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Challenging coerced debt

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If you have been coerced into taking out credit by an abusive partner, this may have left you with debt you cannot afford to repay. You may be unable to cope financially and may feel angry about the money you owe, caused by someone else's behaviour.

Some people wish to challenge the liability of credit agreements they have been coerced into signing and there are several ways in which this could potentially be done. This is not the right option for everyone and will depend on your circumstances. Other debt solutions may be available instead. It is important to speak to a qualified debt adviser about your situation and your options before taking any action to tackle debts.

What does 'challenging coerced debt' mean?

'Credit' is a method of paying for goods or services at a later time, after the goods or services have been received. A plan is usually put in place for repayment, and interest is often due in addition to the cost of the goods or services. Credit could be in the form of a personal loan, overdraft, credit card, utility, mobile phone contract, car finance or catalogue purchases. Being in debt is a result of taking out credit.

An abuser may have forced you into taking out credit, used your credit or made you use your credit against your wishes, which may have left you with debt you cannot repay.

If a credit agreement is in your name, you are legally responsible (or **liable**) for any money owing to the lender (or **creditor**). If you wish to dispute that the money owing is yours to repay, this involves challenging the liability of a credit agreement. A successful challenge means the lender provides confirmation that the agreement is not your legal responsibility, and there will be no record of the agreement on your credit record. **This kind of legal challenge is against the lender, not the abuser.**

Our [resource on economic abuse and coercive or controlling behaviour](#) has more information if you wish to legally challenge the behaviour of the abuser.

Challenging the liability of a credit agreement can be very difficult, and it is not the right course of action for everyone. It is important to speak to a qualified debt adviser about your situation before taking any action to tackle coerced debt.

"I was told there was nothing that could be done as the debts were in my name, so I had to start paying them off."

Ways of challenging coerced debt

It can be very difficult to get coerced debt recognised by the courts and/or lenders, as they often assume that couples are a financial unit. You will usually be responsible for repaying the money owing on any credit agreements that are in your name. There is no general exception for people who have experienced economic abuse and have been coerced into taking out credit.

However, there are some elements of law that may make it possible to challenge the liability for coerced debt in some cases.

- **Consumer credit law:** All organisations providing credit must follow consumer credit law. If they do not, a challenge could be made on this basis.
- **Lender obligations:** The Financial Conduct Authority (FCA) requires all credit providers to treat customers fairly. Challenges can sometimes be made if a lender has not upheld these obligations. These include properly assessing that a customer can afford credit repayments and checking that the customer has not been forced into taking out credit.
- **Contract law:** A contract with a lender may be invalid in cases of economic duress, undue influence or misrepresentation.

- **Fraud:** Challenges to the liability of a credit agreement can also be made if the credit was taken out in your name without your knowledge. This is known as fraud and it is a criminal offence. Laws exist to support people who have had credit fraudulently taken out in their name. If this has happened to you, the first step is to report this to the lender. We have [information about how banks can support you](#), and more information coming soon on what you can do if credit has been fraudulently taken out in your name.

You should consider seeking legal advice if you wish to challenge the liability of a credit agreement.

There are a number of debt solutions and the right option for you will depend entirely on your circumstances. It is important to speak to a qualified debt adviser before taking any action to tackle coerced debt.

“The amount had grown to £20,000, letter after letter threatening court action. I’d ring around and try to explain the situation, but I’m still paying to this day. The economic consequences are with me every single day, a cloud hanging over me. I’m caught in this invisible chain pulling me back and dragging me down.”

Consumer credit law – your rights and protections

If you wish to challenge the liability of a credit agreement, knowing about your rights as a consumer is an important first step. There are some basic protections in place for all consumers taking out credit, including people who have been coerced into doing so, leading them into debt.

Consumer Credit Act 1974

Consumer credit is regulated by the Consumer Credit Act 1974 (CCA 1974), amended in 2006. This law protects consumers because it places legal obligations on lenders. If lenders do not meet these obligations, a credit agreement may be unenforceable.

Terms of a credit agreement:

The CCA 1974 prescribes terms that need to be in all credit agreements. These include:

- a statement of the total amount borrowed (not including charges)
- the rate of interest and if it is variable
- a notice of cancellation in a required form (if it is cancellable)
- details of how it is to be repaid, and the amount and frequency of payments.

