a victim in criminal proceedings concerning acts against market participants' interests.

The most frequent sanctions imposed by the PFSA are fines. However, the PFSA does have the power to de-register lending institutions due to the non-fulfilment of basic registration requirements.[53]

Other types of sanctions are less common due to the relatively brief period of supervision over this sector.

---

51 Recent FCA fines: A wake-up call for financial crime controls | Insights | UK Finance

52 Annual Report and Accounts 2023/24

53 https://url.uk.m.mimecastprotect.com/s/p1HwCzKp9clz7RXIKsBU9nmsl?domain=knf.gov.pl

In **France**, the ACPR's enforcement committee is responsible for sanctioning firms under its supervision that violate the laws and regulations that the ACPR oversees. Depending on the severity of the breach, the committee may take one or more disciplinary measures. These measures include issuing warnings, imposing bans on certain operations, or placing other restrictions on the firm's activities. The committee may also temporarily suspend one or more conducting officers or any other person with supervisory functions within the firm, such as members of the board of directors or the supervisory board.

In more severe cases, the ACPR may require the compulsory resignation of one or more conducting officers or other supervisory personnel. The committee also has the authority to withdraw the firm's licence partially or totally or remove the firm from the list of authorised persons. Additionally, the ACPR can impose financial penalties on the firm and/or its conducting officers. The fines depend on the seriousness of the breach, with serious breaches potentially resulting in fines up to €100 million, 10% of the firm's turnover, or ten times the amount of the income generated from the breach.

The most common sanctions issued by the ACPR are financial penalties against the firm. These penalties serve as a significant deterrent and ensure compliance with the regulatory framework.

Much like the FCA, in **Italy**, the BoI has a wide range of disciplinary and enforcement tools under the CBA. The BoI's enforcement powers range from ordering the elimination of violations, specifying measures to be adopted and deadlines for compliance, to adopting extraordinary measures for crisis management and cancelling a firm's permission. Similar to the UK, financial penalties are the most frequent sanction.

When determining the amount of administrative pecuniary sanctions or the duration of ancillary sanctions, the BoI considers all relevant circumstances. These include the seriousness and duration of the violation, the degree of responsibility, the financial capacity of the person responsible, the amount of advantage obtained, or losses avoided through the violation, the damage caused to third parties, the level of cooperation with the BoI, previous violations in banking or financial matters, and the potential systemic consequences of the violation.

The BoI also has the power to sanction significant violations related to transparency and fairness towards customers, as well as those aimed at preventing money laundering and terrorist financing. It collaborates with judicial authorities to identify and repress financial criminal offences. This collaboration involves reporting facts identified during supervisory activities that may be relevant from a criminal perspective.

Similar to the UK, in **Germany**, the BaFin has a wide range of enforcement powers, including withdrawal of licensing, withdrawal of management approval, a request for information, on-site inspections, orders including the suspension of activities, public warnings and fines. BaFin also has the power to intervene in the marketing, distribution, and sale of certain financial products if they raise significant investor protection concerns.

BaFin will also address perceived flaws in advising consumers or compliance with consumer protection laws with the institutions within the scope of its supervision. For example, in 2021, BaFin issued guidance for all German credit institutions after a high court judgment on the validity of fees.[54] In contrast to the UK, the BaFin has no power to prosecute criminal offences and BaFin also has no power to secure redress for individual consumers.

Federally in the **USA**, in addition to formal enforcement actions, the CFPB may exercise its enforcement authority through consent orders and warning letters. The CFPB may gather information regarding potential violations through its supervisory authority for supervised entities and civil investigative demands. The CFPB can also produce consent orders, which are formal agreements negotiated between the CFPB and a firm to address identified violations. They may include penalties, compliance obligations, and a warning of ongoing monitoring by the CFPB.

The CFPB can also issue warning letters that are intended to caution a firm that its conduct may violate applicable law. They are not accusations of wrongdoing and do not carry penalties, but the contents are sometimes made public whilst the recipient remains unidentified.

Similar to the concept of "Dear CEO" letters in the UK, the CFPB also issues industry-wide circulars, bulletins, and guidance intended to advise firms and other regulatory agencies of the CFPB's expectations and regulatory interpretations. These are not addressed to any particular firm.

In **New York**, the NYDFS uses its investigative and examination authorities to identify potential violations by licensed lenders. When violations are identified, the NYDFS can take enforcement actions, which may

54 BaFin – Press release – Decision of the German Federal Court of Justice regarding changes to …

include issuing consent orders, imposing fines, and requiring corrective actions designed to address the violations and prevent future occurrences. The NYDFS often makes its enforcement actions public.[55]

At both the **USA** federal level and in **New York**, the most common sanctions are monetary penalties and restitution, and firms generally cannot use insurance to pay regulatory fines and penalties.

[55] Enforcement Actions: Banking, Other Financial Products and Services | Department of Financial Services

SCHEDULE 7

Further detail on the application process

In the **UK**, the application must be made online and supported by several documents, including a regulatory business plan, financial forecasts, policies and procedures, sample credit agreements, a quality assurance framework, a conduct risk framework, and a compliance monitoring plan. Additionally, firms must provide documents to help the FCA assess compliance with the Consumer Duty, such as target market analysis, product and service governance frameworks, fair value assessment frameworks, customer understanding assessment and testing frameworks, customer support monitoring policies, and customer outcome monitoring frameworks.

To obtain a credit institution licence in **France**, the applicant must apply through the ACPR's online portal. The application file must include all supporting documentation regarding the company (by-laws, structure charts, balance sheets, and projected income statements for the next three years), the shareholders (a copy of their ID), the directors (a copy of their ID and curriculum vitae), the corporate bodies (a curriculum vitae of its members), and its future internal organisation and control systems, resources (technical and human), and activities.

As a matter of principle, the licensing decision is taken within six months from the date of receipt of a complete application file. However, since the ACPR often asks for additional information and documents, the review period is usually extended. In practice, the authorisation process generally lasts 12 months. The preparation of the application pack depends on the firm's timing and ability to provide the required documents and information. Although it is not mandatory, it is recommended that the applicant engage legal counsel and/or external consultants to ensure the licensing process is completed successfully.

Similar to the UK, the application for registration in **Poland** with the PFSA can be submitted online. However, the information required is much simpler. The application must include basic data such as the business name, registered seat, registration numbers, and names of management board members. It should be accompanied by confirmation of the minimum required share capital (PLN 1,000,000 (approximately £200,000)) covered in cash, proof of legal form and share capital requirements, a certificate from the National Criminal Register for board members and statutory proxies, a statement of intent to grant consumer credit, and an extract from the register of entrepreneurs. As the application for a non-bank, non-PI, and non-EMI was for a registration, the application process and time for the competent regulator to process and determine the application was significantly shorter. The registration fees were also much cheaper.

To apply for authorisation in **Italy**, firms must apply to the BoI, including by-laws, articles of association, shareholder lists, verification of honourability, origin of funds, group description, board meeting minutes, activity programs, organisational reports, business plans, financial forecasts, and key policies.

To apply for a credit institution licence in **Germany**, an application is filed with BaFin and then assessed by the ECB. The application must include a sustainable business plan, detailed organisational structure, evidence of "fit and proper" directors, documentation for qualifying holdings, proof of initial and further capital (minimum €5 million), and a description of liquidity controls. A credit broker licence is submitted to the local trade register and requires a form to be filled out by the applicant, criminal records for managing directors, and various registry information. The fees for this are around approximately €400.

In the **USA (federally)**, this is not applicable because, as earlier discussed, the USA does not have a federal licensing or authorisation regime for non-banks. However, to obtain a lending licence from the **NYDFS**, a firm must complete an application using the NMLS. To obtain a lending licence from the NYDFS, a firm must apply via the NMLS, pay a $3,000 fee, and meet financial and experience requirements. This includes proving assets of $50,000, a net worth of $100,000, a $100,000 bank line of credit, and providing background checks and other materials. The application process's complexity and cost depend on factors like application completeness, follow-up requests, and whether the firm handles the process internally or outsources it. Processing can take several months, with legal fees ranging from $30,000 to $100,000 or more.

SCHEDULE 8

Further detail on approval and supervision of senior managers

In the **UK**, the SMCR consists of three parts: the SMR, the Certification Regime, and the Conduct Rules. The SMR focuses on individuals holding key roles or overall responsibilities within firms. The Certification Regime applies to staff who could pose significant harm to the firm or its customers, while the Conduct Rules set high-level requirements for individual accountability.

SMFs are controlled functions under the FSMA, with specific roles prescribed by the FCA Handbook. Key SMFs for fully authorised consumer credit firms include Chief Executive (SMF1), Executive Director (SMF3), Partner (SMF27), Chair (SMF9), Compliance Oversight (SMF16), and Money Laundering Reporting Officer (SMF17). Limited permission firms only require one SMF (SMF29 – Limited Scope Function). SMFs must be approved by the FCA before assuming their roles, and firms must assess candidates' fitness and propriety, including honesty, integrity, competence, and financial soundness. Regulatory references and criminal records checks are also required.

