



BRIEFING PAPER

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Credit Reference Agencies

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Summary

This note outlines the operation and regulation of credit reference agencies. From April 2014 there will be a new activity of providing credit references that will replace the current activity of operating a credit reference agency. It also looks at the law surrounding the data which the agencies have access to.

1. Credit Reference Agencies

1.1 General operation

A credit reference agency (CRA) is defined in the *Consumer Credit Act 1974* (section 145(8)) as:

.... a person carrying on a business comprising the furnishing of persons with information relevant to the financial standing of individuals, being information collected by the agency for that purpose.

The law allows CRAs to record information on an individual's credit worthiness, which can then be supplied to banks, building societies, retailers or other providers of credit. All CRAs hold similar information about individuals. The information provided by CRAs fall into two main categories – public information and credit account information.

Public Information consists of:

Electoral roll information gathered from the records of those eligible to vote compiled annually by local authorities. It is useful to the credit industry because lenders can use it to confirm that applicants for credit do in fact live at the address given and that they are not attempting to obtain credit fraudulently using a false name and address.

County Court Judgments and Scottish Decrees supplied by the Registry Trust, which holds a list of judgments on behalf of the Lord Chancellor's Department.

Bankruptcies, Individual Voluntary Arrangements and Administration Orders obtained from the official London, Edinburgh and Belfast Gazettes or the Insolvency Service.

Credit Account Information consists of:

Account information which the major lending companies in the UK have agreed to share with each other. Thus on a monthly basis lenders will supply to the agencies details of their customers namely:

- Personal details, name, date of birth etc
- Type of account held
- Date agreement commenced
- Current arrears status
- Historic arrears status – the balance and amounts outstanding by duration
- A range of indicators to indicate the management of the account.

This information is retained by the CRA for six years. This lets lenders check, when someone applies for credit, that the person applying has repaid other lenders in the past and the size of any outstanding loans.

Lenders are bound in what they can provide to CRAs and the use they make of it by the Standing Committee on Reciprocity (SCOR). This is an industry group whose purpose is to define the rules regarding the reciprocal use of information. Whilst a company can refuse to supply information to a CRA it cannot refuse and have access to CRA's records.

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If a lender only supplied the records of bad payers then it would only have access to that information from other lenders.

Strictly speaking CRAs do not themselves make decisions on whether or not credit should be granted. This is a matter for individual lenders, who apply their own criteria to the information they receive from the CRA and any other information which they consider relevant (for example, personal details supplied by the applicant, or the lenders' records of previous dealings with the applicant). Thus, on the basis of the same information held by a CRA, one lender may decide to grant credit to an applicant while another may reject the application.

However, many large lenders use computerised application processing systems which extract information from the agency's database direct and incorporate it into their credit scoring systems automatically. In such cases because it is the CRA which provides the 'scores' on each factor, which it derives from its own analysis of the records on its database, in effect the CRA is very central to the decision making process.

Individuals cannot prevent such information being kept by a CRA. The *Consumer Credit Act 1974* [the "CCA 1974"] does not specify what information may be held by CRAs, nor to what uses it may be put. However, section 157 of the CCA 1974 allows an individual to obtain the name and address of any agency to which a creditor has applied for information about his or her credit standing. Section 158 of the Act allows an individual to inspect the information held about them by a CRA. Agencies are obliged to provide a copy of an individual's records, at the individual's request, within seven days, at a fee of £2. Under section 159 of the CCA 1974, if any of the information held is incorrect the agencies can be asked to remove or amend it, or to add to their records a "notice of correction". A notice of correction is simply a statement of up to 200 words written by the individual, which gives a clear explanation of why he considers the entry to be incorrect. If the agency amends the file or adds a notice of correction, it must also send the details to any lender who has consulted the file in the previous six months, and to those who do so in the future.

The agency can reject a notice of correction if it thinks it is incorrect, defamatory, frivolous or scandalous. However, if an agency to which an individual sends a notice of correction declines to add it to his file, the agency must refer the matter to the Director General of Fair Trading for a final decision.

