

# Enquiry of the month

## Challenging a transfer of a CCA regulated debt to the High Court for enforcement

### Jurisdiction

If a creditor obtains a county court judgment (CCJ) against an individual, and if that debt is regulated by the Consumer Credit Act (CCA), it must not be transferred to the High Court for enforcement, regardless of the amount outstanding.

There are two pieces of legislation to cite:

### Article 8(1A) of The High Court and County Court Jurisdiction Order 1991

The text of [Article 8\(1A\)](#) on legislation.gov.uk is out of date and has altered since but has the same effect. The updated wording is below (taken from our subscription service Lexis Nexis):

**“8**

*(1) [Subject to paragraph (1A)] a judgment or **order** of [the **County Court**] for the payment of a sum of money which it is sought to enforce wholly or partially by execution against goods—*

*[(a) . . . shall be enforced only in the **High Court** where the sum which it is sought to enforce is £5,000 or more;]*

*[(b) shall be enforced only in [the **County Court**] where the sum which it is sought to enforce is less than [£600];]*

*(c) in any other case may be enforced in either the **High Court** or [the **County Court**].*

*[(1A) A judgment or **order** of [the **County Court**] for the payment of a sum of money in proceedings arising out of an agreement regulated by the [Consumer Credit Act 1974](#) shall be enforced only in [the **County Court**.]]”*

### Section 141(1) of the Consumer Credit Act 1974

[Section 141\(1\)](#) and s141(2) state:

**“141 Jurisdiction and parties.**

*(1) In England and Wales the county court shall have jurisdiction to hear and determine—*

*(a) any action by the creditor or owner to enforce a regulated agreement or any security relating to it;*

*(b) any action to enforce any linked transaction against the debtor or hirer or his relative, and such an action shall not be brought in any other court.*

*(2)Where an action or application is brought in the High Court which, by virtue of this Act, ought to have been brought in the county court it shall not be treated as improperly brought, but shall be transferred to the county court.”*

Therefore, it is clear from the above that CCA regulated agreements cannot be enforced by a High Court writ.

### **Next steps:**

#### **Complain that the HCEO firm / original creditor acted in error of the law**

Your client can make a formal complaint to the HCEO firm citing the above pieces of legislation including a breach of [paragraph 66\(1\)\(a\)](#) of Schedule 12 of the Tribunals Courts and Enforcement Act 2007 (TCEA), which states a debtor may ‘bring proceedings’ against the HCEO for breach of the Act or for acting on a writ that is defective.

The complaint should request that the High Court writ is set aside immediately and for any money already paid to be refunded, plus statutory interest of 8%. Any amount they used to reduce fees should not be allowed as they had no jurisdiction. However, if they have passed on all monies to the creditor, then the issue of a refund of money paid towards HCEO fees is resolved.

Your client could consider copying in the [High Court Enforcement Officers Association](#) (HCEOA), which would normally be the next step in the complaints process where the client is not satisfied with their response or the HCEO firm does not respond within 8 weeks. However, page 3 of the HCEOA [complaints procedure](#) states that they will consider complaints over the legality of a writ. The HCEOA is unlikely to accept the complaint either but at least they are made aware.

If the HCEO firm refuse to provide any refund, plus statutory interest of 8%, then follow it up with the HCEOA. Again, their process states they will not consider fees complaints, but will consider whether the correct stage was reached to add a particular fee (see para 14(d) of their complaints procedure). If the writ was invalid, then no fee should ever have been charged.

For general information on complaining about enforcement agents, you can find Graham O’Malley’s very useful articles published in Adviser online “[Complaining about enforcement agents — part 1](#)” and “[Complaining about enforcement agents — part 2](#)”.

You should also write to the original creditor attaching a copy of the letter sent to the HCEO firm requesting that the account is withdrawn immediately citing the above legislation.

Where the account is withdrawn by the original creditor or sent back to the original creditor by the HCEO firm, any HCEO fees added to the balance would be removed as per [Regulation 17](#) of The Taking Control of Goods (Fees) Regulations 2014. See also paragraph 31 of the [Taking Control of Goods: National Standards](#).

### **Successful outcome**

Glen Harrison from Tameside Citizens Advice has successfully argued that a CCA regulated debt should not have been transferred to the High Court, which resulted in enforcement action ceasing and all HCEO fees removed from the outstanding balance. A refund of £200 was made for payments made towards HCEO fees. This enabled the client to set up a direct payment arrangement with the original creditor.

If you have any successes that you've achieved for clients, we would love to hear about them and share them with other advisers. Please email us any success stories to [SpecialistDebt@shelter.org.uk](mailto:SpecialistDebt@shelter.org.uk).