SMFs have a duty of responsibility under the FSMA, meaning they can be held accountable for breaches of FCA requirements if they fail to take reasonable steps to prevent or stop the breach. Firms must assess SMFs' fitness and propriety annually. While FCA action against individual SMFs is rare, significant fines have been imposed for breaches in the UK.[56]

The Certification Regime covers staff who are not senior managers but whose roles could cause significant harm to the firm or its customers. Firms are responsible for ensuring these individuals are fit and proper for their roles, conducting assessments upon appointment and annually. Regulatory references are required for certification functions, and certified individuals must comply with conduct rules to ensure they meet required standards. None of the other jurisdictions surveyed have a system comparable to the UK's Certification Regime. Likewise, no other jurisdictions provided examples of large personal fines against individuals similar to those seen in the UK.

In **Poland**, like other jurisdictions including the UK, the PFSA will assess the fitness and propriety of a member of the lender's management board, supervisory board or proxy and can refuse to register or withdraw a lending institution from the register if such a person has been validly convicted of offences related to document reliability, property, economic turnover, money and securities trading, or fiscal offenses. Additionally, the PFSA may impose sanctions on members of the lending institution if it is found that the institution fails to fulfil reporting obligations, does not implement the PFSA's recommendations within the prescribed time, or conducts activities in violation of the Polish CCA. These sanctions can include fines, restrictions on activities, or other regulatory actions aimed at ensuring compliance by the lender.

Furthermore, the President of OPCC can impose fines of up to PLN 2,000,000 (approximately £400,000) on managing persons who, through their actions or omissions, intentionally cause the firm to contravene prohibitions against using abusive clauses in consumer contracts or infringing collective consumer interests. This highlights the significant responsibility placed on senior managers to ensure that their institutions operate within the legal framework and adhere to consumer protection standards. Failure to do so not only jeopardise the institution's standing but also exposes individual managers to substantial financial penalties and reputational damage.

In **France**, members of the management body, including conducting officers and members of the supervisory bodies, as well as staff holding key functions such as those responsible for control functions (risk management, compliance, and internal audit), must comply with fitness and propriety requirements. The appointment or renewal of any member of a credit institution's management body must be notified to the competent supervisory authorities (the ACPR or ECB, as applicable), who have two months to approve or reject the appointment or renewal. Additionally, the ACPR's Enforcement Committee is entitled to impose sanctions against conducting officers and members of the supervisory bodies of a credit institution or financing company. These sanctions can include temporary suspension for up to ten years, compulsory retirement, and financial penalties (applicable only to conducting officers).

In **Italy**, the CBA provides that individuals who perform administrative, management and control functions of the lender must be suitable for carrying out the assignment. To this end, the company representatives must possess the requirements of professionalism, integrity and independence, satisfy criteria of

56 Final Notice 2024: Philip Pryke

competence and correctness, dedicate the time necessary to the effective performance of the assignment, in order to guarantee the sound and prudent management of the firm.

The responsibility for identifying suitable company officers and ensuring an adequate qualitative and quantitative composition of the administrative and control bodies lies with the firm; the firm must also ensure that the requirements and criteria are met not only at the time of appointment of the relevant officers, but for the entire time the lender is authorised. However, the BoI has the duty to evaluate the suitability of the company representatives and of the senior managers of the main corporate functions, considering the analysis carried out by the competent firm's body for the verification, as well as any corrective measures adopted by the firm.

The BoI has also enacted guidelines on the assessment of the requirements and suitability criteria for carrying out the role of corporate representatives of financial intermediaries.

In **Germany**, the managing directors of credit institutions, payment institutions, and e-money institutions must pass a "fit and proper" test conducted by BaFin. This test assesses their previous experience in regulated business and management, as well as their criminal record. There is no specific requirement regarding consumer credit. BaFin also reviews key managers, such as compliance officers, AML officers, internal auditors, and data protection officers.

In cases of misconduct by managing directors, BaFin may revoke their mandate and appoint interim managers. While this typically occurs in response to serious regulatory breaches, such as violations of capital requirements, AML regulations, or unauthorised business activities, local counsel informed us that they are not aware that it has been used for consumer protection matters. Senior managers of firms providing unregulated consumer credit under the merchant privilege are not subject to any regulation to date.

In the **USA**, because there is no federal authorisation, the CFPB does not approve or supervise their principals directly. However, the CFPB can impose civil penalties on members of management and has done so where it determined that an individual encouraged or overlooked violations of law that caused consumer harm. Although **New York's** NYDFS must determine, before issuing a lending licence, that the financial responsibility, experience, character, and general fitness of the applicant, its officers and directors, are such as to warrant confidence that the business will be operated honestly, fairly and efficiently, our survey respondents did not identify examples of the NYDFS imposing penalties on officers or managers in their individual capacity. This being said, any person who does violate the LLL, including the officers, directors, agents and employees of a licensee, is guilty of a criminal misdemeanour.

SCHEDULE 9

Further detail on regulatory reporting

In the **UK**, firms are subject to various regulatory reporting obligations to ensure transparency and compliance with the FCA. Principle 11 mandates that firms must deal with the FCA in an open and cooperative manner, disclosing any information that the FCA would reasonably expect to be notified of, including significant breaches of regulatory rules and principles (including the Consumer Duty) as well as any significant breach of the CCA. Additionally, firms must adhere to general notification requirements, which include immediately informing the FCA of any proposed restructuring, reorganisation or business expansion which could have a significant impact on the firm's resources and risk profile, any failing to meet threshold conditions, any matter that could have a significant adverse impact on the firm's reputation, or which could affect the firm's ability to continue to provide adequate services and which could result in detriment to the firm or a customer and any matter which could result in serious financial consequences to the UK financial system or other firms[57].

Firms are also required to fulfil specific regular reporting requirements, including the submission of annual accounts, annual controller reporting, complaints data, and product sales data. The FCA requires firms to report this information via their online platform, with the frequency of reporting – quarterly, semi-annually, or annually – depending on the nature and size of the business and the data being reported.

Regulatory consumer credit data reporting is undergoing significant changes following a recent FCA rule change. Most of the current data items will be replaced with a more extensive product sales data return, providing the FCA with a more granular view of the consumer credit-related regulated activities of firms. Starting in October 2025, lenders with £20 million or more in outstanding consumer credit balances and/or new consumer credit advances will be required to submit credit agreement sales data and credit agreement performance data for all relevant regulated credit agreements. This data will include core agreement details, borrower and affordability information, charges and fees, and arrears and forbearance.

From April 2026, lenders with £2 million or more, but less than £20 million, in outstanding consumer credit balances and/or new consumer credit lending will also be required to submit these returns on a quarterly basis. Firms providing high-cost short-term credit but not meeting the £2 million threshold will continue to report short term loans data. The FCA uses this data to support its supervisory work and to calculate the consumer credit portion of the firm's annual fees.

Given the level of required data and the frequency with which firms must report, the requirements can be quite demanding for firms providing consumer credit in the UK.

In **Poland**, lending institutions are required to provide the PFSA with quarterly and annual reports on their consumer credit activities. These reports must include detailed information on consumer loans granted, such as the number of loans, including those with deferred repayment within 120 days of disbursement, their value, term, currency structure, and any delays in repayment. Additionally, the reports should cover consumer credit agreements concluded, specifying their number, types, and status. The number of customers who have been granted consumer credit, including those with deferred repayment, must also be reported. Furthermore, the reports should detail the total revenue generated from consumer credit activities, distinguishing between interest and non-interest credit costs, and provide a balance sheet indicating the sources of funding for these activities. Lastly, the reports must confirm compliance with the requirements for key personnel of the lending institution, ensuring that members of the management board, supervisory board, or proxies have not been validly convicted of offences related to document reliability, property, economic turnover, money and securities trading, or fiscal offences.

In **France**, regulatory reporting requirements to the ACPR include information and data related to prudential requirements, such as own funds, liquidity, and leverage, as well as information on credit institutions' internal control systems and anti-money laundering reporting. The Banque de France publishes detailed monthly statistics regarding loans to individuals, including consumer credit. These statistics are based on data reported monthly or quarterly by French credit institutions, compiled through the unified reporting system for banks and equivalents. This data includes figures on any loans granted by credit institutions, including consumer credit.

Additionally, credit institutions are required to report any incidents of non-payment to the Banque de France. Such incidents include two consecutive defaults of payment, defaults lasting more than 60 days,

[57] See SUP 15.3.1R in the FCA Handbook

misuse of authorised overdrafts not regularised within sixty days for amounts at least equal to €500, and any default of payment for which a formal notice to pay has been ignored.

