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Debt Advice Handbook 15th edition

Description

With living costs and unemployment rising, budgets squeezed and problem debt on the increase, no adviser should be without this essential guide to the practice and process of giving money advice in England and Wales.

Who's this book for?

It is essential for debt advisers, welfare rights advisers, lawyers, local authority and housing association staff, social workers and union official.

What does it do?

The handbook provides the most comprehensive information needed by advisers on the key stages of money advice, including interviewing clients, establishing liability, prioritising debts, preparing a financial statement, negotiating with creditors and dealing with bailiffs. Fully indexed and cross-referenced to law, regulations and official guidance, and to court and tribunal decisions Includes tactical guidance and examples

What's new?

Fully updated to cover all recent changes to legislation, caselaw and court procedure and practice Emphasis is placed on taking due care of vulnerable clients and making sure that any payment arrangements agreed are appropriate. There is a focus on sustainable credit arrangements that do not affect a client's abilities to pay essential living expenses and priority debts.

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Bank overdraft

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A bank overdraft is a type of revolving credit (see here). The bank allows a customer with a current account to overdraw on the account up to a certain amount. Repayment of the overdraft is made as money is paid into the account. Overdrafts may be 'authorised' (ie, if the client has a prior arrangement with the bank to overdraw) or 'unauthorised' (ie, if the client has no prior arrangement, but the bank nevertheless allows the account to go overdrawn).

During the pandemic, the Financial Conduct Authority (FCA) produced tailored support guidance to help borrowers manage the pandemic's financial impact. The FCA has stated that this guidance is also applicable to the cost of living crisis and has reminded lenders they should provide support to borrowers struggling with payments. For further information, see [fca.org.uk/](https://www.fca.org.uk/)

firms/borrowers-financial-difficulty-project.

Banks should not reduce the client's overdraft limit or suspend or remove the facility while a client is receiving help under this guidance if it would cause financial hardship to the client. The guidance is at [fca.org.uk/publication/finalised-guidance/consumer-credit-coronavirus-tailored-support-guidance.pdf](https://www.fca.org.uk/publication/finalised-guidance/consumer-credit-coronavirus-tailored-support-guidance.pdf). It remains in force until varied or revoked.

The legal position

Bank overdrafts are regulated under the Consumer Credit Act 1974, provided the credit is for no more than £25,000 (if granted before 6 April 2008) or £15,000 (if granted before 1 May 1998). It does not matter whether the overdraft is authorised or unauthorised. No written agreement is required for an unauthorised overdraft. If the agreement for an authorised overdraft was made before 1 February 2011, no written agreement is required. If the credit is granted on or after 6 April 2008, the agreement is regulated regardless of the amount, unless it is exempt – eg, it is for business purposes and provides credit of more than £25,000 (see here). An overdraft may be either secured or unsecured.

Special features

Interest is charged, usually on a daily basis, and repayment in full can be requested at any time. When the agreed overdraft limit is reached, cheques and transfers drawn against the account are usually stopped.

If the overdraft is not approved by the bank or the limit is exceeded, a higher rate of interest is usually charged and additional service charges may be made at the bank's discretion. Even if an overdraft is within its agreed limit, the bank may decide to apply additional charges.

When a customer has both a current account with overdraft facilities and a loan account with the same bank, it is common for banks to require payments to the personal loan account to be made from the current account. This may be done even if there are no funds in the current account, so that the higher overdraft rate of interest applies to the payments made to the personal loan account.

Similarly, if wages are paid directly into a current account, they are always applied initially to reduce any overdraft on that account, even if debts such as mortgage arrears should be given a higher priority for repayment. Emergency action may be needed to ensure income is not swallowed up as it becomes available. It may be necessary to open a current account with another bank so that wages can be paid into the new account or, if this is not possible, exercise the 'first right of appropriation' and earmark the funds (see here).

Note: banks can transfer money from a sole account to a joint account to pay a joint debt but

not the other way around (but see here). ¹ In multiple debt cases, the bank should recognise the pro rata principle when considering a payment arrangement and that priority debts should take precedence over non-priority debts. The bank's debt is likely to be non-priority unless it is secured on the client's home.

