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 **Validation Order (VO) Application Form for agreements entered into before 1 April 2014**

**Full legal entity name of applicant firm**

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**Important information you should read before completing this form**

It is important that you give accurate and complete information and disclose all relevant information.

Keep a copy of your completed form and any supporting documents for future reference.

The FCA processes personal data in line with the requirements of The General Data Protection Regulation (EU) 2016/679 and the Data Protection Act 2018. For further information about the way we use personal data, please read our privacy notice at [www.fca.org.uk/privacy](http://www.fca.org.uk/privacy)

This application form relates to credit and hire agreements and ancillary service contracts made unenforceable by the Financial Services and Markets Act 2000 (FSMA), as modified by the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2013/1881, and which were entered into before 1 April 2014, when the FCA took over responsibility for consumer credit regulation. There is a separate application form for credit agreements entered into on or after 1 April 2014. If the agreements in respect of which you are seeking validation cover both periods, you will need to complete both forms.

The statutory test for the granting of a validation order is set out in section 28A of FSMA. 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. We therefore expect you, as the firm seeking a validation order, to provide us with the information and analysis we require to make a decision on your application. Depending on the circumstances of the case, we may make a decision subject to conditions.

As part of the assessment, the FCA is required to consider whether the relevant firm: (i) reasonably believed that a licence under the CCA was not required by the ‘lender’, ‘owner’ or ‘trader’ (as the case may be) to enter into the relevant agreement(s); or (iii) reasonably believed that a licence under the CCA was not required by the credit broker when introducing the underlying consumer(s) to the ‘lender’ or ‘owner’.

Before completing this form, you must read the accompanying guidance notes available at: <https://www.fca.org.uk/publication/forms/cc-validation-order-form-guidance-notes.docx>

The applicant must complete the application form in **two stages**. Applicants should complete Sections 1-4 (‘Stage 1’) and submit those completed sections to the FCA. Once the FCA has confirmed in writing that the relevant agreements are not enforceable, and that the Authority has jurisdiction to determine the application, you should at that point go on to complete Sections 5 and 6 (‘Stage 2’). At that stage, the applicant will be required to provide a detailed assessment of consumer harm, which will include the applicant conducting a consumer contact exercise. Before you undertake that exercise the Authority will review and provide input into your proposed questions to consumers (but always on the basis responsibility for ensuring the sufficiency of the exercise and wider harm assessment rests solely with the applicant).

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**Stage 1**

 In Stage 1 of the application the FCA will require (in overview) a legal opinion confirming each of the following:

1. whether the agreement(s) were entered into in the course of conducting a consumer credit business or a consumer hire business under section 40 of the CCA and the reasons for this view, with an explanation (and copies) of the evidence on which this view is based
2. that the agreement(s) are not enforceable and why
3. that the FCA (as opposed to the court) has jurisdiction to determine the application for a validation order and why
4. that the firm entering into the agreements was not subject to any of the licensing exemptions set out in the CCA Part III (s.21)
5. whether the agreement(s) were compliant with the CCA, and if not in what respects they were not
6. Where applicable, we will also require further details if the relevant agreements are subject to court proceedings (eg if compliance with the CCA is being contested).

**Any legal opinion/advice provided to the FCA in support of the application must be provided with a waiver of any and all claims to legal professional privilege in the opinion/advice. In submitting the application, the applicant agrees that any legal advice or opinion is provided on this basis. The FCA will neither accept nor consider any legal opinion/advice in respect of which a claim to legal professional privilege may persist. The applicant may wish to seek independent legal advice before following this course of action.**

The FCA expects each of the above matters at (i) to (vi) to be confirmed by way of a legal opinion, which sets out the basis on which the view it expresses has been reached (eg detailed explanation of the factual enquiries undertaken in order to reach the view). However, in appropriate cases the FCA may be willing to dispense with the requirement for a legal opinion on one or more of the above points if the applicant can satisfy the FCA on the point in question another way.

**Stage 2**

Stage 2 of the application should only be completed once the FCA has confirmed that it agrees that the relevant agreements are not enforceable and are within the scope of the FCA’s jurisdiction under s28A FSMA. Only if the FCA agrees that the relevant agreements are not enforceable, and that the Authority has the jurisdiction to determine the application, will the applicant be required to complete Stage 2.

Prior to submitting Stage 2 of the application, the applicant will be required to carry out a detailed assessment of consumer harm, which will include the applicant carrying out a consumer contact exercise that seeks representations and evidence from all affected consumers. **The applicant must undertake a robust and comprehensive consumer contact exercise and provide a robust and comprehensive assessment of consumer harm. If the applicant does not do so, the likelihood is that the FCA will not be able to reach the positive conclusion that it is “just and equitable” to grant a validation order – in which case the validation order will not be granted.** As responsibility for the application rests with the applicant, the FCA will not itself seek to remedy deficiencies in an applicant’s consumer contact exercise or consumer harm assessment.

The purpose of Stage 2 of the application is to identify any actual or potential consumer harm that may have occurred or may occur in the future in connection with the relevant agreements into which affected consumers have entered.