In **Italy**, there are various regulatory reporting obligations that apply to consumer credit providers. These include supervisory reports, which are governed by the BoI Circular Letter no. 286 of 17 December 2013, and periodical communications to the Central Risk Office regarding firms' exposure to their clients, and the names of connected entities. Additionally, in the event of significant changes affecting the firm's operations or organisational structure, such as changes in the corporate governance model, entry into new markets, or significant changes in distribution channels, financial intermediaries are required to promptly transmit a report on the organisational structure and an updated program of activities to the BoI. Other regulatory reporting requirements include the submission of annual accounts, annual controller reporting, and complaints data. Firms must also communicate any extraordinary transactions, such as mergers, demergers, or voluntary liquidations, and report any amendments to the articles of association that relate to significant aspects of the company organisation, including changes to the corporate governance model. Furthermore, any increase or reduction in share capital must be reported.

In **Germany**, BaFin is supported in its supervision by the Bundesbank. Authorised firms are required to file monthly reports with the Bundesbank, and to share their annual reports, internal audit reports and anti-money laundering and compliance reports with the Bundesbank and BaFin. Usually, the focus of the supervision is on regulatory requirements (e.g. capital requirements, AML etc.). However, BaFin will investigate if it receives consumer complaints regarding a specific institution.

Federally in the **USA**, there is no general statutory duty for firms to report to the CFPB regarding their operations or interactions with consumers, except that non-banks must report final public orders issued against them by governmental authorities. However, the CFPB may require firms offering consumer financial products or services to respond to requests for information. The CFPB uses this information to inform its enforcement, supervisory, and rulemaking efforts and to monitor the market. Firms must respond accurately and comprehensively to these requests for information. Additionally, firms under CFPB supervision, either by law or through a consent order requiring ongoing reporting and monitoring, must also report to the CFPB. The CFPB has indicated that firms demonstrating "responsible conduct" through proactive assessment, self-reporting, remediation, and cooperation may benefit from a reduction in fines and other negative outcomes from violations.

Additionally, under **New York State law**, licensed lenders are required to file annual reports with the NYDFS on their operations and financial condition. Additionally, they must notify the NYDFS of certain events, such as changes in licensed location, changes in the governing board or executive officers, certain crimes against the lender, and cybersecurity incidents. Prior approval from the NYDFS is also required for any change in control of the licensee.

SCHEDULE 10

Further detail on the nature of the regime

The **UK** regulated consumer credit regime is governed by a combination of financial services legislation, including the CCA, the FSMA, and various regulations and orders. It also includes general consumer protection laws, distance selling regulations, common law, FCA rules and guidance in the FCA Handbook (specifically CONC which details the consumer credit-related conduct of business requirements in addition to those in the CCA), and the FCA PRIN (including the Consumer Duty). This creates a multi-faceted regime involving prescriptive legislation, outcomes-focused regulation, and principles-based regulation.

The CCA provides a framework for regulating consumer credit, covering the origination and servicing of credit agreements, and the provision of information to consumers. It grants various rights and protections, including early settlement, withdrawal, cancellation, voluntary termination of HP and conditional sale agreements, protections for the return of goods, time orders, and the unfair relationships regime. Supporting regulations govern the content of notices, pre-contractual information, settlement statements, and credit agreements. Breaching the CCA provisions generally constitutes a breach of statutory duty, with certain breaches leading to unenforceability sanctions, and others give rise to criminal sanctions (though these are not enforced).

The FCA Handbook includes several sourcebooks relevant to consumer credit firms. The key ones are the PRIN, which outline fundamental principles such as integrity, skill, care, and diligence; the Code of Conduct and FIT, which governs individual roles; the Supervision manual, covering regulatory reporting; and Dispute Resolution: Complaints, detailing complaint handling and the Financial Ombudsman Service. CONC is crucial for firms engaged in credit-related activities, promoting responsible lending and fair treatment of customers. It covers creditworthiness assessments, advertising rules, pre-contractual information, post-contractual obligations, high-cost short-term credit product regulations, and debt collection/arrears handling, including tailored forbearance for customers in financial difficulties.

The UK also has the Consumer Duty, which is an overarching "consumer principle", that requires firms to act to deliver good outcomes for retail customers. This principle is underpinned by three cross-cutting rules that require that firms must: (i) act in good faith; (ii) avoid causing foreseeable harm, and (iii) enable and support retail customers to pursue their financial objectives. Firms are also required to deliver good customer outcomes across four key areas: products and services, price and value, consumer understanding and consumer support. The Consumer Duty is the most significant regulatory change to apply to all FCA authorised firms since the FSMA was first implemented. The Consumer Duty applies to all authorised firms across the distribution chain and requires firms to proactively identify poor outcomes and to provide remediation/redress. No other jurisdiction surveyed has the equivalent of the Consumer Duty that is imposed by the competent regulator and only applies in the context of regulated financial services.

The FCA also requires that firms treat customers in vulnerable circumstances fairly. To ensure positive outcomes for these customers, firms should take several actions. They need to understand the needs of their target market and customer base, ensure staff possess the necessary skills and capabilities to recognise and respond to the needs of vulnerable customers, and address these needs throughout product design, flexible customer service provision, and communications. Additionally, firms should monitor and assess whether they are meeting the needs of customers with characteristics of vulnerability and make improvements where necessary. Other jurisdictions did not appear to have specific obligations applying in the context of customers with characteristics of vulnerability. Such customers would generally be protected under existing consumer protections laws.

In addition, all consumer credit firms must have in place systems and controls to mitigate the risk that they may be used to further financial crime. There are specific requirements in the FCA Handbook that apply in addition to anti-money laundering laws and regulations.

The transfer of regulation from the OFT to the FCA in April 2014 has added to the complexity of consumer credit regulation in the UK. While there are consultations aimed at reviewing the FCA Handbook and the remaining provisions of the CCA, the current regime is multi-layered, at times contradictory (e.g. the prescriptive requirements of the CCA and the outcomes-focused approach of the Consumer Duty) and difficult for firms to navigate. The complexity of the regime means that firms often need external specialist legal advice to help them navigate all of the overlapping legal and regulatory requirements. This adds to the cost of compliance but also creates additional risk.

In the UK, other credit-related ancillary activities fall within the scope of licensing regimes. Lenders do not need separate credit broking or debt-related permissions for activities related to credit agreements they

have entered into. However, third parties involved in arranging credit, collecting monies due under a credit agreement, or administering a credit agreement on behalf of the lender will need the relevant permissions from the FCA unless an exemption applies[58].

In contrast to the UK, the regulatory framework for consumer credit in **France** is rules-based, with specific laws, regulations, and guidelines. The main laws and regulations in France governing consumer credit are set out in the French Financial and Monetary Code and the French Consumer Code.

Other credit related ancillary activities fall within the scope of licensing regimes in France. Collecting monies due under a credit agreement or administering a credit agreement on behalf of the lender requires authorisation by the ACPR as a credit servicer if the credit qualifies as a non-performing loan.[59]

The **Polish** regulated consumer credit regime is governed by several key pieces of legislation. The Polish CCA, which implements the CCD, regulates the registration process of lending institutions and their supervision. General consumer protection legislation, such as the Act on Protection of Competition and Consumers, grants the OPCC the authority to conduct explanatory proceedings and impose fines of up to 10% of annual turnover on entities engaging in practices harmful to the collective interests of consumers. Such requirements apply to all traders selling goods or services to consumers and not just financial services firms.

Similar to the UK CCA and CONC, the Polish CCA provides a comprehensive framework for regulating consumer credit, covering aspects such as the origination and servicing of credit agreements, the provision of pre-contractual, contractual, and post-contractual information to consumers, and the unenforceability of credit agreements for non-compliance with certain provisions. It also grants consumers rights and protections, including early settlement, withdrawal, and cancellation as well as maximum non-interest and late payment costs. Breaches of the Polish CCA can result in statutory duty violations, "free-of-charge credit" sanctions (meaning that the lender is not able to recover interest on the amount of credit provided), and criminal penalties.

The Polish CCA also sets rules for running consumer lending activities, such as registration requirements, legal form, minimum share capital, and management without a criminal history.

The regulatory regime is mainly rules-based, with additional rules expected to allow consumers to apply for restructuring of outstanding credit liabilities. Such practices include failing to provide reliable information, engaging in unfair market practices, and proposing unsuitable financial services. The OPCC can impose fines of up to 10% of the previous year's turnover on lending institutions for these practices.

Other credit related ancillary activities fall within the scope of licensing regimes in Poland. Firms involved in arranging credit (credit intermediaries[60]), collecting monies due under a credit agreement, or administering a credit agreement on behalf of the lender, must also be registered with the PFSA.

In **Italy**, the regulatory framework for consumer credit is rules-based, with specific laws, regulations, and guidelines. One of these is the CBA, which provides a comprehensive framework for the regulation of consumers credit covering aspects such as: the origination and servicing of regulated credit agreements, the provision of pre-contractual, contractual and post-contractual information to consumers, the advertisement, the form in writing of the consumer credit agreement and the formalities for its amendment, and the unenforceability of credit agreements where certain provisions are not complied with.

