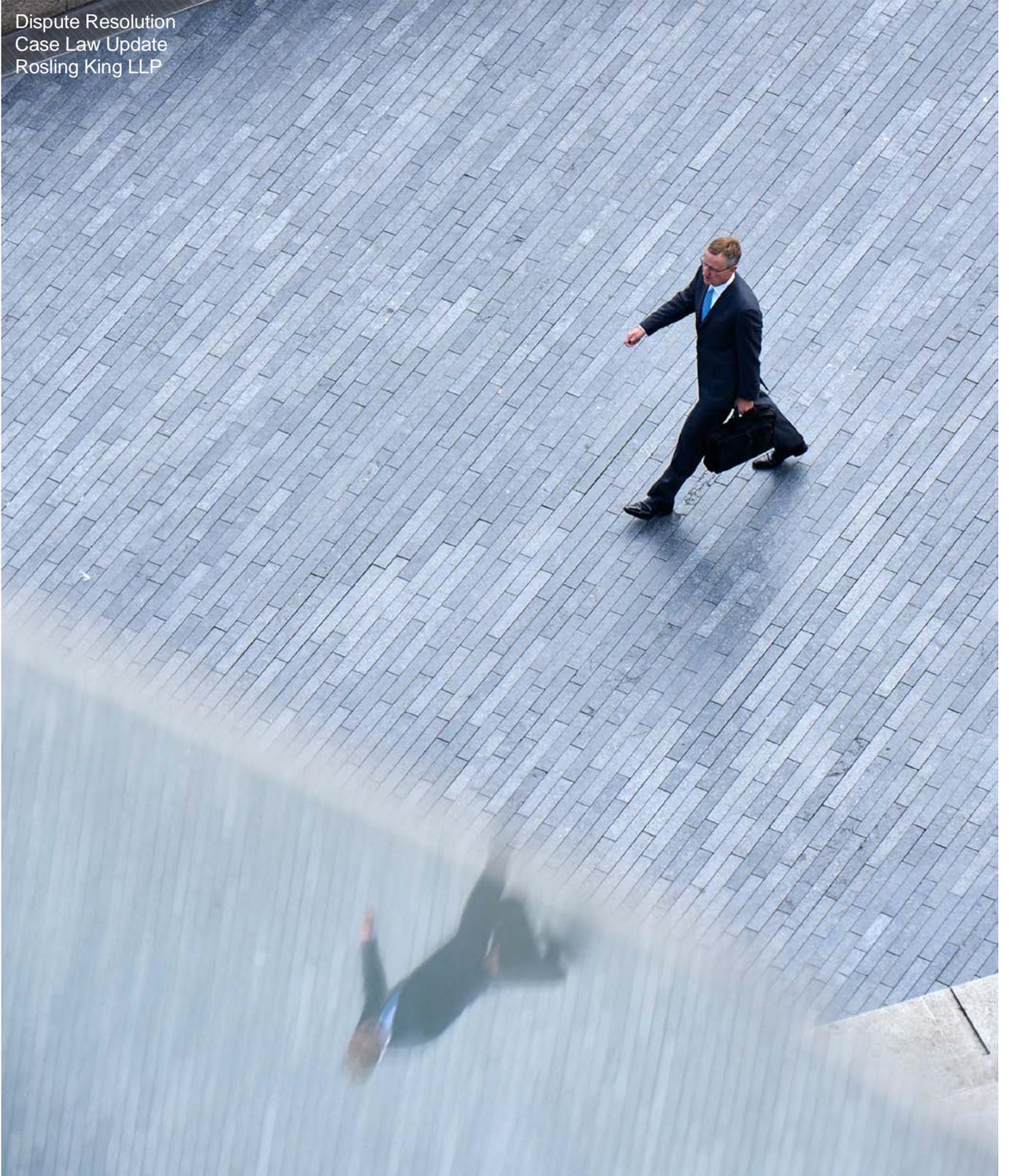


Dispute Resolution  
Case Law Update  
Rosling King LLP



### Background

The Claimant, NRAM PLC (“NRAM”), entered into a large number of unsecured credit agreements between 1999 and March 2008 as part of a product called the ‘Together Mortgage’.

