

FCA Requirements Notice: Amalgamated Finance Ltd.

1. Requirements

1.1. Must not:

- (1) enter into any regulated consumer credit agreement;
- (2) secure a charge (whether legal or equitable) on any customer's property in relation to a bridging loan it has made to a customer; or,
- (3) enter into any consumer credit agreement that uses or relies on any term that seeks to exclude or restrict the statutory rights of consumers under the Consumer Credit Act 1974 (CCA) by asking a consumer to declare that the agreement is a particular type of agreement and/or exempt from regulation under the CCA or the Financial Services and Markets Act 2000 (FSMA).

1.2. Must not:

- (1) take any step to enforce any regulated consumer credit agreement or security provided in relation thereto that is enforceable on an order of the court by reason of sections 65(1), 105(7) or 111(2) of the Consumer Credit Act 1974 (CCA) without first obtaining an enforcement order under section 127 of the CCA;
- (2) take any step to enforce any regulated consumer credit agreement or security provided in relation thereto, that is only enforceable following the FCA issuing a written notice allowing the agreement to be enforced in accordance with section 28A of the Financial Services and Markets Act 2000 (FSMA) and the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2013, where no such notice has been given;
- (3) take any step to enforce any regulated consumer credit agreement or security provided in relation thereto without complying with sections 65, 77A, 87, 88, 93, 105, 111, 113 and/or 130A of the CCA;
- (4) take any step to recover any outstanding debt due under a regulated consumer credit agreement to the extent that such debt comprises irrecoverable interest having regard to section 77A of the CCA and/or section 93 of the CCA; or
- (5) apply for an enforcement order under section 127 of the CCA in relation to any consumer credit agreement already entered into without:
 - (a) providing the court, the debtor and any other surety with a list of the potential CCA breaches set out in Annex 1;

- (b) inviting the court to consider, under section 140A of the CCA, whether the relationship between the debtor and creditor arising out of the agreement (or the agreement taken with any related agreement) is unfair to the debtor because of one or more of the following:
 - (i) any of the terms of the agreement or of any related agreement;
 - (ii) the way in which the creditor has exercised or enforced any of his rights under the agreement or any related agreement;
 - (iii) any other thing done (or not done) by, or on behalf of, the creditor (either before or after the making of the agreement or any related agreement).

1.3. For the avoidance of doubt:

- (1) issuing a claim for possession under Part 55 of the Civil Procedure Rules constitutes an enforcement of an agreement for the purposes of the above requirements;
- (2) the taking or retaking of goods or land by AFL whether under a possession order already obtained under part 55 of the Civil Procedure Rules, and whether by consent or otherwise, is an enforcement for the purposes of the above requirements.

ANNEX 1

POTENTIAL BREACHES OF CONSUMER PROTECTION LEGISLATION BY AMALGAMATED FINANCE LIMITED AND CONSEQUENCES

1. This list was drafted by the Office of Fair Trading (“OFT”) following an investigation into the breach of a range of requirements under the Consumer Credit Act 1974 (“CCA”) by Amalgamated Finance Limited in a number of consumer credit cases. The Financial Conduct Authority adopts the list having taken over the regulation of consumer credit from the OFT on 1 April 2014.
2. The list is intended to ensure that in any case where AFL (hereinafter referred to as ‘the Company’) seeks to enforce improperly executed consumer credit agreements that proper and complete consideration can be given by the court to:
 - 2.1. The range of legal issues raised by the lending and other business practices of the Company;
 - 2.2. whether any application made by the Company for an enforcement order under section 127 CCA should be dismissed bearing in mind:
 - a) the extent and nature of the contraventions by the Company,
 - b) the prejudice caused to any person, including both the debtor and surety, by those contraventions,
 - c) the degree of culpability for it; andbearing in mind the court’s powers under section 127(2) and sections 135 and 136 CCA.

POTENTIAL BREACHES OF CONSUMER PROTECTION LEGISLATION

3. The agreement in this case is improperly executed: it is a regulated consumer credit agreement and its terms fail to comply with the form and content requirements set down in sections 60, 61 and 105 CCA and the associated Consumer Credit (Agreements) Regulations 1983 or Consumer Credit (Agreements) Regulations 2010 as appropriate. The Company will provide the Court with a list of the relevant form and content requirements that have not been complied with in each case.

