Information Commissioner's Office
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Data Protection Technical Guidance

Filing defaults with credit reference agencies

Foreword

This is an updated version of the guidance note on defaults filed with credit reference agencies which was first published under the 1984 Data Protection Act. That guidance noted that the data protection principles relating to data quality, on which much of the advice was based, would not change with the implementation of the 1998 Data Protection Act. Nevertheless, given the passage of time since the guidance was first published, there is a need to confirm what standards continue to apply and take into account developments which have arisen since the original publication. For this reason, the guidance has been updated.

The aim of the guidance is to provide advice to credit grantors on the conditions under which information about defaults is filed with the credit reference agencies. Only if credit grantors file defaults information in broadly comparable circumstances to each other will credit reference agency records provide meaningful information about the financial standing of individuals, and be processed in a way that is fair to those individuals. The guidance sets common standards for filing defaults while recognising that some differences exist with the wide range of credit products available.

The standards were reached originally after extensive consultation with lenders, agencies and trade associations. It is a tribute to the care they gave to that process that the standards have stood the test of time. The changes made for the latest version have been included to reflect changing industry practice and, in some instances, clarify what the standard is. I also recognise the very considerable progress made by the credit industry since the original guidance was produced, in achieving greater consistency in reporting standards. The credit industry has its own "Principles of Reciprocity" governing the sharing of customer information through credit reference agencies. Although the starting points are different, this guidance note complements the principles of reciprocity and there is some overlap between the conclusions reached.

I would like to thank all those representatives of the credit industry and credit reference agencies, and in particular representatives of the Steering Committee on Reciprocity, who have contributed to the development of this guidance.

Richard Thomas
Information Commissioner

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Introduction

1 The aim of this guidance note is to set out our view to credit reference agencies and their clients on the data quality standards which should be met when filing information with credit reference agencies about defaults.

2 The Data Protection Act 1998, in the data protection principles, sets legally enforceable standards for organisations. The principles require, among other things, that:

- personal data is processed fairly and lawfully;
- personal data is adequate, relevant and not excessive in relation to the purpose or purposes of processing;
- personal data is accurate and, where necessary, kept up to date; and
- personal data processed for any reason is not kept for any longer than is necessary.

3 These principles are closely interrelated. It is difficult to see how a record which is inaccurate could be adequate for the purpose for which it is held. A record which has been kept for longer than is necessary may well be excessive and irrelevant for that purpose and a record which is not up to date is unlikely to be relevant to, or reflect adequately, the current position. The record of a default lodged with a credit reference agency provides a reliable reflection of the individual's credit standing to other lenders[1]. If a record is unreliable or based on non-standard criteria, it is unlikely to be meaningful to another lender. In these circumstances it would be unfair for a lender to process the data to assess an individual's credit worthiness.

4 It is an accepted industry standard to record only serious 'defaults' with credit reference agencies. The term 'default' on credit reference files is used to refer to the situation when the relationship between the lender and borrower has broken down. A record showing a series of payments as six months in arrears when this does not reflect the real payment history should not be used as an equivalent of a default. Where a code is used to describe a default or variation in payment, it should always be accompanied by an explanation in plain and intelligible terms which informs the reader of its meaning.

The terms 'default', and 'satisfaction' or 'satisfied' as used in this guidance note are not intended to give a precise legal definition. The term 'default' is discussed in greater detail in the section 'The definition of

[1] For the purposes of this guidance the term 'lender' may include companies which extend credit without making loans, for example, a telecoms company or utility.

a default'; the conditions under which the term 'satisfaction' should be used are discussed in the section 'The settlement or satisfaction of defaults'.

This guidance note also refers in some instances to bankruptcies, IVAs and the assignment of debts. When it does so, it should be read to include the Scottish equivalents of sequestration, trust deeds that have the intent to create a binding arrangement similar to an IVA, and the assignation of debts.

Our general approach

5 Information about borrowers is filed by lenders with credit reference agencies for three reasons.

- To help lenders make responsible lending decisions.
- To help lenders trace and collect overdue debts.
- Occasional prevention of fraud and money laundering.

