

PRACTICE DIRECTION – CONSUMER CREDIT ACT CLAIM

THIS PRACTICE DIRECTION SUPPLEMENTS CPR RULE 7.9

- 1.1 In this practice direction ‘the Act’ means the Consumer Credit Act 1974, a section referred to by number means the section with that number in the Act, and expressions which are defined in the Act have the same meaning in this practice direction as they have in the Act.
- 1.2 ‘Consumer Credit Act procedure’ means the procedure set out in this practice direction.

WHEN TO USE THE CONSUMER CREDIT ACT PROCEDURE

- 2.1 A claimant must use the Consumer Credit Act procedure where he makes a claim under a provision of the Act to which paragraph 3 of this practice direction applies.
- 2.2 Where a claimant is using the Consumer Credit Act procedure the CPR are modified to the extent that they are inconsistent with the procedure set out in this practice direction.
- 2.3 The court may at any stage order the claim to continue as if the claimant had not used the Consumer Credit Act procedure, and if it does so the court may give any directions it considers appropriate.
- 2.4 This practice direction also sets out matters which must be included in the particulars of claim in certain types of claim, and restrictions on where certain types of claim may be started.

THE PROVISIONS OF THE ACT

- 3.1 Subject to paragraph 3.2 and 3.3 this practice direction applies to claims made under the following provisions of the Act:
 - (1) section 141 (claim by the creditor to enforce regulated agreement relating to goods etc),
 - (2) section 129 (claim by debtor or hirer for a time order),
 - (3) section 90 (creditor’s claim for an order for recovery of protected goods),
 - (4) section 92(1) (creditor’s or owner’s claim to enter premises to take possession of goods),
 - (5) section 139(1)(a) (debtor’s claim for a credit agreement to be reopened as extortionate), and
 - (6) creditor’s or owner’s claim for a court order to enforce a regulated agreement relating to goods or money where the court order is required by –
 - (a) section 65(1) (improperly executed agreement),

- (b) section 86(2) of the Act (death of debtor or hirer where agreement is partly secured or unsecured),
 - (c) section 111(2) (default notice etc not served on surety),
 - (d) section 124(1) or (2) (taking of a negotiable instrument in breach of terms of section 123), or
 - (e) section 105(7)(a) or (b) (security not expressed in writing, or improperly executed).
- 3.2 This practice direction does not apply to any claim made under the provisions listed in paragraph 3.1 above if that claim relates to the recovery of land.
- 3.3 This practice direction also does not apply to a claim made by the creditor under section 141 of the Act to enforce a regulated agreement where the agreement relates only to money. Such a claim must be started by the issue of a Part 7 claim form.

RESTRICTIONS ON WHERE TO START SOME CONSUMER CREDIT ACT CLAIMS

- 4.1 Where the claim includes a claim to recover goods to which a regulated hire purchase agreement or conditional sale agreement relates, it may only be started in the county court for the district in which the debtor, or one of the debtors:
- (1) resides or carries on business, or
 - (2) resided or carried on business at the date when the defendant last made a payment under the agreement.
- 4.2 In any other claim to recover goods, the claim may only be started in the court for the district:
- (1) in which the defendant, or one of the defendants, resides or carries on business, or
 - (2) in which the goods are situated.
- 4.3 A claim of a debtor or hirer for an order under section 129(1)(b) of the Act (a time order) may only be started in the court where the claimant resides or carries on business.
- (Costs rule 45.1(2)(b) allows the claimant to recover fixed costs in certain circumstances where such a claim is made.)
- (Paragraph 7 sets out the matters the claimant must include in his particulars of claim where he is using the Consumer Credit Act procedure.)

THE CONSUMER CREDIT ACT PROCEDURE

- 5.1 In the types of claim to which paragraph 3 applies the court will fix a hearing date on the issue of the claim form.
- 5.2 The particulars of claim must be served with the claim form.

- 5.3 Where a claimant is using the Consumer Credit Act procedure, the defendant to the claim is not required to:
 - (1) serve an acknowledgment of service, or
 - (2) file a defence, although he may choose to do so.
- 5.4 Where a defendant intends to defend a claim, his defence should be filed within 14 days of service of the particulars of claim. If the defendant fails to file a defence within this period, but later relies on it, the court may take such a failure into account as a factor when deciding what order to make about costs.
- 5.5 Part 12 (default judgment) does not apply where the claimant is using the Consumer Credit Act procedure.
- 5.6 Each party must be given at least 28 days' notice of the hearing date.
- 5.7 Where the claimant serves the claim form, he must serve notice of the hearing date at the same time, unless the hearing date is specified in the claim form.

