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DATA & INFORMATION GROUP E-ALERT

Recording defaults on unenforceable credit agreements at credit reference agencies

We have recently received confirmation of the Information Commissioner's position on the recording of defaults on unenforceable credit agreements at credit reference agencies. This supplements the previous guidance note from the Information Commissioner's Office (ICO) entitled "Filing defaults with credit reference agencies". That guidance is available [Here](#)

The Information Commissioner's view is:

"In view of the enactment of section 15 of the 2006 Consumer Credit Act, the ICO has given fresh consideration to the circumstances in which the credit reference agencies should be permitted to record details of unenforceable credit agreements. In doing so we have had particular regard not only to the clear legislative intent that the absence of a signature on a credit agreement should no longer be an absolute bar to enforcement, but also to the following factors;

- *The question of whether a legal liability exists in relation to a credit agreement is quite separate from the question of whether such a liability may be enforced by the creditor.*
- *Where a liability does exist, creditors have a legitimate interest in sharing relevant information about that liability, including information about whether the amount due has been repaid. Such information may properly inform responsible lending decisions, regardless of whether the liability is enforceable.*
- *Responsible lending decisions are dependent upon lenders receiving accurate information about individuals' ability (and/or inclination) to repay their debts.*

Where a credit agreement clearly existed and credit has been provided to the debtor, but the debtor is not obliged to repay the loan due to the provisions of the Consumer Credit Acts, this does not mean that there was no agreement in the first place. It simply means that there was no enforceable regulated agreement.

It follows that, where the existence of the agreement is not in doubt, we consider it to be appropriate for information about the agreement, including any failure by the debtor to repay his or her debt, to be recorded with the credit reference agencies. Where a 'debtor' disputes the existence of any credit agreement, enforceable or otherwise, we would ask to see evidence of the agreement and of its terms. This might include evidence of the provision of the credit facility or of a history of payments made by the debtor".

For further information on any of these items contact Margaret Tofalides, Partner and Head of the Data & Information Group at Addleshaw Goddard

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