

Bennion on Statute Law – 2nd edition

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Appendix B

Illustration of the Composite Restatement Method

(Consumer Credit Control Division 9: Information on Credit Reference
Agency Files)

Part I: Analysis

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Part II: Restatement**9§5 Duty to disclose names and addresses of agencies consulted***9§5A Duty of creditor*

- (1) The 'creditor' under an actual or prospective 'consumer credit agreement' (being a 'regulated agreement' or 'prospective regulated agreement') must comply with the following provisions as from 16th May 1977. DUTY TO INFORM CREDIT-BROKER
- (2) Not later than he informs a 'credit-broker' that he is not willing to make the agreement, the creditor (if he is a 'licensee')
- (3) unless he informs the 'debtor' directly that he is not willing to make the agreement
- (4) must inform the credit-broker of the name and address of any 'credit reference agency'
- (5) from which the creditor has during the 'antecedent negotiations' applied for information about the financial standing of the debtor. DUTY TO INFORM DEBTOR
- (6) Within seven 'working days' after receiving a *valid* request to that effect from the debtor
- (7) the creditor must 'give' the debtor a notice in 'writing'
- (8) stating the name and address of any credit reference agency
- (9) from which the creditor has during the antecedent negotiations applied for information about the financial standing of the debtor.

Source

Consumer Credit Act 1974, sections 26, 147, 157 and 189(1); Consumer Credit (Conduct of Business) (Credit References) Regulations 1977, regulation 2.

Interpretation

'creditor' see 1 §920	'debtor' see 1 § 1020
'consumer credit agreement' see 1 §500	'credit reference agency' see 1§ 840
'regulated agreement' see 1§2560	'antecedent negotiations' see 1 § 100
'prospective regulated agreement' see 112440	'working day' see 1§ 3200
'credit-broker' see 1§ 760	'give' see 1 § 1500
'licensee' see 1 i 1860	'writing' see 1§ 3220

9§5B Duty of owner

- (1) The 'owner' under an actual or prospective 'consumer hire agreement' (being a 'regulated agreement' or 'prospective regulated agreement') must comply with the following provisions as from 16th May 1977. DUTY TO INFORM CREDIT-BROKER
- (2) Not later than he informs a 'credit-broker' that he is not willing to make the agreement, the owner (if he is a 'licensee')

- (3) unless he informs the 'hirer' directly that he is not willing to make the agreement
- (4) must inform the credit-broker of the name and address of any 'credit reference agency'
- (5) from which the owner has during the 'antecedent negotiations' applied for information about the financial standing of the hirer. DUTY TO INFORM HIRER
- (6) Within seven 'working days' after receiving a *valid* request to that effect from the hirer
- (7) the owner must 'give' the hirer a notice in 'writing'
- (8) stating the name and address of any credit reference agency
- (9) from which the owner has during the antecedent negotiations applied for information about the financial standing of the hirer.

Source

Consumer Credit Act 1974, sections 26, 147, 157 and 189(1); Consumer Credit (Conduct of Business) (Credit References) Regulations 1977, regulation 2.

Interpretation

'owner' see 1 § 2160	'licensee' see 131860
'consumer hire agreement' 'hirer*' see 1 § 560	'hirer' see 111620
'regulated agreement' see 1 § 2560	'credit reference agency' see 1 § 840
'prospective regulated agreement' see 1 § 2440	'antecedent negotiations' see 1 § 100
'credit-broker' see 1 § 760	'working day' see 1 § 3200
	'give' see 1 § 1500
	'writing' see 1 § 3220

9§5C Duty of credit-broker where goods sold by him to creditor

- (1) As from 16th May 1977, a 'credit-broker' engaging in 'antecedent negotiations' falling within 1§100B
- (2) within seven 'working days' after receiving a *valid* request to that effect from the 'debtor'
- (3) must give the debtor a notice in 'writing'
- (4) stating the name and address of any 'credit reference agency'
- (5) from which the credit-broker has during the antecedent negotiations applied for information about the financial standing of the debtor *or*
- (6) of which the credit-broker has been informed under 9§5A (4).

Source

Consumer Credit Act 1974, sections 26, 147, 157 and 189(1); Consumer Credit (Credit Reference Agency) Regulations 1977, regulation 3; Consumer Credit (Conduct of Business) (Credit References) Regulations 1977, regulation 3.