4. In addition, the Company may have breached one or more of the following provisions of the CCA in the course of its business:
 - 4.1. canvassing consumers off trade premises contrary to the prohibition in sections 49 or 154 CCA;
 - 4.2. for secured agreements, the duty of the Company to provide a copy of the unexecuted agreement containing a notice in a prescribed form indicating the right of the consumer to withdraw from the prospective agreement at least seven days prior to the provision of a second copy for signature under section 58(1) CCA;
 - 4.3. for secured agreements, the provision by the Company of a consideration period under sections 61(2) & (3) CCA, after compliance with section 58(1), of not less than seven days prior to signature, during which the Company must have refrained from approaching the consumer except in response to a specific request made by the consumer;
 - 4.4. the duty of the Company under section 61A or 63 CCA to supply a copy of the executed agreement to the consumer for that consumer to keep after signature;
 - 4.5. the duty of the Company to provide periodic statements to the debtor in a prescribed form indicating, amongst other things, the balance owed under the agreement, pursuant to section 77A and the Consumer Credit (Information Requirements and Duration of Licences and Charges) Regulations 2007;
 - 4.6. the duty of the Company to serve a Default Notice, in a prescribed form, on the debtor before seeking to enforce any security or recover possession of land following a breach by the debtor, pursuant to sections 87 and 88 CCA;
 - 4.7. the requirement not to oblige the debtor to pay increased interest on default under section 93 CCA;
 - 4.8. for secured agreements, the duty of the Company under sections 105(4) and 105(5) CCA to supply a copy of any security instrument to the surety;
 - 4.9. for secured agreements, the duty of the Company to serve a copy of the Default Notice on the surety pursuant to section 111 CCA;

- 4.10. the requirement to serve six monthly notices of judgment obtained under section 130A CCA;
- 4.11. under section 140A, the relationship between the creditor and the debtor arising out of the agreement (or the agreement taken with any related agreement) may be unfair to the debtor because of one or more of the following –
 - a) any of the terms of the agreement or any related agreement;
 - b) the way in which the creditor has exercised or enforced any of his rights under the agreement or any related agreement;
 - c) any other thing done (or not done) by, or on behalf of, the creditor (either before or after the making of the agreement or any related agreement); and
- 4.12. the requirement that any introducer had to be a licensed credit-broker, as per sections 21 (now substituted by article 36A of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001/544) and 145(2) CCA.

CONSEQUENCES

5. A failure to comply with the form and content requirements in sections 60, 61 and 105 CCA and the associated secondary legislation renders the agreement unenforceable without a court order under section 127 CCA. A retaking of goods of land to which a regulated agreement relates is an enforcement of the agreement (section 65(2) CCA).
6. Breach of the prohibition in sections 49 or 154 CCA is a criminal offence and a relevant matter for the court to consider when deciding whether to make an enforcement order under section 127 CCA.
7. Breach of sections 58(1), 61, 61A or 63 CCA renders the agreement unenforceable without a court order under section 127 CCA.
8. Failure to comply with the duty to provide periodic statements in section 77A CCA above renders the agreement unenforceable during the period of non-compliance, pursuant to section 77A(6)(a) CCA. In addition, section 77A(6)(b) CCA imposes an interest freeze during the period of non-compliance, such that the relevant debtor 'shall have no liability to pay any sum of interest to the extent calculated by reference to the period of non-compliance or to any part of it.'
9. Failure to provide a Default Notice pursuant to sections 87 and 88 CCA provides consumers with a defence to any action for the recovery of land or the enforcement of a security.
10. No debtor is liable under any contract for default interest claimed in contravention of the requirement in section 93 CCA (having regard to section 173 CCA).
11. Breach of sections 105(4) and 105(5) CCA renders the agreement unenforceable without a court order under section 127 CCA. If such an application is made and dismissed (except on technical grounds only)

section 106 CCA (ineffective securities) shall apply to the security and, amongst other things, it shall be treated as never having effect.

12. Failure to serve a copy of the default notice on any surety (if a different person from the debtor) renders the agreement unenforceable against the surety (in respect of the breach or other matter to which the notice relates) without a court order under section 127 CCA.
13. No debtor is liable for post-judgment interest in respect of any period in which any of the notices required under section 130A CCA should have (but have not) been served.
14. Where the court considers the relationship between the debtor and creditor is unfair under section 140A CCA, it may make an order under section 140B CCA doing any of the things set out in section 140B(1)(a)-(g). In any proceedings, if the debtor or surety alleges that the relationship between the creditor and the debtor is unfair to the debtor, it is for the creditor to prove the contrary (section 140B(9)).
15. If the debtor was introduced to the creditor by an unlicensed credit-broker, whether directly or indirectly through another credit-broker, the agreements were not enforceable unless the OFT had made an order under section 148(2) or 149(2) CCA prior to 1 April 2014. The OFT has not made any such order, nor has any application been made for such an order. Credit broking includes the effecting of introductions of individuals desiring to obtain credit to other credit-brokers. Therefore, to investigate this issue it will be necessary for the Companies, and any intermediate credit brokers, to disclose the source of their introduction to the debtor.