



# Unit F

## Payment methods v1.3

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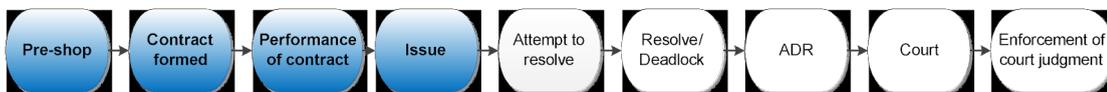
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## Introduction

Consumers pay for goods and services in various ways, including using some form of credit. Controls exist to try and ensure that people buying on credit receive accurate and fair information. It is also important to ensure that creditors or lenders (finance companies) (Fin Co) set out Cs' rights and responsibilities clearly. There are two main pieces of legislation dealing with the credit industry: the Consumer Credit Act 1974 (CCA) and the Financial Services and Markets Act 2000 (FSMA). There are many regulations made under both Acts, which spell out further details and they contain both civil and criminal provisions. Enforcement is undertaken mainly by the Financial Conduct Authority (FCA) but some is carried out by TSS (unit A).

In addition there are some controls on other types of payment, including the use of electronic money, excessive fees for different methods of payment and non-statutory schemes, e.g. Chargeback, whereby some financial institutions compensate Cs when certain payment cards are used and things go wrong, e.g. T fails to deliver or supplies faulty items (section F7).

The stages of C's journey addressed in this unit are as indicated below:



The topics that will be covered are:

**F1:** Types of credit and their control

**F2:** Credit contracts

**F3:** Escaping from credit agreements

**F4:** Creditor liability

**F5:** Specific rights and obligations in credit agreements

**F6:** Secured credit

**F7:** Payment methods

## F1: Credit types and controls

There are many different types of credit, some more suitable than others for certain purposes and many credit agreements are regulated by the CCA and or the FSMA and the various regulations made under them. The legal provisions in place are similar in some respects to those that exist for other contracts, e.g. PCI, contract detail and cancellation rights. The credit industry uses some specific words and phrases and the legislation defines certain ones in particular ways. Some of these are explained in table F1.

**Table F1: Meaning of words and phrases used in the credit industry**

Word/phrase	Meaning/definition
Debtors (D)	Those borrowing money, "borrowers"
Creditor	Those lending money, "lenders" Finance companies (Fin Co)
Credit (s9 CCA)	A cash loan or any other form of financial accommodation
Credit broker (CB)	Someone who introduces a C to a source of credit
Business connection	A pre-arrangement between a lender and a supplier (T) Often established when T passes D onto a lender by acting as a CB
Supplier	The person supplying the goods or services, for which the credit is required (T)

### F1.1 Types of credit

There are many types of credit available and a particular categorisation that affects C's rights is whether it is independent or not.

#### F1.1.1 Independent finance

If C applies for credit without any help or guidance from a supplier, this is likely to result in an independent finance arrangement where there is no business connection between T and the lender. Examples of when this may occur are indicated in table F2. Such arrangements will have no effect on the liability of T if the goods or services purchased with independent finance then cause a problem for C.

**Table F2: Examples of independent finance arrangements**

Finance type	Explanation	Examples
Personal loan	<p>A straightforward loan of money from a bank or other financial institution</p> <p>Where the lender is not connected to a particular supplier of goods or services</p> <p>However, it is possible for the lender to make the money payable directly to a supplier and still be an independent loan, e.g. using a banker's draft</p>	<p>Personal bank loan</p> <p>Payday loan</p> <p>Loan from a moneylender</p> <p>Loan from a Fin Co</p>
Credit card cheque	<p>Some credit card companies issue cheques to their debtors for use against their credit card accounts</p> <p>The cheques can be made payable to anyone</p> <p>There is no need for the payee to be someone who has an arrangement with the credit card company</p> <p>The amount will be treated in the same way as a cash advancement on C's account</p>	<p>MBNA credit card cheque</p>
Credit card to obtain cash	<p>C can use a credit card to obtain cash from an ATM</p> <p>The money can then be used to make any purchase</p> <p>The cash does not need to be spent in an outlet displaying the card's logo</p>	<p>Obtaining foreign currency from an ATM while abroad</p>
Overdraft	<p>Financial institutions offer current accounts to allow C to withdraw cash and pay bills using a variety of payment methods</p> <p>If C is allowed to use more money than is present in their account, they will be overdrawn</p> <p>This could be an unauthorised overdraft, if not agreed beforehand or an authorised one if the institution has agreed a certain limit up to which C is allowed to be overdrawn</p>	<p>An arranged facility on a personal current bank account of £1,000</p>

### **F1.1.2 Finance with a business connection**

The CCA makes a distinction between credit obtained independently by C and that where there is a business connection between T and the lender. This is because the CCA makes lenders equally liable for breaches of contract and misrepresentations in certain circumstances where there is a business connection between T and the lender (section F4). The types of credit this is likely to affect, are indicated in table F3.

**Table F3: Examples of credit with business connections between a supplier and a lender**

Finance type	Explanation	Example
Linked loan	T has made prior arrangements with a particular lender to send customers to them to set up finance for C's purchase	C agrees to buy a mobility scooter from a T who calls at her house and signs a finance application that T sends off to the lender
Credit card purchases of goods or services	C uses a credit card to pay for goods and services with businesses that have made arrangements with the credit card company to allow use of their cards	C agrees for a wedding specialist to act as her wedding coordinator and pays for this service using her credit card
Credit sale	The business supplying C with goods or services also agrees to a finance arrangement with C, allowing C to pay on credit The business connection is that T and the lender are the same person	C buys a bed in a local high street store and signs a finance agreement with them allowing payment in instalments over 2 years
Hire purchase	The supplier sells goods to the Fin Co The Fin Co hires them to C, who pays instalments C has the option to purchase the goods, usually with a final payment under the agreement The contract is with the Fin Co and the goods belong to the Fin Co unless and until the option to purchase is exercised by C	C agrees to buy a three piece suite from a department store and signs a hire purchase agreement form with a Fin Co whilst at the store
Conditional sale	The supplier sells goods to the Fin Co The Fin Co hires them to C, who pays instalments Ownership of the goods is transferred to C, usually with a final payment under the agreement The contract is with the Fin Co and the goods belong to the Fin Co until ownership transfers when the relevant condition is satisfied (usually a final payment)	C agrees to buy a car from a garage and signs a conditional sale agreement form with a Fin Co whilst still at the garage

## F1.2 Roles within the credit industry

There is a general prohibition on carrying out regulated activities in the UK unless the person doing so is either authorised by the FCA or exempt from having to be authorised [s19 FSMA]. The FCA has powers to vary authorisations as well as suspend and revoke them.

### F1.2.1 Regulated activities

The range of regulated activities, for which FCA authorisation is required, covers not only those actually lending money but those involved in introducing Cs to sources of credit and also people giving advice, collecting debts and providing credit references, amongst others. The main categories are indicated in table F4 and they are defined in the FSMA (Regulated Activities) Order 2001 (RA Order).

**Table F4: Regulated credit activities**

Regulated activity	Explanation
(1) Credit broking [a36A]	Introducing C to lenders (or other credit brokers) for regulated credit agreements, e.g. a car dealer Acting as a credit intermediary, which includes: presenting or offering such agreements; assisting with preparatory work for them and entering into them on behalf of a lender
(2) Operating an electronic system in relation to lending [a36H]	Running an electronic system that: assists people to enter into credit agreements; accepts payments from C and passes them onto the lender, and enforces the agreement on the lender's behalf
(3) Debt adjusting [a39D]	Negotiating C's terms for discharging a debt with a lender or taking over the debt
(4) Debt counselling [a39E]	Giving advice to C about liquidating a debt under a credit or hire agreement
(5) Debt collecting [a39F]	Taking steps to obtain payment of a credit or hire debt
(6) Debt administration [a39G]	Taking steps to perform duties, exercise rights or enforce rights under a credit or hire agreement
(7) Entering into a regulated credit agreement [a60B]	Lending money to Cs under regulated agreements, e.g. finance companies, moneylenders and pawnbrokers
(8) Entering into a regulated hire agreement [a60N]	Hiring goods out to Cs under regulated consumer hire agreements
(9) Providing credit information services [a89A]	Ascertaining whether a credit information agency (CIA) holds information about C's financial standing; checking the contents of it; securing modification of it or securing its removal or non-release A CIA is someone who carries on any of the following as a business: (1), (3), (4), (5), (6), (7), (8) or (10) – i.e. any listed in this table except (2)
(10) Providing credit references [a89B]	Collecting information about C's financial standing for the purpose of providing it to others (this does not include activities within (2)), e.g. credit reference agencies (CRAGs)

## F1.3 Controls within the credit industry

The provisions in the CCA and the FSMA do not apply to all credit agreements. Many only apply to regulated agreements, which includes some consumer hire contracts. Various words and phrases are defined in the legislation for the purposes of these controls and some of the more common ones are briefly explained in table F5.

**Table F5: Meaning of words and phrases used in the CCA/FSMA**

Word/phrase	Explanation/example	Reference
Running account (RA)	C has a pre-set credit limit and can borrow up to this maximum amount, e.g. overdraft facilities and credit card agreements	s10(1)(a) CCA
Fixed sum (FS)	C knows how much they are borrowing from the outset, e.g. personal loans, HP and CS agreements	s10(1)(b) CCA
Restricted use (RU)	Credit is provided to C in such a way that C has no choice about its use	s11(1) CCA
Unrestricted use (URU)	Credit is provided to C in such a way that C is free to use it as desired	s11(2) CCA
Debtor-creditor-supplier agreement	T is either the same person as the Fin Co, or T has a business connection with the Fin Co RA Order refers to these as borrower-lender-supplier agreements	s12 CCA a60L(1) RA Order
Debtor-creditor agreement	T is not the same person as the Fin Co, nor does T have any business connection with the Fin Co, although arrangements to pay T directly can be made RA Order refers to these as borrower-lender agreements	s13 CCA a60L(1) RA Order

### F1.3.1 Regulated credit agreements [s8 CCA]

A credit contract will be regulated if:

- ✓ D is an individual [s189(1) CCA]
- ✓ it covers a regulated activity under the RA Order
- ✓ it is not a green deal plan [s189B CCA & a60LB RA Order]
- ✓ it is not an exempt agreement [articles 60C – 60H RA Order]

These elements are explained further in table F6 and some examples are provided.

**Table F6: Elements of a regulated consumer credit agreement**

Element	Explanation	Examples
Individual debtors	Someone receiving credit under a consumer credit agreement (except a green deal plan) or someone to whom the rights and obligations under the agreement have been properly assigned	Consumers are included in this definition  Others are too (unit J)
Regulated activities	Entering into CCA regulated credit agreements is a regulated activity under the RA Order (table F4)	Borrowing money from a Fin Co, moneylender or pawnbroker
Not a green deal plan	Approved green deal credit arrangements for the installation of energy efficient improvements to a domestic property, are payable through the energy bill for the property not by a particular debtor [s189B CCA]	A house owner agrees a green deal credit arrangement to pay for solar heating in their home

Not an exempt agreement	Articles 60C – 60H of the RA Order exempt a number of credit agreements	Certain short term and low cost agreements
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### F1.3.1 Exemptions

There are a number of agreements that are specifically excluded from regulation by the CCA and the most common ones affecting Cs are:

- regulated first and second charge mortgages [a60C(2), a60E]
- short term FS agreements for goods or services where the borrower has to repay within a year in 12 payments or less, and where the credit is provided without interest, without any other charges or is secured on land [a60F(2)]
- short term RA credit for goods or services which is repayable in one amount e.g. charge cards; for such agreements to be exempt, the credit has to be repaid in full by a single repayment within three months and there must be either no charges or only insignificant charges payable for the credit or it must be secured on land [a60F(3)]

**NB:** the two short term exemptions do not apply if the agreement is HP/ CS or is a pledge or is to finance the purchase of land.

