

Chapter 20

Enforcement of the Consumer Credit Act 1974



20.1 Introduction

20.1.1

The *CCA Order* gives the *FCA* the power to enforce the *CCA* through the application of its investigation and sanctioning powers in the *Act* by reference to the contravention of *CCA Requirements* and criminal offences under the *CCA*. The *FCA*'s investigation and sanctioning powers include the following:

- power to censure or fine an approved person, or impose a suspension or a restriction on their approval under section 66 of the *Act*, for being knowingly concerned in a contravention by the relevant *authorised person* of a *CCA Requirement*;
- power to require information and documents, under section 165 of the *Act*, it reasonably requires in connection with the exercise of the functions conferred on it by the *CCA Order*;
- power to appoint an investigator under section 167 of the *Act* for reasons related to its functions under the *CCA Order*;
- power to appoint an investigator under section 168 of the *Act* where there are circumstances suggesting that an offence under the *CCA* may have been committed or that a person may have failed to comply with a *CCA Requirement*;
- power to impose a requirement under section 196 of the *Act* on an *incoming firm* by reference to the contravention or likely contravention of a *CCA Requirement*;
- power to censure (under section 205 of the *Act*) or fine (under section 206 of the *Act*) an authorised person, or impose a suspension or restriction on their permission (under section 206A of the *Act*) for the contravention of a *CCA Requirement*;
- power to apply to the court for an injunction under section 380 of the *Act* by reference to the contravention or likely contravention of a *CCA Requirement*;
- power to apply to the court for a restitution order under section 382 of the *Act* by reference to the contravention of a *CCA Requirement*;
- power to impose a restitution requirement under section 384 of the *Act* by reference to the contravention of a *CCA Requirement*; and
- power to prosecute under section 401 of the *Act* an offence committed under the *CCA*.

20.1.2

The *FCA*'s approach to taking enforcement action under the *CCA Order* will mirror its general approach to enforcing the *Act*, as set out in ■ EG 2. It will seek to exercise its enforcement powers in a manner that is transparent, proportionate, responsive to the issue and consistent with its publicly stated policies. It will also seek to ensure fair treatment when exercising its enforcement powers. Finally, it will aim to change the behaviour of the person who is the subject of its action, to deter future non-compliance by

others, to eliminate any financial gain or benefit from non-compliance and, where appropriate, to remedy the harm caused by the non-compliance.

20.1.3

The *FCA* has decided to adopt procedures and policies that it currently has in place for the enforcement of the *Act* in exercising its powers to enforce the *CCA*. Key features of the *FCA*'s approach are described below.

20.2 Information gathering and investigation powers

- 20.2.1** The *CCA Order* applies much of Part 11 of the *Act*. The effect of this is to apply the same procedures under the *Act* for appointing investigators and requiring information when investigating contraventions of the *CCA Requirements* and offences committed under the *CCA*.
- 20.2.2** The *FCA* will notify the subject of the investigation that it has appointed investigators to carry out an investigation under the *CCA Order* and the reasons for the appointment, unless notification is likely to result in the investigation being frustrated. The *FCA* expects to carry out a scoping visit early on in the enforcement process in most cases. The *FCA's* policy in civil investigations under the *CCA Order* is to use powers to compel information in the same way as it would in the course of an investigation under the *Act*.

20.3 Decision making under the CCA Order

- 20.3.1** The *RDC* is the *FCA's* decision maker for decisions which require the giving of warning or decision notices under the *CCA Order*, as set out in ■ DEPP 2 Annex 1G. The *RDC* will make its decisions following the procedure set out in ■ DEPP 3.2 or, where appropriate, ■ DEPP 3.3.
- 20.3.2** The *CCA Order* does not require the *FCA* to publish procedures about its approach towards the commencement of criminal prosecutions. However, the *FCA* will normally follow its equivalent decision-making procedures for similar decisions under the *Act* as set out in ■ EG 12.
- 20.3.3** The *CCA Order* does not require the *FCA* to publish procedures about its approach towards applications to the court for an injunction or restitution order. However, the *FCA* will normally follow its equivalent decision-making procedures for similar decisions under the *Act* as set out in ■ EG 10 and ■ EG 11.
- 20.3.4** The *CCA Order* requires the *FCA* to give third party rights as set out in section 393 of the *Act* and to give access to material, as set out in section 394 of the *Act*, in relation to warning notices and decision notices given under the *CCA Order*.
- 20.3.5** The *CCA Order* applies the procedural provisions of Part 9 of the *Act*, as modified by the *CCA Order*, in respect of matters that can be referred to the Tribunal. Referrals to the Tribunal in respect of decision notices given under sections 67 (pursuant to article 3(3) of the *CCA Order*) and 208 (pursuant to article 3(7) of the *CCA Order*) of the *Act* are treated as disciplinary referrals for the purpose of section 133 of the *Act*.



20.4 Public censures, imposition of penalties and the impositions of suspensions or restrictions in relation to contraventions of the Consumer Credit Act 1974

- 20.4.1** When determining whether to take action to impose a penalty or to issue a public censure in relation to the contraventions of a *CCA Requirement*, the *FCA's* policy includes having regard to the relevant factors in ■ DEPP 6.2 and ■ DEPP 6.4. When determining the level of financial penalty, the *FCA's* policy includes having regard to relevant principles and factors in ■ DEPP 6.5 to ■ DEPP 6.5B, ■ DEPP 6.5D and ■ DEPP 6.7.
- 20.4.2** As with cases under the *Act*, the *FCA* may settle or mediate appropriate cases involving civil contraventions of *CCA Requirements* to assist it to exercise its functions. ■ DEPP 5, ■ DEPP 6.7 and ■ EG 5 set out information on the *FCA's* settlement process and the settlement discount scheme.
- 20.4.3** When determining whether to take action to impose a suspension or restriction in relation to the contraventions of *CCA Requirements*, the *FCA's* policy includes having regard to the relevant factors in ■ DEPP 6A.2 and ■ DEPP 6A.4. When determining the length of the period of suspension or restriction, the *FCA's* policy includes having regard to relevant principles and factors in ■ DEPP 6A.3.
- 20.4.4** The *FCA* will apply the approach to publicity that is outlined in ■ EG 6.



20.5 Prosecution of criminal offences under the Consumer Credit Act 1974

20.5.1

The *FCA*'s policy with respect to the prosecution of criminal offences is set out in ■ **EG 12** and applies to the prosecution of *CCA* offences under section 401 of the Act. The *FCA* will not prosecute a person for an offence under the *CCA* in respect of an act or omission where the *FCA* has already disciplined the person under section 66, 205, 206 or 206A of the Act in respect of that act or omission.