It may be possible to challenge any charges added to the account (see here).

The FCA requires banks to identify customers who are showing signs of financial strain or are in financial difficulty and implement a strategy to reduce repeat overdraft use.

The FCA has also introduced new rules for overdraft charges, which came into effect on 6 April 2020, that: ²

- prohibit banks from charging higher prices for unarranged overdrafts than for arranged overdrafts;
- abolish the right to charge fixed daily/monthly fees for overdraft use;
- require banks to price overdrafts by a simple annual interest rate and to advertise overdraft prices with an annual percentage rate (APR), to assist customers to compare overdrafts with other products.

Offsetting credits against debts

Although the bank can offset any credits received against any debt owed to it, the FCA's *Banking: conduct of business sourcebook* says that banks must consider the interests of their customers and must treat customers who are in financial difficulty fairly. The FCA says that if a bank is considering using set-off on a client's account, it should: ³

- consider each case and assess how much money needs to be left in the account to meet priority debts and essential living expenses, and refrain from offsetting against that amount;
- usually provide a refund if it becomes apparent that money taken in set-off was intended for priority debts or essential living expenses (or justify why it considers it is not fair to do so);
- not use set-off on money that it knows, or should know, was received by the customer from a government department, local authority or the NHS and was intended for a specific purpose (eg, for healthcare) or if a third party is entitled to it. ⁴

The Financial Ombudsman Service also expects banks to give customers a fair and sufficient opportunity to discuss the situation and repay the outstanding debt before resorting to their right to set off funds. ⁵ Some banks' terms and conditions purport to give the bank a right of set-off in respect of debts solely owed by only one of the joint account holders. The FCA has declined to express a view on either the enforceability or fairness of such terms. ⁶

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- 1 For a discussion on various aspects of bank transfers, see J Wilson, 'Consultancy Corner', *Adviser* 107 and 108. See also a complaint to the Financial Ombudsman Service reported in *Ombudsman News* 40 (*Adviser* 107 abstracts).
 - 2 *FCA Handbook*, CONC 5C and 5D. See also G McLean, 'FCA rein in unfair overdraft charges', *Quarterly Account* 53, IMA.
 - 3 *FCA Handbook*, *Banking: Conduct of Business Sourcebook* 5.1.3AG, 5.1.3BG and 5.1.4G
 - 4 *FCA Handbook*, *Banking: Conduct of Business Sourcebook*, 5.1.3A and 5.1.3B
 - 5 See Financial Ombudsman Service decision in *Ombudsman News* 84 (*Adviser* 140 abstracts).
 - 6 See *FCA Handbook*, *Banking: Conduct of Business Sourcebook* 4.1.4A(2)(a)(ii) and (5)

Checklist for action

Advisers should take the following action.

- Consider whether emergency action is necessary (see Chapter 8).
- Check if a breathing space application would be appropriate (see here).
- Advise the client to open a new bank account at a bank with which they do not have any debts.
- Check liability, including the enforceability of the agreement under the Consumer Credit Act 1974.
- If the bank has resorted to offsetting funds, check that it has complied with the guidance and codes of practice.
- Assist the client to choose a strategy from Chapter 9 as, if the debt is unsecured, it is a non-priority debt. **If it is secured, it is a priority debt** – see Chapter 8.

Credit card

The legal position

Special features

Checklist for action

A credit card (eg, Mastercard or Visa) is a form of revolving credit (see here) and allows the client to buy goods or services from a trader. The trader invoices the credit card company and the client receives a monthly account showing all transactions made during that period. A minimum

monthly repayment is required – often covering at least interest, fees and charges plus 1 per cent of the capital outstanding. Interest is added to balances outstanding after a specified payment date, or immediately for cash withdrawals using a credit card.