- credit union loans where the APR is 42.6% or less [a60G(2)]
- certain low rate loans, where the APR is no more than 1% above the base rate, that are only offered to a particular class of people and not the public generally, e.g. employees [a60G(3)]
- certain other low-cost loans that are only offered to a limited group of borrowers, under an enactment with a general purpose, for example student loans, and where the interest rate is lower than the rate prevailing on the market, or no higher with the other terms being more favourable to the borrower [a60G(4)-(7)]
- "high net worth individuals" - Cs who earn over a certain amount or have a certain amount of assets can declare themselves as "high net worth" debtors and agree that their agreement will not be regulated, providing the credit is over £60,260 or it is secured on land [a60H].

In addition, there are some exemptions which only apply to certain provisions and these will be mentioned where relevant.

### F1.3.2 Regulated consumer hire agreements [r15 CCA, a60N RA Order]

A consumer hire agreement will be regulated by the CCA if it is:

- ✓ capable of lasting for more than 3 months
- ✓ not a HP agreement
- ✓ a regulated activity under the RA Order [a60N]
- ✓ not exempt

A hire agreement will be exempt if it is for the hire of gas, electricity or water meters [a60P RA Order] or if C is a high net worth hirer in a similar way to that for credit [a60Q RA Order].

## Summary

- Cs pay for goods and services in various ways, including **forms of credit**, and there are two main pieces of legislation to regulate this industry, the **CCA and the FSMA** with many regulations being made under both Acts, of both a **civil and criminal nature**, to ensure C receives accurate information and is treated fairly; **enforcement is undertaken by TSS, but mainly by the FCA**.
- The legal provisions in place are similar in some respects to those that exist for other contracts, e.g. **PCI, contract detail and cancellation rights**, although the credit industry uses some **specific words and phrases** and the legislation defines certain ones in particular ways, e.g. debtor, creditor, credit broker and business connection.
- If C applies for credit without any help or guidance from a supplier, this is likely to result in an **independent finance arrangement** where there is no business connection between T and the lender, e.g. personal loans, credit card cheques, credit card cash advances and overdrafts; such arrangements will have **no effect on the liability of T** if the goods or services purchased with independent finance then cause a problem for C.
- The CCA makes **lenders equally liable for breaches of contract and misrepresentations in certain circumstance where there is a business connection between T and the lender**, and the types of credit this is likely to affect, are: linked loans, HP agreements, conditional sale contracts, credit sales and the use of credit card to purchase goods and services.
- There is a **general prohibition on carrying out regulated activities in the UK unless the person doing so is either authorised by the FCA or exempt from having to be** and the FCA has powers to vary authorisations as well as suspend and revoke them; the range of regulated activities covers not only those actually lending money but those involved in introducing Cs to sources of credit and also people giving advice, collecting debts and providing credit references, amongst others.
- The provisions in the **CCA and the FSMA** do not apply to all credit agreements with many only applying to **regulated agreements**, which includes some consumer hire contracts; various words and phrases are defined in the legislation for the purposes of these controls and some of the more common ones are: running account credit; fixed sum credit; restricted use credit; un-restricted use credit; debtor-creditor (or borrower-lender)-supplier agreements and debtor-creditor (or borrower-lender) agreements.
- A credit contract will be regulated if: the **debtor is an individual**; the agreement covers a **regulated activity under the RA Order**; it is **not a green deal plan and it is not exempt**; exemptions include agreements in the following categories that meet specified criteria: first and second charge mortgages; short term agreements for goods or services; credit union loans; low cost loans and agreements with high net worth individuals.
- A **consumer hire agreement will be regulated** by the CCA if it is: capable of lasting for more than 3 months; not a HP agreement; a regulated activity under the RA Order and not exempt, i.e. an agreement for the hire of a gas, electricity or water meter or if C is a high net worth hirer in a similar way to that for credit.

## F2: Credit contracts

C may have two contracts when buying things on finance, one for the credit and one for the purchase of the goods or service, which is being financed by the credit. Sometimes however, the lender is also the supplier, in which case C only has one contract with the Fin Co that covers everything, e.g. HP or CS agreements and also credit sales.

### F2.1 Applying for credit

If C requires credit to purchase goods or services, they will usually have to apply for it. As a process this is just like making any other contract, with C usually being the one making the offer and the lender deciding whether they want to accept them as a customer. Various people or organisations may be involved in this process, e.g. credit brokers, credit information services and CRAgs.

If C receives an initial letter from a lender saying that they have been approved for credit, this is likely to be viewed as an ITT to treat rather than a binding offer, as the lender will still want to do some checks on C before deciding whether to provide credit (*HSBC Bank plc v Brophy*). If the lender declines an application for credit, C can ask them about the main reason for the refusal. If credit scoring formed part of the decision, the lender does not have to give details as to how it worked out the credit scoring, but it does have to disclose the name of any CRAg used. C can ask the lender to review the decision if the credit score was done using a computer, however, there is no legal obligation to approve the application.

#### F2.1.1 Credit brokers

Sometimes a credit broker (CB) is used before deciding which lender to borrow from and many credit brokerage businesses charge an up-front fee for brokering loans for Cs. If consumers use a CB but do not enter into a credit agreement within 6 months of being introduced to the source of credit or hire, no matter what the reason, they are entitled to a refund of the fee less £5 [s155 CCA].

The definition of a CB includes credit intermediary work (table F4) which covers making recommendations, doing preparatory work and entering into credit agreements on behalf of lenders.

CBs must adhere to the FCA rules, in particular the Principles for Businesses (PRIN) and the Consumer Credit sourcebook (CONC). Table F7 indicates the most relevant of these rules as they apply to CBs.

**Table F7: FCA rules applicable to credit broking activities**

Topic	Main requirement	Reference
Treatment of Cs	Treat C fairly, pay due regard to C's interests and communicate in a clear, fair and non-misleading manner Charging policies should be clear and accessible	PRIN 6 PRIN 7
Authorisation and consent	Fees should not be taken from C's bank account without express authorisation Likely amount of fee should be disclosed as early as practicable	CONC 2.5
Sharing of personal information	Firms should not pass C's personal data to third parties, including payment details, without consent or for a purpose other than that for which consent given	CONC 2.5
Advertising and Marketing	Financial promotions, including websites, should be clear, fair and not misleading In particular, CBs should not state or imply that they are a lender if they are not	CONC 3.3
Transparency of status	The nature of the service to be provided, any links to lenders, the status and extent of powers, should all be clear in financial promotions and other documents intended for Cs	CONC 3.7
Transparency of fees and commissions	Any fees payable must be disclosed at an early stage and agreed in writing before a credit agreement is entered into Disclosure must include how and when a fee is payable and whether a refund may be available	CONC 4.4 CONC 4.5
Refunds	Requests for refunds under s155 CCA, of any brokerage fee, less £5 if a credit agreement is not entered into within 6 months of an introduction, must be responded to promptly	CONC 6.8
Information notices and confirmation	Firms are prohibited from charging fees for CB services and requesting payment details from C for them, unless: The CB has provided an explicit and clear notice to C ("information notice", which sets out the following: the firm's legal name; that it is acting as a CB; a statement that a fee will or may be payable; the likely amount of the fee; when and by what means the fee will be payable, AND C has acknowledged receipt of the notice and awareness of the contents ("confirmation") This must be done by every firm for each C before a fee can be charged or payment details requested. Both documents must be on paper, email or some other durable medium The firm must keep records of the documents	CONC 4.4.3R  These rules do not apply to broking agreements secured on land
Transparency	All financial promotions must: <ul style="list-style-type: none"> <li>include the firm's legal name (as it appears in the Financial Services Register) (must also be in any communication with C)</li> <li>state prominently that the firm is a CB and not a lender (if that is the case)</li> <li>state prominently that the promotion is of the firm's CB and not lender services, where the firm provides both and where the promotion relates solely to CB</li> </ul>	CONC 3.7.5R CONC 3.7.7R
Reports	Where fees are charged, CB firms will need to notify the FCA, quarterly of their domain names (data item CCR008) on paper or by email	SUP 16.12.29C Annex 38AR

Right to cancel	Distance CB contracts are covered by the Distance Marketing Directive and carry a 14 day cancellation and refund right	CONC 11.1R
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## F2.1.2 Credit reference agencies

Some lenders use CRAgs to help them to assess a person's suitability for credit and there are requirements about disclosing information about the use of such agencies [s157 CCA]. If a lender decides not to proceed with a prospective agreement and this decision was based on information from a CRAg, then there is a duty to inform C of this fact and give them the name, address and telephone number of any agency used. Consumer hire agreements and agreements secured on land are excluded from this requirement.

### F2.1.2.1 Requesting a copy of a CRAg file

C has a legal right to obtain a copy of their credit file from CRAgs. This can be done by writing to the CRAg and paying a statutory £2 fee to each agency [s7 Data Protection Act 1998]. The CRAg has 7 working days to send the file to C requesting it along with a prescribed statement of rights, relating to correcting information in the file [s159]. Day one is the day after the request is received but there is no duty on the agency to comply with the request unless it is within 28 days of the end of the antecedent negotiations for a regulated agreement.

A lender is not required to disclose information if such a disclosure:

- contravenes the Data Protection Act 1998
- is prohibited by any EU obligation
- would be likely to create a serious risk of violence or intimidation to anyone
- would be likely to prejudice any of the following, the:
  - o prevention or detection of crime
  - o apprehension or prosecution of offenders
  - o administration of justice

### F2.1.2.2 Letters of correction [s159 CCA]

If C disputes information held on their credit file they can write to the CRAg pointing out what they believe is incorrect and ask that the record is corrected. The CRAg should respond within 28 days. If the file is not then corrected C can send a notice of correction of up to 200 words which is placed on the credit file for anyone searching to see. If the CRAg objects to this, the matter will be referred to the Information Commissioner who will make a decision.

C can also write to the CRAg to request that another previously associated person's details no longer appear on their own credit file, e.g. a previous joint account holder, sometimes referred to as a letter of disassociation

## F2.2 Pre-contractual requirements

Before a regulated consumer credit agreement is entered into, any potential lender will have to make some checks to ensure that C is able to pay back the credit they wish to take out – an assessment of creditworthiness and affordability [CONC 5], which should be proportionate to the type of credit being applied for and involves consideration of things like whether C has a strong credit record and how big the loan is in relation to C's disposable income. Borrowing should not reduce C's disposable income to the point that they can no longer afford to pay for their day-to-day expenses.

In addition, at this early stage C:

- ✓ can request a copy of the draft agreement [s55C CCA], (breach of statutory duty if not provided)
- ✓ must be informed if a decision to reject a credit application is based on information from a CRAg (F2.1)
- ✓ must be informed as to how long the creditor will be bound by the PCI (if applicable)

### F2.2.1 Pre-contract disclosure

The Consumer Credit (Disclosure of Information) Regulations 2010 specifically aim to ensure that there is transparency for C so that the rights and obligations under the agreement are clear, and there is an opportunity to consider the position with full knowledge of all of the relevant information. The requirements are slightly different for overdrafts, pawn agreements and distance contracts.

PCI, which is largely the same as for the actual contract, must be provided for most types of agreement:

- ✓ in a clear and easily legible way [r8(3)]
- ✓ in good time before C enters into the agreement [r3(2)]
- ✓ in a format that allows C to remove it from the place where it was disclosed [r8(2)]
- ✓ in a standard format – a PCI [r8(1)]
- ✓ and include any details of any credit intermediary used [r8(4)]

C must be able to take the PCI away if required, but C is not prevented from signing the actual agreement straightaway. The PCI is sometimes referred to as SECCI – Standard European Consumer Credit Information. Exact information differs depending on the type of agreement and there are some exemptions. PCI is not required for the following agreements, those which are:

- ✓ secured on land
- ✓ for credit over £60,260

Brief details of the sort of information required at the PCI disclosure stage can be found in table F8. This information is very similar to that which is required in the actual agreement and where the items are similar this is indicated by a number in a bracket at the end of the details. The number represents the paragraph reference from the Consumer Credit (Agreements) Regulations 2010, Schedule 1.

