



Consumer Credit Act 2006

2006 CHAPTER 14

Unfair relationships

19 Unfair relationships between creditors and debtors

After section 140 of the 1974 Act insert—

“Unfair relationships

140A Unfair relationships between creditors and debtors

- (1) The court may make an order under section 140B in connection with a credit agreement if it determines that the relationship between the creditor and the debtor 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—
 - (a) any of the terms of the agreement or of 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).
- (2) In deciding whether to make a determination under this section the court shall have regard to all matters it thinks relevant (including matters relating to the creditor and matters relating to the debtor).
- (3) For the purposes of this section the court shall (except to the extent that it is not appropriate to do so) treat anything done (or not done) by, or on behalf of, or in relation to, an associate or a former associate of the creditor as if done (or not done) by, or on behalf of, or in relation to, the creditor.
- (4) A determination may be made under this section in relation to a relationship notwithstanding that the relationship may have ended.

- (5) An order under section 140B shall not be made in connection with a credit agreement which is an exempt agreement by virtue of section 16(6C).”

20 Powers of court in relation to unfair relationships

After section 140A of the 1974 Act (inserted by section 19 of this Act) insert—

“140B Powers of court in relation to unfair relationships

- (1) An order under this section in connection with a credit agreement may do one or more of the following—
- (a) require the creditor, or any associate or former associate of his, to repay (in whole or in part) any sum paid by the debtor or by a surety by virtue of the agreement or any related agreement (whether paid to the creditor, the associate or the former associate or to any other person);
 - (b) require the creditor, or any associate or former associate of his, to do or not to do (or to cease doing) anything specified in the order in connection with the agreement or any related agreement;
 - (c) reduce or discharge any sum payable by the debtor or by a surety by virtue of the agreement or any related agreement;
 - (d) direct the return to a surety of any property provided by him for the purposes of a security;
 - (e) otherwise set aside (in whole or in part) any duty imposed on the debtor or on a surety by virtue of the agreement or any related agreement;
 - (f) alter the terms of the agreement or of any related agreement;
 - (g) direct accounts to be taken, or (in Scotland) an accounting to be made, between any persons.
- (2) An order under this section may be made in connection with a credit agreement only—
- (a) on an application made by the debtor or by a surety;
 - (b) at the instance of the debtor or a surety in any proceedings in any court to which the debtor and the creditor are parties, being proceedings to enforce the agreement or any related agreement; or
 - (c) at the instance of the debtor or a surety in any other proceedings in any court where the amount paid or payable under the agreement or any related agreement is relevant.
- (3) An order under this section may be made notwithstanding that its effect is to place on the creditor, or any associate or former associate of his, a burden in respect of an advantage enjoyed by another person.
- (4) An application under subsection (2)(a) may only be made—
- (a) in England and Wales, to the county court;
 - (b) in Scotland, to the sheriff court;
 - (c) in Northern Ireland, to the High Court (subject to subsection (6)).
- (5) In Scotland such an application may be made in the sheriff court for the district in which the debtor or surety resides or carries on business.

- (6) In Northern Ireland such an application may be made to the county court if the credit agreement is an agreement under which the creditor provides the debtor with—
 - (a) fixed-sum credit not exceeding £15,000; or
 - (b) running-account credit on which the credit limit does not exceed £15,000.
- (7) Without prejudice to any provision which may be made by rules of court made in relation to county courts in Northern Ireland, such rules may provide that an application made by virtue of subsection (6) may be made in the county court for the division in which the debtor or surety resides or carries on business.
- (8) A party to any proceedings mentioned in subsection (2) shall be entitled, in accordance with rules of court, to have any person who might be the subject of an order under this section made a party to the proceedings.
- (9) If, in any such proceedings, the debtor or a surety alleges that the relationship between the creditor and the debtor is unfair to the debtor, it is for the creditor to prove to the contrary.”

21 Interpretation of ss. 140A and 140B of the 1974 Act

After section 140B of the 1974 Act (inserted by section 20 of this Act) insert—

“140C Interpretation of ss. 140A and 140B

- (1) In this section and in sections 140A and 140B ‘credit agreement’ means any agreement between an individual (the ‘debtor’) and any other person (the ‘creditor’) by which the creditor provides the debtor with credit of any amount.
- (2) References in this section and in sections 140A and 140B to the creditor or to the debtor under a credit agreement include—
 - (a) references to the person to whom his rights and duties under the agreement have passed by assignment or operation of law;
 - (b) where two or more persons are the creditor or the debtor, references to any one or more of those persons.
- (3) The definition of ‘court’ in section 189(1) does not apply for the purposes of sections 140A and 140B.
- (4) References in sections 140A and 140B to an agreement related to a credit agreement (the ‘main agreement’) are references to—
 - (a) a credit agreement consolidated by the main agreement;
 - (b) a linked transaction in relation to the main agreement or to a credit agreement within paragraph (a);
 - (c) a security provided in relation to the main agreement, to a credit agreement within paragraph (a) or to a linked transaction within paragraph (b).
- (5) In the case of a credit agreement which is not a regulated consumer credit agreement, for the purposes of subsection (4) a transaction shall be treated as being a linked transaction in relation to that agreement if it would have

Status: This is the original version (as it was originally enacted).

been such a transaction had that agreement been a regulated consumer credit agreement.

- (6) For the purposes of this section and section 140B the definitions of ‘security’ and ‘surety’ in section 189(1) apply (with any appropriate changes) in relation to—
- (a) a credit agreement which is not a consumer credit agreement as if it were a consumer credit agreement; and
 - (b) a transaction which is a linked transaction by virtue of subsection (5).
- (7) For the purposes of this section a credit agreement (the ‘earlier agreement’) is consolidated by another credit agreement (the ‘later agreement’) if—
- (a) the later agreement is entered into by the debtor (in whole or in part) for purposes connected with debts owed by virtue of the earlier agreement; and
 - (b) at any time prior to the later agreement being entered into the parties to the earlier agreement included—
 - (i) the debtor under the later agreement; and
 - (ii) the creditor under the later agreement or an associate or a former associate of his.
- (8) Further, if the later agreement is itself consolidated by another credit agreement (whether by virtue of this subsection or subsection (7)), then the earlier agreement is consolidated by that other agreement as well.”

22 Further provision relating to unfair relationships

- (1) After section 140C of the 1974 Act (inserted by section 21 of this Act) insert—

“140D Advice and information

The advice and information published by the OFT under section 229 of the Enterprise Act 2002 shall indicate how the OFT expects sections 140A to 140C of this Act to interact with Part 8 of that Act.”

- (2) In section 16 of that Act (exempt agreements) before subsection (8) insert—
- “(7A) Nothing in this section affects the application of sections 140A to 140C.”
- (3) Sections 137 to 140 of that Act (extortionate credit bargains) shall cease to have effect.
- (4) In section 181 of that Act (power to alter monetary limits etc.)—
- (a) in subsection (1) before “155(1)” insert “140B(6),”;
 - (b) in subsection (2) before “shall” insert “or 140B(6)”.