Interpretation

'credit-broker' see 1 § 760	'debtor' see 1 § 1020
'antecedent negotiations' see 1 § 100	'writing' see 1 § 3220
'working day' see 1 § 3200	'credit reference agency' see 1 § 840

9§5D *Duty of credit-broker in other cases*

- (1) As from 16th May 1977, a 'credit-broker' who is a 'licensee' and does not fall within 9§5C
- (2) within seven 'working days' after receiving a *valid* request to that effect from the 'debtor' or 'hirer'
- (3) must 'give' the debtor or hirer a notice in 'writing'
- (4) stating the name and address of any 'credit reference agency'
- (5) from which the credit-broker has during any negotiations relating to a 'regulated agreement' applied for information about the financial standing of the debtor or hirer *or*
- (6) of which the credit-broker has been informed under 9§5A (4) or 9§5B(4).

Source

Consumer Credit Act 1974, sections 26 and 147; Consumer Credit (Conduct of Business) (Credit References) Regulations 1977, regulation 4.

Interpretation

credit-broker' see 1§760	'give' see 1 §1500
'licensee' see 1 §1860	'writing' see 1§3220
'working day' see 1§3200	'credit reference agency' see 1§840
'debtor' see 1 § 1020	'regulated agreement' see 1 § 2560
'hirer' see 1§1620	

9§5E *Duty of connected supplier*

- (1) As from 16th May 1977, a 'supplier' engaging in 'antecedent negotiations' falling within 1§100C or 1§100D
- (2) within seven 'working days' after receiving a *valid* request to that effect the 'debtor'
- (3) must give the debtor a notice in 'writing'
- (4) stating the name and address of any 'credit reference agency'
- (5) from which the supplier has during the antecedent negotiations applied for information about the financial standing of the debtor.

Source

Consumer Credit Act 1974, sections 157 and 189(1); Consumer Credit (Credit Reference Agency) Regulations 1977, regulation 3.

Interpretation

'supplier' see 152920	'debtor' see 1 § 1020
'antecedent negotiations' see 11100	'writing' see 1§3220
'working day' see 1 §3200	'credit reference agency' see 1§840

9§5F *Breach of duty an offence in certain cases*

- (1) If the 'creditor', 'owner', 'credit-broker' or 'supplier' fails to comply with 9§5A (6) to (9), 9§5B (6) to (9), 9§5C or 9§5E

- (2) then, subject to the defences set out in **10§170**,
- (3) the creditor, owner, credit-broker or supplier (and, in the case of a 'body corporate', any 'individual' liable by virtue of 10§180)
- (4) commits an offence punishable on 'summary conviction' by a fine not exceeding £200.

Source

Consumer Credit Act 1974, section 157(3) and Schedule I.

Interpretation

'creditor*' see 15920	'body corporate' see 1 §240
'owner' see 1 § 2160	'individual' see 1 § 1700
'credit-broker' see 1 §760	'summary conviction' see 1§2900
'supplier' see 1 § 2920	

9§5G *When request valid*

- (1) A request by a 'debtor' or 'hirer' under 9§5A to E valid only where
- (2) it is in 'writing' *and*
- (3) it gives the name and address of the person making it *and*
- (4) it is not received more than 28 days after the termination of the negotiations, whether on the making of the 'regulated agreement' or otherwise.

Source

Consumer Credit Act 1974, section 157; Consumer Credit (Conduct of Business) (Credit References) Regulations 1977, regulation 4.

Interpretation

'debtor' see 1 § 1020	'writing' see 1 § 3220
'hirer' see 1 § 1620	'regulated agreement' see 1 § 2560

Textual note

The legislation does not expressly require the request to include the name and address of the person making it, but since it would be impracticable to carry out the duty imposed by section 157 without this information the requirement is taken to be implied.

9 §10 **Duty of agency to give consumer copy of his file****9 §10 A** *Nature of duty*

- (1) As from 16th May 1977, a 'credit reference agency' which keeps a 'file' relating to any 'individual' (called the "consumer")
- (2) must within seven 'working days' after the consumer complies with 9§103 'give' the consumer
- (3) a 'copy of the file' *and*
- (4) a statement of the consumer's rights in the form set out in Schedule 1

9§20 Duty of agency where no file kept*9§20A Nature of duty*

- (1) A 'credit reference agency' which does *not* keep a 'file' relating to a consumer
- (2) must within seven 'working days' after the consumer complies with *9§10B* 'give' the consumer
- (3) a notice in 'writing' stating that the agency does not keep a file relating to him;
- (4) but the agency need not return any money paid.

Source

Consumer Credit Act 1974, section 158(3).

