

Giving a Guarantor Time to Pay and Unenforceability Under the UK's Consumer Credit Act

Leasing Life

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London's Head of Banking Litigation [Kevin Heath](#) authored an article for Leasing Life examining the UK Court of Appeal's decision in *CFL Finance v Laser Trust & Gertner (2021)*, which decided that a settlement agreement may be unenforceable under the Consumer Credit Act (CCA) and the Financial Services and Markets Act 2000 (FSMA) if a creditor agrees to give the debtor time to pay and the debtor's agreement is supported by consideration (in that case the guarantor undertook to pay £50,000 as a contribution to the creditor's costs).

"If an individual has given a personal guarantee as security for repayment of the debt owed by the company and the creditor calls in the guarantee and then (in exchange for the creditor giving the individual time to pay), the individual provides consideration, the creditor may have given "credit" to the guarantor," Heath writes. "In that event, the debt would be unenforceable without an order of the court and (if the creditor is not authorised to engage in credit-related regulated activity) Financial Conduct Authority's permission."

Heath goes on to explain the circumstances in which the CCA and FSMA may apply to a settlement agreement and the test for enforcement if they do.