

Limitation and section 87 of the Consumer Credit Act 1974

By Julia Smith

Limitation and section 87 of the Consumer Credit Act 1974: statutory default notice requirements are substantive, not just procedural

In *Doyle v PRA Group (UK) Ltd* [2019] EWCA Civ 12, the Court of Appeal has decided that where a borrower defaults under a regulated credit agreement, the lender's cause of action to recover a debt becoming due by reason of the default does not accrue until:

- the lender has served a statutory default notice under section 87(1) of the Consumer Credit Act 1974, and
- the time specified in the default notice for the borrower to remedy the default has expired without the default having been remedied.

In this case, time therefore ran, for the purposes of the six-year time limit under section 5 of the Limitation Act 1980, from the date specified in the default notice for remedying the default, and not from the date of default.

Although this would have been the outcome upon the interpretation of the particular contract in question, it was also the effect, the Court held, of the proper interpretation of section 87. Therefore, where a contract provides for the balance outstanding under a regulated credit agreement to become due automatically by reason of default, the cause

of action to recover that balance will not accrue until a section 87 default notice has been served and the period referred to in the notice, for remedying the default, has expired. Accordingly, subject to any appeal, this decision resolves previous uncertainty as to whether section 87(1) qualifies the substantive legal rights of the lender or is merely a procedural bar to enforcement (see the Encyclopedia of Consumer Credit Law at 2-088): section 87(1) does qualify the lender's legal rights.

It also follows that it is for the lender to allege and prove due compliance with the section 87 default notice requirements.

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