PCI must be presented in the form and order set out in the Schedule to the Disclosure Regulations, which includes using the headings and sub-headings given and also the same wording, however, it does not have to appear in a box. Table F8 contains a summary of the main points and does not use the same wording as in the Regulations. The lender must provide any additional written credit information in a clearly separate and distinct document [r8(4)].

**Table F8: PCI (SECCI) disclosure details for regulated credit agreements**

Heading	Examples of details required (exact wording not replicated)
Contact details	Name and geographical address of creditor and intermediary (2) Other contact details (optional)
Key features of the credit	Type of credit (1) Total amount of credit or credit limit (or how credit limit will be determined) (5,6,7) How and when credit is to be provided (8) Duration of the agreement (or statement that no fixed or minimum duration) (3,4)

	Repayments (amount, number, frequency, allocation of payments) (14, 14A, 15) Total amount payable (i.e. amount of credit plus total charge for credit) (12) Description of goods/services if applicable (9) Cash price (if applicable) (10) Any security required (22, 23) Statement that repayments will not immediately reduce the amount owed (if applicable) (17, 17A)
Costs of the credit	Rate(s) of interest (including any applicable conditions or reference rate and procedure for changing rates) (11) APR (or representative APR) including assumptions used in calculation (13) Any necessary insurance policies or ancillary services or account (24) Charges for using a specific payment method (18) Any other costs arising under agreement (18) Notarial fees if applicable (21) Charges for default or late payment (19) Consequences of missing payments (warnings re possible legal proceedings, repossession if possible, difficulty obtaining credit later) (20)
Other important legal aspects	Right of withdrawal (14 days beginning day after day contract made or executed copy received or notification of credit limit as sum of money) (25) Or statement that no right to withdraw, or right to cancel (if applicable) (25A) Early repayment (full or partial and determination of compensation payable) (28) The consumer will be notified if a decision not to proceed is based on information from a CRAg, with details of any CRAg used Right to a draft credit agreement This information is valid from [ - ] until [ - ] (if applicable)
Additional information for distance marketing of financial services (if applicable)	Creditor's representative in their member State of residence Consumer credit licence number and other relevant registration number The supervisory authority (FCA or other) (33) Practical instructions for exercising the right to cancel (including period for exercising it, relevant address and consequences of non-exercise) Statement concerning the law which governs the contract and the courts to which disputes may be referred Details of the language used for communication Details of out of court complaint and redress mechanism

NB the requirements are different for the following agreements:

- ✓ those made by telephone
- ✓ those made by distance means other than by telephone, e.g. online
- ✓ excluded pawn agreements
- ✓ an authorised overdraft
- ✓ those made before 1 February 2011

### **F2.2.2 Distance contracts for credit broking services**

If C enters into a contract with a credit broker using distance means, then the PCI requirements will those contained in the FS(DM)R (unit D).

## F2.3 Contract formalities

In order to enter into a contract for the provision of credit, there are various rules and regulations that stipulate what must appear in the written agreement and to some extent how. The law also sets out the documentation that must be sent to C with the aim of ensuring that C knows what his rights and obligations are and how to exercise them. Non-compliance with some of these provisions will mean that the agreement is not properly executed and the lender may need a court order to enforce it (section F5).

### F2.3.1 Copies

The lender has to provide a copy of the draft (unexecuted) agreement if C asks for one [s55C CCA], unless the lender has already decided not to proceed. The PCI should tell C this and the unexecuted copy should be provided without delay. This is actionable as a breach of statutory duty if the lender does not comply. Some agreements are excluded namely those:

- ✓ that are secured on land
- ✓ where the credit is over £60,260
- ✓ where an article is taken in pawn

Once the agreement has been made, the lender must give C a copy of the final or actual (executed) agreement and any other document referred to in it, e.g. a security instrument [s61A CCA]. If he does not then the agreement is not properly executed [s61A(5) CCA] and the lender will require a court order in order to enforce it (see section F5). The categories of excluded agreements for final copies are not quite the same as for draft copies. The creditor does not have to give a copy of the final agreement in accordance with s61A CCA if the agreement is:

- ✓ cancellable, or
- ✓ secured on land and the credit is over £60,260

Such a copy need not be provided if a copy of the unexecuted agreement was given and it is identical, in which case the lender should state the following in writing [s61A(2) & (3) CCA], namely that:

- ✓ the agreement became executed and when
- ✓ it is identical to the unexecuted copy
- ✓ C is entitled to a copy of the executed agreement if he asks before the end of the 14 day withdrawal period (there is a duty to provide this without delay [s61A(4) CCA], and if not the agreement is not properly executed)

The requirements for contracts excluded from the final copies requirements [s61A(6) CCA] are different and the basic rule is that, generally, C should be given both an unexecuted copy and an executed copy within certain periods [sections 62 – 64].

### F2.3.2 Content

The information which should be contained in a regulated credit contract is mainly governed by the Consumer Credit (Agreements) Regulations 2010 (Agreement Regs 2010), however, agreements which are secured on land or where the credit is over £60,260, will be covered by the Consumer Credit (Agreements) Regulations 1983 (Agreement Regs, 1983). In addition, there are specific rules which apply in relation to overdraft, pawn and modifying agreements.

The information required depends to a large extent on the type of agreement C has and is very similar to the PCI list in table F8. There is a list of 36 items altogether, although some will only have to be included if they

apply. There are also certain statements of protection and remedies which must be included in accordance with schedule 2, e.g. relating to termination rights under HP and CS agreements (section F5).

In addition to the items listed in table F8, the following must be included [Schedule 1]:

- ✓ the right to an amortisation table (statement of account) (para 16)
- ✓ rights under s.75A and s.75 re creditor liability (paras 26 & 27)
- ✓ termination rights (paras 29 & 30)
- ✓ access to the Financial Ombudsman Service (para 31)
- ✓ other contract terms (para 32)

#### **F2.3.2.1 Headings**

Certain information will usually appear as a heading at the top of the first page of C's agreement and will be in one of the following formats [Schedule 1, para 1]:

- ✓ Hire Purchase Agreement regulated by the Consumer Credit Act 1974
- ✓ Conditional Sale Agreement regulated by the Consumer Credit Act 1974
- ✓ Fixed Sum Loan Agreement regulated by the Consumer Credit Act 1974
- ✓ Credit Card Agreement regulated by the Consumer Credit Act 1974
- ✓ Agreement modifying a Credit Agreement regulated by the Consumer Credit Act 1974
- ✓ Credit Agreement regulated by the Consumer Credit Act 1974 (followed by a description of the types of credit)
- ✓ The words " and Pawn-Receipt " shall be inserted after the word "Agreement" where appropriate
- ✓ The word "partly" shall be inserted before "regulated" where appropriate
- ✓ The words "and secured on" followed by the address of the relevant land shall be inserted at the end of the heading where appropriate

#### **F2.3.2.2 Prescribed terms**

A few items from the list of 36 are specified as "prescribed terms" [r4, Schedule 1, Agreement Regulations 2010] and if these have not been included in the document signed by C, then the agreement is not properly executed and may not be enforced without a court order (section F5). These relate to:

- ✓ the total amount of credit or the credit limit (this must be specified as a sum of money in the final credit agreement, although may be notified separately, e.g. with a credit card) [paras 5, 6 & 7]
- ✓ rate(s) of interest (including any applicable conditions or reference rate and procedure for changing rates) [para 11]
- ✓ repayment details (number and frequency) [para 14]

#### **F2.3.3 Form**

The information does not have to be provided in any particular order or under specific headings, however, it must be:

- ✓ clear and concise [r3(2) 2010 Regs]
- ✓ readily legible [s61(1)CCA]
- ✓ in a colour which is readily distinguishable from the background [r3(3) 2010 Regs]

The agreement must be signed by C and by or on behalf of the lender [s61(1) CCA] but there is no requirement about the positioning of a signature box, although there must be a space indicated for the purpose of the signatures, which must also be dated. An agreement is not properly executed if any of the requirements of s61 CCA have not been met, so there should be a document that: is readily legible; has

been signed by both parties; contains at least the prescribed terms and conforms to the appropriate set of Agreements Regulations.

## Summary

- **If C requires credit to purchase goods or services, they will usually have to apply** for it and the process will be just like making any other contract, with C usually being the one making the offer and the lender deciding whether they want to accept the offer; **various people or organisations may be involved in this process**, e.g. credit brokers (CB), credit information services and CRAgs.
- If the **lender declines an application for credit**, C can ask them about the main reason for the refusal and if credit scoring formed part of the decision, the lender does not have to give details as to how it worked out the credit scoring, but it does have to **disclose the name of any CRAg used**.
- **If C uses a CB** to decide which lender to borrow from and they charge an up-front fee, **C is entitled to a refund of the fee less £5 if they do not enter into a credit agreement within 6 months of being introduced to the source of credit or hire**, no matter what the reason and this includes credit intermediary work, which covers making recommendations, doing preparatory work and entering into credit agreements on behalf of lenders.
- **CBs must adhere to the FCA rules, in particular the Principles for Businesses (PRIN) and the Consumer Credit sourcebook (CONC)**, which cover: treating C fairly; obtaining consent to take fees or pass on personal data; engaging in clear, fair and non-misleading marketing; being transparent about status and service nature; disclosing fees early; promptly refunding excess charges; providing information and confirmation notices; making reference to proper legal names; reporting quarterly and upholding C's right to cancel distance CB contracts.
- C has a legal right to obtain a **copy of their credit file from a CRAg** by writing to them and paying £2 and it should be sent within 7 working days along with a prescribed statement of rights, relating to correcting information in the file; the CRAg should comply with any such request unless it is within 28 days of the end of the antecedent negotiations for a regulated agreement.
- If C disputes information held on their credit file they can write to the CRAg pointing out what they believe is incorrect and ask that the record is corrected and the CRAg should respond within 28 days; if the file is not corrected, then C can send a **notice of correction of up to 200 words** which is placed on the credit file for anyone searching to see and if the CRAg objects to this, the matter will be referred to the Information Commissioner who will make a decision.
- Before a regulated consumer credit agreement is entered into, lenders have to carry out an **assessment of creditworthiness and affordability**, which should be proportionate to the type of credit being applied for; in addition, C can request a **copy of the draft agreement**, must be informed if a decision to reject a credit application is based on information from a CRAg and must be informed as to how long the creditor will be bound by the PCI.
- **PCI, or SECCI, which is similar to the actual contract, must be provided for most types of agreement**: in a clear and easily legible way; in good time before C enters into the agreement; in a format that allows C to remove it from the place where it was disclosed (although, C is not prevented from signing the actual agreement straightaway); in a standard format and include details of any credit intermediary used.
- **PCI includes**: contact details; key credit information; costs; important legal aspects and additional information for distance marketing of financial services, if applicable, with the requirements being different for for agreements made by distance means; excluded pawn agreements; an authorised overdraft or those made before 1 February 2011.
- A **copy of the draft agreement must be provided if C asks for one**, unless the lender has already decided not to proceed, and it should be provided without delay or C may make a claim for breach of statutory duty, although some agreements are exempt and one is not necessary if

- A **copy of the final agreement is also required and any other document referred to in it**, or the agreement is not properly executed and the lender will require a court order to enforce it, but a final copy is not necessary if a copy of the draft agreement was given and it is identical, in which case the lender is required to provide certain written details and confirmation.
- In addition to the items similar to the PCI list, **statements about the following must be included in the actual credit agreement**: the right to an amortisation table (statement of account); rights under s.75A and s.75 re creditor liability; termination rights; access to the Financial Ombudsman Service and any other contract terms.
- **Certain information will usually appear as a heading at the top of the first page of C's agreement**, e.g. Hire Purchase Agreement or Conditional Sale Agreement or Credit Card Agreement, regulated by the Consumer Credit Act 1974.
- The **information** in a regulated credit agreement does not have to be provided in any particular order or under specific headings, however, it must be, **clear and concise, readily legible and in a colour which is readily distinguishable from the background**.
- An **agreement is not properly executed if any of the following requirements have not been met**, and a court order would be necessary to enforce it; there should be a document that: is readily legible; has been signed by both parties; conforms to the appropriate set of Agreements Regulations and contains at least the prescribed terms, which relate to: the total amount of credit or the credit limit; rate(s) of interest and the number and frequency of the repayments.

