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**Validation Orders (VO) Application Forms - Notes**

If you entered into regulated credit agreements when you were unauthorised or did not hold the required lending permission – or if agreements were entered into following an introduction by an unauthorised credit broker or other third party – you cannot enforce them without a validation order from the FCA. An order may also be needed in other circumstances where agreements were entered into before April 2014.

This guidance explains what validation orders are and how you can apply for one. The FCA can only grant a validation order if we are satisfied that it is just and equitable to do so in the circumstances of the case. Firms are reminded that carrying on credit-related regulated activity without an appropriate permission may be a criminal offence.

**Background**

Before 1 April 2014, the Consumer Credit Act 1974 (CCA) enabled firms to apply to the Office of Fair Trading (OFT) for an order to validate consumer credit (or consumer hire) agreements that were entered into by an unlicensed creditor (or owner), or as a result of an introduction by an unlicensed credit broker. These orders were known as ‘validation orders’. In the absence of a validation order, the agreements were unenforceable against the debtor or hirer. The CCA also enabled firms to apply to validate contracts for ancillary credit services that were entered into by an unlicensed trader. On 1 April 2014 the regulation of consumer credit was transferred from the OFT to the FCA.

Agreements entered into on or after 1 April 2014

For agreements entered into on or after 1 April 2014 a new regime applies for the purposes of ‘validating’ agreements. This is set out in Part II of the Financial Services and Markets Act 2000 (FSMA). Unlike the CCA regime, it applies only to regulated credit agreements (and not consumer hire or ancillary service contracts).

A credit agreement may be unenforceable:

* under section 26 FSMA, because the lender was not authorised and so was contravening the general prohibition under section 19; or
* under section 26A FSMA, because the lender was authorised but did not have the correct permission and so was contravening section 20; or
* under section 27 FSMA, because although the lender was authorised, with the correct permission, the agreement was made in consequence of something said or done by a third party (typically a credit broker) who was not authorised and so was contravening the general prohibition under section 19

The legislation refers to a ‘credit-related regulated activity’ but this is limited in this framework[[1]](#footnote-2) to lending (article 60B[[2]](#footnote-3) of the Regulated Activities Order, RAO[[3]](#footnote-4)) and certain debt-collecting (article 39F(1)[[4]](#footnote-5) of the RAO). It does not include credit broking, so if a broker was authorised but without the correct permission, this does not make any resultant credit agreement unenforceable and so requiring validation.

In addition to agreements being unenforceable, the customer is entitled to recover:

* any money or other property paid or transferred under the agreement, and
* compensation for any loss sustained as a result of having parted with it

Section 28A provides that a firm can apply to the FCA to validate an agreement that was entered into in the course of carrying on a credit-related regulated activity and is unenforceable because of section 26, 26A or 27. The FCA can also, upon application, determine the amount of any compensation recoverable under those sections.

If the FCA is satisfied that it is just and equitable in the circumstances of the case, it may by written notice to the applicant allow:

* the agreement to be enforced, and/or
* money paid or property transferred under the agreement to be retained

We refer to this as a ‘validation order’ although this term is not used in FSMA.

The FCA may, if it thinks fit, limit a validation order to specified agreements, or agreements of a specified description or made at a specified time. It can also make the order conditional on the doing of specified acts by the applicant.

There is a separate process under section 28 FSMA enabling a firm to apply to the court to validate agreements which are unenforceable because of section 26 or 27 but were not entered into in the course of carrying on a credit-related regulated activity. This would include consumer hire agreements.

Agreements entered into before 1 April 2014

For agreements entered into before 1 April 2014, a modified regime applies. This has the same scope as the previous CCA regime, and so is not limited to credit agreements (it also includes consumer hire agreements and ancillary service contracts). In addition, under this regime (unlike under section 28A of FSMA), unenforceability can arise if the credit broker was licensed but not for credit broking.