The CBA also provides for certain other rights and protections of consumers including: full or partial early settlement; withdrawal and cancellation; and voluntary termination of a credit agreement aimed exclusively at financing the supply of a specific good or the provision of a specific service in case of non-fulfilment of the relevant provider.

The CBA is supported by various regulations which govern, for example, the transparency of consumers' credit transactions.

---

58 Typically, firms must apply for full authorisation, but there are a few 'lower risk' activities that can be authorised with a 'limited permission' from the FCA. These include secondary credit broking.

59 This requirement is in accordance with the EU Directive 2021/2167 on credit servicers and credit purchasers, which has been transposed into French law.

60 A consumer credit intermediary is defined as an entrepreneur who receives material benefits, particularly remuneration from the consumer, by performing factual or legal actions related to the preparation, offering, or conclusion of a consumer credit agreement.

The BoI's Transparency Regulation aims to make customers aware of the essential elements of their contractual relationships and any variations with firms, thereby promoting competition in the banking and financial markets. As a general principle, the regulation ensures that business relationships with customers are based on good faith and fairness. Specifically, it covers pre-contractual information and the content and method of information related to consumer credit agreements, the evaluation of consumers' creditworthiness, the offering of consumer credit agreements through intermediaries, a description of AGER and its calculation (as per Annex 5B), the form and content of credit agreements and their execution through electronic tools, the assignment of credit and/or consumer credit agreements, and changes to contractual terms and conditions with consumers. The concept of "good faith and fairness" sounds similar to the cross-cutting rules under the UK's Consumer Duty. However, this concept applies more broadly and so is not specific to financial services. One could argue that it is therefore similar to the UK common law of contract principle of "good faith" which requires parties to act honestly, observe reasonable commercial standards of fair dealing and be "faithful" to the common purpose.

Other credit related ancillary activities, fall within the scope of licensing regimes in Italy. Lenders do not need separate credit broking or debt-related permissions where their activities or administering a credit agreement on behalf of the lender, must also be registered with the PFSA.

The regulatory framework for consumer credit in **Germany** is primarily governed by the BGB, which relies on principle-based law. This framework is heavily influenced by European directives aimed at harmonising the EU regulatory landscape.

The BGB provides a comprehensive framework covering all civil aspects of consumer credit agreements, including their conclusion, termination, pre-contractual and contractual information obligations, and formal requirements. It also includes accessory obligations such as assessing the consumer's creditworthiness. Notably, s492 of the BGB mandates that all consumer credit agreements must be concluded in writing, excluding email and online acceptance, unless a qualified digital signature is used. An exemption exists for instalment credits granted by online merchants, provided that the strict information requirements are met.

The BGB also addresses secondary claims like damages, where breaches of consumer protection laws may lead to damage claims by the consumer and potentially render the agreement invalid. German law includes strict usury provisions, deeming credit agreements void if there is a serious imbalance between service and remuneration (e.g., such as interest rates exceeding 100% of the comparable market rate or 12 percentage points above the basis interest rate).

The BGB is supplemented by the Introductory Act to the Civil Code, which outlines information obligation requirements. Breaches can lead to reduced interest rates, extended withdrawal rights, and administrative fines up to €2 million. The Act on Injunctive Relief allows consumer protection associations to file lawsuits against discriminatory practices, while the Act Against Unfair Competition addresses unfair business practices, enabling lawsuits for removal, injunction, and damages. The Price Indication Regulation mandates the disclosure of the effective annual interest rate, with non-compliance considered an unfair trade practice. Consumer protection provisions in Germany are binding and cannot be deviated from.

Other credit related ancillary activities fall within the scope of licensing regimes in Germany. The credit broking (consumer or business) requires registration with the local trade register as a credit broker. This applies to firms offering third-party credit (e.g. advertising the loan offer from a bank on their website or in their store) or third-party brokers, but the lender itself does not require a credit broking licence[61].

In the **USA**, the regulatory framework for consumer credit is also rules-based. Importantly, although these rules define "credit" similarly, they may have different triggering criteria from rule to rule. For example, the Truth-in-Lending Act applies to consumer credit under a specified dollar amount (currently $71,900) that is payable in more than four instalments or on which a finance charge is imposed. Other laws, like the Fair Credit Reporting Act and the Equal Credit Opportunity Act, generally apply regardless of principal amount or repayment terms.

In addition to the federal laws, regulated consumer credit extended by non-banks to **New York** residents is governed by various laws and regulations specific to New York. The LLL, in addition to requiring a licence, imposes requirements relating to the calculation of interest, prepayment, late fees, advertising, maintenance of books and records, and examinations and reporting.

---

61 We are informed by local counsel in Germany that the threshold for requiring a credit broker licence is incredibly low. Any activity that helps to intermediate a credit contract or point out a potential lender to a potential borrower would meet the legal requirements.

Other credit related ancillary activities fall within the scope of licensing regimes depending on the State. Under New York law, loan brokers and debt collectors are not licensed at state level. However, New York City does license debt collectors. Debt collectors must adhere to New York's statute on "*debt collection procedures*" which prohibits harassing methods and communications. However, it is important to note that several other U.S. states do regulate and require a licence for loan brokering.

In the **UK**, **Italy**, the **USA**, and **Poland**, lenders can provide unsecured consumer credit without being a bank or authorised PIs or EMIs . In **France** and **Germany**, authorised PIs and EMIs can only offer credit on an "ancillary" basis. In Poland, registration is needed for non-bank lenders, rather than licensing. In all other jurisdictions, firms must be authorised by competent regulators to provide regulated consumer credit.

All jurisdictions required authorisation (or registration in **Poland**) for any third party performing ancillary credit-related activities, including credit intermediation. The **UK** is unique in having two levels of authorisation based on the activities performed. Under the FCA authorisation regime, certain consumer credit-related activities can be performed under a "limited permission" from the FCA. Introduced in April 2014, this limited permission is designed for firms carrying on certain "lower risk" activities. These activities include credit broking, debt adjusting, debt counselling, and providing credit information services. The limited permission regime aims to reduce the regulatory burden on firms conducting these lower-risk activities, while ensuring adequate consumer protection. Firms with limited permission are subject to a lighter regulatory framework compared to those with full permission, including lower application fees and reduced ongoing compliance requirements. However, the Consumer Duty remains applicable.

SCHEDULE 11

Further detail on private right of redress

Consumers in the **UK** have a private right of redress for certain regulatory rule breaches. Section 138D of the FSMA sets out the circumstances in which private persons may bring an action for damages arising as a result of a breach by a financial institution. Section 138D refers to these breaches as being "actionable". Provided the conditions specified are met, section 138D of the FSMA allows relevant persons to recover losses by showing there has been a breach of an FCA rule causing them to suffer loss, rather than having to rely on that breach as evidence of negligence. Breach of the PRIN, including the Consumer Duty is not actionable by the consumer, but the FCA can take supervisory action against a firm in breach and require that firm to provide consumer redress/remediation. The Consumer Duty also imposes a proactive obligation on firms to provide redress.

In **Poland**, if a firm breaches a law when contracting with consumers, those consumers may have a private right of redress. The legal basis and scope of redress depend on the nature of the breach. Abusive clauses in contracts are considered ineffective, allowing consumers to reclaim fees and charges collected based on these clauses, regardless of any loss suffered. If the OPCC finds a practice infringes collective consumer interests, this decision can also support consumers seeking redress if they have suffered a loss. The OPCC may require the firm to remedy ongoing effects and reimburse fees collected from such practices. Under article 45 of the Polish CCA, if a firm breaches specific provisions regarding consumer credit agreements, consumers can repay the credit without interest or other costs. They can also claim back any interest or costs already charged under these circumstances. This article does not otherwise give rise to the unenforceability of the credit agreement.

In **France**, consumers have the right to redress against a firm if it breaches laws and regulations related to consumer credit; it is of civil nature and does not depend on the nature of the breach itself (e.g. if it constitutes a criminal offence, a consumer may have a right of civil action towards the relevant firm). As a principle, the consumer must demonstrate that they suffered damage from the breach of the relevant laws or regulations.

Consumers in **Italy** also have a right of redress for certain regulatory rule breaches. Consumers that suffer losses as a result of a breach of a rule contemplated under the CBA, the BoI Transparency Regulation and/or the Usury Law have a right of civil action for damages for those losses. In order to access this redress, consumers are required to show that there has been a breach of one of the above-mentioned rules which has caused them to suffer loss.

However, in **Germany**, there is no private right of redress comparable to section 138D of the FSMA. Although consumers may file a lawsuit for damages regarding a breach of duties deriving from general principles in Germany statutory provisions on contracts, these rules only apply directly between the parties and not towards the competent regulator. Such a claim for damages requires an obligation, a breach of duty, responsibility by the breaching party, and damage. Consumers will therefore have to prove the existence of an obligation, a breach of duty on the part of the lender, and damage to them. The responsibility is usually assumed by law and must be challenged by the other party.