Interpretation

'credit reference agency' see 1§840 'give' see 1§1500
 'file' see 1 § 1340 'writing' see 1 § 3220
 'working day' see 1§3200

9§20B Breach of duty an offence

- (1) If a 'credit reference agency' fails to comply with *9§20A*
- (2) then, subject to the defences set out in *10§170*
- (3) the agency (and, in the case of a 'body corporate', any 'individual' liable by virtue of *10 §180*)
- (4) commits an offence punishable on 'summary conviction' by a fine not exceeding £200.

Source

Consumer Credit Act 1974, section 158(4) and Schedule 1.

Interpretation

'credit reference agency' see 1 §840 'individual' see 1 § 1700
 'body corporate' see 1§240 'summary conviction' see 112900

9§30 Alternative procedure for business consumers (section 160 direction)

- (1) The 'Director General of Fair Trading', on an application made by a credit reference agency', and on payment of a fee of £25
- (2) may direct that section 160 of the Consumer Credit Act 1974 [restated in *9§40* and *9§50*] shall apply to the agency if he is satisfied
- (3) that to give consumers who carry on a 'business' copies of 'files' relating to them kept by the agency would *adversely affect the service* provided to its customers by the agency *and*
- (4) that, having regard to the methods employed by the agency and to any other relevant factors, it is probable that consumers who carry on a business would not be prejudiced by the making of the direction.

- (5) The Director General may vary or revoke any direction given by him under clause (2).

Source

Consumer Credit Act 1974, sections 160(1) and 183; General Notice No. 1, paragraph 23.

Interpretation

'Director General of Fair Trading' 'business' see 1§320
 see 111 140 'file' see 1 §1340
 'credit reference agency, see 1 § 840

9§40 Section 160 direction: giving of information to consumer

9§40A Nature of duty

- (1) Where an agency to which section 160 of the Consumer Credit Act 1974 applies [see 9§30] keeps a 'file' relating to a consumer who carries on a 'business', and the consumer complies with 9§10B
- (2) the agency, instead of complying with 9§10A, may within seven 'working days' after the consumer complies with 9§10B, 'give' the consumer
- (3) a notice in 'writing' stating that the agency is proceeding under section 160 of the Consumer Credit Act 1974 *and*
- (4) a notice in writing giving such information included in or based on entries in the file as the 'Director General of Fair Trading' may direct *and*
- (5) a statement of the consumer's rights in the form set out in Schedule 2 to the Consumer Credit (Credit Reference Agency) Regulations 1977.

Source

Consumer Credit Act 1974, section 160(2) and (3); Consumer Credit (Credit Reference Agency) Regulations 1977.

Interpretation

'file' see 1 §1340 'writing' see 1 §3220
 'business' see 1 § 320 'Director General of Fair Trading'
 'working day' see 1§ 3200 see 1§1140
 'give' see 1§1500

9§40B Breach of duty an offence

- (1) If a 'credit reference agency' fails to comply with 9§40A
- (2) then, subject to the defences set out in 10§170,
- (3) the agency (and, in the case of a 'body corporate', any 'individual' liable by virtue of 10 §180)
- (4) commits an offence punishable on 'summary conviction' by a fine not exceeding £200.

Source

Consumer Credit Act 1974, section 160(6) and Schedule 1.

Interpretation

'credit reference agency' see 1 § 840 'individual' see 1 § 1700
'body corporate' see 1 § 240 'summary conviction' see 1 § 2900

9§50 Section 160 direction: obtaining of further information by consumer

9§50A *Nature of duty*

- (1) If within 28 days after receiving the information given him under 9§40, or such longer period as the 'Director General of Fair Trading' may allow, the consumer
- (2) 'gives' notice in 'writing' to the Director General of Fair Trading that he is dissatisfied with the *sufficiency* of the information provided under 9§40 * *and*
- (3) satisfies the Director General that he has taken such steps in relation to the agency as may be reasonable with a view to removing the cause of his dissatisfaction
- (4) the Director General may direct the agency to give *the Director General* a 'copy of the file'
- (5) and the Director General may disclose to the consumer such of the information on the 'file' as the Director General thinks fit.

Source

Consumer Credit Act 1974, section 160(4).

Interpretation

'Director General of Fair Trading' 'writing' see 1 § 3220
see 1 § 1140 'copy of the file' see
1 § 660
'give' see 1 § 15 00 'file' see 1 § 1340

Textual note

In clause (2) the words 'the sufficiency of' are added. It is clear that they are implied because the only remedy provided by section 160(4) is the obtaining of further information about what is on the consumer's file. Dissatisfaction with the *nature* of the information (e.g. where it is incorrect) can be dealt with under 9§60 to 95100.