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As part of your consumer contact exercise, you must ensure that you provide a clear explanation to each affected consumer:

* that their agreement is currently not enforceable (and why)
* of the order you are seeking from the FCA and what it will mean for them if it is granted
* that it is important they respond to the customer contact exercise, as it is their opportunity to make representations to the FCA on whether it should grant the order sought (either unconditionally or subject to conditions) and why.

Once the exercise has been completed the applicant will be required to provide the following as part of Stage 2 of its application. Please note that this is not an exhaustive list and more details of what information is required in Stage 2 can be found in the guidance:

1. the underlying evidence from the consumer contact exercise (including copies of the applicant’s correspondence as sent to each affected consumer and their responses)
2. evidence from any additional investigations and enquiries that the applicant has conducted (eg management information it has interrogated) in order to identify the extent of any consumer harm that has occurred or may occur in connection with the relevant agreements
3. a summary of:
	1. how the consumer contact exercise was conducted (including when and how each of the affected consumers was contacted and the response rate); and
	2. the results of the exercise, insofar as informs an assessment of actual and potential consumer detriment;
4. detailed analysis of:
	1. the underlying evidence at (1) and (2) above;
	2. to the extent the customer contact exercise and wider enquires have evidenced any actual or potential harm, the steps the applicant has taken and/or will take to mitigate it;
	3. whether the applicant proposes to leave any actual or potential detriment unmitigated and, if so, what specifically and why;
5. a detailed explanation of why the applicant considers that the results of its consumer contact exercise (and any wider investigations and enquiries) allow a sufficiently robust and reliable view to be reached on the actual and potential detriment suffered by all affected customers; and
6. a detailed explanation from the applicant as to why, in light of the analysis at (4) and (5) above and your responses in Stage 1 of the application, the applicant considers that it is “just and equitable” for the FCA to grant the validation order sought.

Further details of our expectations can be found in the VO Application Forms – Guidance Notes (Stage 2 – Consumer Harm Assessment). This includes a minimum set of questions that applicants will need to ask each consumer in a consumer contact exercise. The final set of consumer questions and overall scope of the consumer harm exercise must be reviewed by the FCA before it is conducted. However, responsibility for ensuring that the exercise is sufficiently robust rests solely with the applicant; the applicant will therefore need to identify all additional questions that affected consumers should be asked to ensure consumer detriment is properly identified on the specific facts.

Guidance Notes available at:

<https://www.fca.org.uk/publication/forms/cc-validation-order-consumer-harm-guidance-notes.docx>

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**Once you submit Stage 1 of this form we will:**

* Tell you as soon as your application has been assigned to a case officer. All communication about your application will be handled by this person. Please be aware that this could take a number of weeks from receipt of your application.  If it subsequently proves necessary to assign your case to a different case officer, you will be told as soon as this change is made.
* Review the application and request any further information and/or clarification that we may need. Give clear deadlines when we ask you to submit additional information.
* Send regular updates on the current status of the case once the case has been assigned to a case officer.
* Confirm (once we have reviewed Stage 1 of the application) whether we agree that the relevant agreements are not enforceable, and that the FCA has the jurisdiction to determine the application.
* Once we have confirmed our agreement following review of your Stage 1 application, you will need to produce your proposed consumer contact exercise. You should submit a final draft of that proposed exercise to us for review: whilst responsibility for ensuring the exercise is sufficiently robust and comprehensive rests solely with the applicant, we will provide recommendations on matters to be included in it.
* Consider whether any action will need to be taken in respect of any potentially unauthorised business.

**Once you submit Stage 2 of this form we will:**

* Review the application and request further information and/or clarification.
* Give clear deadlines when we ask you to submit additional information.
* Send regular updates on the current status of the case.
* Communicate our initial view on Stage 2 of the application once our assessment has progressed sufficiently. You will then have the opportunity to provide further written submissions before we determine the application.
* Issue our written Notice of Determination granting the validation order, granting subject to conditions, or declining to grant the validation order. The notice will give our reasons for the determination and include an indication of the right of any person aggrieved by the determination to have the matter referred to the Upper Tribunal and the procedure for doing so.

**In this application form we use the following terms:**

* 'the applicant firm' and ‘firm’ refer to the firm applying for the validation order
* ‘we’, ‘us’, ‘our’ or ‘FCA’ refers to the Financial Conduct Authority
* ‘FSMA’ refers to the Financial Services and Markets Act 2000
* ‘OFT’ refers to Office of Fair Trading
* ‘RAO’ refers to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 SI 2001/544
* ‘RAO Amendment No.2 Order’ refers to the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2013 SI 2013/1881
* ‘CCA’ refers to the Consumer Credit Act 1974
* ‘period covered by the application’ refers to the period in respect of which a validation order is sought, starting from the date that the first relevant agreement was entered into
* ‘relevant agreements’ refers to the agreements covered by the application
* ‘affected customers’ refers to the customers who entered into the relevant agreements
* ‘consumer credit agreement’ has the same meaning as in section 8 CCA
* ‘consumer hire agreement has the same meaning as in section 15 CCA
* ‘ancillary service contract’ is an agreement falling within the scope of section 148(1) CCA as it remains in effect by virtue of RAO Amendment No.2 Order
* ‘lender’ means a person carrying on a regulated activity of the kind specified by article 60B(2) of RAO
* ‘owner’ means a person carrying on a regulated activity of the kind specified by article 60N(2) of RAO
* ‘trader’ has the same meaning as in section 148(1) CCA