6 Defaults are usually filed in relation to the first of these. It is now recognised within the credit industry that information placed on a credit reference file should meet consistent standards and, therefore, that defaults should be filed in similar circumstances to each other. As far as possible these circumstances should be defined objectively. This guidance does not relate to lenders' internal policies regarding collection activities or decisions to write off debts, and so on. It is concerned solely with the filing of information for credit referencing purposes. Such internal policies and practices should not be the determining factor in when and how a default is filed.

7 This does not necessarily mean that every lender must adopt exactly the same approach. The criteria for filing defaults may vary according to the particular product involved although significant differences in the standards between product types should only exist where necessary to give an adequate reflection of customers' financial standing. The crucial point is that lenders offering the same product type should operate to the same standards in filing defaults. Those standards can also allow some flexibility in when and how defaults are filed within a product type.

8 One consequence of allowing some differences is that it increases the likelihood that default records for different product types will not be able to predict bad debt equally. To make sure they process data fairly, lenders should take account of this possibility when they develop scorecards.

The definition of a default

9 A 'default' can be said to occur as soon as a borrower fails to meet the terms of their credit arrangement. However, adopting this definition for credit referencing purposes would create difficulties since it is accepted that not all these defaults should be reported, for example, where weekly payments are late but are quickly remedied.

> The term 'default', when recorded on a credit reference file should be used to refer to a situation when "the lender in a standard business relationship with the individual decides the relationship has broken down"[2].

Where there is an unresolved dispute about whether a default exists, lenders should refer to paragraphs 42 -45.

10 Indicators of a default

The following indicate that a breakdown has occurred in most types of product (excluding those in the section on Exceptions at paragraphs 12-15). This list is not necessarily exhaustive.

- The account has been referred to a collection agency or in-house debt collection department.
- The account has been referred for legal action.
- The account has been included in a bankruptcy, IVA, or similar.
- The asset financed has been repossessed or instructions for repossession have been given.
- The lender takes or has taken steps to cut off the service provided (or would do so if they were not prevented on social rather than commercial grounds or by other regulations, codes of practice or statute).
- The customer has not made satisfactory proposals in response to a demand for repayment.

[2] Definition of 'Default Data' from 'Information Sharing – Principles of Reciprocity' available from credit reference agencies or at http://www.experian.co.uk/corporate/compliance/datasharing/index/html

- The customer has given a clear indication, for example, by handing back an asset, that they do not intend to meet their contractual obligations.

- The lender has evidence that an account has been opened or used for fraudulent purposes by the applicant.

11 Time framework

Although there will be some flexibility in the definition of a breakdown, we believe there should be general rules for the minimum period of arrears which should exist before a default can be filed. Equally there should be a maximum period after which, if anything is to be recorded with a credit reference agency, a default must be filed. The following are in line with the practices currently adopted by most lenders.

- Accounts should not be routinely filed as being in default where full payments or those due under a rescheduled agreement are fewer than three consecutive months in arrears.

- Accounts should normally be filed as being in default where those payments due have not been received for six months.

This time framework only relates to filing defaults. It does not affect the lenders' ability to continue to report accurately on the extent of arrears using monthly status codes. We recognise that may not always be appropriate for products which advance credit over either a very short or very long-term.

12 Exceptions

We recognise there are circumstances which will be likely to be exceptions to the general standard for most credit products.

13 Factors that are likely to influence whether a particular credit product justifies a full or partial exception to the general standard are:

- if the term of the loan is particularly long;
- if the loan is secured;
- if there is anything special about the nature of the relationship with the customer.

Commonly available products where exceptions are justified are:

i. long-term secured loans; and

ii. current accounts with overdraft facilities.

14 Long-term secured loans

Although long-term, secured loans, such as mortgages, are likely to involve monthly repayments, they are an exception to the general standard. The existence of a secured asset which, if repossessed, will indemnify the lender, and the length of the term involved, distinguish this category from the majority of products. This may mean that the lender is prepared to allow the customer greater latitude if the account gets into difficulties. A lender may decide that, even though one or more of the above indicators has occurred or more than six months has passed without a payment being received, there is no breakdown until they have decided to take possession of the asset. Nevertheless, there are practical problems facing lenders in these circumstances because in some cases, even after court action to gain possession has been taken, a customer will go on to repair the relationship by starting again to pay on a regular basis the contractual sums (or at least an agreed compromise sum that would constitute a variation in payment terms as indicated in paragraphs 17 -23).