“I refuse to be told that nothing can be done and I want change for other victims. I know first-hand how devastating the effects of economic abuse can be.”

Check your credit agreement carefully, together with a debt adviser, to make sure that these terms are included. If any of these terms are not included, you may be able to challenge the agreement but this depends on the date that it was taken out as the rules change over time. Depending on when the credit agreement was taken out, the lender may also be legally obliged to include other terms in the agreement. A qualified debt adviser can give you more information.

Request for information

The lender must give you certain information related to credit agreements in your name.

If requested, they must share with you a 'true copy' of the agreement, related documents, and a statement of account. Lenders sometimes provide a 'reconstituted agreement', which has not been signed, instead of a 'true copy'. An agreement may be invalid if it is not signed. However, a court may rule in the lender's favour if they later provide a signed agreement.

Unfair relationships

It is possible to challenge the liability of a credit agreement based on an unfair relationship between you as a consumer and the lender.

A court may find there to be an 'unfair relationship' if the lender has mis-sold you a financial product for personal gain, for example, by deliberately misleading you. The relationship with the abuser will not normally be considered where the court is ruling on an unfair relationship in relation to a credit agreement.

If the court decides that the relationship between the lender and you as the borrower is unfair, they can: alter the terms of the credit agreement, reduce the amount owing, make the lender refund any money paid, or remove any obligation on you as a consumer to repay. It is important to speak to a legal professional for advice on whether an unfair relationship may have occurred in your case.

Lender obligations

All firms that provide financial products and services to customers in the UK are regulated and supervised by the Financial Conduct Authority (FCA). This includes banks, building societies and insurers, as well as companies issuing loans, credit cards and hire purchase agreements (for example, for cars or electronic goods).

The FCA sets out lenders' obligations when providing credit, and all lenders must comply with these rules. These include: taking the interests of customers into consideration and treating them fairly; communicating information clearly to customers; and taking reasonable care to ensure that customers are given suitable advice.

Fair dealing with customers

One of the FCA's key principles is that credit providers must be able to show that they consistently treat customers fairly. In particular, they must: provide simple, understandable information; provide fair products and services that deliver as promised; and fix problems promptly and effectively. Lenders must also show that:

- their products and services meet the needs of consumers and are targeted appropriately
- any advice they give to consumers is suitable and takes their circumstances into account
- consumers do not face unreasonable barriers if they wish to change products, switch providers, submit a claim or make a complaint
- they take customer feedback seriously.

If you believe you are not being treated fairly by the lender, the FCA advice is to contact the lender directly. The FCA can take action where firms fail to treat customers fairly.

Failure to assess affordability

Another responsibility that lenders have is to assess your ability to repay the money you have borrowed. This is known as an affordability assessment and must take place before any credit agreement can be entered into.

This assessment looks at the risk to the lender as well as your ability to repay. The lender will consider whether the repayments would affect your wider financial situation or cause financial distress. If an affordability assessment did not take place, or it was insufficient, you could raise a complaint with the lender and or the [Financial Ombudsman Service](#).

In some cases, a consumer redress scheme may be put in place if the Financial Conduct Authority finds evidence of consistent and persistent lender wrongdoing. This is a scheme that allows people who have taken out credit to raise a complaint against the lender. In the case of Wonga Group Ltd, the FCA found that it was not adequately assessing people's ability to repay before lending money to them. The FCA put a consumer redress scheme in place. Through this scheme, people who had taken out a loan with Wonga were entitled to have the debt written off.

Contract law – economic duress, undue influence and misrepresentation

If you have been coerced into taking out a credit agreement, there are some principles of contract law that may make the contract with the lender invalid.

- **Undue influence:** Where a credit agreement is taken out due to an abuse of trust. Usually, this refers to the lender abusing their position of trust as a regulated credit provider. To prove undue influence by a third party, such as a partner, the lender must be aware of the influence that the abuser's behaviour had on your actions in taking out the credit agreement.
- **Economic duress:** Where you have not entered into a credit agreement freely and have done so as a result of conduct that is unlawful, for example violence. Usually, this refers to the conduct of the lender. To prove economic duress on the part of a third party, such as a partner, the lender must be aware of the abuse.
- **Misrepresentation:** Where a lender makes an untrue statement that misleads someone into taking out credit.