**Filling in the form**

1. If you are using your computer to complete this form:
	1. use the TAB key to move from question to question and press SHIFT TAB to move back to the previous question
	2. save all the parts of the form before submitting your application
2. If you think a question is not relevant to you, write 'not applicable' and explain why.
3. If you leave a question blank or do not attach the required supporting documents, this will increase the time taken to assess your application.
4. If there is not enough space on the form you may use separate sheets of paper. Clearly mark each continuation sheet with your firm name and the relevant question number.
5. Ensure you have completed this application form and paid the minimum application fee.
6. Once you have completed the relevant sections, sign the declaration in Section 6 and email the form to creditandlendingauthorisations@fca.org.uk. Alternatively, please post your form and payment to:

Lending & Intermediaries

Authorisations Division

The Financial Conduct Authority
12 Endeavour Square
London
E20 1JN

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6 Declaration and signature in respect of Stage 2 of the application 29

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| 1 | Contact details  |

 **1.1 Contact details**

|  |  |
| --- | --- |
| First name(s) |       |

|  |  |
| --- | --- |
| Last name |       |

|  |  |
| --- | --- |
| Role |       |

|  |  |
| --- | --- |
| Phone number |       |

|  |  |
| --- | --- |
| Email address |       |

|  |  |
| --- | --- |
| Firm name (if different to Applicant firm) |       |

 **1.2 Details for the giving of any "relevant document" (including statutory notices) to the applicant firm in relation to this notice under the Financial Services and Markets Act 2000 and in accordance with the Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001**

|  |  |
| --- | --- |
| First name(s) |       |

|  |  |
| --- | --- |
| Last name |       |

|  |  |
| --- | --- |
| Role |       |

|  |  |
| --- | --- |
| Phone number |       |

|  |  |
| --- | --- |
| Email address |       |

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| --- | --- |
| Company name |       |

|  |  |
| --- | --- |
| Address  |       |

|  |  |
| --- | --- |
| What is the notice-giver’s relationship with this address  |       |

 **1.3 Does the applicant firm have a registered number at Companies House?**

[ ]  No

[ ]  Yes4You must provide Companies House Reference Number

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 **1.4 Main place of business in the UK (and any previous addresses used during the period covered by the application)**

|  |  |
| --- | --- |
| Current business address |       |
|  |
|  |
| Postcode |       |

|  |  |
| --- | --- |
| Business phone number (including STD code) |       |

|  |  |
| --- | --- |
| Business mobile number (if applicable) |       |

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| --- | --- |
| Business email address |       |

 **Previous address 1**

|  |  |
| --- | --- |
| Business address |       |
|  |
|  |
| Postcode |       |

From (dd/mm/yyyy)

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To (dd/mm/yyyy)

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 **Previous address 2**

|  |  |
| --- | --- |
| Business address |       |
|  |
|  |
| Postcode |       |

From (dd/mm/yyyy)

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To (dd/mm/yyyy)

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 **1.5 You must provide details of any trading names the applicant firm used during the period covered by the application**

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|  2 | The agreements you wish to validate entered into before April 2014We need this information to help us decide whether or not to validate the agreements that you want us to consider. We will process this information in accordance with our confidentiality obligations in s348 FSMA. Continue your answers on a separate sheet of paper where necessary.**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.** |

Section A: Period covered by the application

 **2.1 Period covered by the application**

This is the period in respect of which a validation order is sought, starting from the date that the first relevant agreement was entered into to the last date a relevant agreement was entered into (irrespective of whether agreements may still be ongoing).

From (dd/mm/yyyy)

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To (dd/mm/yyyy)

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 **2.2 Does this application cover all agreements entered into during the period covered by the application (or, if applicable, all agreements entered into during that period following introductions by the relevant credit broker)?**

[ ]  No4You must provide as much detail as possible, which should include (but is not limited to) whether the firm has obtained legal advice. You may wish to include a copy of any relevant legal opinion.

[ ] Yes4Continue to Question 2.3

[ ]  Attached -Legal opinion /advice relating to this question

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 **2.3 Types of agreement you wish to validate.**

You must provide details, ideally in a tabular format (on a separate sheet of paper), for the type or types of agreement you wish to validate (see guidance notes for meaning of ‘type of agreement’).

You can find an example table that can be used in the notes on pages 5 <https://www.fca.org.uk/publication/forms/cc-validation-order-form-guidance-notes.docx> .

If there is more than one type of agreement, you must provide details in respect of each type.

The details should include:

* a brief description of the type of agreement, eg consumer credit agreement, consumer hire agreement or ancillary service contract
* the total number of agreements per type of agreement
* the total number of customers per type of agreement
* the interest charged on each type of agreement
* the possible charges incurred by customers on each type of agreement
* the total value of initial credit per type of agreement
* the total sums paid to date per type of agreement
* the total number of agreements per type that are still live.

If a validation order is sought both under Section C below (lender unlicensed or without correct licence) and Section D (unlicensed credit broker), you must provide a breakdown accordingly, making clear which each set of details applies to.