## F3: Escaping from credit agreements

There are various ways in which it may be possible to escape from a regulated agreement:

- ✓ withdrawal under the CCA
- ✓ cancellation
- ✓ withdrawal under the common law
- ✓ ending the agreement early
- ✓ termination
- ✓ withdrawal from agreements secured on land

### F3.1 Withdrawal under the CCA [s66A CCA]

C has a right to withdraw from a credit agreement within 14 days, wherever it was entered into. This right is only in relation to the credit, there is no automatic withdrawal from any contract to supply goods or services, even though quite often it is that contract which C wishes to avoid (units D and G).

The withdrawal period lasts for the 14 days following conclusion of the agreement, or, if later, once C has received a copy of the executed agreement or notification of the credit limit (as a sum of money) on a credit card. C must repay the credit and must also pay interest for each day the credit was drawn down. Notice of withdrawal can be given orally or in writing, using the contact details in the agreement, and there is no particular format or wording that must be used.

A withdrawal notice is effective when it is posted or at the time of transmission if faxed, e-mailed or sent by other electronic means or at the time it is given when dealt with in person. The effects of withdrawal are that:

- ✓ any credit provided must be returned to the lender
- ✓ any interest which has accrued must be paid
- ✓ C is not liable to pay any other fees or charges
- ✓ the agreement is treated as if it was never entered into
- ✓ ancillary credit agreements automatically fall away, e.g. Payment Protection Insurance (PPI)
- ✓ if the agreement is HP, CS or credit sale, title in the goods will pass to C once any credit and interest have been repaid and there will be no liability to pay an option to purchase fee
- ✓ any cancellation rights relating to goods or services under other legislation will continue to apply

The right of withdrawal does not apply to the following agreements, those:

- ✓ secured on land
- ✓ for credit over £60,260
- ✓ which are RU to finance the purchase of land
- ✓ which are bridging loans in connection with the purchase of land

Even if there are no statutory rights to escape from a contract, the express terms of a contract can be checked to see if T has given C a right to cancel.

### **F3.2 Cancellation** [s67 – s73 CCA]

If the right of withdrawal under s66 applies, it takes precedence over any right to cancel in s67, which only apply to agreements for credit over £60,260 and consumer hire agreements. The right to cancel such agreements applies if:

- ✓ C signed the agreement away from trade premises
- ✓ there were face to face verbal discussions beforehand
- ✓ the agreement is not secured on, or associated with, land

The right is to cancel, usually within 5 days of receipt of a second copy of an agreement or cancellation notice [s68] and there are various effects which come into play on cancellation [s69 – 73], which include:

- ✓ the automatic cancellation of linked transactions (this will include the purchase of the goods/services)
- ✓ return of any money paid
- ✓ interest free credit, providing any credit advanced is repaid before the first instalment date
- ✓ restoration of any goods supplied (there are some exceptions to this)

### **F3.3 Withdrawal under the common law** [s57]

C can withdraw an offer to enter into a contract before it has been accepted (unit B). There may, therefore, be a limited period of time between C completing an application form for credit (the offer), and the lender signing the form (acceptance), during which the offer can be withdrawn.

If this happens, then s57 states that withdrawing from a prospective regulated agreement operates as if a cancellation has taken place and therefore the effects of cancellation, (section F3.2), will all come into play, e.g. the automatic cancellation of a linked transaction such as the purchase of goods and services and the return of any money paid.

### **F3.4 Ending the agreement early** [s94]

C may wish to end the credit agreement for a number of reasons. This could include a change in financial circumstances that enables C to pay the sums due in full, or the fact that C has sourced less costly finance elsewhere. The action that C takes to end the agreement will depend on the type of credit agreement that they have and their reason for ending it. If C ends the agreement by paying all sums due under it, he will be entitled to an early settlement rebate, which is a rebate on the interest payable. Such a rebate will be due even if C has been in default and has triggered an accelerated payment clause, which means that the whole amount becomes payable at once.

A complicated calculation is used to work out the amount of the rebate, but Cs do not have to perform this calculation themselves. Special consideration may need to be given to balloon payments and option to pay fees. If PPI or a Guaranteed Asset Protection (GAP) policy was financed by the credit agreement, then the charges on that part of the loan will also be subject to a rebate on full early settlement. If they are separate agreements then C should be given the option of settling both.

In order to obtain the settlement details, C can make a written or oral request for a settlement statement, which should usually be provided within 7 days and should contain the following:

- ✓ the amount outstanding
- ✓ the rebate
- ✓ the settlement figure

C also has the right to make one or more partial early repayments (section F5).

### F3.5 Termination

The CCA gives both the lender and C the right to terminate certain agreements. When C terminates, this is sometimes referred to as voluntary termination (VT). Tables F9 and F10 indicate the provisions which apply in each case depending on the type of agreement concerned.

**Table F9: Borrower's right to terminate a regulated credit agreement**

Type of Agreement	Period of Notice	Form of termination	Exceptions	Comments
Open-ended agreements [s98A]	Check T & C Maximum 1 month	Check T & C Lender may require written notice	Agreements secured on land Overdrafts	In force 1/2/2011
HP/CS [s99]		Written notice	No right to terminate if it is a CS agreement and property has passed to someone other than borrower	C can be liable to pay up to half [s100] a court can order less if it thinks lender's loss is less C will have to hand the goods back C may have to pay compensation if they have not taken reasonable care of the goods
Hire [s101]	1 interval or 3 months whichever less (not available for the first 18 months)	Written notice	If have to pay over £1500 in any year	

**Table F10: Lender's right to terminate a regulated credit agreement**

Type of Agreement	Period of Notice	Form of termination	Exceptions	Comments
Open-ended agreements [s98A]	Minimum 2 months		Agreements secured on land Overdrafts	In force 1/2/2011
Fixed duration agreement [s98]	Not less than 7 days	Prescribed written notice	If C is in default	Lender can also restrict access to credit (see below)
Restricting access to credit [s98A]		Written notice before or immediately after Must be objectively justified reasons, e.g. unauthorised or fraudulent use of credit or significant increase in risk of non-payment	Agreements secured on land Overdrafts	Notice not required if would prejudice prevention of crime, apprehension or prosecution of offenders or administration of justice  In force 1/2/2011

### **F3.6 Withdrawal from agreements secured on land [s58]**

Agreements secured on, but not to purchase land, e.g. second charge mortgages to pay for expensive items such as holidays and cars, are treated differently from other agreements. C must be notified in writing of his right to withdraw his offer and must then be left alone, uninterrupted to think about whether he wishes to do so [s58]. The only contact should be if C wants to ask any questions.

The consideration period is initially for seven days. An unexecuted copy of the agreement can then be sent for signature and C has a further seven days to decide whether to withdraw. He can, of course, send the agreement back signed during the second seven day period. Some second mortgages are exempt, mainly ones which are taken out with the same Fin Co who is providing the first mortgage.

### **F3.7 FS(DM)R**

If C enters into a contract with a credit broker using distance means, then the cancellation rights will be contained in the FS(DM)R (unit D).

## Summary

- C has a **statutory right to withdraw from a credit agreement within 14 days under s66 CCA**, wherever it was entered into, however, this right is only in relation to the credit, there is no automatic withdrawal from any contract to supply goods or services, even though quite often it is that contract which C wishes to avoid; if C enters into a **contract with a credit broker using distance means, then the cancellation rights will be contained in the FS(DM)R**.
- If the right of withdrawal under s66 applies, it **takes precedence over any right to cancel in s67**, which **only apply to agreements for credit over £60,260** and consumer hire agreements and where: C signed the agreement away from trade premises; there were face to face verbal discussions beforehand and the agreement is not secured on, or associated with, land.
- Under the **CL, C can withdraw an offer to enter into a contract before it has been accepted** so there may be a limited period between C completing an application form for credit (the offer), and the lender signing the form (acceptance), during which the offer can be withdrawn and if this happens, the CCA applies as if a cancellation has taken place and the effects of cancellation will all come into play.
- C may have the **right to pay off an agreement before it is due and is likely to be entitled to an early settlement rebate**, even if C has been in default and has triggered an accelerated payment clause; a written or oral request for a settlement statement should be made and this should be provided within 7 days and contain, the outstanding amount, the rebate and the settlement figure.
- The CCA gives both the **lender and C the right to terminate certain agreements** and if C terminates, this is sometimes referred to as voluntary termination (VT); which provisions apply in each case, with regards to the form of termination required and period of notice necessary, will depend on the type of agreement concerned.
- **Where an agreement is secured on, but not to purchase land, C must be notified in writing of the right to withdraw this offer and must then be left alone, uninterrupted to think about whether this is desirable** and the only contact should be if C wants to ask any questions; the initial consideration period is seven days, after which an unexecuted copy of the agreement can be sent for signature and C has a further seven days to decide whether to withdraw.

## F4: Lender liability

A creditor, or Fin Co, will be liable for problems arising under a contract, e.g. breaches of the ITs in the CRA or any express contract terms, where the Fin Co is also the supplier of the goods or service (T), because of the nature of the credit provided. This will be the case where the finance is:

- ✓ a HP agreement
- ✓ a CS agreement
- ✓ a credit sale

If Cs are unsure or confused as to the type of finance they have, advisers should signpost as per the Quick Reference Tool for Financial Capability.

Even if the lender is not also the supplier, liability can still arise under 3 separate sections of the CCA:

- ✓ section 75 (cash price over £100 and up to £30,000)
- ✓ section 75A (cash price over £30,000 and credit less than £60,260)
- ✓ section 56 (no financial limits but only applies to specific negotiations, not subsequent faults)

The CCA does not create any remedies, those that generally cover the breach concerned will apply. Table F11 summarises when the three sections apply to different types of credit transaction.

### F4.1 Section 75 CCA

A lender will be jointly and severally liable with T if there is a transaction financed [s189] by certain credit arrangements where there is a business connection between the lender and the supplier; this will be where:

- ✓ C has bought goods or services with a credit card or a linked loan (or paid a deposit)
- ✓ the cash price was over £100 but not more than £30,000
- ✓ the agreement is regulated (not debit or charge cards)

If Cs are unsure what debit/charge cards are, advisers should signpost as per the Quick Reference Tool for Financial Capability.

This gives C the option of pursuing either T or the lender for a like, but not a better, claim (*Durkin v DSG Retail*), which is particularly useful if C bought something abroad (*OFT v Lloyds TSB Bank Ltd and others*) or T is no longer trading.

#### F4.1.1 Application of s75

A number of issues may arise in relation to whether s75 would apply in certain circumstances.

##### F4.1.1.1 Credit limit

C is still protected by s75, even if the credit limit for the agreement was exceeded when C entered into the relevant transaction [s75(4)].

##### F4.1.1.2 Authorised card users

Authorised card users, such as a spouse, are not debtors and so do not automatically receive the protection of s75. However, it is possible that allowing someone to use a card may make them an agent, in which case action could be taken through the principal card holder.