There is a separate application form in respect of pre-April 2014 agreements. If a firm has agreements which are unenforceable, some of which were entered into before 1 April 2014, and some on or after that date, both forms will need to be submitted. (Please refer to the fees section below to understand how this may impact the fee payable).

In determining whether to grant a validation order, the FSMA test will apply and we can only grant an order if we consider it would be just and equitable to do so.

For agreements entered into before 1 April 2014, the customer has no right to recover monies paid or property transferred under the agreement, or compensation for loss.

Qualifying criteria

A firm can only apply to validate agreements if it is a ‘relevant firm’.

For agreements entered into on or after 1 April 2014, this means the lender – that is, the person who entered into the relevant agreements or a person to whom the lender’s rights under the agreements have been assigned.

For agreements entered into before 1 April 2014, this means the lender or owner or other person who would be entitled to enforce the relevant agreements.

Application forms

There are separate application forms for agreements pre- and post-1 April 2014.

Pre 1 April 2014 - <https://www.fca.org.uk/publication/forms/cc-validation-order-form-pre.docx>

Post 1 April 2014 <https://www.fca.org.uk/publication/forms/cc-validation-order-form-post.docx>

The application form must be completed in full, and should include all relevant information that may be needed to enable the FCA to reach a decision on the application, and in particular to establish whether the statutory test is met (see below).

If the application is incomplete, or further information or clarification is needed, this can delay a decision on the application.

An applicant may also wish to provide documents or other evidence supporting the application. This could include, for example, an internal analysis by the firm or a legal opinion by an external law firm.

Any legal opinion or other legal advice in support of your application must be provided with a waiver of all claims to legal professional privilege. In submitting your application, you agree that any legal advice or opinion is provided to us on this basis. You may wish to seek independent legal advice before following this course of action.

Part 1 of each application form requests contact details, and Part 2 requests information on the agreements for which validation is sought, to help us to decide whether or not to validate the agreements.

Part 3 explores issues relating to actual or potential harm to customers and, where this may have arisen, what steps the firm has taken or intends to take to address this.

Part 4 relates to the application fees.

Part 5 lists the documents that must accompany the form. Part 6 is the signature and declaration where an authorised person on behalf of the relevant firm must agree and sign.

Determination of applications

We will grant a validation order only if we are satisfied that it is just and equitable to do so in the circumstances.

For agreements entered into on or after 1 April 2014, we must have regard to whether:

* the lender reasonably believed that in making the agreement it was neither contravening the general prohibition nor acting without permission
* if applicable, the lender knew that a credit broker or other third party, involved prior to the agreement, was contravening the general prohibition

For agreements entered into before 1 April 2014, we must consider whether the firm reasonably believed that an OFT licence was not required, either by it, the credit broker or the trader concerned (as the case may be).

We will also have regard to other relevant factors in making a decision. In particular, in considering issues of consumer detriment, we will have regard to any evidence of actual or potential harm to affected customers, and in some instances, customers in connection with the relevant agreements. This will not be limited to harm arising by virtue of the absence of authorisation or permission, or the terms of the agreements, but could also include conduct by or on behalf of the firm (or the credit broker where applicable).

Outcome of application

Once we have assessed your application we will give you our initial views. You will then have the opportunity to provide written representations to us before we determine the application and issue our written notice.

Once we have determined an application we will, by written notice, grant or refuse a validation order. A validation order will typically provide both for agreements to be enforced under FSMA and for money paid or property transferred under the agreements to be retained by the firm. However, if the agreements have ended (and so cannot be enforced) only the latter will apply.

A decision can also be made to limit the validation order or to attach conditions. For example, the FCA may allow enforcement of agreements under FSMA but decide not to allow monies to be retained by the firm, or only in part, if we consider this to be just and equitable in the circumstances.

The notice given under section 28A FSMA will set out our reasons for our determination of the Application. It will also include an indication of the right of any person aggrieved by the determination (which may include the applicant firm or a consumer who is a party to an agreement subject of the Application) to have the matter referred to the Tribunal and the procedure for doing so.

Paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008 provides that any person wishing to refer the determination to the Upper Tribunal will have 28 days from the date after notice was given of the Authority’s determination of the Application to deliver their reference notice to the Upper Tribunal.

For further information please refer to the Upper Tribunal website: <http://hmctsformfinder.justice.gov.uk/courtfinder/forms/t400-eng.pdf>

We will agree with you a suitable strategy for providing a copy of the notice to affected customers (section 28B FSMA). We will also consider whether any further action should be taken, in light of the specific facts and circumstances.

Other unenforceability

A validation order makes the agreement potentially enforceable against the customer, by removing the FSMA bar to enforcement. However, it does not correct any other deficiencies which may make the agreement unenforceable under other legislation.

In particular, an agreement may be unenforceable under the CCA without a court order (for example, because it was improperly executed) or until the breach is remedied (for example, because post-contractual statements and notices were not provided or were not compliant). In the latter case, the lender may also not be entitled to interest and default sums in respect of the period of non-compliance.

The firm should consider seeking legal advice as to its position with regard to any CCA non-compliance, and what steps it may need to take to remedy this. It should not in any case mislead customers as to the legal status of the agreement.

Compensation

As noted above, an affected customer can apply for compensation, for loss incurred as a result of FSMA unenforceability, and can ask the FCA to adjudicate on the request (but only in respect of agreements entered into on or after 1 April 2014).

If applicable, we will determine whether compensation should be paid and the amount of the compensation. However, whilst we will ultimately consider each case on its facts, as a general position we would not expect that the right to compensation will apply in many cases and it is possible that we could specify that no compensation is payable.

Fees

Validation orders are charged on the basis of the total value of the agreements the firm is looking to validate.

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| **Value of agreements** | **Category** |
| Up to £500,000 | 3 |
| Above £500,000-£750,000 | 4 |
| Above £750,000-£1,000,000 | 5 |
| Above £1,000,000-£7,500,000 | 6 |
| Over £7,500,000 | 7 |

Please refer to FEES 3 Annex 1AR for the details of the amount chargeable for each category - [https://www.handbook.fca.org.uk/handbook/FEES/3/Annex1AR.html](https://www.handbook.fca.org.uk/handbook/FEES/3/Annex1A.html)

If completing more than one application form, only one fee needs to be submitted for the total value of all agreements.

Form submission

Firms can apply for a validation order by filling in the appropriate application form on our website and emailing it to AuthorisationSupportTeam@fca.org.uk. Alternatively firms can post their application, with any supporting material to:

Lending & Intermediaries

Authorisations Division

The Financial Conduct Authority

12 Endeavour Square

London

E20 1JN

Payment of the fee can be made by cheque, banker's draft or postal order and made out to The Financial Conduct Authority, with the firm name and Firm Reference Number (FRN) (if applicable) written on the back and enclosed with your application form.

Alternatively, you can pay via debit/credit card payment by calling our Fee Payment line at 0207 066 6014 from 9:00 to 17:00 Monday to Friday, following confirmation of application receipt.

The information collected in this section (including nationality, place of birth, date of birth, previous names) is used to assist us in verifying the identity of the candidate thereby enabling us to discharge our statutory functions under the Financial Services and Markets Act 2000 and other relevant legislation. This information will not be disclosed for any other purpose without the permission of the applicant.

1. Financial Services and Markets Act 2000 (Consumer Credit) (Designated Activities) Order 2014. [↑](#footnote-ref-2)
2. Entering into a regulated credit agreement as lender, or exercising or having the right to exercise the lender’s rights and duties under a regulated credit agreement. [↑](#footnote-ref-3)
3. Financial Services and Markets Act 2000 (Regulated Activities) Order 2001. [↑](#footnote-ref-4)
4. Taking steps to procure the payment of a debt due under a credit agreement or a relevant article 36H agreement (peer-to-peer lending). [↑](#footnote-ref-5)