Section B: Unenforceability Under Relevant Legislation (all applicants complete)

**Any legal opinion/advice provided to the FCA in support of the application must be provided with a waiver of any and all claims to legal professional privilege in the opinion/advice. In submitting the application, the applicant agrees that any legal advice or opinion is provided on this basis. The FCA will neither accept nor consider any legal opinion/advice in respect of which a claim to legal professional privilege may persist. The applicant may wish to seek independent legal advice before following this course of action.**

The FCA expects each of the matters in Questions 2.4 and 2.5 below to be confirmed by way of a legal opinion, which sets out the basis on which the view it expresses has been reached (eg detailed explanation of the factual enquiries undertaken in order to reach the view). However, in appropriate cases the FCA may be willing to dispense with the requirement for a legal opinion on one or more of the below points if the applicant can satisfy the FCA on the point in question another way.

Unenforceability under relevant legislation

 **2.4 You must attach one or more legal opinions that confirm the following in connection with all of the agreements that are the subject of this application:**

* whether the agreement(s) were entered into in the course of conducting a consumer credit business or a consumer hire business under section 40 of the CCA and the reasons for this view, with an explanation (and copies) of the evidence on which this view is based
* that the agreement(s) are not enforceable and why
* that the FCA (as opposed to the court) has jurisdiction to determine the application for a validation order and why
* that the firm entering into the agreements was not subject to any of the licensing exemptions set out in the CCA Part III (s.21)
* whether the agreement(s) were compliant with the CCA, and if not in what respects they were not

You must ensure that your legal opinion(s) states explicitly:

* the rationale for the conclusion in the opinion
* the enquiries and material on which it is based
* any assumptions, caveats or limitations to which the opinion is subject.

[ ]  Attached

If the required legal opinion is not provided, you must provide an explanation below as to why.

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Consumer Credit Act (1974) and other statutory compliance

 **2.5 Were the relevant agreement(s) compliant with the CCA?**

[ ]  No4You must ensure the opinion attached explains clearly with which provisions of the CCA the agreement(s) did not comply, in what period, and why.

[ ]  Yes

 **2.6 You must attach a legal opinion that confirms the position in respect of all of the agreements that are the subject of this application. This opinion should cover all provisions of the CCA non-compliance with which could render the agreement(s) unenforceable.**

You must ensure that your legal opinion states explicitly:

* the rationale for the opinion
* the enquiries and material on which it is based
* any assumptions, caveats or limitations to which the opinion is subject.

[ ]  Attached

 **2.7 Are any of the relevant agreements subject to court proceedings (eg is compliance with the Consumer Credit Act, CCA [1974] being contested?)?**

 [ ]  No

 [ ]  Yes 4Specify the relevant agreements that are the subject of those proceedings and (in respect of each such agreement) the parties to the proceedings, the orders being sought from the court in respect of the agreement, and (in summary) the issues in dispute

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 **2.8 Describe below whether and how an assessment was made by the applicant firm, prior to entry into the relevant agreements, regarding compliance with:**

* the CCA and its regulations
* applicable legislation governing unfair contract terms
* other statutory or regulatory requirements

As part of your response, explain the basis on which you have satisfied yourself that your answer to this question is a complete and accurate account of any assessment undertaken by the firm prior to entry into the relevant agreements (eg What enquiries were made? Were legal opinions sought?).

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 **2.9 Describe whether and to what extent any non-compliance of the kinds referred to in Question 2.5 have subsequently been identified in respect of the relevant agreements.**

As part of your response, you must explain what non-compliance you have identified, in respect of which agreement(s), when and how you identified it, and the steps you have taken in response.

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Steps taken to enforce the relevant agreement(s)

 **2.10 Have you taken any steps to recover payments and/or enforce the relevant agreements. This includes, but it not limited to, issuing default or demand notices, contacting Credit Reference Agencies, threatening court action etc.**

[ ]  No4Continue to Question 2.11

[ ]  Yes4Explain (for each relevant agreement) what steps have been taken, provide the number and value of the agreements where such steps have been taken, and state the value of arrears and any default interest or charges levied.

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Circumstances giving rise to unenforceability

 **2.11 Describe the applicant firm’s current business and (if different) its business during the period to which the application relates (ie the period you have stated in response to Question 2.1 ).**

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**2.12 Which type(s) of licensable activity do the agreements you wish to validate relate to?**

[ ]  Consumer credit

[ ]  Consumer hire

[ ]  Ancillary credit business

[ ]  Credit brokerage

[ ]  Debt-adjusting

[ ]  Debt-counselling

[ ]  Debt-collecting

[ ]  Debt administration

[ ]  Provision of credit information services

[ ]  Credit reference agency

**2.13 In the case of the consumer credit or consumer hire, did the lender or owner (as applicable) hold the correct license when entering into the relevant agreement?**

[ ]  No

[ ]  Yes4Give the OFT license number below.