##### F4.1.1.3 Merchant acquirers

Some credit card companies have previously argued that if a merchant sets up an arrangement between a business and themselves then this means that the business has no business connection with the credit card company. The case of *OFT v Lloyds TSB Bank* and others did not agree with this interpretation and the House of Lords (now the Supreme Court) decided that there was such a connection in these circumstances.

#### **F4.1.1.4 Use of third parties**

Problems may arise if goods or services are ordered via a third party, e.g. holidays booked through travel agents or items paid for using PayPal. It would be necessary to check who the payment is made to and or whether there is an agency relationship between the third party and the supplier. The required business link must exist between the creditor and the supplier for s75 to apply and the third party is not the supplier. The problem may be overcome if it can be shown that the third party is an agent for the supplier.

## **F4.2 Section 75A CCA**

The conditions which need to be in place for lender liability to arise under s.75A are where:

- ✓ the cash price of the goods/service is over £30,000
- ✓ the credit is £60,260 or less
- ✓ the goods/service were purchased under a "linked credit agreement" (defined)
- ✓ there has been a breach of contract
- ✓ C has not been able to resolve the matter with the supplier
- ✓ the agreement was not secured on land

A "linked credit agreement" is one where the credit exclusively finances a contract for the supply of specific goods or services and the creditor either uses the supplier in connection with the preparation or making of the credit agreement, or the goods/services are explicitly specified in the credit agreement. This will not cover credit card purchases.

A lender will be consecutively liable under s75A if T:

- ✓ cannot be traced
- ✓ has not responded after being contacted
- ✓ is insolvent
- ✓ has not provided satisfaction (replacement product or other compensation) for C's claim even though reasonable steps have been taken to pursue the claim against him/her (need not include litigation).

## **F4.3 Section 56 CCA**

Where T has been involved in the pre-contract discussions, or "antecedent negotiations", a lender may be liable for what was said by T, whether or not T is a party to the final contract, providing there is a business connection between T and the lender. This is covered by s56 CCA, which:

- ✓ makes T an agent of the lender
- ✓ makes the lender liable for representations of T

Representations are widely defined as "any condition or warranty, and any other statement or undertaking, whether oral or in writing" [s189(1) CCA] and begin when C first enters into communication with whoever is negotiating, including via an advertisement, and can be concerning any dealings between the parties, e.g. about the product, the credit agreement or the transaction generally.

For the antecedent negotiations to be included within s56 they must be conducted by one of the following:

- ✓ the lender
- ✓ a T acting as a CB for goods to be the subject of a HP or CS agreement
- ✓ a T supplying goods or services under a transaction financed by a lender with a business connection

Examples of finance agreements (not hire) that will be covered are:

- ✓ hire purchase (providing the dealer is acting as a CB)
- ✓ conditional sale (providing the dealer is acting as a CB)
- ✓ loan linked agreements
- ✓ credit sale
- ✓ credit card transactions

**Table F11: lender liability summary**

Credit type	Goods ownership	C's contract with	Liability for problems
Hire purchase for goods	D can exercise option to purchase when makes final payment-then ownership passes to D	Finance company	Finance company is liable Including for representations by a dealer who is a credit broker if s56 CCA applies
Conditional sale for goods	Ownership automatically passes to D when loan repaid	Finance company	Finance company is liable Including for representations by a dealer who is a credit broker if s56 CCA applies
Credit card for goods or services	D becomes owner at time goods are bought from T	Trader	T liable Finance company also liable if s75 or s56 CCA apply
Loan-linked agreement for goods or services	D becomes owner at time goods are bought from T	Trader	T is liable Finance company also liable if s75, 75A or s56 CCA apply
Independent loan for Goods or services	D becomes owner at time goods bought from T	Trader	T only is liable

## Summary

- **A Fin Co will be liable for problems arising under a contract**, e.g. breaches of the ITs in the CRA or any express contract terms, **where the Fin Co is also the supplier** of the goods or service because of the nature of the credit provided, i.e. where the finance is a HP agreement, a CS agreement or a credit sale.
- **A lender may be jointly and severally liable with T if there is a transaction financed by certain credit arrangements where there is a business connection between the lender and the supplier**, and this will be where: C bought goods or services with a credit card or a linked loan (or paid a deposit); the cash price was over £100 but not more than £30,000 and the agreement is regulated (not debit or charge cards).
- **Where the cash price of the goods/service is over £30,000**, lender liability can arise where: the credit is £60,260 or less; the goods/service were purchased under a "linked credit agreement" (not using a credit card); there has been a breach of contract; C has not been able to resolve the matter with the supplier and the agreement was not secured on land.
- Where T has been involved in the pre-contract discussions, or "antecedent negotiations", **a lender may be liable for what was said by T, whether or not T is a party to the final contract**.

**providing there is a business connection between T and the lender**; this is covered by s56 CCA, which makes T an agent of the lender and makes the lender liable for representations of T.

## F5: Specific rights and obligations in credit agreements

During the course of a credit agreement, C has certain rights. Those relating to creditor liability, when problems arise in relation to the goods or services the credit was used to buy, were discussed in detail in section F3, namely when the creditor may be liable in relation to the following:

- ✓ breaches of contract under sections 75 and 75A,
- ✓ misrepresentation under s.75
- ✓ their own representations and also those of certain third parties under s.56

In addition to these important rights, there are other various requirements which also apply during the lifetime of an agreement, some of which are briefly outlined below, including when the lender may need a court order to enforce an agreement:

- cost of short-term credit
- partial early settlement
- supply of information
- default notices
- use of credit cards
- seizure of goods
- outstanding finance
- unfair relationships

### F5.1 Cost of short term credit

There is a price cap on high-cost, short-term credit, which means that any C taking out a loan after this date should not have to pay more than twice the amount they borrowed [Consumer Credit (Cost Cap) Instrument 2014]. There are 3 elements to this cap, covering maximum: charges per day, default fees and total amount repayable. The caps are that:

- interest and fees charged must not exceed 0.8% per day of the amount borrowed
- default fees must not exceed £15, although interest can continue to be charged after default, but not at above the initial rate
- there is a total cost cap and borrowers must never pay more in fees and interest than 100% of what they borrowed

The definition of high-cost, short-term credit is where:

- the APR is 100% or more, and
- the credit is due to be substantially repaid within a maximum of 12 months

However, it does not apply to credit agreements:

- secured by a mortgage, charge or pledge
- where the lender is a community finance organisation
- which are home credit loan agreements, bills of sale loan agreements or overdrafts

If Cs are unsure of their repayment terms, advisers should signpost as per the Quick Reference Tool for Financial Capability.

Credit agreements that breach this price cap will be unenforceable.

## F5.2 Partial early settlement

C can make one or more partial early repayments at any time throughout the agreement [s94]. It is important that C makes clear whether a payment is a partial early settlement or simply an advance payment because they are going on holiday for example. C must:

- ✓ give written or oral notice to the lender
- ✓ pay the outstanding balance of the credit less any permitted rebate for future interest and charges

Whether the duration of the agreement or the amount of the instalments is reduced, or a combination of the two, is not dictated by the legislation so it will be down to what the T&C state or what the parties agree at the time of the early settlement. The CCA gives C the right to request information about the effect of the partial early settlement once the payment has been made, but not before [s97A]. In the case of full early settlement, C can request a settlement statement [s97] showing how much is owed under the agreement and how much it will cost to settle early.

A compensatory charge may be made by the lender, but only if the lender has incurred a cost as a direct result of the early settlement being made at that particular time, e.g. if the interest rates at the time of full or partial early settlement are lower than the rate in the agreement and the lender has to re-lend or invest the money at a lower rate [s95A]. A compensatory charge can be made only if:

- ✓ the interest rate is fixed rather than variable
- ✓ the amount repaid early exceeds £8,000 in any 12 month period (but only on payments which have passed the trigger amount of £8,000)
- ✓ it is fair and objectively justified
- ✓ it does not exceed 1 per cent or 0.5 per cent of the amount repaid early depending on what would have been the length of the agreement still to run (if a year or less, then the 0.5% applies)

If Cs are unsure of their repayment terms, advisers should signpost as per the Quick Reference Tool for Financial Capability.

Lenders cannot claim compensatory charges when the early settlement payment is made under a Payment Protection Insurance policy or used to repay an overdraft on a current account.

## F5.3 Supplying information

The requirements relating to what information C is entitled to during the lifetime of the agreement are quite detailed and depend on a number of factors such as:

- ✓ whether the agreement is for FS or RA credit or for hire
- ✓ what the exceptions are for a particular requirement
- ✓ when the provision came into force
- ✓ whether a fee has been paid (where applicable)
- ✓ whether an appropriate request has been made

Examples of the main types of information that C may be entitled to at various stages, include:

- ✓ annual and other periodic statements [s77A CCA]
- ✓ statements on request (amortisation tables) [s77, s78, s79 CCA]
- ✓ copy agreement and statement of account on request [s77B CCA]
- ✓ details of changes in the rate of interest [s78A CCA]
- ✓ other variations of agreements [82 CCA]

The effects for the creditor of not complying with these requirements, also differ.

## F5.4 Default notices

If C does not comply with the terms of a regulated credit agreement, the lender may wish to take further action against C to enforce it e.g. when C misses payments.

The lender can only take such action if they have first issued a default notice [s87]. This is a formal document that informs C that the lender intends to take a particular course of action if C fails to comply with the agreement. The notice must allow C 14 days to put right the default, e.g. pay the lender the missing payments, and must state what action will be taken if they fail to do so [s88].

The action that the lender may take could include the following:

- terminate the agreement
- recover goods from C
- enforce any security provided under the agreement, e.g. a bill of sale

Lenders are also required to provide arrears notices, when C falls behind with payments by the equivalent of 2 months' payments, and then at, at least six-monthly intervals while the arrears remain. An arrears notice or default notice must be accompanied by an FCA Information Sheet. In addition, a default sum notice must be provided within 35 days of any sum becoming payable in respect of a breach of the agreement [s86A – s86E].

If C has received a default notice or if a lender institutes enforcement proceedings, C may be able to ask the court to make a time order [s129], which would allow C more time to pay. The court can only make such an order if it is just to do so, which includes consideration of the lender's position as well as that of C.

## F5.5 Use of credit cards

Credit cards are an example of a credit token [s14(1) CCA] and there are provisions in the CCA that deal with lost or stolen cards and cards which are subject to misuse. The maximum liability which can be imposed on the card holder if a card is lost, stolen or misused, is £50, unless the card is used with the cardholder's consent, in which case liability is unlimited [s84].

If Cs are unsure of the difference between credit and debit cards, advisers should signpost as per the Quick Reference Tool for Financial Capability.

Once the card holder has notified the credit card company of the loss or misuse there is no further liability and this notice is effective when it is received. If notification is done verbally, e.g. over the phone, then the agreement may state that it will not be effective until it is confirmed in writing within 7 days [s84(5)]. C would have to check the T&C to see whether the credit card company has chosen to impose the maximum £50 liability up to written notification. There is some overlap with similar provisions in the Payment Services Regulations 2009, which apply to other payment methods besides those relating to credit (section F7).

## F5.6 Seizure of goods

If C has a HP or CS agreement and misses payments under the agreement, the lender may take steps to obtain the goods, i.e. repossess them as the legal owner of the goods. If there are goods which are subject to a bill of sale, the lender may also have rights to seize the goods. For other types of finance, the lender will not have any right to take goods as they will belong to C.

## **F5.6.1 HP or CS agreements**

A lender would need a court order to repossess goods kept on private property, if they were the subject of a HP or CS agreement [s92(1)]. If they are not stored on private property, e.g. a car parked on the road, the lender could repossess them without a court order, unless they are “protected goods” [s90(1)]. These are two separate requirements. Court orders are not required in relation to goods which are subject to a bill of sale (BOS).