In the **USA**, some provisions of the consumer financial protection laws are privately enforceable while others are enforceable only by governmental agencies. For example, provisions of the Truth in Lending Act that require specified pre-origination disclosures for consumer loans are subject to a private right of action. However, the CFPB's prohibition on unfair, deceptive, or abusive acts or practices is enforceable by the CFPB and state attorneys general. In general, a consumer bringing an action to enforce a consumer financial protection law would have to allege a violation and resulting loss or harm, though some laws do allow recovery for technical violations without a corresponding loss.

In **New York**, the LLL does not expressly provide for a private right of action. Individual consumers can sue for violations of the state's unfair and deceptive practices statute, which applies to a broad range of consumer transactions.

SCHEDULE 12

Further detail on enforceability sanctions

In the **UK**, we have strict provisions in the CCA that determine when a credit agreement will be unenforceable. The CCA provides that certain matters relating to the origination of regulated credit agreements can render the credit agreement unenforceable without a court order, even for a minor and technical breach. For example, failing to provide the prescribed form and content of pre-contractual information or credit agreement to the customer, not having the credit agreement signed, failing to provide a copy of the executed credit agreement, and failing to provide certain post-contractual information can all lead to unenforceability. For certain breaches, such as errors in the form and content of the pre-contractual information and/or the credit agreement, the court can make an enforcement order if the customer has not suffered any prejudice. For other post-contractual breaches, the agreement will only be enforceable once the lender provides the required information.

Additionally, a failure to provide arrears notices and annual statements under the CCA will result in the unenforceability of the credit agreement until this information is provided. During the period of non-compliance, the lender is not entitled to any interest or other charges payable in connection with the agreement.

The UK unenforceability sanction applies irrespective of whether the customer has suffered any loss or detriment. It is automatic and draconian. The only way a lender can address the automatic sanction is by either applying to the court for an enforcement order (limited to pre-contractual non-compliance) or remedying the breach by sending the corrected statement or notice. While there may be opportunities for lenders to consider whether the breach is "de minimis" or does not affect the substance of the information or forms of prescribed wording, the circumstances in which lenders can rely on these principles is often uncertain. Where there is uncertainty, lenders will undertake expensive remediation to correct errors in documentation so that they can enforce the agreement and, where relevant, require the customer to pay interest and other charges etc. after the non-compliance has been addressed. This is the case even if the customer will not read the corrected information and/or the changes do not otherwise materially impact the information already supplied.

By contrast, in **France**, case law does not render a consumer credit agreement granted in violation with applicable laws and regulations unenforceable against the consumer. In the case of a breach of applicable laws and regulation, the most common civil sanction is the loss of interest rights, either in full or in part, as determined by the court. Any interest already earned by the lender may also be refunded or deducted from the outstanding principal.

In **Italy**, certain obligations relating to the origination of regulated credit agreements which are not duly fulfilled by the firm pursuant to the CBA and/or the BoI Transparency Regulation and/or the Usury Law (for example, failing to provide the prescribed form of pre-contractual information or prescribed form of credit agreement to the customer, the credit agreement not being signed, failing to provide a copy of the executed credit agreement, and failing to provide certain post-contractual information) can render the credit agreement void/unenforceable.

In **Germany**, if certain pre-contractual information is not provided completely, the credit agreement is not void but the customer has a withdrawal right from that agreement. Consumer credit agreements also have to be concluded in written form and, in the case of non-compliance, agreements are deemed void.

Federally in the **USA**, breaches of consumer financial protection laws do not automatically render a consumer agreement unenforceable or voidable by the consumer unless the contract is unenforceable under general USA contract law (for example, because the consumer lacks capacity, the object of the contract is illegal or against public policy, or the contract was induced by fraud). Unenforceability depends on the specific facts of the case, and a court may deem a contract partially unenforceable, severing the unenforceable provisions and enforcing the remainder. The CFPB may prevent a covered person from enforcing an unlawful provision of a consumer contract through various supervisory and enforcement mechanisms, such as a cease-and-desist order, formal or informal supervisory communications, or a consent order.

In **New York**, non-bank entities must obtain a licence to issue consumer loans of $25,000 or less with an annual interest rate exceeding 16%. Any unlicensed loan surpassing this interest rate cap may be deemed void and unenforceable (because the loan is unlicensed) or the lender may be forbidden to collect interest (because the loan is usurious). Licensed loans can be issued at any interest rate agreed upon by the creditor and consumer, up to the state's criminal usury rate of 25% per year. If a licensed loan exceeds this 25%

cap, it is automatically void and unenforceable. While violations of other provisions of the LLL do not automatically render loans void or unenforceable, they can expose officers, directors, agents, and employees to criminal misdemeanour liability and subject the entity to civil penalties. Additionally, transactions that breach New York's consumer protection law are not automatically void or unenforceable, but lenders may be required to forgo enforcement of unlawful provisions, make restitution to affected consumers, and pay civil penalties.

SCHEDULE 13

Further detail on ADR responses

1. Do the different jurisdictions have an ADR scheme specifically for resolving complaints between consumers and financial services firms about financial services or products?

Jurisdiction	Name of financial services complaints ADR scheme, funding and independence
UK	The FOS. The FOS is currently funded through a combination of annual levies and case fees paid by financial businesses and professional representatives. The current case fee for respondent firms is £650 (subject to a small number of free complaints). The current case fee for professional representatives is £250 (reduced to £75 if the complaint is upheld in favour of the complainant). The FCA has a duty to ensure that the FOS is capable of exercising its statutory functions, but the FOS and its ombudsmen are independent of the FCA and are impartial.
France	There is no single financial ombudsman. It is mandatory for banking firms to appoint one or more in-house ombudsmen or to offer consumers access to an external competent ombudsman. For the French banking sector, there are several competent ombudsmen and not a unique ombudsman. The information provided about the ADR system in France therefore provides the general position. An ombudsman must be impartial and independent, whether in-house or external. Access to an ombudsman is free for the consumer. The funding system depends on whether the ombudsman is in-house or external. As a principle, in-house ombudsmen are funded by the firm with which they are affiliated. For external ombudsmen, funding can take various forms: (1) a fixed annual subscription; and/or (2) a fixed annual fee linked to the number of referrals requested; and/or (3) a variable mediation fee based on hours spent on the case or the amount involved (from €100 to €3,500 per dispute). The relevant respondent firm pays these fees.
Germany	There is no single financial ombudsman or uniform all-encompassing entity. The financial ombudsman scheme is organised by sector, with different ombudsmen handling complaints related to banks, savings banks, investment firms, and insurance companies. Many banks, saving banks, investment firms, and insurance companies are members of private dispute resolution entities known as consumer dispute resolution entities which are recognised by the Federal Office of Justice. The ombudsmen working at these entities are often former judges who make independent and impartial decisions. The Bundesbank also provides an ombudsman service "Bundesbank Ombudsman". The Bundesbank Ombudsman is the ombudsman for consumer credit type complaints if the respondent firm is not associated with a private dispute resolution entity. The information provided about the ADR system in Germany therefore concentrates on the service provided by the Bundesbank Ombudsman. The Bundesbank Ombudsman is free for complainants to use. Generally, respondent firms have to pay a €200 case fee. There is no levy paid by respondent firms (the Bundesbank Ombudsman largely appears to fund itself).
Italy	The ABF.

Jurisdiction	Name of financial services complaints ADR scheme, funding and independence
	The ABF is funded through a combination of annual levies and case fees paid by the financial institutions which fall under its jurisdiction. Complainants must also pay a fee of €20 to file a complaint which covers procedural costs (this is usually reimbursed if the complainant is successful). The current case fee is €200. This is paid by the respondent firm to the BoI if the complaint is upheld. The BoI assists in its operations by providing administrative and technical support. The BoI also appoints some of the members to the territorial panels who decide complaints. However, the ABF is otherwise independent and impartial.
New York	The CAU. The CAU is a sub-division of the NYDFS, but the CAU uses an independent resolution process. The CAU is funded through the NYDFS's operating budget. It is free for complainants to use. At federal level, the CFPB provides a platform for complainants to submit complaints about financial products and services. The CFPB facilitates communications between the complainant and the respondent firm and monitors outcomes but does not itself make decisions on complaints.
Poland	The RF. The RF is an independent institution which is publicly funded. Complainants must also pay a fee of PLN 50 (approximately £10) to file a complaint. Consumers can also have a financial services dispute resolved via the Arbitration Court at the Financial Supervision Commission but there has to be an arbitration clause in the contract and the subject matter of the dispute usually needs to exceed PLN 10,000 (approximately £2,000). It is unusual for consumer credit agreements to contain such a clause and so consumer disputes about financial services would ordinarily be resolved via the RF or the courts. The information provided about the ADR system in Poland therefore concentrates on the service provided by the RF.

2. What is the relevant procedure of each ombudsman scheme, and are the resulting decisions/recommendations binding on complainants and respondent firms?