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 **2.14 In the case of ancillary credit business, was the trader unlicensed when entering into the relevant agreement(s)?**

[ ]  No

[ ]  Yes

 **2.15 Does the applicant firm have any outstanding agreements it is seeking to enforce, and/or does it intend to enter into new regulated agreements?**

[ ]  No4Continue to Question 2.17

[ ]  Yes4Continue to Question 2.16

**2.16 Has the firm applied, or does it intend to apply, for the relevant permissions?**

[ ]  No4You must explain below why the firm does not consider it necessary to apply

[ ]  Yes 4You must advise when the application will be submitted. If already submitted, you must provide date (dd/mm/yyyy)

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Section C: Unlicensed lending firms, or lending firms not licensed for the correct activities

**Complete this section if validation is being sought because the lender or owner (as the case may be) was unlicenced or did not have permission to conduct the relevant licensable activities; or the trader was unlicensed.**

 **2.17 You must explain why lender or owner (as applicable) was not licenced, or did not hold the correct licensable category, or the trader was unlicensed, when the relevant agreements were entered into.**

Provide as much detail as possible, which should include (but is not limited to) whether the firm sought legal advice at the time and, in the event that it did not, the reason why. You may wish to provide a relevant legal opinion in relation to this.

[ ]  Attached -Legal opinion /advice relating to this question

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**2.18 Did the applicant firm reasonably believe that a licence under the CCA was not required by the ‘lender’, ‘owner’ or ‘trader’ to enter into the relevant agreement(s)?**

[ ]  No

[ ]  Yes 4You must explain the basis for this belief

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**2.19 When did the applicant firm become aware that it (or the lender, owner or trader as the case may be) was carrying on a licensable activity without the necessary licence? (dd/mm/yyyy)**

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**2.20 How did the applicant firm become aware that it (or the lender, owner or trader as the case may be) was carrying on licensable activity without the necessary licence?**

Provide as much detail as possible, which should include (but is not limited to) whether this was based on legal advice received by the firm. You may wish to provide copies of any legal advice you had sought that is relevant here.

[ ]  Attached -Legal opinion /advice relating to this question

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**2.21 What has the applicant firm done since becoming aware that it (or the lender, owner or trader as the case may be) was carrying on a licensable activity without the necessary licence?**

Provide as much detail as possible, which should include (but is not limited to) whether the firm has obtained legal advice. You may wish to provide copies of any legal advice you had sought that is relevant here.

[ ]  Attached -Legal opinion /advice relating to this question

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**2.22 After the applicant firm became aware that it (or the lender, owner or trader as the case may be) was carrying on a licensable activity without the necessary license, did it (or the lender, owner or trader as the case may be) enter into further agreements?**

[ ]  No

[ ]  Yes 4You must explain why further agreements were entered into.

Provide as much detail as possible. You may wish to provide copies of any legal advice you have sought that is relevant here. As part of your answer, also indicate the number of agreements entered into after becoming aware that you (or the lender, owner or trader as the case may be) did not have the necessary license, and the time period in question, including the date of entry into the last such agreement.

[ ]  Attached -Legal opinion /advice relating to this question

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**2.23 You must confirm whether all such agreements detailed in Question 2.22 are covered by this application.**

[ ]  No4 Explain why you do not wish to validate the agreements that are not covered.

[ ]  Yes

Provide as much detail as possible, in particular if you are applying to validate some agreements but not others, you must explain why. You may wish to provide copies of any legal advice you have sought that is relevant here.

[ ]  Attached -Legal opinion /advice relating to this question

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Section D: Where validation is being sought because one or more third party credit brokers were not authorised

Only complete this section if validation is being sought because one or more third-party credit brokers who introduced customers to the applicant were not authorised or were not exempt from authorisation

**Note**: Where there is more than one credit broker giving rise to the need for a validation order under this application, you must answer each of the questions below separately in respect of each unlicensed credit broker (using a separate continuation sheet for each unlicensed credit broker.

**2.24 You must provide details of the relevant credit broker(s).**

|  |  |
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| Name of credit broker |       |
| Any relevant trading names |       |
| Firm Reference Number (if applicable) |       |
| Companies House registration number (if applicable) |       |
| Main place of business |       |
| Postcode |       |
| Telephone |       |
| Email  |       |

**2.25 What date did the lender or owner (as applicable) first accept introductions from the unlicensed credit broker? (dd/mm/yyyy)**

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**2.26 Did the applicant firm reasonably believe that a licence under the CCA was not required by the credit-broker when introducing the affected customer(s) to the lender or owner?**

[ ]  No

[ ]  Yes 4You must explain the basis for this belief

Provide as much detail as possible, which should include (but not limited to) whether the lender or owner had established procedures to check whether credit brokers were licensed (or did not need to be licensed), when these were put in place, how they were implemented and monitored, and why they did not work in this case.

[ ]  Attached -Legal advice relating to this question

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**2.27 When did the applicant firm become aware that the unlicensed credit broker needed a license but did not have one? (dd/mm/yyyy)**

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**2.28 How did the applicant firm become aware of this?**

Provide as much detail as possible, which should include (but is not limited to) whether the unlicensed credit broker notified the firm of this or whether it was based on legal advice the firm received.

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**2.29 What has the applicant firm done since becoming aware of this?**

Provide as much detail as possible, which should include (but is not limited to) whether the firm has obtained legal advice, and whether it has terminated or modified its dealings with the unlicensed credit broker.

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**2.30 Did the applicant firm enter into agreements, following introductions by the unlicensed credit broker, after becoming aware that it did not have the necessary licence?**

[ ]  No

[ ]  Yes 4Explain why the applicant firm continued to accept business despite the credit broker being unlicensed.