### **F5.6.1.1 Protected goods [s90(1)]**

The goods will be protected when C has paid one third of the total price payable under the agreement, including interest but not installation charges or any type of insurance policy, e.g. PPI or Gap insurance. This is sometimes referred to as the 'one third rule' and is applicable even if C has died.

### **F5.6.1.2 Effect of repossession without a court order**

C is entitled to a refund of all payments made under the agreement and does not have to make any further payments if protected goods are repossessed without a court order [s91]. This includes from anyone to whom the goods have been entrusted by C, e.g. a garage where a car has been left for repair or someone to whom the goods have been lent. However, if the goods have been abandoned there would be no requirement for the lender to obtain a court order before repossessing the goods.

If the lender enters private property without a court order then C may be entitled to some compensation [s92(3)].

Neither of these provisions will apply if C agrees that the lender can take the goods without a court order or if the goods being taken are the subject of a BOS. Policies, such as PPI or GAP insurances, will continue even if goods are repossessed, which means that C will still have to make payments for them.

It is likely that in Scotland a creditor would need a court order to repossess goods under a HP/CS agreement at any time, regardless of whether they are protected, on private property or abandoned.

### **F5.6.1.3 Return or transfer orders**

The court has powers, in certain circumstances, to make orders to allocate goods, either to the Fin Co or to C, where they are subject to a regulated HP or CS agreement [s133 CCA]. A ‘transfer order’ allows goods to be transferred to C and a ‘return order’ allows them to be returned to the Fin Co. A transfer order will only be made if C has paid more than a specified amount and the court can only make these orders if it would be just to do so and if the matter is already before them because there has been an application for a time, repossession or enforcement order.

## **F5.6.2 Other types of credit**

Where C is the legal owner of the goods, the lender will not have any rights to take the goods and if C has defaulted the lender would have to take court action to enforce any debt. The situation would be different if there was a BOS. A summary of these various situations is indicated in table F12.



**Table F12: Summary of when a lender can take goods from C**

Type of credit	Possible lender action
<b>Loan linked agreement</b>	Lender has no right to seize the goods, unless there is a BOS
<b>Credit card transactions</b>	Lender has no right to seize the goods
<b>Credit sale</b>	Lender has no right to seize the goods, unless there is a BOS
<b>Hire purchase</b>	Lender is the owner of the goods until option to purchase is exercised by C, normally upon making final payment. Lender may be able to seize the goods without a court order as long as: <ul style="list-style-type: none"> <li>• a default notice has been sent to C and it has expired</li> <li>• the goods are not protected</li> <li>• they are not on private premises</li> <li>• or they have been abandoned</li> </ul>
<b>Conditional sale</b>	Lender is the owner of the goods until all payments have been made at which point the goods are owned by C. The lender may be able to seize the goods until that time without a court order as long as: <ul style="list-style-type: none"> <li>• a default notice has been sent to C and it has expired</li> <li>• the goods are not protected</li> <li>• they are not on private premises</li> <li>• or they have been abandoned</li> </ul>
<b>Bank loan/independent</b>	Lender has no rights over the goods, unless there is a BOS
<b>Hire</b>	Lender is the owner of the goods. The lender can seize goods as long as: <ul style="list-style-type: none"> <li>• a default notice has been sent to C and it has expired</li> <li>• and it has a court order to enter premises</li> </ul>

It is likely that in Scotland a creditor would need a court order to repossess goods at any time, regardless of whether they are protected, on private property or abandoned.

## F5.7 Outstanding finance

Using HP or CS agreements gives the lender security over the goods since, until transfer of ownership to C, there is no legal right for C to sell the goods on to a third party. However, this often happens in practice, and many Cs are not aware that they do not have the right to do this.

It is necessary to consider the position of the third party in such a situation as the lender may attempt to recover the goods from them if C has failed to make payments under the agreement. In normal circumstances, the lender, as the legal owner, would be able to recover the goods from the third party. The only option for the third party would be to take action against the seller for breach of contract on the basis that they did not have title to the goods. However, there is an exception to this rule under the Hire Purchase Act 1964.

If C has taken out finance, other than HP or CS, to purchase the vehicle, the lender will not have the right to recover the goods as C will be the legal owner. The lender would have to take action against C for non-payment of the credit, unless there is a bill of sale (BOS).

It is also necessary to check exactly what type of agreement C has because sometimes it may not be credit but hire, i.e. a leasing or rental agreement. This is particularly common with cars, and although it may still be regulated by the CCA '74 it would mean that ownership can never pass to C and also the exception below in the Hire Purchase Act 1964 cannot apply.

#### **F5.7.1 Protection available under the Hire Purchase Act 1964 [s27]**

The Hire Purchase Act protects the purchasers of motor vehicles who buy a vehicle that is subject to outstanding finance under a HP or CS agreement. Motor vehicles are covered but not towing caravans or boats, also commonly acquired using such agreements, as s27 states that only purchases of mechanically propelled vehicles intended or adapted for use on public roads are included.

A third party will be protected and will acquire ownership (good title) of the vehicle if they:

- are the first private purchaser of the vehicle
- take the vehicle in good faith
- take the vehicle without knowledge of the un-discharged credit agreement

#### **F5.7.2 The first private purchaser**

The protection only covers private purchasers, however, the first private purchaser still gets a good title if there is good faith and no knowledge, even if there is a trader buyer in between. Once the car has acquired a good title by this route it can be passed on to other owners, including subsequent trade owners.

A private purchaser includes anyone who does not carry on a business involving trading in motor vehicles or providing finance for their hire purchase or conditional sale.

#### **F5.7.3 Good faith and without knowledge**

C may be unaware that the car is subject to outstanding finance; however, the circumstances may imply otherwise, e.g. the car is being sold at a drastically reduced price and/or the circumstances surrounding the sale are suspicious. If this is the case then the lender may argue that C has not acquired the vehicle in good faith and therefore, has not obtained ownership (good title) of it.

If C knows that the vehicle is subject to outstanding finance, they take it with the knowledge of the un-discharged agreement and will not get ownership (good title).

If the first private purchaser does not get good title to the vehicle, a later private purchaser will not be able to get good title either, even if that later purchaser takes the vehicle in good faith and without knowledge of the outstanding agreement.

#### **F5.7.4 Effect of a bill of sale**

These provisions do not apply to bills of sale so a subsequent private purchaser will not get a good title to a vehicle which is subject to a BOS, regardless of lack of knowledge or good faith, and it would remain the property of the lender.

## F5.8 Unfair relationships [s140A – C]

The courts are able to order various courses of action where it feels that there is an '*unfair relationship*' between a lender and C. This could include refusing to allow the lender to enforce the agreement. The court will take a variety of factors into account when deciding whether or not the relationship is unfair. Issues such as providing misleading information about an agreement, or putting pressure on Cs to sign agreements without giving them ample opportunity to read them, could come within these provisions as well as charging very high rates of interest (*MBNA v Thorius*, *Plevin v Paragon Personal Finance Ltd*, *British Credit Trust Ltd v Scotland*). The lender has the BOP to show that a relationship is not unfair [s140B(9)].

The unfair relationship provisions also apply to agreements which are exempt from CCA regulation, other than first charge mortgages regulated by the FCA.

## F5.9 Effect of non-compliance with CCA requirements

If a lender does not comply with some of the rules laid down by the CCA, this could affect whether or not the lender is able to enforce the agreement. The CCA specifies certain situations where the court can decide whether or not they feel that it is appropriate to allow the lender creditor to enforce the agreement in those circumstances. The court can use its discretion to decide whether or not it feels that the agreement should be enforced in the circumstances for any of the listed non-compliance items.

If a lender applies for an enforcement order, under any of the sections listed, the court shall dismiss the application, but only if it thinks this is the just thing to do, after considering [s127 CCA]:

- prejudice caused to anyone by the contravention
- the degree of culpability for the contravention
- the powers available to it under sections 135 and 136 of the CCA (powers to impose conditions on or suspend operation of, any of its orders and power to vary any agreements or security)

A lender would need to apply to the court for an order to enforce a regulated agreement, if there has been a failure to comply with:

- the disclosure requirements [s55(2)]
- the duty to supply a copy of an overdraft agreement [s61B(3)]
- the proper execution requirements [s65(1)]

## Summary

- **During the course of a credit agreement, C has certain rights**, including those relating to creditor liability, when problems arise in relation to the goods or services the credit was used to buy, when the creditor may be liable in relation to: breaches of contract under sections 75 and 75A, misrepresentation under s.75 and their own representations and also those of certain third parties under s.56.
- There is a **price cap on high-cost, short-term credit**, where the APR is 100% or more and substantially repayable within a year, which means that any C taking out a loan after this date should not have to pay more than: 0.8% in interest and fees per day, £15 in default fees or more than twice the amount they borrowed in total. If a C is unsure of their repayment terms, then the adviser should signpost as per the Quick Reference Tool.

- **C can make one or more partial early repayments at any time throughout the agreement and a compensatory charge may be made by the lender**, if they have incurred a cost as a direct result of the early settlement being made at that particular time and only if certain criteria are met.
- **C is entitled to certain information during the lifetime of an agreement depending on a number of factors** including whether the agreement is for FS or RA credit or for hire and information required includes annual and other periodic statements, amortisation tables, copy agreements, statements of account, rate of interest changes and other variations in agreements.
- If C does not comply with the terms of a regulated credit agreement, the lender may wish to take further action against C to enforce it, but can only do so if they first issue a **prescribed default notice** that informs C about the intended course of action if C fails to comply and allows 14 days to put the default right and state what action will be taken if they fail to do so; **arrears notices and FCA Information sheets** must also be sent to C in certain circumstances.
- Credit cards are an example of a credit token, covered by **provisions in the CCA that deal with lost or stolen cards and cards which are subject to misuse, with a £50 maximum liability** imposable on the card holder if this happens, unless the card is used with the cardholder's consent, in which case liability is unlimited.
- **If C has a HP or CS agreement and misses payments, the lender may take steps to repossess them** in certain circumstances as they are the legal owner of the goods, although they may need a court order to do so; if there are goods which are subject to a bill of sale, the lender may also have rights to seize the goods; however, for other types of finance, the lender will not have any right to take goods as they will belong to C.
- C is entitled to a refund of all payments made if **protected goods**, where more than a third of the price has been paid, are repossessed without a **court order**, unless the goods were abandoned: if the lender **enters private property** without a court order then C may be entitled to some compensation, however, neither of these provisions will apply if C agrees to the repossession or if the goods are the subject of a BOS.
- **Return and or transfer orders can be made by the court**, if it is just to do so and C has paid the appropriate amount under a **HP or CS agreement**, but only if the matter is before the court for an application to make a time, enforcement or repossession order; goods revert to the Fin Co under a return order and are passed to C under a transfer order.
- The Hire Purchase Act protects **first private purchasers of motor vehicles who buy in good faith and without knowledge**, that it is subject to **outstanding finance under a HP or CS agreement**, by giving them a **good title** to such a vehicle and private purchasers include anyone who does not carry on a business involving trading in motor vehicles or providing finance for their HP or CS agreement.
- The courts can order various courses of action, including refusing to allow the lender to enforce the agreement, where they feel there is an **'unfair relationship'** between a lender and C; issues such as

providing misleading information about an agreement, or putting pressure on C to sign an agreement without proper opportunity to read it, could come within these provisions as well as charging very high rates of interest.

- A **lender would need to apply to the court for an order to enforce a regulated agreement**, if there has been a failure to comply with: the disclosure requirements; the duty to supply a copy of an overdraft agreement and the proper execution requirements, and the court shall dismiss the application, but only if it thinks this is the just thing to do, after considering: prejudice caused to anyone by the contravention; the degree of culpability for it and its powers to impose conditions, suspend operation of an order or vary agreements and securities.