Jurisdiction and ADR body	Process for dealing with complaints and binding nature of the resulting decision or recommendation
UK (FOS)	• Complainants must first submit their complaint to the respondent firm to allow them to consider. Firms must provide a final response within eight weeks. The complainant then has six months to refer the complaint to the FOS. The FOS can consider the complaint if a final response has been sent, or eight weeks have passed since the complaint was received. • The FOS will determine if the complaint falls within its jurisdiction. The FOS may also dismiss complaints without considering the merits if they are frivolous, vexatious, or subject to a court case. • If an investigation is necessary, both parties can make written representations. The adjudicator provides an initial assessment in writing, and most complaints are settled at this stage. • If either party disagrees with the assessment, they can request a review and final determination by an ombudsman. A hearing may be requested but is at the ombudsman's discretion.

Jurisdiction and ADR body	Process for dealing with complaints and binding nature of the resulting decision or recommendation
	• The ombudsman issues a signed written statement of the determination. The complainant must accept or reject it by a specified date. If accepted, it becomes final and binding on both parties. If not accepted, neither party is bound by it.
France	• First, the complainant must have submitted a complaint to the respondent firm, in writing, and in compliance with the process for submitting a complaint provided for in the contract (if any). • A complaint may also be inadmissible in the following cases: (i) the complaint is clearly unjustified or abusive; (ii) the case is already being handled by an ombudsman or a court or has already been handled; (iii) the complaint is made more than one year after the written complaint was submitted to the firm; or (iv) the complaint is outside the ombudsman's competence. • The ombudsman notifies the parties (electronically or by letter) of its referral. • If requested, the ombudsman may share any supporting documents with the parties. They can also meet with the parties, if necessary. • From the date of notification sent to the parties, the ombudsman has 90 days to issue a decision (such period can be extended in case of particularly complex disputes). The decision includes a reminder of fact, applicable laws, and equitable circumstances that justify the decision/proposal. • The parties are free to accept or reject the ombudsman's decision within the timeframe specified by the ombudsman.
Germany (Bundesbank Ombudsman)	The various financial ombudsman services have their own individual procedures, but they all have to match basic standards of fairness, transparency and neutrality. Regardless of which entity is responsible for resolving a complaint, the procedures have certain key principles in common: • Prior recourse to the respondent firm is not necessarily required. • The complaints procedure usually takes place in writing and is free of charge for complainants. • If a complainant disagrees with the ombudsman decision, they can still decide to take legal action against the respondent firm in the courts. The procedure for the Bundesbank Ombudsman is summarised as follows: • Upon receipt of a complaint, the ombudsman will determine whether it has jurisdiction to consider the case. • If the ombudsman lacks jurisdiction or if another ground for rejection exists, the application will be declined. If the application is incomplete, the complainant will be given one month to provide the missing information. If the complainant fails to meet this deadline, the application will be rejected. • Valid applications are forwarded to the respondent firm, who is required to respond within one month. This response is shared with the complainant, who may submit a written reply within another month if the dispute remains unresolved. • If the matter is not resolved during the preliminary stage, the case is assigned to an ombudsman. The ombudsman reviews the complaint and may request additional written statements or information from the parties.

Jurisdiction and ADR body	Process for dealing with complaints and binding nature of the resulting decision or recommendation
	No formal evidence is taken unless it can be provided in the form of documents, and no oral hearings are conducted. Within 90 days of receiving all required information, the ombudsman issues a written recommendation based on applicable law, including a detailed rationale for their decision. • The recommendation is binding only if both parties accept it in written form within six weeks of receipt. If either party rejects the proposal or fails to respond within the specified period, neither party is bound by the proposal, and both parties are free to pursue legal action in court. After the six-week period, the mediation office notifies both parties of the outcome, at which point the procedure is formally concluded. • Note that, where the relevant ombudsman is the Ombudsman Scheme of the Private Commercial Banks (Ombudsmann privaten Banken), the ombudsman's decision is binding on the bank, but not on the complainant, where the amount involved in the dispute does not exceed €10,000.
Italy (ABF)	• Complainants must first submit their complaint to the respondent firm to allow them to consider. If the complaint has not been resolved within 60 days, the complainant may refer the complaint to the ABF. • In some circumstances, the ABF may dismiss the complaint without consideration of the merits. For example, if the complaint has been submitted to the ABF more than 12 months after the complaint was submitted to the respondent firm. • Complaints received by the ABF are submitted to a decision-making body divided into seven 'territorial panels depending on where the complainant is domiciled'[62]. The panels are comprised so that the interests of all parties are represented[63]. Support is provided to each panel by technical secretariats (BoI employees). • The complainant and the respondent firm may exchange, through the technical secretariat, within predetermined timescales, written statements, counter statements and the relevant documentation. • Once all information is complete, the ABF must communicate the outcome of the complaint within 90 days (this deadline can be extended). If the complaint is accepted in whole or in part, the respondent firm must comply within 30 days of the communication of the ABF's decision. • Alongside the territorial panels, there is a 'co-ordinating panel'[64] which decides on complaints concerning issues of particular significance or that have given or could give rise to inconsistent decisions by the seven territorial panels. Pending the decisions of the co-ordinating panel, the chairs of the territorial panels defer the handling of filed complaints that involve the same issue. The coordinating panel establishes a principle of law that is binding for the territorial panels in all future disputes involving the same issue. When a panel intends to deviate from a decision taken by the coordinating panel, it must state the reasons for deciding on a different option.

62 In Bari, Bologna, Milan, Naples, Palermo, Rome, and Turin.

63 Each territorial panel is composed of five members: the chair and two members are selected by the BoI; one member is selected by the associations representing financial firms and one member is selected by the associations representing consumers.

64 The co-ordinating panel is composed of three of the seven chairs of the territorial panels, one member designated by the Banking and Financial Conciliator (association representing financial firms) belonging to one of the territorial panels and one member designated by the associations representing customers belonging to one of the territorial panels.

Jurisdiction and ADR body	Process for dealing with complaints and binding nature of the resulting decision or recommendation
	• If a respondent firm does not comply with an ABF decision, this non-compliance is made public on the ABF's website for five years and highlighted on the respondent firm's website for six months. This public disclosure can encourage respondent firms to adhere to ABF's decisions to maintain their reputation.
New York (CAU)	• Complainants should file a complaint with the respondent firm first. • Complainants can file a complaint if they are unable to resolve the issue directly with the firm. The complaint is reviewed by the CAU who will investigate the complaint and ask for additional information if necessary. • The CAU will attempt to mediate the complaint informally and voluntarily by working with the complainant and the respondent firm to try and resolve the complaint. After the investigation and mediation, the CAU provides a resolution which could involve the respondent firm taking corrective action or providing an explanation to the complainant. • The CAU process published by the NYDFS does not expressly state that its decisions are binding.
Poland (RF)	• After exhausting the complaints procedure with the respondent firm, the complainant may submit a request for conciliation with the RF. In the request, the complainant may choose whether they want the RF to help find an amicable solution to the dispute, or whether they want the RF to present their own proposal for resolving the dispute. • In some circumstances the RF may refuse to consider a complaint without consideration of the merits. For example, if the complainant has not exhausted the complaint procedure. • If necessary, the RF may schedule a hearing. • The RF draws up a report which is delivered to the parties. If no settlement has been reached, an opinion will be attached to the report. The opinion will assess the legal circumstances of the case. The RF may support the position of the complainant or the respondent firm. The RF does not always take an unequivocal position on the matter, e.g. when the facts of the case have not been established, or the legal status is ambiguous (e.g. discrepancies in jurisprudence). In such situations, the RF explains what the deficiencies are in the facts of the case or the ambiguity of the legal assessment. The opinion allows the parties to assess their legal situation e.g. in a possible court dispute. The purpose of this is to assist with legal proceedings should a party choose to initiate them. • An opinion issued by the RF is not binding on the parties and the parties are notified of this and the consequences for not complying. Firms can therefore ignore RF decisions. • The RF can report issues to the OPCC. The OCCP is a central government, independent authority responsible for making and implementing competition and consumer protection policies in Poland. They report directly to the Prime Minister. The OCCP has various powers to help combat bad behaviour by financial institutions.