Provide as much detail as possible, which should include whether it has terminated or modified its dealings with the unlicensed credit broker. You may wish to provide copies of any legal advice you had sought that is relevant here.

You must also indicate the number of agreements entered into following introductions by the unlicenced credit broker after the applicant firm became aware that it was unlicensed, and the time period in question, including the date of entry into the last such agreement.

[ ]  Attached -Legal opinion/advice relating to this question

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**2.31 Are all such agreements are covered by this application?**

[ ]  No4Explain why you do not wish to validate all the agreements.

[ ]  Yes

If you have modified your dealings with the credit broker such that you consider these agreements are not unenforceable, you must explain the basis for that view. You may wish to provide a legal opinion confirming that position.

[ ]  Attached -Legal opinion/advice relating to this question

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**2.32 Are you aware of any information (whether verbally or in writing) that the credit broker may have given to customers which suggested that it was licenced?**

[ ]  No

[ ]  Yes 4Give details when and how you became aware of this.

[ ]  Attached -Copies of any relevant communication (if available) or other relevant details.

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**2.33 Do you know if the unlicensed credit broker has since applied for authorisation?**

[ ]  No

[ ]  Yes4Give details below, including the date of the application (dd/mm/yyyy).

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**2.34 What steps has the applicant firm taken, or does it intend to take, to ensure that it deals only with credit brokers that have the appropriate permission (where needed) in the future?**

For example, in what ways (if applicable) has the applicant firm modified its procedures?

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| 3 | Application fee in respect of Stage 1 of the application |

Stage 1 of the Validation Order application is charged based on the number of third parties the firm used at the time of entering into the agreements.

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| **Number of third parties used** | **Fee** |
| 0-1 | £1,000 |
| 2-3 | £2,500 |
| 4-10 | £5,000 |
| 11+ | £7,500 |

If completing more than one application, only one fee needs to be submitted for the total number of third parties of all the agreements if the application forms relate to the same set of circumstances.

Please refer to FEES 3 Annex 15R (5) for full details of VO application fees: <https://www.handbook.fca.org.uk/handbook/FEES/3/Annex15.html>

If the fee is not paid in full within five working days from the date you receive confirmation of receipt of your application, your application will be returned to you.

The Stage 1 fee is non-refundable and we do not issue invoices for it.

This payment should be made by card over the phone to our Payments Helpline: 020 7066 6014. The line is open 10am-4pm Monday-Friday. If you do not have a card please speak to your case officer to discuss a different method of payment.

 **3.1 You must confirm how much your payment is in the box below**

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| 4 | Declaration and Signature in respect of Stage 1 of the application |

**Warning**

Knowingly or recklessly giving us information, which is false or misleading in a material particular, may be a criminal offence (sections 398 and 400 of the Financial Services and Markets Act 2000).

Further, our rules (SUP 15.6.4R) require a licenced person to take reasonable steps to ensure the accuracy and completeness of information given to us and to tell us immediately if materially inaccurate information has been provided. Contravening these requirements may lead to disciplinary sanctions or other enforcement action by us.

It should not be assumed that issues are known to us just because they are in the public domain or have previously been disclosed to us or another regulatory body. You should include as part of this application any information that falls to be disclosed in response to a question, irrespective of whether you consider it is publicly available or already known to us.

If you are not sure whether a piece of information is relevant, include it anyway.

You must ensure you update us and/or provide any additional relevant information as it becomes available whilst the application is in progress. Failure to do so may delay the assessment of your application.

**Declaration**

By submitting this application form:

* I confirm that I am authorised to submit this application on behalf of the applicant firm.
* I confirm that the information in this application is accurate and complete to the best of my/our knowledge and belief and that I/we have taken all reasonable steps to ensure that this is the case.
* I am aware that it is a criminal offence to knowingly or recklessly to give the FCA information that is false or misleading in a material particular.
* I will notify the FCA immediately if there is a significant change to the information given in the application. I am aware that, if I fail to do so, this may result in a delay in the application process or enforcement action.
* I confirm that upon the FCA agreeing the Stage 1 analysis, the applicant will proceed to conduct a robust and comprehensive assessment of consumer harm, including carrying out a customer contact exercise, to the standard described in the “important information” section at the start of the application form.

 **Name of signatory[[1]](#footnote-2)**

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 **Position[[2]](#footnote-3) of signatory**

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 **Individual Registration Number (if applicable)**

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 **Signature**

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 **Date (dd/mm/yyyy)**

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| 5 | Stage 2 of Application: Consumer Harm |

**Note:**

* Stage 2 of the application should only be completed once the FCA has confirmed that it agrees that the relevant agreements are not enforceable and within the scope of the FCA’s jurisdiction under s28A FSMA.
* You must only submit Stage 2 of the application once you have carried out the assessment of consumer harm (including a customer contact exercise) to the robust and comprehensive standard described in this application form.
* For further information on what you are required to do to assess consumer harm, and what is involved in the customer contact exercise specifically, please see “Validation Orders (VO) Application Forms – Guidance Notes: Stage 2 – Consumer Harm Assessment” (the “Consumer Harm Notes”)**.**

**Why is consumer harm relevant?**

When deciding whether the test for granting a validation order (namely that it is “*just and equitable in the circumstances to do so*”) is satisfied, the FCA must consider all relevant factors. One such factor will be whether there is evidence of actual or potential detriment to consumers (which we refer to as ‘consumer harm’). This includes harm that may have occurred or may occur in the future in connection with the relevant agreements into which affected consumers have entered.