POWERS OF THE COURT AT THE HEARING

- 6.1 On the hearing date the court may dispose of the claim.
- 6.2 If the court does not dispose of the claim on the hearing date:
 - (1) if the defendant has filed a defence, the court will:
 - (a) allocate the claim to a track and give directions about the management of the case, or
 - (b) give directions to enable it to allocate the claim to a track,
 - (2) if the defendant has not filed a defence, the court may make any order or give any direction it considers appropriate.
- 6.3 Rule 26.5 (3) to (5) and rules 26.6 to 26.10 apply to the allocation of a claim under paragraph 6.2.

MATTERS WHICH MUST BE INCLUDED IN THE PARTICULARS OF CLAIM

- 7.1 Where the Consumer Credit Act procedure is used, the claimant must state in his particulars of claim that the claim is a Consumer Credit Act claim.
- 7.2 A claimant making a claim for the delivery of goods to enforce a hire purchase agreement or conditional sale agreement which is:
 - (1) a regulated agreement for the recovery of goods, and
 - (2) let to a person other than a company or other corporation, must also state (in this order) in his particulars of claim:
 - (a) the date of the agreement,
 - (b) the parties to the agreement,

- (c) the number or other identification of the agreement (with enough information to allow the debtor to identify the agreement),
- (d) where the claimant was not one of the original parties to the agreement, the means by which the rights and duties of the creditor passed to him,
- (e) the place where the agreement was signed by the defendant (if known),
- (f) the goods claimed,
- (g) the total price of the goods,
- (h) the paid up sum,
- (i) the unpaid balance of the total price,
- (j) whether a default notice or a notice under section 76(1) or section 88(1) of the Act has been served on the defendant, and, if it has, the date and the method of service,
- (k) the date on which the right to demand delivery of the goods accrued,
- (l) the amount (if any) claimed as an alternative to the delivery of goods, and
- (m) the amount (if any) claimed in addition to –
 - (i) the delivery of the goods, or
 - (ii) any claim under sub paragraph (l) above with the grounds of each such claim.

7.3 A claimant who is a debtor or hirer making a claim for an order under section 129(1)(b) of the Act (a time order) must state (in the following order) in his particulars of claim:

- (1) the date of the agreement,
- (2) the parties to the agreement,
- (3) the number or other means of identifying the agreement,
- (4) details of any sureties,
- (5) if the defendant is not one of the original parties to the agreement then the name of the original party to the agreement,
- (6) the names and addresses of the persons intended to be served with the claim form,
- (7) the place where the claimant signed the agreement,
- (8) details of the notice served by the creditor or owner giving rise to the claim for the time order,
- (9) the total unpaid balance the claimant admits is due under the agreement, and –
 - (a) the amount of any arrears (if known), and

- (b) the amount and frequency of the payments specified in the agreement,
 - (10) the claimant's proposals for payments of any arrears and of future instalments together with details of his means;
 - (11) where the claim relates to a breach of the agreement other than for the payment of money the claimant's proposals for remedying it.
- 7.4 (1) This paragraph applies where a claimant is required to obtain a court order to enforce a regulated agreement by:
- (a) section 65(1) (improperly executed agreement),
 - (b) section 105(7)(a) or (b) (security not expressed in writing, or improperly executed),
 - (c) section 111(2) (default notice etc. not served on surety),
 - (d) section 124(1) or (2) (taking of a negotiable instrument in breach of terms of section 123), or
 - (e) section 86(2) of the Act (death of debtor or hirer where agreement is partly secured or unsecured).
- (2) The claimant must state in his particulars of claim what the circumstances are that require him to obtain a court order for enforcement.

ADMISSION OF CERTAIN CLAIMS FOR RECOVERY OF GOODS UNDER REGULATED AGREEMENTS

- 8.1 In a claim to recover goods to which section 90(1)¹ applies:
- (1) the defendant may admit the claim, and
 - (2) offer terms on which a return order should be suspended under section 135(1)(b).
- 8.2 He may do so by filing a request in practice form N9C.
- 8.3 He should do so within the period for making an admission specified in rule 14.2(b). If the defendant fails to file his request within this period, and later makes such a request, the court may take the failure into account as a factor when deciding what order to make about costs.
- 8.4 On receipt of the admission, the court will serve a copy on the claimant.
- 8.5 The claimant may obtain judgment by filing a request in practice form N228.
- 8.6 On receipt of the request for judgment, the court will enter judgment in the terms of the defendant's admission and offer and for costs.

