

# Blues and lose

Richard Humphreys worries that some businesses may be in breach of the consumer credit act and the CCA police are on their trail.

**C**onsumer credit protection legislation, designed to protect ordinary individuals from the worst excesses of the finance industry, is nothing new in the UK.

We've had hire-purchase legislation since at least the 1930's and the overarching Consumer Credit Act (CCA) has been around since 1974 (though much of it didn't actually come into force until the mid-80's). Banks and finance companies are generally well aware of the regulations and most businesses outside of mainstream lending aren't directly affected. Or are they?

Many mainstream lenders have found the task of complying with CCA legislation getting increasingly complicated over the past few years and this trend is set to escalate still further over the next 12 months. Furthermore, those businesses who would traditionally consider themselves to be on the periphery of the credit world, such as suppliers of goods or services to consumers who have arrangements with a finance company to introduce to consumers wanting credit facilities, have been finding themselves drawn steadily into the complex and, for most, highly confusing world of consumer credit compliance.

So why is this happening? In practice, there are a number of factors at work. The main interlocking drivers behind these developments, however, are the modern tendency towards wider and deeper regulation, the recent upgrading of the Consumer Credit Act for the 21st Century and the impending (June 2010) introduction of Europe-wide regulation in accordance with the EU Consumer Credit Directive (CCD). Even a relatively brief look at any one of those three main drivers would itself amount to a lengthy article; fortunately, highlighting a few salient examples will be enough to illustrate the scale of the problem.

## Granting credit

To start with, there are many businesses up and down the country that trade successfully and have done so for years, secure in the mistaken belief that consumer credit legislation is something for others to worry about, because they are not in the business of granting credit. The CCA 1974 is, however, drafted widely to prevent avoidance and goes far beyond simple loans. Effectively, it covers any situation where a business agrees to provide an individual (defined so as to include sole traders and small partnerships) with a 'financial

accommodation', such as the deferment of a liability to pay a debt that would otherwise be immediately due.

Standard trade credit usually falls into one of the few exemptions and if a customer is simply late in paying then there is no 'agreement' for an extension of credit in place. However, there are many other business activities which are not exempt. A typical example might be the local health club which decides to boost membership by allowing the annual subscription to be paid by monthly instalments in return for a small 'administration' fee. Doing this would almost certainly amount to the grant of regulated credit. As a result, before it even considered detailed CCA compliance, the club would need to obtain a license from the OFT and failure to be licensed is a serious criminal offence.

Those businesses which mistakenly operate without a CCA licence are not alone in being on the wrong side of the law. Many other businesses do have a consumer credit licence somewhere in a drawer that they applied for years ago, but assume that this is enough to comply with their liability and do nothing to actually implement the long list of regulations that apply to consumer credit businesses.

Those regulations cover every aspect of a credit transaction, from advertising for business in the first place, through the formulation of documentation and the execution of the credit agreement itself, right down to how the agreement may be enforced if the debtor fails to pay. They have also been greatly extended by the recent CCA reforms: for example, in 2005 more detailed documentation requirements were imposed and only last year the CCA 2006 introduced a whole range of new post-contract information requirements, such as the need to serve formal Notices of Sums in Arrears if a customer falls behind with payments.

## Avoiding the breach

'So what?' is a common reponse. 'We've been doing it this way for years and so have all our competitors'. Unfortunately, neither pointing to all the other speeding drivers nor telling the nice policeman that you've been doing 90 miles an hour on this piece of road for years without an accident is going to do much good if you are the driver pulled over on the motorway. Much the same is true for breaches of consumer credit legislation.

... the complex and, for most, highly confusing world of consumer credit compliance ...

... those businesses which mistakenly operate without a CCA licence are not alone ...

More importantly, perhaps, there are an increasing number of CCA policeman out there and they have greater powers than they used to. The CCA regulator, the OFT, was given extended licensing powers in 2007, including the ability to impose substantial fines. It has stated its intention to use these powers and whilst a lack of resources is causing it at present to concentrate on 'high risk' cases, that will change sooner or later.

That year also saw the extension of the remit of the Financial Ombudsman Service (FOS) and all CCA licence holders can now be subject to a formal FOS complaint if they fail to look after their customers properly. In addition, local enforcers in the shape of Trading Standards Departments are becoming more knowledgeable and active in this field; this is partly as a result of consumers increasing awareness of their own rights, driven to a great extent by increased levels of internet access. All in all, the regulatory landscape has been changing and there are now simply fewer places for non-compliant businesses to hide.

On top of all this, businesses engaging in the grant of unsecured regulated credit are now under even more pressure due to the pending introduction of the CCD reforms. Even many finance companies haven't yet caught up with the full implications of the changes here. This may be partly because they are a bit punch drunk after all the other changes introduced over the last few years and partly because the CCD, despite well over 10 years gestation in Brussels before it became law last year, is still the subject of consultation by the Department for Business Innovation and Skills (BIS) and final versions of regulations to introduce the CCA changes are unlikely to be available for some weeks yet.

The result is that lenders do not yet fully know what it is they will need to have implemented before the new regulations take force in June next year. Many of them are, though, waking up to the consequences of these latest changes and yet again it isn't just mainstream lenders who will be affected. A well respected manufacturer of home audio equipment has spent many years selling its products on credit outside CCA regulations using one of the major exemptions; no more than four repayments in less than 12 months. That exemption is being amended in June next year, as a result of which that manufacturer (and possibly many like it) will either need to adopt full CCA regulation if it wishes to carry

on charging for the grant of credit, or find another business model to operate, such as interest free arrangements.

### Taking good advice

This last point is particularly important for any business. Full CCA compliance was time consuming and expensive enough before the recent changes and the best legal advice for any business that didn't need to dabble in the area was 'don't'. That advice still holds good and many businesses that are inadvertently breaking the law might, with only minor adjustments to their business model, take themselves outside CCA regulation altogether.

There are also many businesses operating as introducers of regulated credit agreements to finance companies who will be affected by the CCD changes. For example, 'Credit Intermediaries' will be required to state in all relevant advertising whether they deal exclusively with one lender or are genuinely independent. For all these businesses, there will be decisions to be made, weighing up the cost of continuing to be involved in the regulated arena against the benefits. For most, though, there will probably be little choice but to comply if they wish to keep trading.

In conclusion, therefore, it is getting more difficult to be CCA compliant and there are still many businesses that aren't even aware that these regulations affect them. Full compliance is undoubtedly burdensome and in the present economic climate few businesses can afford to throw money about. On the other hand, the cost of compliance is undoubtedly much less than the cost (in both time and money) of having to deal with the CCA police if they happen to pull you over.

... full compliance is undoubtedly burdensome ...



\*This OFT decision concerning failure to properly implement CCA Regs was published after the article was written.

Richard Humphreys is a partner at Blake Lapthorn.



Richard Humphreys

**The ICM will be running a dedicated training seminar on the Consumer Credit Act run by Richard at the Cumberland Hotel in London on 25 November, for further information or to book a place please contact [training@icm.org.uk](mailto:training@icm.org.uk) or telephone 01780 722907.**

Friendly & practical advice • Pre legal collection • Dispute resolution • Legal proceedings



If *only* it was this easy to spot them

Coltman Warner Cranston LLP

*Specialist Debt Recovery Lawyers*

Unit 3, The Innovation Village, Coventry University Technology Park, Cheetah Road, Coventry CV1 2TL  
T: +44 (0) 2476 627262 F: +44 (0) 2476 227691 E: [icoltman@coltmanco.com](mailto:icoltman@coltmanco.com)

WWW.COLTMANCO.COM