Consumer detriment may result from the relevant party (eg a lender in s26 FSMA cases or a broker in s27 FSMA cases) not having the required authorisation. However, the FCA will also need to understand whether there is evidence of consumer detriment in broader terms: by way of example, how a broker and lender have conducted their business in relation to the selling process in respect of the relevant agreements is a relevant factor to be taken into account.

The purpose of Stage 2 of the application is to identify any actual or potential consumer harm that may have occurred or occur in the future in connection with the relevant agreements into which affected consumers have entered.

**What can consumer harm look like?**

Ultimately what (if any) consumer harm has occurred or might occur in the future will depend on the facts. Examples of where consumer harm may have arisen include (but are not limited to):

* Poor customer understanding
* Unaffordable lending
* Mistreatment of borrowers in financial difficulty
* Products not meeting requirements as to fair value in Principle 12 or treating customers fairly (as applicable)
* Unsuitable products and/or services
* Poor treatment of customers (in particular vulnerable customers)

**Note:** In carrying out your consumer harm assessment, you should have regard to the protections under the regulatory system that were in force at the relevant times.

**What does Stage 2 of the VO application involve?**

The purpose of Stage 2 of the application is to identify any actual or potential consumer harm that may have occurred or occur in the future in connection with the relevant agreements into which affected consumers have entered.

Stage 2 will require you to complete 4 steps. The Consumer Harm Notes set out more fully what we require on each of these steps as part of your application, but in overview the four steps are:

1. Customer Journey Walkthrough: This is where you will provide full details of the end-to-end customer journey for the relevant agreements.
2. Customer Contact Exercise: This will involve you writing to all affected customers with a questionnaire that aims to understand the customer journey that they experienced and any actual or potential consumer harm that may have occurred (or may occur in the future) in connection with the relevant agreements into which affected consumers have entered.
3. Consumer Harm Assessment Report: This is where you will provide a report in the required form that analyses the responses from your Customer Contact Exercise and sets out why you consider that the FCA should conclude that the “just and equitable” test is met.
4. Requests for clarification/follow up: This is where the FCA will ask you to clarify any details in your report (potentially asking that you talk us through some or all of your assessment at a meeting or on a call).

**What does the Customer Contact Exercise involve?**

The applicant should refer to the Consumer Harm Notes before drafting the consumer contact exercise or reaching out to customers, as this includes details of the steps which must be completed before conducting the consumer contact exercise.

The guidance also includes example questions to be included in the consumer contact exercise. The final set of consumer questions and overall scope of the consumer harm exercise must be reviewed by the FCA before it is conducted. However, as already stated, responsibility for ensuring that the exercise is sufficiently robust rests solely with the applicant; the applicant will therefore need to identify all additional questions that affected consumers should be asked to ensure consumer detriment is properly identified on the specific facts.

The results of the consumer harm assessment should be presented to the Authority as set out in the guidance.

**What happens if my Consumer Harm Assessment is insufficient?**

Given that consumer harm is a relevant factor when the FCA is deciding whether to grant a validation order, the applicant must ensure that it can demonstrate to the FCA what (if any) consumer harm has occurred or may occur in connection with the relevant agreements and how it is being mitigated.

To do this, the applicant must undertake a robust and comprehensive consumer contact exercise and provide a robust and comprehensive assessment of consumer harm. If the applicant does not do so, the likelihood is that the FCA will not be able to reach the positive conclusion that it is “just and equitable” to grant a validation order – and so the validation order will not be granted.

As responsibility for the application rests with the applicant, the FCA will not itself seek to remedy deficiencies in an applicant’s consumer contact exercise or consumer harm assessment.

The results of the consumer harm assessment should be presented to the Authority as set out below and in the guidance.

**How should I present my Consumer Harm Assessment?**

The results of the consumer harm assessment should be presented to the Authority as follows:

1. the underlying evidence from the consumer contact exercise (including but not limited to copies of the applicant’s correspondence as sent to each affected consumer and their responses)
2. evidence from any additional investigations and enquiries that the applicant has conducted (eg management information it has interrogated) in order to identify the extent of any consumer harm that has occurred or may occur in connection with the relevant agreements
3. a summary of:
* how the consumer contact exercise was conducted (including when and how each of the affected consumers was contacted and the response rate)
* the results of the exercise, insofar as informs an assessment of actual and potential consumer detriment
1. detailed analysis of:
* the underlying evidence at (1) and (2) above
* to the extent the customer contact exercise and wider enquires have evidenced any actual or potential harm, the steps the applicant has taken and/or will take to mitigate i
* whether the applicant proposes to leave any actual or potential detriment unmitigated and, if so, what specifically and why
1. a detailed explanation of why the applicant considers that the results of its consumer contact exercise (and any wider investigations and enquiries) allow a sufficiently robust and reliable view to be reached on the actual and potential detriment suffered by all affected customers
2. a detailed explanation from the applicant as to why, in light of the analysis at (4) and (5) above and your responses in Stage 1 of the application, the applicant considers that it is “just and equitable” for the FCA to grant the validation order sought.