If meaningful information is to be reported to credit reference agencies there needs to be a consistent approach by lenders that also needs to take account of the practical problems they face. This is also necessary to treat all customers in this situation fairly. Consequently, a lender should file a default no later than six months after the date of a successful court application to proceed with possession unless

- the customer has made reasonable and agreed arrangements to repay,
- the lender can justify not filing a default on an exceptional basis. For example, the lender is fully informed of the circumstances and knows that payments will start again, or
- the loan has been included in a bankruptcy in which case the default should be filed in accordance with the guidance in paragraphs 47 – 48.

In rare circumstances the court can grant possession on conditions that delay physical repossession for a long period of time, even though the customer is not making an acceptable agreed level of repayment. This is usually on compassionate grounds. In these circumstances the lender should record a default within the six month period of the order date.

15 Current accounts

Breakdowns on current accounts will happen in relation to overdraft facilities. We recognise this is a complex area because of the range of factors affecting the relationship with the customer, and the indicators in paragraph 10 above are of limited relevance.

On these accounts the following are indications of a breakdown.

- The customer has had an unauthorised overdraft for at least three months and the lender has demanded they put their account in order but the customer has failed to do so.

- The lender has closed the account (or would have done so if extenuating social considerations had not dictated otherwise) because the customer has failed to use it according to the original terms and conditions. (This includes situations where an account has been opened for fraudulent purposes).

- As a result of the way in which the account has been conducted the lender has asked for the return of the cheque guarantee card.

- The account has a debit balance (within or outside overdraft limits) but there have not been any or enough credits to service the debt for at least three months.

16 Flexibility

We recognise there will be some circumstances where a lender may feel justified in filing a default, or withholding a report, outside the parameters set out in paragraphs 10 and 11 and, in particular, where:

- the lender has direct evidence that a customer is unable or unwilling to make further payments;
- the customer has continued to use facilities which have been withdrawn by the lender; or
- the customer has a hire purchase or conditional sale agreement and has sold on the goods without settling the account; or
- the lender is aware of the reason for non-payment and knows that payments will start again or the arrears will be paid.

These decisions should be made on a case-by-case basis. When these decisions are made, lenders should consider whether, if a default record is filed or withheld, it would be likely to help or mislead another lender in their credit decision about the individual concerned. A general company policy to file defaults as a matter of routine outside the above parameters would not be acceptable unless the lenders' products all justify exceptions on the grounds referred to in paragraph 13.

Variations in payment schedules - Keeping the record up to date

17 Lenders should not file a default where there is a genuine and agreed variation in the payment schedule. (The only exception to this is where a debt management programme is put in place where the level of repayment represents only a token sum which is only accepted by the lender because the customer cannot afford to pay more. The reporting of debt management plans is discussed at paragraphs 22-26.) Customers should not be led to believe that they have agreed a change to the arrangement to repay a loan, when the lender considers that the customer has defaulted. A lender filing a default in these circumstances is likely to be processing personal data unfairly. In all cases it is important that lenders and debt advisers explain to borrowers how their credit reference files will reflect the changed situation. This is necessary to avoid misunderstandings and disputes about what a customer has agreed to and what will be reported to a credit reference agency as a result of variations in payment schedules.

In considering variations in payment schedules, the following situations should be recorded differently on the credit reference file. These are the rescheduling of an agreement, an 'arrangement to pay', debt management plans and unsatisfactory payments.

Rescheduling of agreements

18 Formal rescheduling of the agreement

This involves a formal and permanent rescheduling of the payments due on account. It might include capitalisation of part of the debt; it may extend the length of the loan; it may change the level of payments. This adjustment may take the form of a new agreement or a change to the original agreement.

- If a new account is set up for the customer then the original account should be shown on the credit reference file as settled, with the correct payment history shown up to the time of rescheduling.

- If the rescheduling results in changing the original agreement, the correct payment history up to the time of rescheduling should again be shown, but in this case the credit reference file will not show the account as settled. Information filed after the rescheduling should reflect payments and the terms of the modified agreement.

19 Informal rescheduling of the agreement

This is where the lender agrees to reschedule the terms of the agreement for the medium to long-term but anticipates that the customer will return to the original level of payment on the account.