The FCA has reiterated its expectations of creditors for the treatment of borrowers who are affected by the rising cost of living and struggling with payments. The FCA has stated that the existing tailored coronavirus support guidance is also applicable to the cost of living crisis. The guidance is at [fca.org.uk/publication/finalised-guidance/consumer-credit-coronavirus-tailored-support-guidance.pdf](https://www.fca.org.uk/publication/finalised-guidance/consumer-credit-coronavirus-tailored-support-guidance.pdf).

The legal position

Transactions made by credit card are linked agreements under the Consumer Credit Act 1974. Consequently, credit card companies can be held responsible for misrepresentation and for defective goods or services costing between £100 and £30,000 if the trader is unwilling to remedy the situation. This could include a claim for damages due to misrepresentation or other breach. Overseas transactions are covered. ¹

If an additional credit card is issued to another person (usually a member of the client's family) to enable them to use the client's account, the client is liable for all transactions incurred by the additional cardholder, including if the client has not specifically authorised the transaction in question.

Unless the credit card agreement is a joint agreement (signed by both the client and the additional cardholder), the additional cardholder has no liability under the agreement if the client fails to pay.

If the client withdraws the additional cardholder's permission to use the credit card, the client remains liable for any transactions incurred by the additional cardholder until the client informs the creditor that the second cardholder's permission has been withdrawn in accordance with the terms and conditions of the credit card agreement. Once that has been done, the additional credit cardholder is no longer an 'authorised person' and the client has no further liability for transactions incurred by them.

Persistent debt

When a debt is included in a breathing space moratorium and the credit card company is complying with its obligations, the requirements set out below are suspended for as long as the moratorium is in effect (see here). ²

The FCA requires credit card companies to take a series of escalating steps to help clients who

are deemed to be in 'persistent debt'. '**Persistent debt**' is when the amount the client has repaid towards the credit card balance over the preceding 18-month period comprises a lower amount of principal than interest and charges. The first intervention required by the credit card company is at the 18-month point, followed by subsequent interventions at 27 months and 36 months.

At the 18-month point, the company must contact the client and point out the level of repayments over the previous 18 months and how increasing payments would reduce both the cost and the time it would take to repay the balance. It must give the client details of not-for-profit debt advice providers and encourage them to contact them.

At the 27-month point, if the pattern of payments has continued so that it appears the client will remain in 'persistent debt' at the 36-month point, the credit card company must repeat the previous 18-month communication.

If, at the 36-month point, the client is still in 'persistent debt', the credit card company must taken reasonable steps to assist the client to repay the balance more quickly and in a way that does not adversely affect their financial situation. The credit card company must set out options for the client to increase payments with a view to repaying the balance within a 'reasonable period' (generally, three to four years in the FCA's view). The company must also provide contact details of not-for-profit debt advice providers and encourage the client to contact them. If the client either does not respond to the communication or confirms that one or more of the repayment options is sustainable, but that they will not make the payment, the credit card company must suspend or cancel the client's use of the card.

Where the client confirms the payment options are unsustainable, or the pattern of payments actually made under the repayment plan indicates that the client is unlikely to repay the balance in a reasonable period, the credit card company must treat the client with forbearance and due consideration. This might involve reducing, waiving or cancelling any interest, fees or charges and accepting token payments where the client would not otherwise be able to meet their priority debts or other essential living expenses. ³

Note: these rules do not apply where, in either of the 18-month periods referred to, the balance of the client's account was below £200 at any point.

¹ *Office of Fair Trading v Lloyds TSB and Others* [2007] UKHL 48

² CONC 6.7.28G(1)(b)

³ *FCA Handbook*, CONC 6.7.3A, 6.7.3B and 6.7.27-6.7.40. See also P McCarron, 'Addressing the challenge of persistent credit card debt', *Quarterly Account* 49, IMA.

Special features

Using a credit card is the cheapest way to obtain short-term credit (up to about six weeks) for specific items. This is because no interest is charged on most cards if the account is cleared at the first due date after a purchase is added to it. However, interest is charged immediately for cash withdrawals, and there is sometimes an annual charge for cardholders.

Checklist for action

Advisers should take the following action.