In some cases, these principles can be used to challenge the liability of a credit agreement. However, a credit agreement is not automatically invalid in these circumstances and it is often at the court's discretion. Remember that, in challenging the liability of a credit agreement, the complaint is against the lender not the abuser. If you wish to raise a challenge on the basis of economic duress, for example, you must show that the pressure or threat came from the lender.

Undue influence

In cases of coerced debt, most challenges will be made on the basis of undue influence, but this can be difficult to prove.

Undue influence does not apply if the lender has:

- advised you to take independent legal advice regarding credit agreements in your name or
- explained to you in private what your responsibilities are and the consequences of not meeting them.

However, a credit agreement with a lender could be voided if there are obvious signs of economic duress or undue influence from a third party, such as a partner, and the lender ignores these signs. For example, if there is a telephone recording of the application being made and the borrower is being coached through the process.

There are also certain situations when the lender is expected to know there is a risk of undue influence. This is called 'constructive knowledge' and applies, for example, if you have agreed to act as a guarantor to someone else's borrowing. In these situations, the lender is put 'under notice' of undue influence. This means that the lender must take steps to ensure that you are acting of your own free will. In practice, this usually means that the lender must tell you to seek independent legal advice.

If a credit agreement is in joint names, the lender is not put 'under notice' unless it is clear that the credit is for one party's purposes. If, for example, the money borrowed is for a business and you both benefit from the income, the loan will usually be considered to be for joint benefit. This will usually be the case even if the business is just in one person's name.

If you wish to challenge the liability of credit agreements in your name based on any of these principles, it is important to seek independent legal advice.

Other ways of tackling coerced debt

Challenging the liability of a credit agreement that is in your name is difficult and it will only be possible in a small number of cases. It is not right course for everyone and it is important to speak to a qualified debt adviser about your circumstances and all your options.

Other debt solutions may be available, including asking the lender to write off your debt, a debt management plan or insolvency. [We have resources](#) on these topics. The right option for you will depend on your circumstances, so advice from a qualified debt adviser is essential. Some organisations you may wish to contact for support are listed below.

Through the Economic Justice Project, SEA has been working to challenge debt that has been coerced. This includes working with domestic abuse and money/debt advice services, creditors and other financial services as well as influencing policy. [More details about this project](#) can be found on our website.

“My husband racked up a lot of debt. He was told by the bank manager that they couldn't do anything for him but they could if he used me as I had a good credit. He called me from the bank manager's office and I was asked to come in. I joined the meeting and his debt was transferred into my name. At no time was I given space or time on my own. Given our relationship and his control, I wasn't in a position to refuse.”

Organisations that can help

Debt Advice Foundation

W www.debtadvicefoundation.org

T **0800 043 4050** (Mon–Fri, 8am–8pm;
Sat, 9am–3pm)

Offers free, confidential advice and information on loans, credit and debt. Runs a debt advice helpline with qualified debt advisers.

Money Advice Plus

W www.moneyadviceplus.org.uk

T **01273 664 000** (Mon–Fri, 9am–1pm &
2pm–5pm)

Offers specialist debt and benefit advice to people in financial difficulty. Works with SEA on the [Domestic and Economic Abuse Project](#).

Money Advice Trust

W www.moneyadvicetrust.org

T **National Debtline 0808 808 4000**
(Mon–Fri, 9am–8pm; Sat, 9.30am–1pm)

T **Business Debtline 0800 197 6026**
(Mon–Fri, 9am–8pm)

Helps people tackle debts and manage money. Qualified debt advisers are available by phone, with fact sheets online.

StepChange

W www.stepchange.org

T **0800 138 1111** (Mon–Fri, 8am–8pm;
Sat, 8am–4pm)

Get expert debt advice, online or by phone, based on your situation. Recommends debt solutions and provides debt information online or by phone.

Turn2us

W www.turn2us.org

T **0808 802 2000** (Mon–Fri, 9am–5.30pm)

Helps people in financial hardship access benefits and grants. Website has a benefits calculator, grants search and a 'find an adviser' search. Also has its own grants scheme and a freephone helpline.

Further support

If you are experiencing economic abuse, you are not alone. We have more information that can support you to take steps towards safety and begin to regain control of your finances.

Visit www.survivingeconomicabuse.org/resources for information including:

- What is coerced debt?
- Separating your finances from the abuser
- Economic abuse and your credit report
- Asking a lender for a debt write-off