## F6: Secured credit

Credit can be provided in a secured or unsecured way and it will be a matter for the lender to decide whether to ask C for security or collateral, depending on the risk of C not paying back the credit advanced. Any security provided is not part of the credit but if the credit relates to a regulated agreement, the CCA controls it to some extent, e.g. by requiring it to be: in writing [s105(1)]; embodied in the credit agreement [s105(4)] and compliant with any regulations made under the CCA with regard to form and content. In addition or instead, some forms of security have their own regulatory measures, e.g. bills of sale.

If the security instrument is covered by the CCA and it does not comply with the relevant requirements, it may not be properly executed and a court order may be required to enforce it (section F5).

Table F13 indicates some of the more common forms of security and a brief explanation of how they work. A more detailed explanation follows for some of these items.

**Table F13: Types of security**

Security	Explanation
Hire purchase	Lender maintains ownership of the goods until C exercises option to purchase Lender can take action to repossess the goods if C defaults
Conditional sale	Lender maintains ownership of the goods until ownership is automatically transferred to C on satisfaction of the condition Lender can take action to repossess the goods if C defaults
Pawn	Pawnbroker loans money against an item of value left with the pawnbroker as security (pledge) and this can be reclaimed by paying back the loan and the interest
Bill of sale (BOS)	Lender transfers the title of goods, for which the loan is made, or some other personal property belonging to C, using a BOS, although the goods or other property stay with C who can use them, and the debt remains attached to the goods until the loan is paid off.
Guarantor	Someone who promises to pay of the debtor's loan if the debtor does not. The lender can only pursue a guarantor after failing to obtain payment from the debtor.
Indemnity	Someone who promises to make sure the person indemnified does not lose money on the deal in question. A lender can choose whether to pursue a debtor or an indemnifier if a debt is not paid.

### F6.1 HP or CS agreements

If C's credit agreement is HP or CS, then the lender is the owner of the goods unless and until ownership transfers to C. This provides the lender with some security because they can take action to repossess their goods if C fails to keep up the payments on the loan and defaults. The lender will have to comply with the requirements concerning default notices etc (section 5.4) and seeking court orders if required (section 5.9).

The lender may not be able to take the goods if they are a motor vehicle and have been passed on from the C they had the HP or CS agreement with if s27 Hire Purchase Act 1964 applies. This protects the first private purchaser if they buy in good faith and without knowledge of any outstanding finance and provides the vehicle with a good title which can be transferred to subsequent purchasers, regardless of knowledge.

However, the lender may be able to argue against the operation of s27 if the original C defrauded them as to his identity (*Shogun Finance Ltd v Hudson*).

## **F6.2 Pawned goods**

Some lenders operate as pawnbrokers and trade from high street outlets where they take C's goods as security for a loan. The article taken in pawn is called a 'pledge' and is worth at least the value of the loan. The pawn can be redeemed at any time by during the redemption period, which is usually within 6 months of being taken. After the redemption period has passed the pawnbroker can then sell the goods, typically jewellery, to pay off the debt if C does not re-pay in time, providing that the rules [Consumer Credit (Realisation of Pawn) Regulations 1983] have been complied with. In some cases the pawnbroker would need to serve a notice of their intention to sell the goods, or alternatively, in some circumstances, the property will then belong to the pawn broker. If the item is sold, the pawnbroker must inform C and hand over any excess monies achieved on sale after paying off the credit and expenses. If there is a shortfall C will be liable for this.

## **F6.3 Bills of sale**

A lender may make a loan to C and as collateral or security for that loan, transfer to himself the title of the goods, for which the loan is made, or some other personal property belonging to C. The actual goods or other property remain with C who enjoys physical possession of them, while the debt remains attached to the goods until it is paid off. The document that identifies the lender's transfer of title is called a bill of sale (BOS). The BOS gives the lender rights to take the goods without the need for a court order if the loan is not repaid and if correct procedure is followed.

### **F6.3.1 Code of practice**

The Government considered the possibility of banning BOS in 2009, but decided in favour of self-regulation by the industry through a code of practice and a consumer information sheet. In addition, the FCA has powers to take action under the FSMA authorisation regime where firms treat Cs unfairly. The code is a voluntary measure, however, 95 per cent of the industry have signed up to it.

The Code has numerous aims, one of which is to give protection to any unsuspecting buyer of a second-hand car. The code obliges lenders to register their interest in a vehicle on an Asset Finance Register within 24 hours of making the agreement, e.g. HPI, so anyone buying a second-hand car can check if the car is subject to outstanding finance before handing over any money.

The code also provides that if a company fails to register the existence of finance on a vehicle within 24 hours, then the buyer gets the same protections as if HP existed on the car, so it cannot be taken from the person who later buys the car. The debt would still be outstanding and would remain the responsibility of the original debtor.

### **F6.3.2 Application of the CCA and CONC to BOS**

If the BOS is given as a security in relation to a regulated consumer credit agreement, e.g. a personal loan, the credit agreement must comply with the CCA requirement regarding content and format.

The credit agreement must also 'embody' the security which is usually done by referring to the BOS in the credit agreement. C must also sign and be given a copy of the BOS.

The bill of sale and the related credit agreement are subject to the provisions of the CRA concerning the fairness of terms [s62] and the credit agreement is subject to other CCA and CONC protections including the requirements on PCI disclosure, assessment of creditworthiness, right of withdrawal and unfair relationships.

### **F6.3.3 Application of the Bills of Sale Acts 1878 and 1882**

The BOS itself is regulated by the Bills of Sale Acts 1878 and 1882. Lenders' documentation needs to comply with all relevant legislation, i.e. these Acts as well as the CCA, if applicable. The BOS must comply with the standard format as contained in the Schedule to the 1882 Act. The BOS also has to be witnessed and registered at the High Court. The two Acts contain rules regarding the timing and manner for the registration process.

### **F6.3.4 Enforcing a bill of sale**

The lender can take the goods from wherever they are, without the need for a court order if the correct registration procedure has been followed. It can then sell the goods after a certain period of time. C can write to the court to check that this procedure has been followed and can search the court register upon payment of a fee.

The lender cannot enforce the security and take the goods until a default notice has been served (section F5.4) and has expired (14 days) and C has not paid the sums due or applied to the court.

A BOS which is not properly drawn up or registered will be void.

There is no such thing as a Bill of Sale in Scotland and one would not be legally enforceable. Hire Purchase agreements are used as the alternative.

## Summary

- Credit can be provided in a secured way if the lender decides this is appropriate, after assessing the risk of not being repaid; any **security provided is not part of the credit but the CCA regulates it to some extent**, e.g. by requiring it to be embodied in the credit agreement and in addition or instead, some forms of security have their own regulatory measures.
- If C's credit agreement is **HP or CS, then the lender is the owner of the goods until ownership transfers to C, which provides some security** as the lender can take action to repossess their goods if C fails to keep up the payments on the loan and defaults, subject to compliance with the relevant requirements concerning default notices and seeking court orders if necessary.
- **Pawnbrokers take C's goods as security for a loan** and they can be redeemed at any time during the redemption period, usually within 6 months, after which the pawnbroker can sell the goods to pay off the debt if C does not re-pay in time, providing that the rules have been complied with; if the item is sold, the pawnbroker must inform C and hand over any excess monies achieved after paying off the credit and expenses, but if there is a shortfall C will be liable for this.
- A **bill of sale is a document that identifies a lender's transfer of title in goods that act as security for a loan** and the goods remain with C who enjoys physical possession of them, while the debt remains attached to the goods until it is paid off; the BOS gives the lender rights to take the goods if the loan is not repaid and if the correct procedures are followed.
- The **industry code on BOS** provides that if a company fails to register the existence of finance on a vehicle within 24 hours, then the buyer gets the same protections as if HP existed on the car, so it cannot be taken from a person who later buys the car; the debt would still be outstanding and would remain the responsibility of the original debtor.
- The **BOS itself is regulated by the Bills of Sale Acts 1878 and 1882**, so lenders' documentation needs to comply with these Acts as well as the CCA, if applicable, which means it needs to be in the standard format and also witnessed and registered at the High Court, which will then allow the lender to take the goods, without the need for a court order, and sell them to satisfy the debt after serving a default notice.

## **F7: Non-credit payment services**

In addition to the various types of credit arrangements discussed, there are many other different ways of paying for goods and services that do not necessarily involve a credit agreement or where credit is not a crucial dimension.

The main rules governing payments are the Payment Services Regulations 2009 and the Electronic Money Regulations 2011. In some circumstances, certain provisions of the CCA may also apply. The Payment Services Regulations include conduct of business rules that regulated firms must comply with and these also apply to electronic money institutions. In addition, the Consumer Rights (Payment Surcharges) Regulations 2012 mean that C should not be charged excessive fees for using any specific means of payment.

There are also a number of non-statutory, but highly institutionalised schemes, which provide protection when using certain types of payment methods: the Chargeback arrangements under the different card schemes (e.g. Visa and MasterCard), the Credit Payment Recovery Framework (CPRF) and the Direct Debit Guarantee.

While each payment method, payment system or means of payment may operate in a particular way, the applicable rules affecting Cs and their rights are relatively few. Table F14 briefly outlines the protections for Cs that apply to some of the most commonly used payment services and products.

### **F7.1 Statutory protection**

#### **F7.1.1 The Payment Services Regulations 2009**

Payment services are regulated by the FCA under the Payment Services Regulations 2009. The Regulations provide a number of protections and obligations for Cs under certain scenarios including for lost or stolen cards, when a card is used without the cardholder's knowledge and in the case of an unauthorised or incorrectly executed payment transaction. There is some overlap with some of the provisions in the CCA, e.g. misuse of credit tokens [s84], however, the Payment Services Regulations mainly apply to providers of payments that are not credit institutions.

##### **F7.1.1.1 Lost or stolen payment instruments**

C must take all reasonable steps to keep their security details safe. Upon learning that their debit or credit card (but also any other payment instrument including, for instance, e-banking and telephone banking details) is lost or stolen, C should immediately notify their payment service provider (often a bank) in the contractually agreed manner.

##### **F7.1.1.2 Payment instruments used without the cardholder's knowledge**

Should C discover that their debit or credit card (but also any other payment instrument) has been used, he or she must, without undue delay, and no later than 13 months after the date of the transaction, notify the issuer in the contractually agreed manner. A notification made after 13 months from the date of the transaction will not be eligible for redress under the Regulations but individual issuers may agree to more favourable terms to their customers.

##### **F7.1.1.3 Unauthorised or incorrectly executed payment transactions**

When a payment transaction occurs that has not been authorised or that has been incorrectly executed, the payment service provider, often a bank or building society, must immediately, (normally before close of business unless the claim has been made out-of-hours or very late in the day) refund the amount of the transaction once notified by the payer.

However, when there is enough evidence of gross negligence or fraud by C to warrant further investigation by the payment services provider, the refund may await the outcome of such enquiry. The decision to carry out further investigations should be taken on the day in which the claim is made. In normal circumstances, delays due to an investigation should be limited to a matter of days, not weeks.

Depending on terms and conditions, C may be liable for the first £50 of losses in the event of unauthorised transactions arising from: (1) the loss or theft of their payment instrument, or (2) use of their personalised security features (e.g. PIN or password) because of negligence. C's liability for the first £50 of losses covers total losses for each period of unauthorised transactions and not for each individual transaction, so, in the event of ten unauthorised transactions of £10, £100 in total, C is only liable for a maximum of £50.

C is not liable for any unauthorised transactions which occur after they have notified their payment service provider that their payment instrument has been lost or stolen; however, they are liable for all unauthorised transactions if they acted intentionally, with gross negligence or fraudulently. The BOP is on the payment service provider, not C.