- Check liability and that the goods purchased were as described and of satisfactory quality (see here).
- Check if a breathing space application would be appropriate (see here).
- Assist the client to choose a strategy from Chapter 9, as this is not a priority debt.

Interest-free credit (Buy Now Pay Later)

The legal position

Special features

Checklist for action

Alert: Legislation has now been passed by Parliament to regulate BNPL agreements offered by third party lenders (- ie, not instalment plans offered by retailers to customers) which will be known as 'regulated deferred payment credit agreements' (RDP). The FCA is currently consulting on new conduct rules to enable regulation to start with effect from 15 July 2026. These will contain the requirements for creditors to provide information about these agreements. Creditors will be expected to comply with the Consumer Duty and the CONC arrears and forbearance rules. The time order provisions will also apply. However, not all provisions of CCA 1974 will apply to such agreements.

Interest-free credit, also known as Buy Now Pay Later (BNPL), is a type of credit sale agreement in which money is loaned to buy goods without any interest being charged. Some agreements offer interest-free credit provided the total balance is paid off within a specified period and, thereafter, become ordinary credit sale agreements.

The FCA has reiterated its expectations of creditors for the treatment of borrowers who are affected by the rising cost of living and struggling with payments. The FCA has stated that the existing tailored support guidance is also applicable to the cost of living crisis. The guidance is at [fca.org.uk/publication/finalised-guidance/consumer-credit-coronavirus-tailored-support](https://www.fca.org.uk/publication/finalised-guidance/consumer-credit-coronavirus-tailored-support)

guidance.pdf.

The legal position

These agreements are regulated credit agreements, provided the credit is for no more than £25,000 (if made before 6 April 2008) or £15,000 (if made before 1 May 1998), even though there is no charge for credit. If the agreement was made on or after 6 April 2008, the agreement is regulated regardless of the amount, unless it is exempt (see here).

An agreement is exempt if it requires the credit to be repaid in no more than four instalments within 12 months of making the agreement, and in the case of agreements made on or after 1 February 2011, the credit is provided without interest or other significant charges. An agreement made on or after 18 March 2015 is exempt if the number of instalments to be paid by the borrower is no more than 12. However, if it is not exempt, it must contain all the details required by a regulated agreement (see here) and details of the circumstances in which interest could become chargeable. Interest can be charged on late payments if the agreement contains a clause allowing it. This type of credit can be expensive if it is not repaid during the interest-free period.

The FCA has rules govern BNPL. ¹ Creditors:

- cannot charge backdated interest on amounts that the client has repaid during the BNPL offer period;
- have to provide better information to clients about BNPL offers. This information should be more balanced and appropriately reflect the risks as well as the benefits of the product;
- must remind clients when the offer period is about to end.

¹ [fca.org.uk/news/press-releases/fca-publishes-final-rules-buy-now-pay-later-products](https://www.fca.org.uk/news/press-releases/fca-publishes-final-rules-buy-now-pay-later-products)

Special features

BNPL is offered as an inducement to buy particular goods in a particular place and therefore is a linked agreement (see here).

Checklist for action

Advisers should take the following action.

- Check liability, including the enforceability under the Consumer Credit Act 1974.
- Check if a breathing space application would be appropriate (see here).

- Check that the goods purchased were as described and of satisfactory quality (see here).
- Assist the client to choose a strategy from Chapter 9, as this is a non-priority debt.

Pawnbroker

The legal position

Special features

Checklist for action

Money is lent against an article(s) (pawn) left with the pawnbroker as security – a pledge. The goods can only be reclaimed (redeemed) if the loan is repaid with interest. If the loan is not repaid, the pawnbroker can sell the goods.

The FCA has reiterated its expectations of creditors for the treatment of borrowers who are affected by the rising cost of living and struggling with payments. The FCA has stated that the existing tailored coronavirus support guidance is also applicable to the cost of living crisis. The current guidance is at [fca.org.uk/publication/finalised-guidance-consumer-credit-coronavirus-tailored-support-guidance.pdf](https://www.fca.org.uk/publication/finalised-guidance-consumer-credit-coronavirus-tailored-support-guidance.pdf).