- The credit reference file should record the correct payment history up to the time of the rescheduling.
- The account should be marked to show a new arrangement has been made, and reflect the modified repayment terms.
- Any record of monthly payments after the reschedule should reflect payments made against the modified agreement.
- Where a rescheduling of this type breaks down, a default may be filed when the total value of the arrears is equivalent to three monthly payments under the original terms. However, this should not result in the customer being placed in a worse position than someone who has made no effort to pay whatsoever. This is illustrated in the example at paragraph 21.

20 Sometimes a rescheduling will result from solving a genuine and reasonable dispute over the original account. In these cases, the payment history on the original account should not continue to show arrears if these are disputed by the customer, although the account can show the dispute exists. Where a lender considers the dispute is not genuine or reasonable, and has evidence to support his view, he may wish to maintain the record. In such cases he will need to be able to substantiate his position. Our approach to the accuracy of information when there is a dispute is described at paragraphs 42 to 45.

Arrangements to pay

21 An ‘arrangement to pay’

This involves a temporary, short-term (up to six months) arrangement where the lender agrees to accept reduced payments.

- The original payment terms will still be shown on the credit reference file and arrears will accrue which will be shown on the monthly status record.

- The account will be marked by an ‘arrangement to pay’ marker (which distinguishes the account from one where the customer has behaved less responsibly).

- Where such an ‘arrangement to pay’ breaks down, a default may be filed when the total value of the arrears is equivalent to three monthly payments under the original terms. However, this should not result in

the customer being placed in a worse position than someone who has made no effort to pay whatsoever.

- If a customer fails to return to contractual payments after an 'arrangement to pay' has expired, then the lender can file a default immediately, as long as this would not place the customer in a worse position than they would have been in, had they not made the arrangement.

Examples

1. If a customer makes an 'arrangement to pay' at a reduced rate but breaks that arrangement by making no payments for three months, the lender should only automatically file a default if
   - the total value of the arrears is equivalent to three monthly payments under the original terms, and
   - the lender would normally file a default at this stage in the arrears process.

   So no default should be filed if the lender normally records defaults when accounts are six monthly payments in arrears and the customer has not yet reached that level of indebtedness, even though he may have missed payments under the 'arrangement to pay'.

2. If a lender accepts an 'arrangement to pay' as an alternative to filing a default, and the customer fails to make any of the agreed repayments, then a default can be filed straight away.

Debt management programmes

22 A debt management programme (DMP) is when a customer enters a programme of repayment of all or a number of their credit agreements that has been negotiated by a third party, 'not for profit', debt adviser. By entering the programme the customer shows that he is acting more responsibly than someone who makes no effort whatsoever to pay what is due. However, in financial terms, DMPs include markedly different situations. Repayments vary from a level acceptable to a lender to those where the sums repaid are only nominal amounts which a socially responsible lender agrees to accept because it recognises that in entering a debt management programme the customer is trying to act responsibly but cannot afford to pay more, and this is the only way to recoup any of the debt.[3] Consequently the record filed on a credit reference file should discriminate between these situations so that an adequate reflection of the financial standing of these customers can be shared with other lenders.

[3] This difference is recognised by the Consumer Credit Counselling Service in their use of an 'Extended Payment Plan' as well as their usual 'Debt Management Plan'.

23 Moderate to high levels of repayment
If the payment set out in the DMP is at a level of repayment that a lender considers at least adequate, the agreement should be marked as included in a DMP. A lender may be willing to reschedule the agreement at a later stage at which point the record should be changed to reflect the agreed rescheduling.

24 Low repayment levels

If the payment set out in the DMP is at a level that represents only a token sum in repayment, because that is all the customer can afford, the account should be recorded as a default. A notice of correction can be added to the credit agency files by the customer, or the third party not for profit debt adviser acting on their behalf, to record the existence of the DMP. Lenders should bring the notice of correction facility to the attention of customers and their debt advisers. The notice will distinguish the customer from those who have acted less responsibly. The record should be removed six years from the date of the default so that the customer is not disadvantaged over those who have made no effort to pay whatsoever.

25 Where a customer does not make the repayments agreed under the DMP, a default can be recorded and the DMP marker should be removed when the total value of the arrears is equivalent to three monthly payments under the original terms. However, this should not result in the customer being placed in a worse position than someone who has made no effort to pay whatsoever, as in the example at paragraph 21.

26**.** In both cases the lender should update the balance regularly to reflect payments that have been made.

