

Credit and hire agreements – requests for information

According to the Office of Fair Trading, consumers are currently making high numbers of information requests in relation to credit and hire agreements. Many businesses do not appear to:

- Understand their obligations under the Consumer Credit Act 1974 (CCA 1974).
- Have a system in place to help them comply with these requests.

This checklist sets out how your business should respond to a request for information.

What duties does your business owe to debtors and hirers?

To provide a copy of the credit or consumer hire agreement

- Your business is required to give copy documents of certain credit or hire agreements to debtors or hirers.
- The copy of the credit or hire agreement must be easily legible. It should set out:
 - the details of the original agreement.
 - whether there have been any changes made to the original agreement; and
 - how much is still owed under the terms of the agreement.
- Your business should reply to a request for copy documents within **12 working days** after receipt of the request.
- When your business sends the information, you should retain a record of the posting date, to avoid future disputes about whether the request was responded to in time or at all.

To provide statements of account

- Your business is obliged to provide the debtor or hirer with a statement of account. It should set out how much the debtor or hirer:
 - still owes under the agreement;
 - should be paying and the date payment is due; and
 - has already repaid.
- If your business provides a statement representing the state of the account as held by your business, you will comply with your duty. The agreement remains enforceable even if the statement of account turns out to be inaccurate against the terms of the agreement.

When will the duty not apply?

There are only a limited number of situations where the duty to supply information will not apply. For example, when the request is made less than one month after a previous request concerning the same agreement.

What happens if your business does not comply with an information request?

- If your business does not comply with an information request, the credit or hire agreement in question will be unenforceable for as long as your business fails to comply with the request. The courts have no discretion to allow enforcement in these circumstances.
- Your business must not mislead a debtor about the enforceability of the agreement. To do so is an unfair or improper business practice and may affect your fitness to hold a licence under the CCA 1974.

What does unenforceable mean?

Unenforceable does not mean that the debt is wiped out. The debtor or hirer still owes your business the money. However, if your business does not provide the debtor or hirer with the information, your business **cannot**:

- Obtain a court judgment against the debtor or hirer.
- Make the debtor or hirer pay off the debt that is owed.
- Take anything back that the debtor or hirer has bought on credit or hired.
- Take anything used by the debtor or hirer as security when the agreement was made.

Nevertheless, your business **can** still:

- Ask that the debtor or hirer pay what they owe.
- Send a default notice to the debtor or hirer if they miss any payments.
- Pass the debtor or hirer's information to a debt collector.
- Sell the debt to another business.
- Take the case to court, although your business will not be able to get a court judgment against the debtor or hirer until you provide them with the information they are entitled to.

Regulatory compliance

Your business should take all reasonable steps to ensure you have suitable procedures in place to comply with your duties (for example, through training, auditing or record keeping).

This is only a brief summary of the requirements and is not intended as legal advice. If you would like further information please contact Alan Lodge on 024 7623 4205or alanl@n-v.co.uk