Summary of ch\_13.pdf

Chapter 13 Summary: Guidance on Information Duties under CCA Sections 77, 78 and 79

# Overview

This chapter provides FCA guidance on firms' obligations to provide information to borrowers and hirers under sections 77, 78 and 79 of the Consumer Credit Act 1974. The guidance aims to ensure borrowers/hirers can obtain necessary information to be properly informed while avoiding unnecessary burden on firms.

# Key Points and Main Findings

## Application and Scope

* Applies to firms engaged in consumer credit lending and consumer hiring
* Excludes obligations for regular statements on running-account credit under section 78(4), (4A) or (5)

## Request Requirements

* Requests can be made by or on behalf of borrowers/hirers (including third parties like solicitors or claims management companies)
* Firms must verify proper authority when third parties make requests
* Where multiple borrowers/hirers exist, a request from one requires response to all
* Information must be provided by ordinary second class post

## Copy Agreement Requirements

* "True copy" does not require exact reproduction - signatures can be omitted
* Firms may provide reconstituted copies using templates populated from records
* Must include:  
    
  Original terms and conditions at time of execution  
  Name and address at execution  
  CCA-prescribed headings and cancellation notices  
  Details of any variations to the agreement
* Original terms and conditions at time of execution
* Name and address at execution
* CCA-prescribed headings and cancellation notices
* Details of any variations to the agreement
* Certain information may be excluded (borrower details not required by CCA, signatures, dates)
* Original terms and conditions at time of execution
* Name and address at execution
* CCA-prescribed headings and cancellation notices
* Details of any variations to the agreement

## Statement of Account

* If insufficient information exists to determine exact amounts/dates, firms should indicate the basis for calculation

## Enforcement Implications

* Non-compliance renders agreements unenforceable while failure persists
* Courts have no discretion to allow enforcement during non-compliance
* Firms must not mislead customers about enforceability
* Cannot threaten court action or imply debt is enforceable when it is not
* Must clearly communicate unenforceable status in payment requests

# Important Details and Conclusions

## Legal Precedents

* Carey v HSBC Bank plc [2009]: Established that "true copy" doesn't require exact reproduction
* McGuffick v RBS [2009]: Clarified that:  
    
  Passing debt details to credit reference agencies is not "enforcement"  
  Demanding payment and threatening legal action are steps toward enforcement, not enforcement itself  
  Actual enforcement includes: demanding earlier payment, recovering possession, terminating agreements, enforcing security
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## Practical Implications

* Firms should preserve and maintain information accessibility for future requests
* When providing reconstituted copies, firms should explain this to avoid misleading customers
* Clear communication about enforceability status is essential to avoid unfair treatment
* The guidance emphasizes balancing customer information rights with practical business operations