27 Unsatisfactory payments

This involves an unsatisfactory situation for the lender, where there is no genuine and agreed variation in the payment schedule. In these cases, the lender will file a default. The lender should update the default record regularly to reflect any changes in the outstanding balance.

28 It is for lenders, and not us, to decide what terms are acceptable in relation to agreements to vary a repayment schedule. A lender will not be seen as committed to an agreed variation if, for example, the sum paid was a token amount but was taken as the only realistic means of getting back any of the outstanding money. Lenders must take particular care to make sure a customer or debt management adviser is not led to believe that these reduced payments constitute an agreed and reasonable variation if this is not the case.

Recording the amount of default

29 Original amount and current balance

Default records should show the original amount of the default as a snapshot in time and should reflect subsequent payments by showing the current balance of arrears. A common cause of disputes relates to the accuracy of the current balance. The current balance should be filed both by those who file monthly account information and those who file only defaults. It should be updated regularly. Defaults should be shown as satisfied where all payments have been received. If the individual no longer owes any money to the lender the balance should be shown as zero. The satisfaction of defaults is discussed at paragraphs 49 to 51.

30 When 'in collection'

Where debts are passed for collection to internal or external debt collection departments or agents, the lender is responsible for keeping the record of the default and any outstanding balance accurate and up to date. The lender will need to make sure that those responsible for collection report payments to them or directly to the agency (or both) to make sure internal records and those of the credit reference agency are kept up to date. The account record on the agency file should continue to show the name of the lender and not any outside collection agent. This situation is to be distinguished from that where debts are assigned or sold to debt collectors. The sale or assignment of debts is dealt with at paragraphs 52 to 54.

The date of default

31 The date of default recorded on the file should be the date on which a decision to file a default becomes effective according to the criteria discussed in paragraphs 9 to 16. If a notice of intention to file a default is served (see paragraphs 32 to 37), the default date should be the date the notice becomes effective. When a default is filed after a genuine and agreed variation in payment schedule has broken down, it should record the date of that breakdown subject to the conditions described in paragraph 21.

Notices of intention to file a default

32 Lenders should tell their customers about filing information with a credit reference agency as part of the account opening procedure, in line with the requirements of the 'fair processing code'[4]. This explanation will not normally refer explicitly to defaults and will often be distant from the events which cause them. Therefore we strongly recommend that a notice of the intention to file a default should be served. Many lenders now subscribe to trade association codes of practice which require this. This practice helps the transparency of the credit reference process and may even prompt payment, so avoiding the need to file a default at all.

33 Notices to comply with Sections 13.7 of the Banking Code[5] and 7.5 of the Lending Code[6] should provide adequate warning. A notice of intention to file a default can be sent with a formal default notice served under Section 87 of the Consumer Credit Act 1974. Where lenders are not required to issue these notices, they can send an intention to file a default through a final demand, letter or relevant account statement, which should make clear not only the intention to file but also the date of the intended default. The date should allow the customer enough time to respond properly. Lenders who have to provide a notice of intention to file a default under a relevant code of practice should be aware that not complying with the code may be taken into account in any assessment of the fairness of their processing.

34 When a default occurs in line with the criteria in this guidance, and the lender has given the customer 28 days notice of the intention to file a default, then subject to paragraph 37, the lender may supply this information to a credit reference agency despite no advance warning when the account was opened.

35 It may not be necessary to serve a notice on all occasions. We accept there are cases when there should be no doubt over a default, for example, cases:

- involving fraud;
- where the lender has been notified under the terms of a bankruptcy or IVA;
- where there has been successful court action or repossession; or
- where a customer has made no attempt to resolve their arrears.

36 We do not believe that on its own a notice of intention to file a default amounts to harassing the debtor. We accept that lenders need to take care in the wording and use of notices to avoid the possibility of harassment.

[4] The term used by the Commissioner to describe the requirements of Schedule 1, Part II, Paragraphs 1-4, Data Protection Act 1998. For further explanation see also The Data Protection Act 1998, Legal Guidance, Chapter 3.
[5] The Banking Code March 2005
[6] Lending Code 2004, The Finance and Leasing Association

37 If a borrower fully meets the terms set out in a notice of intention to file a default, it follows that the lender should not file the default.