This product allowed lenders to borrow at an LTV of up to 95% to be secured, and to take out an additional fixed sum of up to 30% of the value of the borrower’s home on an unsecured basis, capped at £30,000. As long as the secured loan remained outstanding, interest on the unsecured loan was charged at the same rate as in respect of the secured loan.

The First Defendant, Mr Jeffrey Patrick McAdam, and the Second Defendant, Ms Ann Hartley (together “the Defendants”) were two borrowers who borrowed up to the maximum of the unsecured loan of £30,000 under the Together Mortgage product.

### The Dispute

The Consumer Credit Act 1974 (“the 1974 Act”) sets out detailed provisions in relation to regulated consumer credit agreements, along with other regulations. The law relating to consumer credit made available a number of remedies and protections to borrowers in respect of regulated agreements. In 2006, the Consumer Credit Act 2006 introduced a number of new provisions to the 1974 Act, some of which are of particular importance in this matter. One of these newly introduced provisions was the requirement for the lender to provide periodic statements to the debtor under a regulated agreement for fixed sum credit in a prescribed form. One of the consequences of failure to provide such a statement in the prescribed time is that the debtor shall have no liability to pay any interest or default sum in respect of the period of non-compliance. The lender’s obligation to provide such statements took effect on 1 October 2008 and applies to regulated agreements made both before and after 1 October 2008. A regulated agreement under the 1974 Act was defined as an agreement where the principal loan was for £25,000 or less.

The paperwork used by NRAM between 1999 and March 2008 made no distinction between regulated and unregulated agreements and the same agreements were used for unsecured loans of more than £25,000 as for loans of £25,000 or less. All agreements were documented as though they were regulated agreements. NRAM failed to provide statements in the prescribed form, however, it did not provide any redress to borrowers who entered into agreements before 6 April 2008 under which the amount of credit exceeded £25,000 on the basis that such agreements were in fact not regulated agreements and that borrowers would therefore not have any rights under s77A of the 1974 Act.

The Court was asked to decide whether the agreements had been held out to be regulated agreements in the documentation and whether or not this meant that the rights and remedies available under the 1974 Act were imported into such agreements even though they fell outside the statutory scheme. Additionally, the Court was asked to consider whether or not the statements amounted to a ‘shared assumption’ for the purposes of estoppel by convention or constituted representations such as to found estoppel by representation.

NRAM sought declarations to the effect that:

December 2014  
Page 3

1. the rights and remedies under the 1974 Act, or equivalent rights, were not imported into the agreement;
2. that NRAM was not in breach of the agreement by issuing non-compliant statements and not repaying or re-crediting the Defendants; and
3. that the provision of the statements was not sufficient to give rise to a shared assumption or constituted representations that the agreements were regulated and/or that the borrowers were entitled to rights under s77A of the 1974 Act.

### The Decision

The Court found in favour of the Defendants.

The Court found that, on consideration of the construction of the agreements, it was agreed between the parties (whether or not it was a regulated agreement) that it was to be treated as if it was one, such that the over £25,000 loans and the under £25,000 loans would all be treated the same. Furthermore the Court was satisfied that the rights and obligations applicable to regulated agreements were given to the Defendants whether or not the agreement was a regulated agreement, as they had been incorporated or implied into the agreement.

The Court concluded that NRAM was in breach of its obligations under the agreements by virtue of its failure to indemnify the Defendants in respect of NRAM's breach. Mr Justice Burton found that the Defendants are entitled to recover, pursuant to any relevant contractual terms, the repayments under s77A of the 1974 Act.

### Commentary

NRAM brought the claims against the Defendants with a view to resolve a dispute between NRAM and some 41,000 other borrowers who are in the same position as the Defendants and the Defendants' legal costs were being indemnified by NRAM. This judgment consequentially means that NRAM is liable to repay losses suffered by borrowers in the sum of around £258 million at the time of judgment. The decision highlights the dangers of blanket agreements and reinforces the importance of careful review of existing and new agreements and general documentation in relation to legal reforms.

For further information, please contact [Georgina Squire](#) or the Partner with whom you usually deal.