



# Consumer Credit Act 1974

## 1974 CHAPTER 39

### PART IX

#### JUDICIAL CONTROL

##### *Extortionate credit bargains*

#### **137 Extortionate credit bargains**

- (1) If the court finds a credit bargain extortionate it may reopen the credit agreement so as to do justice between the parties.
- (2) In this section and sections 138 to 140.—
  - (a) " credit agreement" means any agreement between an individual (the " debtor ") and any other person (the " creditor ") by which the creditor provides the debtor with credit of any amount, and
  - (b) " credit bargain "—
    - (i) where no transaction other than the credit agreement is to be taken into account in computing the total charge for credit, means the credit agreement, or
    - (ii) where one or more other transactions are to be so taken into account, means the credit agreement and those other transactions, take together.

#### **138 When bargains are extortionate**

- (1) A credit bargain is extortionate if it—
  - (a) requires the debtor or a relative of his to make payments (whether unconditionally, or on certain contingencies) which are grossly exorbitant, or
  - (b) otherwise grossly contravenes ordinary principles of fair dealing.
- (2) In determining whether a credit bargain is extortionate, regard shall be had to such evidence as is adduced concerning—

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*Status: This is the original version (as it was originally enacted).*

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- (a) interest rates prevailing at the time it was made,
  - (b) the factors mentioned in subsection (3) to (5), and
  - (c) any other relevant considerations.
- (3) Factors applicable under subsection (2) in relation to the debtor include—
- (a) his age, experience, business capacity and state of health; and
  - (b) the degree to which, at the time of making the credit bargain, he was (under financial pressure, and the nature of that pressure.
- (4) Factors applicable under subsection (2) in relation to the creditor include—
- (a) the degree of risk accepted by him, having regard to the value of any security provided ;
  - (b) his relationship to the debtor ; and
  - (c) whether or not a colourable cash price was quoted for any goods or services included in the credit bargain.
- (5) Factors applicable under subsection (2) in relation to a linked transaction include the question how far the transaction was reasonably required for the protection of debtor or creditor, or was in the interest of the debtor.

### **139 Reopening of extortionate agreements**

- (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.
- (2) In reopening the agreement, the court may, for the purpose of relieving the debtor or a surety from payment of any sum in excess of that fairly due and reasonable, by order—
- (a) direct accounts to be taken, or (in Scotland) an accounting to be made, between any persons,
  - (b) set aside the whole or part of any obligation imposed on the debtor or a surety by the credit bargain or any related agreement,
  - (c) require the creditor to repay the whole or part of any sum paid under the credit bargain or any related agreement by the debtor or a surety, whether paid to the creditor or any other person,
  - (d) direct the return to the surety of any property provided for the purposes of the security, or
  - (e) alter the terms of the credit agreement or any security instrument.
- (3) An order may be made under subsection (2) notwithstanding that its effect is to place a burden on the creditor in respect of an advantage unfairly enjoyed by another person who is a party to a linked transaction.
- (4) An order under subsection (2) shall not alter the effect of any judgment.

- (5) In England and Wales an application under subsection (1)(a) shall be brought only in the county court in the case of—
- (a) a regulated agreement, or
  - (b) an agreement (not being a regulated agreement) under which the creditor provides the debtor with fixed-sum credit not exceeding £750 or running-account credit on which the credit limit does not exceed £750.
- (6) In Scotland an application under subsection (1)(a) may be brought in the sheriff court for the district in which the debtor or surety resides or carries on business.
- (7) In Northern Ireland an application under subsection (1)(a) may be brought in the county court in the case of—
- (a) a regulated agreement, or
  - (b) an agreement (not being a regulated agreement) under which the creditor provides the debtor with fixed-sum credit not exceeding £300 or running-account credit on which the credit limit does not exceed £300.

#### **140 Interpretation of sections 137 to 139**

Where the credit agreement is not a regulated agreement, expressions used in sections 137 to 139 which, apart from this section, apply only to regulated agreements, shall be construed as nearly, as may be as if the credit agreement were a regulated agreement.