Accuracy of a lender's default records

39 Records

Any default record should be accurate. We normally expect a lender to keep records that are necessary to show an agreement exists and to support filing a default. We would also expect a lender to be able to produce evidence to justify a default record they had placed on a credit reference file. Not having any supporting records may indicate a breach of the data protection principle requiring personal data to be adequate, relevant and not excessive for the purpose for which it is processed. A record that a notice of an intention to file a default was sent, if not a copy of the notice itself, will help lenders to comply with this requirement.

40 Factors to be taken into account in enforcement

Any decisions on enforcement action will be taken in accordance with our Regulatory Action Strategy. When we consider enforcement action in cases where there is inconclusive evidence of whether a default did or did not occur, or the amount of a default, we must make a judgement on whether we consider that the Information Tribunal would support a view that a default record filed with an agency is incorrect or misleading. To reach a judgement we will consider, among other factors:

- any evidence that exists, even if it is inconclusive;
- the credibility of the data subject;
- the credibility of the lender;
- the reliability of the lender's internal procedures;
- the existence of other similar complaints about the lender; and
- the use which the customer, or lender has made of other mechanisms to determine the accuracy of the record, for instance the courts or a relevant ombudsman scheme.

41 Credit reference agencies potentially have a defence against action through the courts by individuals who successfully challenge the accuracy of data received from a lender. However, this defence is only available if the agency takes reasonable steps to make sure the data is accurate and, as soon as they become aware of the challenge, takes steps to mark the file accordingly[7]. Records where the accuracy is challenged can be marked as 'under query'. This marker alone is unlikely to be sufficient to provide protection against claims, including those for compensation. Agencies should therefore ask the lender to

[7] Data Protection Act 1998 Schedule 1, Part II, Paragraph 7 applies, the interpretation of the fourth principle.

substantiate the disputed information within a reasonable time frame, for example, 28 days, and, if the lender is unable to substantiate the disputed information in that time, should suppress the information from the file.

Unresolved disputes

42 Lenders are faced with difficult decisions when considering recording defaults which are disputed by the customer. It is not our role to arbitrate in disputes between borrowers and lenders. However, when we consider complaints, we will conclude, where there is clear and sufficient evidence that a default has not occurred, that it is likely that the lender has not complied with the data protection principle which requires that personal data are accurate.

43 If we conclude that there is a genuine, reasonable and unresolved dispute between the borrower and lender, then we are likely to find that personal data have been processed unfairly if a default has been filed. Defaults filed in these circumstances may also be inadequate for the purpose of credit referencing in that they do not provide meaningful information about the creditworthiness of the customer.

44 These are difficult judgements to make. Although none of the following will necessarily be conclusive, we will take into account these factors.

- Is the customer able to produce evidence that they disputed that a default occurred?
- Did the customer dispute the default before the lender announced their intention to file a default or after?
- What is the nature of the dispute? For instance, does the customer allege that the agreement has been breached, for example, because the goods supplied were faulty, or does the customer simply dispute the amount of the default?
- What evidence has the customer produced to support their side of the dispute?
- Has the lender simply ignored this evidence or have they produced evidence to support their version of events?
- If the goods financed were supplied by a third party, has the lender taken reasonable steps to check the accuracy of the information supplied about the dispute?

- Does the customer argue that payment is owed not by them but by a third party such as an insurance company, and, if so, is there any evidence?

- Has the customer told the lender that they are exercising set- off rights?

- Is the customer defending a court action by the lender to obtain a judgment, and what is the nature of their defence?

- Has a court refused judgment to the lender and, if so, on what grounds?

- If the dispute has not been before a court, is the lender prepared to test their claim by seeking a CCJ or decree against the customer? If not, why not?

45 We will not necessarily ask a lender to remove default records while they are carrying out their initial investigation to establish whether a dispute is genuine, reasonable or unsolved. However, there should be no unnecessary delay in this investigation. In these circumstances, defaulted accounts under investigation should be marked as 'under query' on the credit reference agency file.

Relationship of defaults to CCJs, decrees, bankruptcies, IVAs and similar arrangements

46 We do not see any inconsistency in filing defaults relating to debts which the lender has also tried to recover through a CCJ or decree. Of course, the default must not be filed as being after the date of the CCJ or decree.