The legal position

Pawnbrokers must be authorised by the FCA. The lending is a regulated credit agreement, provided the credit is for no more than £25,000 (if the agreement was made before 6 April 2008) or £15,000 (if made before 1 May 1998). If the agreement was made on or after 6 April 2008, the agreement is regulated regardless of the amount, unless it is exempt (see here).

Special features

Pawnbrokers have a duty to comply with the pre-contract information requirements outlined on here, but there are some exceptions.

- Unless the client is a 'new customer' (ie, they have not done business with the pawnbroker in the previous three years), the pawnbroker only has to inform them of their right to receive the pre-contract information free of charge on request.
- The pawnbroker's duty to provide the client with 'adequate explanations' (see here) only applies to:
 - the main consequences of their failure to make the payments due under the agreement. **Note:** the requirement to explain any features of the agreement which may make it unsuitable for particular types of use does not apply to pawnbroking agreements and so there is no requirement to explain to the client that they are a

short-term product, and an expensive and unsuitable method of longer-term borrowing;

- the effects of withdrawing from the agreement, and when and how to exercise this right. **Note:** if the client fails to repay the loan and interest within 30 days of exercising their right to withdraw, the pawnbroker can retain and sell the pawned goods.
- The pawnbroker does not have to assess the client's creditworthiness – ie, their ability to repay the loan (see here).
- The pawnbroker does not have to supply the client with a copy of the draft credit agreement.

The pawnbroker must provide a receipt for the goods (a 'pawn receipt') and keep the goods for at least six months, during which time interest is charged on the money borrowed. The client retains ownership of the goods in the meantime. If the goods are not redeemed after six months:

- if the loan was for £75 or less and the goods were not subject to an earlier pledge which was renewed, ownership of the goods automatically passes to the pawnbroker and they can be sold;
- in all other cases, the pawnbroker can sell the goods, but may have to give the client notice of their intention to do so.

Unless the loan was for £100 or less, the pawnbroker must give the client at least 14 days' notice of their intention to sell the goods. The client can redeem the goods at any time before the goods are sold (except if ownership has passed to the pawnbroker) by handing in the pawn receipt and paying off the loan and accrued interest.

It is a criminal offence for a pawnbroker to refuse to redeem a pawn unless there is reasonable cause to believe that the person handing in the pawn receipt is neither the owner of the goods nor authorised to redeem them. If the client cannot redeem the goods, they must renew the pledge to prevent the goods being sold. If the goods are sold, the pawnbroker must inform the client of the sale price and provide details of the costs of sale. If the client challenges the sale price and/or the costs of sale, the onus is on the pawnbroker to justify the figures.

Checklist for action

Advisers should take the following action.

- Check liability, including the enforceability of the agreement under the Consumer Credit Act 1974.
- Assist the client to choose a strategy from Chapter 9, as this is a non-priority debt (or Chapter 8 if the pawned item is essential).

High-cost short-term loan (formerly payday loan)

The legal position

Special features

Checklist for action

Following the introduction of FCA regulations, high-cost short-term lending has replaced 'payday loans' as a source of immediate credit for clients. The FCA defines high-cost short-term credit as any credit that:

- has an APR of 100 per cent or more; *and*
- is repayable over a maximum period of 12 months.

Excluded from this definition are:

- home credit loans; *and*
- bills of sale.

The FCA has reiterated its expectations of creditors for the treatment of borrowers who are affected by the rising cost of living and struggling with payments. The FCA has stated that the existing tailored coronavirus support guidance is also applicable to the cost of living crisis. The guidance is available at [fca.org.uk/publication/finalised-guidance/consumer-credit-coronavirus-tailored-support-guidance.pdf](https://www.fca.org.uk/publication/finalised-guidance/consumer-credit-coronavirus-tailored-support-guidance.pdf).

The legal position

High-cost short-term loans are fixed-sum credit agreements and are likely to be regulated because they are generally within the financial limits for regulation and are not covered by the various exemptions (see here).