3. What is the basis for the ombudsman's decision-making and do ombudsman decisions create precedents?

Jurisdiction and ADR body	Basis for decision-making and precedential value
UK (FOS	The FOS's determination is made by what is, in their opinion, fair and reasonable in all the circumstances of the case. In considering what is fair and reasonable, the FOS can consider relevant law and regulations, the regulator's rules, guidance and standards, codes of practice and, where appropriate, what the FOS considers to have been good industry practice at the relevant time. Determinations by the FOS do not set legal precedent. While the FOS may consider its previous decisions for consistency, it is not bound by them in the same way that UK courts are bound by legal precedents. However, respondent firms are required to take account of previous decisions by the FOS when handling new complaints they have received. Further, where a firm identifies (from its complaints or otherwise) recurring or systemic problems in its provision of, or failure to provide, a financial services or claims management service, it should consider whether it ought to act with regard to the position of customers who may have suffered detriment from, or been potentially disadvantaged by, such problems but who have not complained and, if so, take appropriate and proportionate measures to ensure that those customers are given appropriate redress or a proper opportunity to obtain it.
France	French ombudsman decisions are based on fairness and equity, taking into account the circumstances of the dispute, as well as applicable laws and regulations, court precedent, regulatory rules, guidance and standards, codes of practice, and good industry practice. Ombudsman decisions do not set legal precedent.
Germany (Bundesbank Ombudsman)	Any proposal an ombudsman makes is made in accordance with applicable law and taking in account good faith (*Treu und Glauben)*. The ombudsman therefore has limited discretion to settle a complaint. The proposal is akin to a court ruling. Determinations by the ombudsman do not create legal precedent. There is no provision requiring the Bundesbank Ombudsman or respondent firms to consider previous decisions.
Italy (ABF)	The ABF decides by reference to the applicable laws and regulations, BoI's rules, guidance and standard and codes of conduct to which the financial institution has adhered. Decisions made by the ABF do not set legal precedent (although note that the co-ordinating panel can bind the territorial panels). However, respondent firms must ensure that their complaints handling personnel are updated on the ABF's decisions by consulting the electronic archive of decisions on the ABF website and that they evaluate the complaints received in light of ABF decisions, verifying whether the issues submitted by the complainant fall within cases similar to those already decided by the ABF and considering the solutions adopted in those cases.
New York (CAU)	The NYDFS has not articulated the standards for CAU decision-making, although it is expected that the NYDFS would apply the law and its own regulations, which implement the New York consumer financial protection statutes. There is no express provision of the CAU's published process that makes it decisions binding.
Poland (RF)	The RF's proposals and opinions are based on the relevant law. The RF is not bound by its previous decisions.

4. Are there any limitation periods for referring complaints/disputes to the ADR system in the various jurisdictions?

Jurisdiction and ADR body	Applicable limitation periods
UK (FOS)	A complainant must bring a complaint to the FOS before the following time periods have elapsed: • more than six months from the date on which the respondent's final response was sent to the complainant; or • more than six years from the date of the event the complainant is complaining about or, if later, three years from the date on which the complainant became aware or ought reasonably to have become aware that they had cause for complaint. The interpretation of these rules can cause issues in practice and has led to multiple judicial review applications brought by firms to challenge the FOS's interpretation where it allows material additional complaints considered to be out of time by firms to be adjudicated. The FOS can look at complaints outside of these time limits if there are exceptional circumstances or the respondent firm has consented to the FOS considering the complaint outside of the time limits.
France	A complainant must submit a complaint to an ombudsman within one year from the date of its written complaint to the firm. No other applicable limitation periods apply.
Germany (Bundesbank Ombudsman)	There is no formal limitation period for referring complaints to the Bundesbank's Ombudsman. Financial ombudsmen can decline to consider the complaint if it is barred by the statute of limitation (*verjährt*) and the respondent firm has raised the plea of limitation (*Einrede der Verjährung*). The standard limitation period is three years and usually commences at the end of the year in which the claim arose, and the complainant obtains knowledge of the circumstances giving rise to the claim and the identity of the opponent (respondent firm), or would have obtained such knowledge if they had not shown gross negligence. Irrespective of knowledge of an issue, claims become time-barred in any case ten years after they arise (long-stop date).
Italy (ABF)	A complainant must bring a complaint to the ABF before the following time limits have elapsed: • more than six years from the date in which the transactions and the respondent firm's conduct have been executed/committed; and • the statute of limitation period depending on the type of complaint submitted by the complainant. It is understood that the statutory periods are under 10 years. Note that the ABF may also dismiss complaints without consideration of the merits, for example, in circumstances where the complaint has been submitted to the ABF more than 12 months after the complaint was submitted to the respondent firm.
New York (CAU)	None reported.
Poland (RF)	There are no procedural deadlines to file a complaint to the RF. However, general rules of the statute of limitations are applicable. In Poland, the most general statute of limitations period is six years. For claims connected with conducting business and for periodical payments' claims, it is three years. Special statutes of limitations shorten as well as lengthen the statute of limitations in relation to the general terms,

Jurisdiction and ADR body	Applicable limitation periods
	for example, claims in tort for damages are limited to three years from the time the person discovered the harm, but no longer than ten years from the time the harm occurred.

5. What types of remedies and resolutions can the various ombudsmen provide to complainants?

Jurisdiction and ADR body	Remedies and resolutions
UK (FOS)	Where the FOS determines a complaint in favour of the complainant, the FOS can order the respondent firm to do one or more of the following: • pay the complainant a money award as compensation for financial loss (including consequential or prospective loss, pain and suffering, damage to reputation, and distress or inconvenience). There are maximum amounts which the FOS can award which depend on when the act or omission complained about occurred, and when the complaint was referred to the FOS. For acts or omissions complained about on or after 1 April 2019 and where the complaint was referred to the FOS on or after 1 April 2024, the cap is £430,000; • award interest to the complainant (in most cases the FOS considers 8% simple interest per year is appropriate to reflect the complainant's cost of being deprived of money in the past)[65]. Any interest awarded does not form part of the maximum award; • award costs (and interest) to the complainant. Any amount for costs and interest awarded does not form part of the maximum award; and/or • a direction that the respondent takes such steps as the ombudsman considers just and appropriate. When the FOS was set up in 2001, the award limit was set at £100,000. Since 2019, the FOS's award limit increases each year in line with inflation (measured by the Consumer Prices Index). Annual inflation linked increases to the FOS's compensation limits started in 2019 when the FCA reset the maximum compensation from £150,000 to £350,000. This coincided with FOS's remit being widened to include SMEs with less than 50 employees and a turnover of under £6.5 million per annum. In 2019, the FOS's award limit was increased following a public consultation to £350,000 for complaints about acts or omissions which took place on or after 1 April 2019, or £160,000 for complaints about acts or omissions that took place before 1 April 2019 and are referred to the FOS on or after 1 April 2019. Complaints referred before 1 April 2019 remained subject to a £150,000 cap. The reason for these increases was because the FCA estimated there could be up to 500 complaints where the amount of compensation was above £150,000[66]. These complaints typically involve insurance, advice on long-term investments, or the investments themselves, and the FCA considered it unlikely that the complainants would have the means to pursue firms for unpaid compensation through the courts.

65 Note that, on 4 June 2025, the FOS published a consultation on compensation interest levels. The consultation proposes a new rate of interest on certain compensation awards. The consultation closes on 2 July 2025 and further news is expected in September 2025.

66 PS19/8: Increasing the award limit for the Financial Ombudsman Service | FCA

Jurisdiction and ADR body	Remedies and resolutions
France	French law does not specify the remedies an ombudsman can propose. The ombudsman is free to decide, with no particular restrictions provided by legislation. In practice, the ombudsman's proposals typically include: • reimbursement of the disputed amount (either fully or partially depending on the degree of responsibility); and • a proportional goodwill gesture.
Germany (Bundesbank Ombudsman)	If the ombudsman determines a complaint in favour of a complainant, they can order the respondent firm to do one of more of the following: • pay the complainant a money award as restitution and/or compensation for financial loss; • award interest to the complainant; and • a declaratory statement, clarifying the rights and obligations of the parties. No limitations to the rewards apply.
Italy (ABF)	Where the ABF determines a complaint in favour of the complainant, the ABF can order the respondent firm to: • pay the complainant a money award (limited to €200,000); and • award interest to the complainant (in most cases the ABF considers statutory interest[67] is appropriate) Complainants can also request to establish rights, obligations, and prerogatives, such as the right to receive banking documents.
New York (CAU)	The NYDFS may take corrective action. Available remedies are not expressly limited.
Poland (RF)	The RF may: • make a proposal for resolving the complaint (which might include a payment order of compensation by the respondent firm for financial loss); and • if the complaint is not resolved, issue an opinion which contains a legal assessment. This may assist parties should they wish to dispute the complaint in court. No limitations to the rewards apply.

6. Can the various ombudsmen decisions, resolutions, or recommendations be challenged or appealed, and if so, what is the process for doing so?

Jurisdiction and ADR body	Challenging decisions
UK (FOS)	There is no right of appeal from the decision of the FOS.

[67] The statutory rate is understood to be around 5%.

Jurisdiction and ADR body	Challenging decisions
	However, the FOS is a public body and so judicial review is available to either the complainant or respondent firm. In practice, such challenges do not often succeed due to the stringent legal tests involved. If a complainant does not accept a FOS determination, it is open to them to submit a dispute to the court.
France	There is no right of appeal from the decision of an ombudsman.
Germany (Bundesbank Ombudsman)	The recommendations made by financial ombudsmen are non-binding. If either the complainant or the respondent firm is dissatisfied with the recommendation, they are not obligated to accept it and can pursue further legal action in court.
Italy (ABF)	The decisions of the ABF cannot be challenged. Complainants and respondent firms can submit the dispute to a civil court if they are not satisfied with the decision made by the ABF.
New York (CAU)	Complainants who are not satisfied with the resolution can seek further review or escalate within the NYDFS. This is not available to dissatisfied respondent firms.
Poland (RF)	The decisions of the RF cannot be challenged. Complainants and respondent firms can submit the dispute to a civil court if they are not satisfied with the decision made by the ABF.