[ ]  You must tick to confirm that you have read all of the information above concerning Stage 2, and that you have included as part of your application a consumer harm assessment (including the results of a customer contact exercise) that meets the standards described in this application form and which is set out in the manner described at points (1) to (6) above.

Please note that we may seek further information from you. This may require you to, for example, undertake further work to identify and assess whether customers have experienced, or may experience, harm from the applicant firm’s conduct (or the conduct of any person acting on its behalf or a third party) before or after entering into the relevant agreements, and whether harm could arise if the validation order is granted.

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| 6 | Application Fee is respect of Stage 2 of the Application |

Stage 2 of the Validation Order application is charged using a Validation Order Project Fee (VOPF). The VOPF will capture all the time and costs we allocate to the stage 2 assessment, up until we issue a Notice of Determination.

The VOPF covers our regulatory work in assessing Stage 2 of your application. It also covers any fees and disbursements invoiced to us by external persons to assist with the Stage 2 assessment.

At the start of Stage 2 we will give you a non-binding estimate of what the final costs may be at the start of Stage 2.

The hourly rate for the VOPF will be set according to the prevailing rates for the Special Project Fee for Restructuring as set out in FEES 3 Annex 9 (11)R: <https://www.handbook.fca.org.uk/handbook/FEES/3/Annex9.html>

Once the application is determined, we will issue a final invoice in respect of the VOPF. In some cases, we may also issue interim invoices throughout Stage 2 of the application. Any fee must be paid within 30 days of us issuing an invoice.

If your firm wishes to withdraw the application, you can do so any point. You will only be charged for the costs incurred up to the point of withdrawal.

The payment should be made by card over the phone to our Payments Helpline: 020 7066 6014. The line is open 10am-4pm Monday-Friday. If you do not have a card please speak to your case officer to discuss a different method of payment.

Please refer to FEES 3 Annex 15R (5) for full details of VO application fees: <https://www.handbook.fca.org.uk/handbook/FEES/3/Annex15.html>

* I understand that the fee for Stage 2 of the application will be invoiced to the firm after the FCA issues a Notice of Determination, and that interim invoices may be issued during the assessment of Stage 2 in some cases.
* I understand the estimate provided by the FCA at the start of Stage 2, and that this is non-binding.
* I understand and agree that any Stage 2 fee will be paid within 30 days of an invoice being issued.

 **Name of signatory[[3]](#footnote-4)**

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 **Position[[4]](#footnote-5) of signatory**

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 **Individual Registration Number (if applicable)**

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 **Signature**

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 **Date (dd/mm/yyyy)**

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| 7 | Declaration and signature in respect of Stage 2 of the Application |

**Warning**

Knowingly or recklessly giving us information, which is false or misleading in a material particular, may be a criminal offence (sections 398 and 400 of the Financial Services and Markets Act 2000).

Further, our rules (SUP 15.6.4R) require an licenced person to take reasonable steps to ensure the accuracy and completeness of information given to us and to tell us immediately if materially inaccurate information has been provided. Contravening these requirements may lead to disciplinary sanctions or other enforcement action by us.

It should not be assumed that issues are known to us just because they are in the public domain or have previously been disclosed to us or another regulatory body. You should include as part of this application any information that falls to be disclosed in response to a question, irrespective of whether you consider it is publicly available or already known to us.

If you are not sure whether a piece of information is relevant, include it anyway.

You must also ensure you update us and/or provide any additional relevant information as it becomes available whilst the application is in progress. Failure to do so may delay the assessment of your application.

**Declaration**

By submitting this application form:

* I confirm that my answers from Stage 1 of the application remain accurate, comprehensive and complete or, to the extent–they are not, that I have provided updated answers alongside my submission of Stage 2 of the application.
* I confirm that I am licenced to submit this application on behalf of the firm.
* I confirm that the information in this application is accurate and complete to the best of my/our knowledge and belief and that I/we have taken all reasonable steps to ensure that this is the case.
* I am aware that it is a criminal offence to knowingly or recklessly to give the FCA information that is false or misleading in a material particular.
* I will notify the FCA immediately if there is a significant change to the information given in the application. I am aware that, if I fail to do so, this may result in a delay in the application process or enforcement action.
* I confirm that a consumer harm assessment and consumer contact exercise have been conducted to the standard described in the application form, and presented to the FCA in the manner set out in Section 5.

 **Name of signatory[[5]](#footnote-6)**

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 **Position[[6]](#footnote-7) of signatory**

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 **Individual Registration Number (if applicable)**

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 **Signature**

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 **Date (dd/mm/yyyy)**

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1. The signatory must be a suitable person of appropriate seniority at the firm. [↑](#footnote-ref-2)
2. For example, Director, Sole Trader, Compliance Officer, etc. [↑](#footnote-ref-3)
3. The signatory must be a suitable person of appropriate seniority at the firm. [↑](#footnote-ref-4)
4. For example, Director, Sole Trader, Compliance Officer, etc. [↑](#footnote-ref-5)
5. The signatory must be a suitable person of appropriate seniority at the firm. [↑](#footnote-ref-6)
6. For example, Director, Sole Trader, Compliance Officer, etc. [↑](#footnote-ref-7)