



**CASE NO: 1526, 1527 AND 1528 OF 2018**

**IN THE HIGH COURT OF JUSTICE (FOLLOWING TRANSFER FROM THE MANCHESTER DISTRICT REGISTRY)**

**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**

**CR-2018-001528**

**INSOLVENCY AND COMPANIES LIST**

**Before: Insolvency and Companies Court Judge Mullen**

**Date: 13 June 2022**

**IN THE MATTER OF COLLATERAL (UK) LIMITED (IN LIQUIDATION)**

**AND IN THE MATTER OF COLLATERAL SALES LIMITED (IN LIQUIDATION)**

**AND IN THE MATTER OF COLLATERAL SECURITY TRUSTEE LIMITED (IN LIQUIDATION)**

**(TOGETHER, THE "COMPANIES")**

**AND IN THE MATTER OF THE INSOLVENCY ACT 1986**

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**ORDER**

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**UPON THE APPLICATION** by way of application notice dated 22 March 2022 of:

(1) Collateral (UK) Limited (in liquidation) ("**CUKL**"), Collateral Sales Limited (in liquidation) ("**CSL**") and Collateral Security Trustee Limited (in liquidation) ("**CSTL**") (the "**Companies**"); and

(2) Shane Crooks and Mark Shaw, of BDO LLP, 55 Baker Street London, W1U 7EU, being the joint liquidators of each of the Companies (the "**Liquidators**"),

made pursuant to section 112 of the Insolvency Act 1986 (in the Liquidators' case) and/or pursuant to the Court's inherent jurisdiction to assist with the administration of trusts (the "**Application**")

**AND UPON** the Companies, prior to their entry into administration on 27 April 2018, having carried on regulated business without the requisite authorisation of the Financial Conduct Authority ("**FCA**"), specifically the operation of an online peer-to-peer lending platform, in breach of the general prohibition under the Financial Services and Markets Act 2000 ("**FSMA**")

**AND UPON** client money being held by CUKL on behalf of investors in a client account (the “**Client Money Account**”), which was treated as being subject to a “*primary pooling event*” (the “**PPE**”) upon the entry of the Companies into administration on 27 April 2018, the appointment of administrators having amounted to a *failure of the firm*” for the purposes of rule 7A.2.2R(1) of the Client Asset Rules (the “**CASS Rules**”) as set out in the handbook of the rules and guidance published by the FCA (the CASS Rules being treated as applicable for the purposes of the holding and distribution of funds in the Client Money Account)

**AND UPON** further funds having been received by CUKL following the PPE on 27 April 2018, specifically in respect of interest payments and security realisations received in respect of various loans entered into by CUKL on behalf of various investors (“**Investors**”) with various borrowers (“**Borrowers**”) (the “**Loans**”) (the “**Loan Realisations**”)

**AND UPON** CUKL holding these Loan Realisations as client money in various blocked bank accounts (one in respect of each Loan) on behalf of those Investors with exposures to the various Loans in question (the “**Loan Accounts**”), with further Loan Realisations expected to be received into some of the Loan Accounts in the future (the CASS Rules also being treated as applicable for the purposes of the holding and distribution of funds in the Loan Accounts)

**AND UPON** the Liquidators having sent detailed schedules to each of the Investors whom they were able to identify from the Companies’ records, setting out the Liquidators’ understanding as to that Investor’s entitlement to the client money in the Client Money Account and/or their exposure to one or more of the various Loans (the “**Detailed Exposure Schedules**”)

**AND UPON** the Companies and the Liquidators seeking, by way of the present Application, relief from the Court in relation to the monies held in the Client Money Account as well as the monies held (including any monies which may be received in future) in the various Loan Accounts, in particular directions and orders establishing (a) an appropriate mechanism for the distribution of the monies held in those accounts to those Investors with a proprietary claim to them, (b) a mechanism for the resolution of any disputes in relation to Investors’ proprietary claims to these funds and (c) a bar date for the notification of appeals by Investors disputing the contents of the Detailed Exposure Schedules relating to them and/or the notification of any new proprietary claims

