Claim number:

Defence and Counterclaim

Date:

|  |  |  |
| --- | --- | --- |
| IN THE County Court sitting at | | |
| BETWEEN | | |
|  | [Claimant Name] | (Claimant) |
|  | AND |  |
|  | [Defendant/s Name] | (Defendant/s) |
|  |  |  |
| Defence and Counterclaim | | |

I, [name] of [address], currently [occupation, retired or unemployed] and the defendant in this matter, make this statement of case in support of my defence form N11M to the possession claim/money claim issued on [date] and counterclaim for a time order under s129 Consumer Credit Act 1974.

An N9B/N11M was filed with the court on [date, or has been filed with this statement of case].

The defendant has received help in drafting this statement of case from [adviser name] of [advice agency name] and Shelter’s Specialist Debt Advice Service.

**Grounds of defence**

1. The defendant denies the claimant’s right to possession on the grounds stated below. Note that these are template pleadings, you will need to amend details as appropriate to your case.
2. The defendant admits entering into a legal charge in respect of the specified property on [date].
3. The defendant admits being in sole possession of the property.
4. The defendant admits the loan secured on the property is not currently a regulated consumer credit agreement.
5. The defendant admits the amounts of the loan and neither admits nor denies the charge for credit stated.
6. The defendant is in receipt of [details of income].

**Counterclaim**

1. When the agreement was executed it was a Regulated Credit Agreement within the definition in the Consumer Credit Act 1974.
2. The agreement became a Regulated Mortgage Contract on 21 May 2016 by virtue of the Mortgage Credit Directive Order 2015. Certain Consumer Credit Act requirements were still to be enforced, including (but not limited to) the issue of statutory default notices, statutory notices of sums in arrears, and the time order provisions.
3. Consumer Credit Act regulation at the outset would allow the court to engage the Time Order provisions to *amend the agreement in consequence of the order* – s136. This is not withstanding the transfer of regulation to the FCA, who have confirmed in their Perimeter Guidance Manual (PERG) at 4.17.*2 “It therefore follows that, for example, the CCA provisions relating to time orders apply to regulated mortgage contracts”*.
4. The mortgage is a Regulated Mortgage Contract (hereafter RMC) within the meaning of Article 61(3)(a) Financial Services and Markets Act 2000 (Regulated Activities) Order 2001/544 and the FCA Perimeter Guidance Manual at PERG 4.4 *What is a regulated mortgage contract?* This mortgage meets the definition because:
5. the contract is one where a lender provides credit to an individual
6. the contract provides for the obligation of the borrower to repay to be secured on land in the EEA
7. at least 40% of that land is used as a dwelling
8. it is not exempt by virtue of being a loan to a commercial borrower, a second charge loan by a credit union, a second charge bridging loan excluded under PERG 4.4.27 G or a consumer buy to let loan
9. PERG 4.4.10 confirms the purpose of the loan is irrelevant
10. The Administration of Justice Acts 1970 (s36) and 1973 (s8) (hereafter AJAs) provide the court with a power to suspend possession on payment terms. However, I am not able to make a proposal to pay the balance within a “reasonable period” as required by s36 AJA.
11. The Consumer Credit Act 1974, s126 Enforcement of Land Mortgages was amended by the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2013 Article 5(4) to include RMCs as follows:

*“For section 126 (enforcement of land mortgages) substitute—*

*“(1)     A land mortgage securing an agreement of one the following types is enforceable (so far as is provided in relation to the agreement) on an order of the court only—*

*(a)     a regulated agreement;*

*(b)     a regulated mortgage contract;*

*(c)     a consumer credit agreement which would, but for article 60D of the Regulated Activities Order (exempt agreements: exemption relating to the purchase of land for non-residential purposes), be a regulated agreement.*

*(2)     Subject to section 140A(5) (unfair relationships between creditors and debtors), a regulated mortgage contract which would, but for article 60C(2) of the Regulated Activities Order (exempt agreements: exemption relating to the nature of the agreement), be a regulated agreement is to be treated for the purposes of Part 9 (judicial control) as if it were a regulated agreement.*