Special features

High-cost short-term loans are inappropriate for clients already in financial difficulties. They are likely to exacerbate any pre-existing financial problems. The client is locked into a high repayment rate and, unless they have the resources to maintain these payments, further financial difficulties may arise before the loan is paid in full.

High-cost short-term lenders must advertise on at least one FCA-approved price comparison website and prominently display a link to that site on their own website. ¹

From 2 January 2015:

- interest and charges must not exceed 0.8 per cent per day of the amount borrowed (the 'initial rate');
- default charges must not exceed £15 and interest on unpaid balances and default charges must not be more than the initial rate;
- clients must never pay back more than the amount borrowed in interest and charges.

Two of the requirements to provide the client with adequate pre-contract explanations (see here) are of particular relevance to payday loans.

- Features of the agreement that may make it unsuitable: high-cost short-term loans are a short-term product and are unsuitable for supporting borrowing over longer periods.
- Features of the agreement that may operate adversely: the effect of 'rolling over' such loans could accumulate an unmanageable level of debt. The codes of practice of the four trade associations for payday lenders issued on 24 May 2012 (known as the Good Practice Customer Charter) state that creditors should:
 - 2
 - not pressurise clients to roll over loans; *and*
 - only consider rolling over a loan if a client asks; *and*
 - tell clients if there is a limit on the number of times a loan can be rolled over.

If a client is in financial difficulties and informs the creditor, the creditor should explore new arrangements for paying the debt with them. 3

Continuous payment authorities

The most common method of repaying a high-cost short-term loan is by debit card. Unlike standing orders and direct debits, there is confusion about whether clients can cancel a debit (or credit) card payment authority (known as a 'continuous payment authority' if it is for ongoing payment arrangements).

In the past, many banks have advised customers that, to cancel a continuous payment authority, a client must approach the creditor as there is no automatic right to cancel. However, this advice appears to conflict with the provisions of the Payment Services Regulations 2009. The correct legal position appears to be that a client has the right to cancel a continuous payment authority directly with their bank or card issuer by informing it that they have withdrawn their permission for the payments. The payments must then be stopped and the bank cannot insist that the client contact the payee to agree to this first. 4 The Financial Ombudsman Service agrees with this view. 5

There are restrictions on requesting part-payment under a continuous payment authority and on the number of times the creditor can request payment when previous payment requests have

been refused.

- The creditor cannot further request payment of an instalment due under the payday loan where two previous requests have been made for payment of the same instalment and been refused.
- The creditor cannot request payment of any further instalments due under the payday loan unless it has informed the client of the refusal of the previous payment requests, the client has paid the missed instalment using a payment method other than a continuous payment authority and is not in arrears, and the creditor has reminded the client of the date and the amount of the next instalment due under the agreement.
- The creditor cannot request payment of a sum which is less than the full sum due under the payday loan at the time of the request unless the creditor has entered into a repayment plan with the client which provides for one or more reduced payments, the client has been notified of the number, frequency and amounts of those payments and has given express consent to the creditor to make payment requests to collect the payments due under the repayment plan.

However, the creditor is not prevented from accepting payment (including part-payment) from a client using a means of payment other than a continuous payment authority – eg, a single payment using their debit card details. ⁶

¹ *FCA Handbook*, CONC 2.5A

² For a discussion, see H Hollingworth, 'Payday lenders good practice charter: one year on', *Quarterly Account* 31, IMA

³ See Financial Ombudsman Service decision in *Ombudsman News* 109, 2013 (*Adviser* 158 abstracts)

⁴ See A MacDermott, 'CPAS: the facts behind the myths', *Adviser* 150

⁵ See *Ombudsman News* 103

⁶ *FCA Handbook*, CONC 7.6.12-7.6.15A

Checklist for action

Advisers should take the following action.

- Consider whether emergency action is necessary – eg, cancel any continuous payment authority.