### **F7.1.2 The Electronic Money Regulations 2011**

The electronic money (e-money) regime comes from a European Directive implemented in the UK through the Electronic Money Regulations 2011 (EMRs). From a legal perspective, e-money is electronically-stored money that is issued on receipt of funds to make payment transactions, accepted by a person other than the issuer; and represented by a claim on the issuer, e.g. PayPal, Skrill and pre-paid travel money cards. Paper based vouchers are not e-money.

Transactions completed using e-money benefit from the same protections afforded under the Payment Services Regulations. Certain e-money products, which can only be used at a certain chain of stores or for a limited range of goods and services, such as Oyster cards, Starbucks cards, mall cards and store specific gift cards, do not benefit from the protections under the Payment Services Regulations or the EMRs.

### **F7.1.3 Consumer Rights (Payment Surcharges) Regulations 2012**

If a T offers C different methods of paying for sales or service contracts, utility contracts and DigC, e.g. credit or debit card, as well as cash or contactless payments, then T can only charge a fee for any particular means of payment if it reflects what it costs T to use it [r4]. A number of contracts are exempt from the provisions in these Regulations [r5].

If T is in breach, then payment of the fee is unenforceable, to the extent of the excess charged, and C can recover any excess fee paid [r10].

## **F7.2 Non-statutory protection**

### **F7.2.1 Chargeback agreements**

Chargeback is the name given to the reversal of a card transaction. It is a facility provided by individual card schemes e.g. Visa, MasterCard and American Express, and is usually available for payments made using a

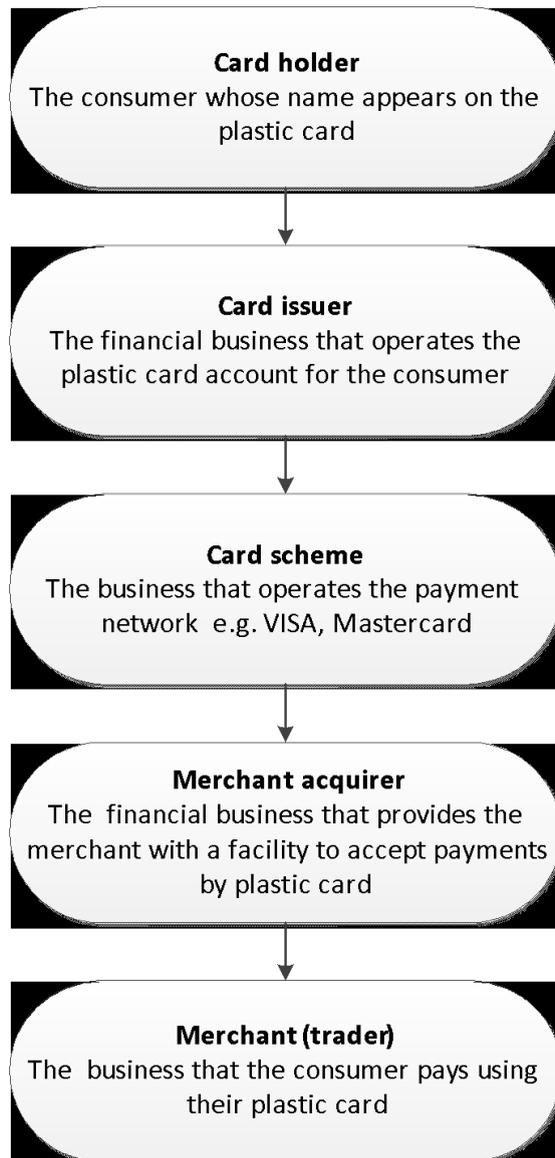
debit, credit or pre-paid card with the card scheme's logo on. Chargebacks are possible because of the contract between the card issuer and the card scheme. The option to raise a chargeback is available in lots of different situations and depends on the rules of each card scheme. The chargeback process is a right afforded to card issuers, it is not a right given directly to Cs. To raise a chargeback C should contact their card issuer, who will in turn raise a chargeback on their behalf.

Each scheme operates its own rules for the plastic cards that fall within the scheme. There is normally a time limit for raising a chargeback request, usually 120 days from the transaction appearing on the account. There is usually no minimum or maximum limit to the amount that can be claimed.

If the card issuer refuses a chargeback in circumstances in which a standard chargeback request through the proper channels would have, more likely than not, succeeded, then the Financial Ombudsman Service (FOS) may uphold a complaint; it may also ask for the payment service provider to pay interest on the amount, backdated to when the transaction took place and pay for the inconvenience caused to C.

A chargeback claim can usually be made if the goods or services paid for were not provided, when there appear to be issues with the goods or services provided and when T has ceased trading and is unresponsive to C's attempts to resolve the matter. Figure F1 explains some of the terminology involved in the Chargeback schemes.

## **Figure F1: How a typical Chargeback scheme operates**



### **F7.2.2 CPRF: mis-directed payments**

If C, or, in certain circumstances, a bank, has sent a payment in error they should contact the sending bank immediately and explain the situation. Many firms have signed up to an industry-led initiative called the Credit Payment Recovery Framework (CPRF), which is designed to assist Cs in recovering payments sent in error that have been processed by Faster Payments or BACS (Bankers Automated Clearance Services). The CPRF contains actions that both the sending and receiving banks should do in circumstances when a payment has been sent in error to try and ensure consistency. There is no guarantee that Cs will receive the funds back but, in order to increase the likelihood of success, C should contact their bank immediately after becoming aware of the error.

### **F7.2.3 Direct Debit Guarantee**

The Direct Debit Guarantee is offered by the banks and building societies that accept instructions to pay Direct Debits. If there are any changes to the amount, date or frequency of a Direct Debit, the originator (normally a merchant) will have to notify C at least 10 working days in advance of C's account being debited

or as otherwise agreed. If C requests the organisation to collect a payment, confirmation of the amount and date will be given to him at the time of the request.

If an error is made in the payment of a Direct Debit, by the organisation or the bank or building society, C is entitled to a full and immediate refund of the amount paid from the bank or building society.

If C receives a refund to which he/she is not entitled, it must be paid back when requested by the organisation. A Direct Debit can be cancelled at any time simply by contacting the relevant bank or building society. Written confirmation may be required and it is good practice to also notify the payee.

**Table F14: Summary of payment services**

Type of payment	Example	How it works	Protections for C
Payment made directly from a bank account	A transfer made from a branch, online or through mobile banking to a friend's bank account	Payment made directly from a bank account	A transfer made from a branch, online or through mobile banking to a friend's bank account
Payment made from an e-wallet	Paying for something online using PayPal or Skrill, for instance	The pre-funded e-wallet is used to make a payment	The Payment Services Regulations apply
Direct Debit (DD)	Utility bill	The money is taken from C's bank account on a specific date based on a request for payment from the originator, normally a merchant or service provider	Direct Debit (DD)
Standing Order (SO)	Regular payments initiated by the payer such as for rent	Unlike DDs, SOs are for a specific amount that C authorises in advance to be taken periodically from their account	Standing Order (SO)
Continuous payment authorities	Payday loan provider/gym membership	If C provided the long number across their debit/credit card as opposed to their bank details, then C has probably given a continuous payment authorisation to the lender/gym	C should be able to cancel the payment by contacting the payee
Debit card	Visa Debit	Card payment made on or off premises	Debit card
Credit card	BarclayCard	Card payment made on or off premises	Credit card
Digital wallet	ApplePay	Digital wallet	ApplePay
Prepaid cards and other electronic money governed by EMRS	Travel Money Card	Cash is loaded onto a plastic card in advance of spending	C must notify if card lost, stolen or

Type of payment	Example	How it works	Protections for C
Electronic gift cards	Gift cards sold by a store and to be used for the goods and services provided by said store	A set value is loaded on to a card and can only usually be used in certain locations or for certain products	if an unauthorised transaction occurs The protections available will depend on whether the product is defined as e-money or not (see explanation above)
Gift vouchers	Paper voucher	A paper voucher for a set value is given in exchange for the cash equivalent	Equivalent to cash, it will be subject to T&Cs of the specific issuer
Cheque	Paying for school photographs	Instructs C's bank to pay a specified amount of money to the person the cheque is written out to	

## **F7.4 Assistance for consumers**

### **F7.4.1 FCA Consumer Helpline**

As the regulator for financial services, the FCA monitors compliance in the industry and through its Consumer Helpline is able to give Cs impartial information to help them make informed decisions. It cannot give advice on individual issues but can provide Cs with more detailed information about rules of conduct that financial businesses are expected to adhere to, their right to complain to the business and to take their complaint to the FOS if it is not resolved.

The FCA Consumer Helpline can deal with issues such as:

- financial scams, including cloned companies (the FCA will put a notice on their website about cloned companies to warn Cs and protect the regulated business)
- poor conduct or behaviour of a financial business
- unauthorised financial businesses
- a request for general information about what regulated financial businesses can and can't do
- misleading financial advertising (the FCA deal with the technical aspects and ASA with taste and decency aspects)

The FCA Consumer Helpline signposts Cs to a variety of partners for further assistance, including:

- FOS – for vulnerable Cs who have a problem with a financial business
- Citizens Advice – for problems relating to contracts for goods and services
- Money Advice Service – for debt support and advice

### **F7.4.2 Financial Ombudsman Service (FOS)**

If C has a problem with their payment service provider they should complain directly to the firm in the first instance. If that doesn't resolve the problem, C may refer the complaint to the FOS (unit H).

## Summary

- **Payment services are regulated by the FCA under the Payment Services Regulations 2009**, which provide a number of protections and obligations for Cs under certain scenarios including for lost or stolen cards, when a card is used without the cardholder's knowledge and in the case of an unauthorised or incorrectly executed payment transaction; there is some overlap with some of the provisions in the CCA, however, the Payment Services Regulations mainly apply to providers of payments that are not credit institutions.
- **Electronic money issuers are also regulated by the Electronic Money Regulations 2011**; e-money is electronically-stored money that is issued on receipt of funds to make payment transactions, accepted by a person other than the issuer, and represented by a claim on the issuer, e.g. PayPal, Skrill and pre-paid travel money cards, however, products that can only be used at certain stores or for a limited range of goods or services are exempt from the protections afforded under the Payment Services Regulations or the EMRs.
- If a T offers C different methods of paying for sales or service contracts, utility contracts and DigC, e.g. credit or debit card, as well as cash or contactless payments, then **T can only charge a fee for any particular means of payment if it reflects what it costs T to use it, as required by the CR(PS)R**; a number of contracts are exempt from the provisions in these Regulations and if T is in breach, then payment of the fee is unenforceable, to the extent of the excess charged, and C can recover any excess fee paid.
- **Chargeback is a process that allows the reversal of a card transaction** and the card issuer may be able to raise a chargeback through the scheme on behalf of C, typically for goods or services that have not been provided or with which there is a problem, providing the matter is raised within the relevant timescale, usually 120 days; there is not usually a minimum or maximum amount that can be claimed. **This is not a financial capability trigger.**
- Many banks have signed up to an industry-led initiative called the **Credit Payment Recovery Framework, which is designed to assist Cs in recovering payments sent in error** that have been processed by Faster Payments or BACS and it contains actions that both the sending and receiving banks should do in such circumstances to try and ensure consistency, although there is no guarantee that Cs will receive the funds back.
- **The Direct Debit Guarantee is offered by the banks and building societies that accept instructions to pay Direct Debits** and includes requirements relating to: confirmation for C of dates and amounts; any changes to these by the originator; full and immediate refunds if errors are made; C returning any refund to which there is no entitlement and straightforward cancellation provisions for C.
- **As the regulator for financial services, the FCA monitors compliance in the industry and through its Consumer Helpline is able to give Cs impartial information to help them make informed decisions**, but cannot give advice on individual issues only more detailed information about rules of conduct that financial businesses are expected to adhere to, the right to complain to the business and to take a complaint to the FOS if it is not resolved.