

A true copy (sections 77-79 of the Consumer Credit Act 1974)

The Act has never presumed that photocopies, scans or even carbonated paper, are available. So there is no requirement that copies are exactly images of the original signed by the consumer. In particular, copies do not need debtor's details, signature boxes or signatures.

If you want a good example of how different copies can be, just look at any credit or store card application booklet. The required first copy (section 62) will be printed as text in the booklet, while the agreement, in conventional format, will be on the back of an application form.

So if a consumer asks for a copy of an agreement under section 77, 78 or 79, he or she will be entitled to a plain copy, readable and in any format.

Things that cause problems are:

- scanned copies – likely to include signatures, but will not include terms on the reverse, which should be supplied separately. Unreadable scans do not qualify as true copies.
- Credit card agreements – copies in text document format should be as originally signed, (and in particular if signed before 2005, should have old format of paragraphs – nothing about Key information, as required since that date)
- where terms have changed since execution, very common with credit cards, then creditors have a choice, they can send you either a list of changes or a copy of the current agreement, this being in addition to the requirement to provide a copy of the signed agreement.

The creditor or owner has 12 working days, starting with the day after receipt of a proper request. They do not have to comply with the request if the agreement is no longer in existence (eg accidentally destroyed), but merely being unable to locate the original is not a good excuse).

Failure to satisfy the 12 working days rule renders the agreement unenforceable, but only while the default continues.

County Court rules

CPR 31.16 requires that creditors must provide best evidence. So at that point it is possible to expect a photocopy of the original agreement.

My own experience

- I have seen several similar letters from Nat West stating that they cannot find the original, so they recognise that they cannot enforce the agreement at court, However they state that they still expect the debtor to keep paying since they will still be able to register the default on credit reference agency files. I don't agree with this since they can only do this if they have a signed authorisation (the fair processing warning) from the debtor (which of course they cannot find). However this argument will not help in case of some catalogue agreements, where the fair processing warning is not in the agreement but elsewhere in the catalogue.
- Scanning is not always successful. I am aware of an Egg agreement which was more or less unreadable and which a county court has thrown out, and have seen both MBNA and Next documents which have become distorted in the scanning process.