- Check if abbreathing space application would be appropriate (see here).
- Check whether the creditor has unsuccessfully attempted to take payments under the continuous payment authority in breach of the requirements in the *Consumer Credit Sourcebook* noted above, possibly incurring bank charges for a refused payment as well as default charges under the payday loan, which could be the subject of a complaint to the creditor.
- Check liability, including the enforceability under the Consumer Credit Act 1974.
- If the client is in financial difficulties and the time for payment has not yet arrived, either ask the creditor not to take the payment under the continuous payment authority, or arrange to cancel the continuous payment authority if time is short or the creditor refuses to comply with the request.
- Consider whether the loan was inappropriate to the client's situation and, if there is evidence of irresponsible lending (including in dealing with the client's default and arrears), use the Financial Ombudsman Service complaints procedure (see here). ¹ If the case has already gone to court, obtain specialist support for a possible unfair relationship challenge (see here).
- In other cases, assist the client to choose a strategy from Chapter 9, as this is a non-priority debt.

¹ See S McFadden, 'Payday lending and the Financial Ombudsman Service', *Adviser* 160

Personal loan

The legal position

Special features

Checklist for action

A personal loan is a loan offered at a fixed or variable rate of interest over a set period.

The FCA has reiterated its expectations of creditors for the treatment of borrowers who are affected by the rising cost of living and struggling with payments. The FCA has stated that the existing tailored coronavirus support guidance is also applicable to the cost of living crisis. The current version of the guidance is available at [fca.org.uk/publication/finalised-guidance/consumer-credit-coronavirus-tailored-support-guidance.pdf](https://www.fca.org.uk/publication/finalised-guidance/consumer-credit-coronavirus-tailored-support-guidance.pdf).

The legal position

Personal loans are regulated credit agreements, provided the credit is for no more than £25,000

(if the agreement was made before 6 April 2008) or £15,000 (if made before 1 May 1998). If the agreement was made on or after 6 April 2008, it is regulated regardless of the amount, unless it is exempt (see here).

Special features

Personal loans are widely available from banks, building societies and other financial institutions, including small moneylenders. Some personal loans have fixed interest rates and the total interest charged is set at the beginning of the loan period. Repayments are then made in equal instalments. A personal loan is sometimes part of a linked transaction (see here). The amount to be loaned may be paid directly to the supplier rather than the borrower. With smaller moneylenders, a representative often collects repayments at the door.

Checklist for action

Advisers should take the following action.

- Check liability, including the enforceability of the agreement under the Consumer Credit Act 1974.
- Check if a breathing space application would be appropriate (see here).
- Assist the client to choose a strategy from Chapter 9, as personal loans are generally a non-priority debt.

Revolving credit

Revolving credit is a type of personal borrowing in which the creditor agrees to a credit limit and the client can borrow up to that limit, provided they maintain certain agreed minimum payments. Revolving credit takes a number of different forms – eg, credit cards, budget accounts, catalogues and store cards (see under the individual headings for more information about each type of credit).

See 'Credit card' on here.

Trading cheque or voucher

The legal position

Special features

Checklist for action

Finance companies may supply a voucher or cheque to the client to be used at specified shops in

exchange for goods. Repayments, which include a charge for the credit, are then made by instalments to the finance company. The shop is paid by the credit company.

The legal position

These agreements are regulated credit agreements, provided the credit is for no more than £25,000 (if the agreement was made before 6 April 2008) or £15,000 (if made before 1 May 1998). If the agreement was made on or after 6 April 2008, it is regulated regardless of the amount, unless it is exempt (see here). If the voucher is for £50 or less, the creditor is not obliged to comply with the rules on here. ¹

¹ ss14 and 17 CCA 1974

Special features

This is normally an expensive way of borrowing and limits the client to shopping in a limited number of outlets where prices may be high.

Checklist for action

Advisers should take the following action.

- Check liability, including the enforceability of the agreement under the Consumer Credit Act 1974.
- Check if a breathing space application would be appropriate (see here).
- Assist the client to choose a strategy from Chapter 9, as this is usually a non-priority debt. If this is the only way the client can buy essential goods, see here.

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