9§50B *Breach of duty an offence*

- (1) If a 'credit reference agency' fails to comply with 9050,4
- (2) then, subject to the defences set out in 10§170,
- (3) the agency (and, in the case of a 'body corporate', any 'individual' liable by virtue of 10§180)
- (4) commits an offence punishable on 'summary conviction' by a fine not exceeding £200.

- (8) giving particulars of the entry removed and a statement that it has been removed *or*
- (9) (where the information furnished did not include the entry which has been removed, but (whether in the form of a rating or opinion or otherwise) was based in whole or in part on the removed entry and has been, or falls to be, modified by reason of the removal)
- (10) giving particulars of the modified information, and a statement that the information has been modified by reason of the removal.
- (11) Within 10 working days after giving notice to the consumer under *clause (4) above* the agency must give a notice in writing
- (12) to each person falling within *clause (7) above*
- (13) giving particulars of the amended entry and of the amendment, or of the entry as amended *or*
- (14) (where the information furnished did not include the entry which has been amended, but (whether in the form of a rating or opinion or otherwise) was based in whole or in part on the amended entry and has been, or falls to be, modified by reason of the amendment)
- (15) giving particulars of the modified information, and a statement that the information has been modified by reason of the amendment.

Source

Consumer Credit Act 1974, sections 26, 147, 159(2), 160(5) and 189(1); Consumer Credit (Conduct of Business) (Credit References) Regulations 1977, regulation 5.

Interpretation

'give' see 1 §1500

'copy of the file' see 1 §660

'writing' see 1 §3220

'working day' see 1 § 3200

'file' see 1 § 1340

'person' see 1 §2320

9§80 Requirement to add notice of correction to file**9§80A Nature of requirement**

- (1) Where a consumer has given the agency a notice under 9§60
- (2) and the agency has not (under 9§70 (3)) informed the consumer that it has removed the entry in question from the 'file'
- (3) the consumer may within the period specified in 9§80B 'give' the agency a further notice in 'writing' requiring it
- (4) to add to the file a *notice of correction* drawn up by the consumer which accompanies the further notice and does not exceed 200 words in length *and*
- (5) to include a copy of the notice of correction when furnishing information included in or based on the entry in question.

Source

Consumer Credit Act 1974, sections 159(3) and 160(5).

Interpretation

'file' see 1 §1340

'writing'¹ see 1§ 3220

'give' see 1§1500

9§80B *Period for serving requirement*

- (1) The period for giving a notice under 9§80A
- (2) where the consumer received a notice under 9§70 is the period of 28 days following his receipt of that notice *or*
- (3) where the consumer did *not* receive a notice under 9§70 is the period beginning on the expiry of 28 days from the receipt by the agency of the notice given by the consumer under 9 §60 and ending on the expiry of a further 28 days.

Source

Consumer Credit Act 1974, sections 159(3) and 160(5).

9§90 **Response to requirement to add notice of correction to file**

9§90A *Where agency considers notice of correction unsuitable*

- (1) If on receiving a notice under 9§80A the agency considers that it would be improper for it to publish the notice of correction because
- (2) it is incorrect *or*
- (3) it unjustly defames any 'person' *or*
- (4) it is frivolous or scandalous *or*
- (5) it is for any other reason unsuitable,
- (6) the agency may make an application to the 'Director General of Fair Trading' for an order under section 159(5) of the Consumer Credit Act 1974 [see 9§100A(\)].
- (7) An application under clause (6) must
- (8) state the name and address of the agency and of the consumer *and*
- (9) give an indication of when the notice under 9§80A was given by the consumer to the agency *and*
- (10) be accompanied by a copy of the notice of correction *and*
- (11) be accompanied by a copy of the material given by the agency to the consumer under 9 §10A(3) or 9§40A(4), as the case may be *and*

- (12) be accompanied by a copy of related correspondence and other documents which have passed between the agency and the consumer *and*
- (13) state the grounds upon which it appears to the agency that it would be improper for it to publish the notice of correction.

Source

Consumer Credit Act 1974, sections 159(5) and 160(5); Consumer Credit (Credit Reference Agency) Regulations 1977, regulation 4.

Interpretation

'person' see 1§2320

'Director General of Fair Trading' see 1 §1140

9§90B Duty to notify consumer

- (1) Within 28 days after receiving a notice under 9§80A the agency
- (2) unless it intends to apply to the 'Director General of Fair Trading' under 9§90A(6)
- (3) must 'give' the consumer a notice in 'writing' informing him
- (4) that it has received the notice under 9§90A *and*
- (5) that it intends to comply with it.