*(3)     In this section, “regulated mortgage contract” has the meaning given by article 61(3) of the Regulated Activities Order (regulated mortgage contracts)).”.*

1. Article 60C(2) of the Regulated Activities Order exempts RMCs from the Consumer Credit Act 1974 (hereafter CCA) except as specified above.
2. Part 9 (judicial control) Consumer Credit Act 1974 contains the time order provisions. Therefore, the provisions to be relied upon by the defendant in s129 (Time Orders) and s136 (Power to vary agreements and securities) apply to this agreement as it is an RMC.
3. This is confirmed in the FCA Perimeter Guidance Manual PERG 4.17.2 as follows:

*Section 126(2) of the*[*CCA*](https://www.handbook.fca.org.uk/handbook/glossary/G3159.html)*(as inserted by the*[*Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2014)*](http://www.legislation.gov.uk/uksi/2014/366)*provides, however, that for the purposes of section 126(1) of the*[*CCA*](https://www.handbook.fca.org.uk/handbook/glossary/G3159.html)*(a land mortgage securing a*[*regulated credit agreement*](https://www.handbook.fca.org.uk/handbook/glossary/G3184.html)*is enforceable (so far as provided in relation to the agreement) on an order of the court only) and Part 9 of the*[*CCA*](https://www.handbook.fca.org.uk/handbook/glossary/G3159.html)*(judicial control) a*[*regulated mortgage contract*](https://www.handbook.fca.org.uk/handbook/glossary/G1321.html)*which would, but for the exemption in PERG 2.7.19CG(1), be a*[*regulated credit agreement*](https://www.handbook.fca.org.uk/handbook/glossary/G3184.html)*is to be treated as if it were a*[*regulated credit agreement*](https://www.handbook.fca.org.uk/handbook/glossary/G3184.html)*. This is subject to section 140A(5) of the*[*CCA*](https://www.handbook.fca.org.uk/handbook/glossary/G3159.html)*(unfair relationships between creditors and debtors), which provides that an order under section 140B of the*[*CCA*](https://www.handbook.fca.org.uk/handbook/glossary/G3159.html)*(powers of court in relation to unfair relationships) shall not be made in connection with a*[*credit agreement*](https://www.handbook.fca.org.uk/handbook/glossary/G3163.html)*which is an exempt agreement under*[*PERG 2.7.19C G*](https://www.handbook.fca.org.uk/handbook/PERG/2/7.html#DES1248)*. It therefore follows that, for example, the CCA provisions relating to time orders apply to*[*regulated mortgage contracts*](https://www.handbook.fca.org.uk/handbook/glossary/G1321.html)*.*

1. The defendant relies on s129(2) CCA to request the court consider whether it is just to make a time order:

*(2) 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*

1. The defendant [has filed, or will file] a witness statement that supports the assertion that it would be just to make a time order, and to amend the agreement in consequence of the order under s136 Consumer Credit Act (also contained in part 9, judicial control):

***136 Power to vary agreements and securities.***

*The court may in an order made by it under this Act include such provision as it considers just for amending any agreement or security in consequence of a term of the order.*

1. The defendant can make an offer which would clear the loan in full in [x years] and is willing to pay a market rate of interest on the outstanding balance.
2. The defendant would suffer undue hardship if a possession order were made against them. They have no alternative accommodation.
3. The defendant pleads the leading cases of *Equity Home Loans v Lewis and Southern District Finance v Barnes* [1995] 27 HLR 691 in which the Court of Appeal held that a time order could be made for a period of 15 years in one case (Barnes) and the lifetime of a loan in another (Lewis).
4. The defendant request the court make a time order suspending possession on the same terms allowing them to remain in their home.
5. The defendant proposes to pay £suggest an amount based on the financial statement.

I believe that the facts stated in this defence and counterclaim are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Dated: ………………………………

Signed: ……………………………

Name

Defendant

To the court and to the claimant