**AND UPON** the FCA having been notified of the present Application on 7 March 2022 and having confirmed on 15 March 2022 that it does not object to it

**AND UPON** the creditors' committee for the Companies having been first notified of the intention to make the present Application on 28 May 2021 and having since made no objection to it

**AND UPON** the present Application having been advertised by way of a website update on the Liquidators' website, namely <https://www.bdo.co.uk/en-gb/collateral-companies-in-liquidation> (the "**Website**") on 30 March 2022, and no objection from any Investor or from any other creditor of the Companies having been received in response

**AND UPON** reading the fourth witness statement of Mr Shane Crooks ("**Crooks4**"), as well as the exhibits thereto

**AND UPON** hearing Alex Riddiford for the Applicants

**IT IS ORDERED AND DIRECTED** that:

**A. DETAILED EXPOSURE SCHEDULES**

1. The Liquidators do, prior to 4 July 2022, resend a Detailed Exposure Schedule to each of the Investors identified by the Liquidators, using those contact details which are available to the Liquidators, under cover of a letter making reference to the present Order and providing a brief précis of its purpose and effect.

**B. DISTRIBUTIONS TO INVESTORS**

2. Subject to paragraphs 3 to 9 below, the Liquidators be permitted to cause CUKL to make interim and/or final distributions to Investors out of the Client Money Account and the Loan Accounts.
3. In effecting distributions in accordance with paragraph 2 above (and subject to the provisions of Section C below), the Liquidators be permitted to rely upon the statement of each Investor's entitlement to the funds contained in the Client Money Account and/or the Loan Accounts as set out in that version of the Detailed Exposure Schedule which has most recently been sent to each of the Investors. For the purposes of effecting distributions to Investors out of the Client Money Account and/or the various Loan Accounts:

- (1) The Liquidators be permitted to remit funds from the Client Money Account and the various Loan Accounts into a central pool account (the “**Pool Account**”), from which payments shall then be made to Investors (such that, if a given Investor has an entitlement to payment from more than one of the underlying accounts upon any interim or final distribution, a single payment may be made to that Investor from the Pool Account (rather than multiple payments being made to that Investor from various underlying accounts)). Each such payment to an Investor from the Pool Account shall be referred to as a “**Pool Payment**”;
  - (2) If, in respect of any given interim distribution, a particular Investor’s Pool Payment would be in a sum less than £5, then the Liquidators be entitled to withhold payment to that Investor (such a withheld payment being referred to as a “**Withheld Payment**”). Any such Withheld Payment shall be added to that Investor’s next Pool Payment upon the subsequent interim or final distribution;
  - (3) In the event that, upon the making of the final distribution, an Investor’s Pool Payment would still be in a sum less than £5, then the Liquidators be permitted to treat that Investor as having no entitlement to that sum for the purposes of effecting that final distribution; and
  - (4) Funds in the Client Money Account and the Loan Accounts available for distribution to Investors shall be calculated in each case net of the costs and expenses of administering the trust, of enforcing security in respect of Loans and of making distributions to Investors, which costs and expenses fall to be paid as an expense of each trust.
4. If and to the extent that the funds held in the Client Money Account and/or in any of the Loan Accounts (net of costs and expenses) prove insufficient to pay in full all of those Investors who establish that they have a proprietary claim to those funds, then that shortfall shall be borne rateably among those Investors entitled to them, subject only to the following proviso:
- (1) In those cases where the Liquidators are satisfied that certain Investors have agreed that their proprietary entitlement to particular Loan Realisations shall be subordinated to the proprietary entitlement of other Investors, the Liquidators be permitted to give effect to any such

- agreement by withholding payment to the subordinated Investor or Investors until all prior ranking Investors have been repaid in full; and
- (2) Where Investors have agreed to subordinate their participation in Loan Realisations in the manner described at sub-paragraph (1) above and there is a shortfall preventing payment in full of all Investors in a particular tranche (whether that tranche be a subordinated one or prior-ranking), that shortfall shall be borne rateably among those Investors in that particular tranche where the value has broken.