47 In normal circumstances lenders will be notified when the debt that is owed to them is to be included in a bankruptcy or IVA. In these cases lenders should file a default relating to an account that is included in an IVA or bankruptcy as soon as they receive the notification. In principle, a default should be filed as being no later than the date of the IVA or bankruptcy. We understand that on some occasions a lender does not immediately become aware of the court's decision. In these cases, we are satisfied if a lender files a default when they become aware of the position, providing the delay is only relatively short. In these circumstances a lender should backdate the default filed to the date of the bankruptcy or IVA if the customer requests this. Where a credit agreement, for example, hire purchase on a motor vehicle, is not included in an IVA or bankruptcy, then it should be treated separately from the debts included in the IVA or bankruptcy and not be automatically marked in default. Similarly, where there is joint and several liability, and one party becomes bankrupt, then the account should not automatically

be marked in default, because the other party will be responsible for it and may maintain payments.

48 Where a customer continues to pay a debt in line with the original contractual obligations, despite the debt being included in a bankruptcy or IVA (including where the bankrupt agrees with Official Receiver that payments will continue), the lender would not be obliged to record the account as in default. If the customer stops payment at a later stage, the default recorded should show the date of the IVA or bankruptcy and the fact that it was settled only by IVA or bankruptcy as described in paragraph 51.

The settlement or satisfaction of defaults

49 To comply with the requirements of the data protection principles that personal data must be accurate, adequate, relevant and, where necessary, kept up to date, defaults should normally be marked as 'settled' or 'satisfied' in the following circumstances.

- Where a default occurred according to the criteria described in paragraphs 9 to 16 and the customer has repaid the money owed in full.

- Where a CCJ or decree was granted and the customer has repaid in full the money owed as determined by the Court. This includes situations where full payment is made but there is no Certificate of Satisfaction from the Court or other formal acknowledgment of payment. (A CCJ record should be marked as satisfied in line with the existing procedures.)

- Where a default occurred but the amount was disputed and full and final settlement was made in line with a legally binding compromise.

50 Where there is a default but a lender has formally accepted in **full and final** settlement a smaller amount than was owed under the terms of the original agreement, then it would be unfair to process personal data to record an outstanding balance on a default when the matter had been formally and finally concluded.

51 There are other circumstances where the terms 'satisfied' or 'settled' are not appropriate because they do not adequately reflect the fact that lenders have been left with no choice but to accept significantly less than they were owed under the terms of the original agreement. Examples include the following.

- Where an IVA, which included the lender, has been successfully completed even if the lender did not recover all the money owed under the terms of the original agreement.

- Where a lender has received all the money owed under the terms of a bankruptcy order which has been discharged, even though the amount received falls short of the amount owed under the original agreement and, in some cases, may not have received any payment at all.

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- Where a secured asset has been possessed and the lender is no longer chasing payment of any outstanding debt.

- Where the lender has accepted as part of a negotiated settlement a payment that is less than the outstanding amount and the customer has agreed as part of the settlement how their credit record will be affected.

In the first two examples above, borrowers are under no legal obligation to pay any more money. In the last two examples the lender who is responsible for the record has decided it is not worth chasing further payment. In these circumstances, we understand a lender may be reluctant to mark the entry as 'satisfied' or 'settled'. However the entry must record the position adequately, for example, by showing that no further monies are expected and the account was partially paid.

The 'sale' or assignment of debts on defaulted accounts

52 When the rights to a debt are sold to a third party, the lender has to make sure the records with the credit reference agency are accurate, up to date and adequate. If they want information about the debts to continue on the credit reference file they will need to come to an agreement with the purchaser about who is to be responsible for this.

53 If the purchaser agrees to take control of the record, the customer should be informed that the debt has been sold or assigned and to whom. The credit reference agency file should be changed to show the name of the purchaser and that the rights to the debt have been sold or assigned. The purchaser should then make sure the record is kept up to date including changes to the amount still owed. The purchase should not affect how long the record is kept. It should be removed six years after the default.

54 Where the purchaser of the debt does not agree to take control of the record, the original lender, and at least in part the credit reference agency, will remain responsible if the original record is kept on the file. When the debt is sold or assigned, the customer will no longer owe any money to the original lender. If the record is not removed, the sale or assignment should be recorded and the balance should be shown as

zero. The customer should still be told who the debt has been sold or assigned to.

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