7. How does the scale of complaints compare?

Jurisdiction and ADR body	Scale of complaints
UK (FOS)	In 2024/25, the FOS received around 330,000 new complaints. Around 267,700 of those related to banking and consumer credit.
France	Every four years, the French *Commission d'évaluation et de contrôle de la médiation de la consommation* publishes a report aimed at identifying good practices, highlighting issues in mediation proceedings, and making recommendations to improve the mediation process and efficiency. According to the last report and a 2021 report focusing on banking and insurance mediation: • in 2020, consumer ombudsmen received 170,000 complaints, representing a 60% increase compared to 2017; • 86% of admissible claims were resolved, and over 60% of mediators' proposals were accepted by the parties; and • in 2020, mediations related to banking services, such as consumer credit, accounted for over 40,000 complaints. 91 consumer ombudsmen are registered, of whom 30 are specialised in financial services and credit disputes.
Germany (Bundesbank Ombudsman)	For 2024, the Bundesbank's Ombudsman received 1,085 new complaints of which 33 dealt with consumer credit.

Jurisdiction and ADR body	Scale of complaints
Italy (ABF)	In 2023, the ABF received 15,816 complaints (up by 2% from 2022)[68]. Consumer credit complaints accounted for 370 complaints.
New York (CAU)	In 2023, the NDYFS resolved a record number of consumer complaints and returned $187.4 million in restitution for consumers and healthcare providers, compared to $175.7 million in 2022. The CAU received about 35,000 consumer complaints in 2024, and about 12,000 of these related to licensed consumer lenders. The NYDFS had not yet produced its annual report for 2024 as of the date of the response.
Poland (RF)	In 2023, the RF received a total of 1,606 requests for conciliation, an increase of 326 cases, or 25%, compared to 2022.

8. It is necessary to have legal representation when submitting a complaint to the various ombudsmen, or can complaints proceed without legal assistance?

Jurisdiction and ADR body	Necessity of legal representation
UK (FOS)	The FOS's service is designed to be accessible and straightforward for consumers to use on their own without the need for legal representation. Sometimes consumers find it helpful to seek professional advice if the complaint is complex or significant (at their own cost). However, in recent years, CMCs and CLFs have been able to take advantage of the FOS's structure and operation to refer large numbers of speculative and/or unsubstantiated complaints to the FOS. To address this behaviour, since 1 April 2025, the FOS charges a £250 case fee for individual legally represented cases, reduced to £75 if the outcome is in the complainant's favour (subject to limited exceptions). 25% of cases were referred to the FOS by CMCs or other professional representatives in 2023/24.
France	Access to an ombudsman is free for the consumer and professional representation is not necessary. Parties are free to use representation at their own cost. There is no data on how many complaints involve professional representatives.
Germany (Bundesbank Ombudsman)	The Bundesbank's Ombudsman service is designed to be accessible and straightforward for consumers to use on their own without the need for legal representation. Both consumers and the respondent firm can seek legal representation (at their own cost).
Italy (ABF)	The ABF's service is designed to be accessible and straightforward for consumers to use on their own without the need for legal representation. Consumers find it helpful to seek professional advice, in particular if the complaint is complex or significant. This is at their own cost. 72% of the cases were referred to the ABF by professional representatives in 2023. However, it is understood that this has been historically linked to a certain type of complaint (salary-backed loans), and there is no indication that a claims industry is developing, or has developed, in Italy to the same extent as in the UK.
New York (CAU)	The CAU process is designed to be accessible and straightforward for consumers, without the need for legal assistance.

68 en-report-ABF-2023.pdf

Jurisdiction and ADR body	Necessity of legal representation
Poland (RF)	Legal representation is not mandatory, but parties are entitled to use professional representatives (at their own cost).

9. How do various jurisdictions handle cases with wider implications, and is there an established dialogue or procedure with regulators or other bodies to address such cases?

Jurisdiction and ADR body	Dialogue with regulators or other bodies in respect of cases with wider implications
UK (FOS)	The FOS is part of the WIF: a structure designed to facilitate cooperation among key regulatory bodies in the UK financial services sector. It aims to address issues that could have significant implications across the industry. The FOS has also entered into a memorandum of understanding with the FCA which outlines how the two bodies cooperate and consult with each other.
France	The French ADR system operates independently from the French regulators (the AMF and the ACPR). Note that the AMF has instituted its own ombudsman (*le Médiateur de l'AMF*), who is responsible for handling disputes between investors and market participants, including financial institutions and professionals under the AMF's supervision.
Germany (Bundesbank Ombudsman)	Pursuant to s23 FinSV, registered ADR services shall inform BaFin of any business practices of which they become aware during their work, and which could significantly impair the interests of a large number of consumers.
Italy (ABF)	The ABF collaborates with other ADR bodies at national level, to share best practices, improve functionality of the system and increase the protection of consumers. The ABF also cooperates with Italian courts to facilitate dialogue on particularly important issues relating to banking and financial contracts.
New York (CAU)	At a federal level, the CFPB analyses the complaints its receives and responses to monitor trends and identify potential issues in the financial marketplace. Neither the CAU or CFPB has published a "broader/wider implications" framework, but both collaborate with other state and federal regulators to address consumer risk and bring enforcement actions. The CFPB has made a particular effort to recruit state regulators and attorneys general to its enforcement agenda.
Poland (RF)	The RF can report issues to the OPCC. The OCCP is a central government, independent authority responsible for making and implementing competition and consumer protection policies in Poland. They report directly to the Prime Minister. The OCCP has various powers to help combat bad behaviour by financial institutions.

10. To what extent are complaints backed by third-party litigation funding brought to the financial ombudsman in each jurisdiction?

Jurisdiction	Litigation funding
UK	There is no published measure to establish what proportion of complaints are driven by litigation funders. However, there is an increasing trend that complaints are brought via CMCs or CLFs on a mass basis. Litigation funders will provide funding to pursue the claims and invest in technology to streamline the process. For example, Katch, a Luxembourg based private equity fund has been very active in motor commission, payment protection insurance, and cavity wall insulation claims.

Jurisdiction	Litigation funding
	Litigation funding is currently under review and changes are expected in the future[69].
France	Third-party litigation funding is available for disputes but there is no data available in relation to financial services complaints to the various ombudsmen.
Germany	There is no public information and no single marketing litigation funder addressing the German ADR market has been found. It is common for private households to have legal expenses insurance.
Italy	Third-party litigation funding is not utilised in Italy (though some funders have tried to enter the market in the past).
New York	Not applicable.
Poland	In the Polish market, third-party litigation funding is neither widely known nor used.

69 See the CJC's Final Report on Review of Litigation Funding (June 2025).

Authors

Chris Busby
UK Head, Financial Services Disputes and Investigations

T: +44 121 232 1225
M: +44 778 095 3544
chrisbusby@
eversheds-sutherland.com

Joanne Owens
Partner

T: +44 207 919 4855
M: +44 787 600 5558
joanneowens@
eversheds-sutherland.com

Laura Norris
Principal Associate Professional Support Lawyer

T: +44 121 232 1294
M: +44 782 542 0803
lauranorris@
eversheds-sutherland.com

Alexandra Byard
Senior Associate

T: +44 207 919 0710
M: +44 755 757 2567
alexbyard@
eversheds-sutherland.com

Kitty Maddison
Trainee Solicitor

T: +44 207 919 0940
M: +44 755 219 6205
kittymaddison@
eversheds-sutherland.com

Contributors

Brian Murphy
Partner

T: +1 404 853 8178
M: +1 404 273 9511
brianmurphy@
eversheds-sutherland.com

Hannah Winiarski
Special Counsel

T: +1 312 535 3413
M: +1 251 751 6616
hannahwiniarski@
eversheds-sutherland.com

Ubaldo Caracino
Partner

T: +39 02 892 871
M: +39 0331 6427506
ubaldocaracino@
eversheds-sutherland.it

Grzegorz Kott
Of Counsel

T: +48 22 50 50 756
grzegorz.kott@
eversheds-sutherland.pl

ANNERTON

Annerton
Law firm

BCLP.

BCLP
Law firm

eversheds-sutherland.com

© Eversheds Sutherland 2025. All rights reserved.
Eversheds Sutherland (International) LLP and Eversheds Sutherland (US) LLP are part of a global legal practice, operating through various separate and distinct legal entities, under Eversheds Sutherland. For a full description of the structure and a list of offices, please visit www.eversheds-sutherland.com.

CLOUD_UK\240883017\10