### **C. BAR DATE AND APPEAL PROCESS**

5. If and to the extent that any Investor wishes to appeal the Liquidators' calculation of his or her proprietary entitlement to the funds contained in the Client Money Account and/or in any of the Loan Accounts as set out in that version of the Detailed Exposure Schedule which he or she has most recently received from the Liquidators (an "**Appeal**"), then details of that Appeal (together with any evidence relied upon by that Investor in support of that Appeal) must be communicated to the Liquidators by email to [investorcollateral@bdo.co.uk](mailto:investorcollateral@bdo.co.uk) by 4pm on the date falling 35 days after the date on which the Detailed Exposure Schedules are resent to Investors pursuant to paragraph 1 above (the "**Bar Date**").
6. If any person wishes to assert a proprietary claim to any of the funds contained in the Client Money Account or in any of the Loan Accounts but has not received a Detailed Exposure Schedule from the Liquidators (a "**Claim**"), then he or she shall submit details of that Claim (together with any evidence relied upon by that person in support of the Claim) to the Liquidators by email to [investorcollateral@bdo.co.uk](mailto:investorcollateral@bdo.co.uk) by 4pm on the Bar Date.
7. The Liquidators shall communicate their decision to any person who has lodged an Appeal or a Claim as soon as practicable. If that person is dissatisfied with the Liquidators' decision:
- (1) That person may apply to the Court for the Liquidators' decision to be reversed or varied. Any such application must be made by way of application notice to this Court under this paragraph 7 of this Order.
- (2) An application under this paragraph must be filed with the Court within 21 days of that person receiving notice of the Liquidators' decision.

- (3) Any person who has filed an application under this paragraph 7 (an “**Applicant**”) must forthwith give notice to the Liquidators of the filing of that application.
  - (4) Where application is made to the Court under this paragraph 7, the Court shall fix a venue for the application to be heard, notice of which shall be sent by the Applicant to the Liquidators.
  - (5) Neither the Liquidators nor any of the Companies shall be personally liable for costs incurred by an Applicant or any other person in respect of an application under this paragraph 7, unless the Court otherwise orders. The Liquidators’ costs of and occasioned by such an application shall be borne by the assets of the trust or trusts to which it relates, subject to the Court ordering that they be borne instead by the Applicant.
8. In effecting any distribution pursuant to paragraph 2 above, the Liquidators shall make a reserve in respect of any Claim, any Appeal or any application issued under paragraph 7 above which has not yet been finally determined (or otherwise finally resolved).

**D. MISCELLANEOUS**

9. For the avoidance of doubt, the Liquidators shall act in accordance with this Order solely as agents of CUKL in its capacity as trustee of the monies held in the Client Money Account and in the Loan Accounts, as the case may be. Nothing in this Order, or in the Liquidators’ performance of their obligations or in their exercise of their powers pursuant to the provisions of this Order, shall result in the Liquidators assuming liability as trustees.
10. The costs of and occasioned by the present Application shall be paid out of the funds held in the Client Money Account and the Loan Accounts.
11. The Liquidators and the Companies shall have liberty to apply to the Court including to vary or modify the terms of this Order. Anyone else who has notice of this Order shall have liberty to apply to the Court to vary or modify it if they see fit by 4pm on the Bar Date (in the case of Investors), or by 4pm on the date falling 35 days after the date on which they were put on notice of this Order (in all other cases),
12. The Liquidators shall upload a copy of this Order to the Website by 4pm on 22 June 2022.

**Service of the order**

The Court has provided a sealed copy of this order to the serving party:

Stevens & Bolton LLP (Solicitors for the Applicants)  
Wey House  
Farnham Road  
Guildford  
Surrey GU1 4YD  
Ref: CO.1792.0002