Source

Consumer Credit Act 1974, sections 159(4) and 160(5).

Interpretation

'Director General of Fair Trading'
see 1§1140

'give' see 1 §1500
'writing' see 1§3220

9§90C Consumer's right when not notified

- (1) If the consumer has not received a notice under 9§90B within the time required by 9§90B(\)
- (2) he may make an application to the 'Director General of Fair Trading' for an order under section 159(5) of the Consumer Credit Act 1974 [see 9§100(1)].
- (3) An application under clause (2) must
- (4) state the name and address of the agency and of the consumer *and*
- (5) give an indication of when the notice under 9§80A was given by the consumer of the agency *and*
- (6) give particulars of the entry in the 'file', or of the information received by **the** consumer from the agency *and*
- (7) state why the consumer considers the entry or information to be

incorrect and why, if it is not corrected, he considers that he is likely to be prejudiced.

Source

Consumer Credit Act 1974, sections 159(5) and 160(5); Consumer Credit (Credit Reference Agency) Regulations 1977, regulation 4; General Notice No 11.

Interpretation

'Director General of Fair Trading' 'file' see 1 § 1340 see 1§1140

9§90D Duty to notify clients of agency

- (1) Within 10 'working days' after giving notice to the consumer under 9§90B the agency must 'give' a notice in 'writing'
- (2) to each 'person' to whom (at any time since the date 6 months immediately preceding the receipt by the agency of the request from the consumer under 9§10B) the agency furnished information relevant to the financial standing of the consumer
- (3) giving particulars of the entry referred to in the notice of correction, together with a copy of the notice of correction *or*
- (4) (where the information furnished did not include the entry which is referred to in the notice of correction, but (whether in the form of a rating or opinion or otherwise) was based in whole or in part on that entry and has been, or falls to be, modified by reason of the notice of correction)
- (5) giving particulars of the modified information, and a statement that the information has been modified by reason of the notice of correction.

Source

Consumer Credit Act 1974, sections 26, 147, 159(2), 160(5) and 189(1); Consumer Credit (Conduct of Business) (Credit References) Regulations 1977, regulation 5.

Interpretation

'working day' see 1 §3200 'writing' see 1 §3220
'give' see 1§1500 'person' see 1 §2320

9 §100 Order by Director General as to notice of correction

9§100A Making of order

- (1) On an application made in pursuance of 9§90A(6) or 9§90C(2) the 'Director General of Fair Trading' may make such order as he thinks fit
- (2) and if the agency fails to comply with the order within the period specified in the order
- (3) then, subject to the defences set out in 10§170,

- (4) the agency (and, in the case of a 'body corporate', any 'individual' liable by virtue of 10 §180)
 (5) commits an offence punishable on 'summary conviction' by a fine not exceeding £200.

Source

Consumer Credit Act 1974, sections 159(5) and (6) and 160(5) and Schedule 1.

Interpretation

'Director General of Fair Trading' 'individual' see 1 § 1700
 see 1 § 1140 'summary conviction' see 1 §2900
 'body corporate' see 1§ 240

Textual note

Section 159(6) says that any person who fails to comply with an order is guilty of an offence. This is wide enough to include the consumer as well, but it is submitted that the intention is to limit the penalty to the credit reference agency. This is borne out by the description of the offence in Schedule 1 to the Act (which in other respects is somewhat inaccurate).

9 §1008 Duty to notify clients of agency

- (1) Within 10 'working days' after the expiration of the period specified in an order under 9§100A as that within which it is to be complied with, the agency must 'give'
 (2) to each 'person' to whom (at any time since the date 6 months immediately preceding the receipt by the agency of the request from the consumer under 9§100B) the agency furnished information relevant to the financial standing of the consumer
 (3) a notice in 'writing' giving, as appropriate, the following particulars-
 (4) where the order requires an entry to be removed from the 'file', the particulars mentioned in 9 §70 (8) to (10) *or*
 (5) where the order requires an entry to be amended, the particulars mentioned in 9§70(13) to (15) *or*
 (6) where the order requires a notice of correction to be added to the file, the particulars mentioned in 9§90D.

Source

Consumer Credit Act 1974, sections 26, 147, 159(5) and 189(1); Consumer Credit (Conduct of Business) (Credit References) Regulations 1977, regulation 5.

Interpretation

'working day' see 1 § 3200 'writing' see 1 §3220
 'give' see 1 § 15 00 'Tile' see 1 § 1340
 'person' see 1§ 2320