¹ Section 90(1) provides that:

'At any time when -

- (a) the debtor is in breach of a regulated hire-purchase or a regulated conditional sale agreement relating to goods, and
- (b) the debtor has paid to the creditor one-third or more of the total price of the goods, and
- (c) the property in the goods remains in the creditor, the creditor is not entitled to recover possession of the goods from the debtor except on an order of the court.

8.7 If:

- (1) the claimant does not accept the defendant's admission and offer, and
- (2) the defendant does not appear on the hearing date fixed when the claim form was issued,

the court may treat the defendant's admission and offer as evidence of the facts stated in it for the purposes of sections 129(2)(a)¹ and 135(2)².

ADDITIONAL REQUIREMENTS ABOUT PARTIES TO THE PROCEEDINGS

- 9.1 The court may dispense with the requirement in section 141(5) (all parties to a regulated agreement and any surety to be parties to any proceedings) in any claim relating to the regulated agreement, if:

- (1) the claim form has not been served on the debtor or the surety, and
- (2) the claimant either before or at the hearing makes an application (which may be made without notice) for the court to make such an order.

- 9.2 In a claim relating to a regulated agreement where –

- (1) the claimant was not one of the original parties to the agreement, and
- (2) the former creditor's rights and duties under the agreement have passed to him by –
 - (a) operation of law, or
 - (b) assignment,

the requirement of section 141(5) (all parties to a regulated agreement and any surety to be parties to any proceedings) does not apply to the former creditor, unless the court otherwise orders.

- 9.3 Where a claimant who is a creditor or owner makes a claim for a court order under section 86(2) (death of debtor or hirer where agreement is partly secured or unsecured) the personal representatives of the deceased debtor or hirer must be parties to the proceedings in which the order is sought, unless no grant of representation has been made to the estate.

1 Section 129(2) provides that –

'A time order shall provide for one or both of the following, as the court considers just –

- (a) the payment by the debtor or hirer or any surety of any sum owed under a regulated agreement or a security by such instalments, payable at such times, as the court, having regard to the means of the debtor or hirer and any surety, considers reasonable;
- (b) the remedying by the debtor or hirer of any breach of a regulated agreement (other than non-payment of money) within such period as the court may specify.'

2 Section 135(2) provides that –

'The court shall not suspend the operation of a term [in an order relating to a regulated agreement] requiring the delivery up of goods by any person unless satisfied that the goods are in his possession or control.'

- 9.4 Where no grant of representation has been made to the estate of the deceased debtor or hirer, the claimant must make an application in accordance with Part 23 for directions about which persons (if any) are to be made parties to the claim as being affected or likely to be affected by the enforcement of the agreement.
- 9.5 The claimant's application under paragraph 9.4:
- (a) may be made without notice, and
 - (b) should be made before the claim form is issued.

NOTICE TO BE GIVEN TO RE-OPEN A CONSUMER CREDIT AGREEMENT

- 10.1 Where a debtor or any surety intends to apply for a consumer credit agreement to be reopened after a claim on or relating to the agreement has already begun, and:
- (1) section 139(1)(b)¹; or
 - (2) section 139(1)(c),
- applies, the debtor or surety must serve written notice of his intention on the court and every other party to the proceedings within 14 days of the service of the claim form on him.
- 10.2 If the debtor or surety (as the case may be) serves a notice under paragraph 10.1 he will be treated as having filed a defence for the purposes of the Consumer Credit Act procedure.

¹ Section 139(1) provides that –

‘(1) A credit agreement may, if the court thinks just, be reopened on the ground that the credit bargain is extortionate:

- (a) on an application for the purpose made by the debtor or any surety to the High Court, county court or sheriff court; or
- (b) at the instance of the debtor or a surety in any proceedings to which the debtor and creditor are parties, being proceedings to enforce the credit agreement, any security relating to it or any linked transaction; or
- (c) at the instance of the debtor or a surety in other proceedings in any court where the amount paid or payable under the credit agreement is relevant.’