There are four main CRAs in the UK - Call Credit, Equifax, Experian. They all have their own websites which outline their particular activities.

The Independent Commissioners Office (the body responsible for public data) has a useful [guide to the basics](#) of the CRA industry.

1.2 New Regulation

By virtue of the *Financial Services Act 2012*, as of April 2014, regulation of the whole consumer credit market passes to the Financial Conduct

Authority (FCA). Regulation will henceforth be by FCA rules rather than by the less flexible structure of legislation.

There will be a new activity of providing credit references that will replace the current activity of operating a credit reference agency. The new activity only applies to a firm if its business **primarily** consists of providing others with information relevant to someone's financial standing and collecting such information for that purpose. Consequently, only firms whose main business activity is being a credit reference agency are likely to meet the criteria to hold a permission for this activity.

The detailed rules can be found in Appendix 1 of the FCA Policy Statement 14/3 [here](#).¹ The new rules generally include a greater emphasis on companies undertaking credit worthiness checks before lending. This is in response to concerns about the levels of personal 'problem' debt incurred. This requirement puts greater emphasis therefore on the CRAs and their role and the importance of accurate information on the CTRA records. Henceforth, there are specific rules regarding the rights of individuals to alter their record and the response of the CRA in response. Rule 9.2.1 requires the CRA to notify (within 10 working days) all lenders that have enquired about a person, any change/correction made to their credit record.

¹ FCA, [Detailed rules for the FCA regime for consumer credit](#), PS14/3 February 2014

2. Data protection

CRA's are also subject to the provisions of the **Data Protection Act 1998**. Individuals' data protection rights were extended under this Act, which came into force on 1 March 2000. It provides an important range of measures including a specific right to prevent personal data from being used for direct marketing purposes and the right to prevent processing likely to cause damage and distress. The individual is entitled to compensation for damage caused by inaccuracy, loss, unauthorised destruction or unauthorised disclosure of such data. Under the Act, organizations processing personal data ('controllers') must comply with the eight data protection principles set out in Part 1 of Schedule 1 of the Act. These require data to be:

- fairly and lawfully processed;
- processed for limited purposes;
- adequate, relevant and not excessive;
- accurate;
- not kept longer than necessary;
- processed in accordance with individuals' rights;
- kept secure;
- not transferred to non-EEA countries without adequate protection.

As shown above, the fifth data protection principle dictates that: personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes. This fifth principle does not specify limits as to the length of time information can be held on the records of CRA's. However, as a general rule, CRA's can only retain records for six years. For example, records of bankruptcies are held for six years after the date of the bankruptcy order. Records of County Court judgments are held for six years from the date of judgment (whether or not they are subsequently satisfied). Account records are held for six years from the date of the last entry on that record.

Sections 12(1) to (3) of the DPA 1998 are also of particular relevance to CRA's. These state:

12(1). An individual is entitled at any time, by notice in writing to any data controller, to require the data controller to ensure that no decision taken by or on behalf of the data controller which significantly affects that individual is based solely on the processing by automatic means of personal data in respect of which that individual is the data subject for the purpose of evaluating matters relating to him such as, for example, his performance at work, his creditworthiness, his reliability or his conduct.

(2) Where, in a case where no notice under subsection (1) has effect, a decision which significantly affects an individual is based solely on such processing as is mentioned in subsection (1) –

the data controller must as soon as reasonably practicable notify the individual that the decision was taken on that basis, and

the individual is entitled, within twenty-one days of receiving that notification from the data controller, by notice in writing to require the data controller to reconsider the decision or to take a new decision otherwise than on that basis.

(3) The data controller must, within twenty-one days of receiving a notice under subsection (2)(b) ('the data subject notice') give the individual a written notice specifying the steps that he intends to take to comply with the data subject notice.

The office of the Information Commissioner has produced a short leaflet entitled '[Credit Explained](#)'. This booklet gives practical advice on how an individual can check that his credit record is correct. It should be available from the Citizens Advice Bureau. Further information can be had online from [Experian](#). They have a section on the website answering many of the standard questions as well as offering advice about improving your chances of getting credit.²

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