

**DEPARTMENT FOR BUSINESS
ENTERPRISE & REGULATORY REFORM**

PART 9 ENTERPRISE ACT 2002

Examples of information
disclosure for civil
proceedings

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Question and Answer
Examples of information disclosure for civil proceedings

This document is for guidance only and only relates to the disclosure of information under Part 9 for civil redress purposes (s.241A). BERR cannot provide legal advice. You may consider it necessary to seek advice from your legal advisors. Disclosure decisions should be made by public authorities on a case by case basis. Further information about Part 9 is available at <http://www.berr.gov.uk/bbf/enterprise-act/part9/index.html>

1. A product causes injury to someone other than the person who purchased the product. Can the injured person be given information?

Yes. The statutory instrument allows disclosure for civil proceedings relating to or arising out of a legal right or obligation of a consumer. This is not limited to the purchaser themselves asking for the information. So for example if someone is injured by a product they themselves did not purchase and trading standards have a test report about that product it can be disclosed.

2. A reporter from a newspaper approaches a public authority asking for prescribed information. They claim to represent a consumer on behalf of whom they will conduct a campaign. Can they be given the information?

No. Specified information can only be disclosed for the purposes of, or in connection with, prescribed civil proceedings; or to get legal advice in relation to such proceedings.

3. A consumer or IP rights holder approaches a public authority for prescribed information for proceedings. The information came to the public authority before the new rules came into effect. Can the information be disclosed?

Yes. It is irrelevant when the information came into to possession of the public authority.

4. A person buys materials for a home working scheme. They want to dispute an issue about terms and conditions, payments etc. Can the information be disclosed?

The person buying the materials is a “consumer” for the purpose of disclosure if the materials were bought with a view to starting a business that has not yet begun to trade. Once the person begins to trade they cease to be a consumer and become a business. Part 9 specified information cannot be disclosed to a business (other than an IP rights holder).

5. A society or club are in dispute with a trader from whom they collectively buy materials. Can the information be disclosed to this group?

Under the order a consumer must be an individual. Information can be disclosed to the individuals making up the club to pursue rights they have individually. Information cannot be disclosed to a club if it is a business.

6. A group of individuals have similar disputes with one trader. Can the information be disclosed to this group?

Specified information can be disclosed to the group to pursue their claims together.

7. A consumer approaches a public authority about a product that caused an injury to them. Some of the information had been passed to the public authority by another authority, perhaps as a parallel investigation. Can the public authority disclose?

Yes. If the specified information came to the public authority in connection with the exercise of any function it has under or by virtue of legislation listed in section 238, EA02, then the information is specified information in the hands of the authority and may be disclosed through the civil proceedings gateway.

8. A prosecution is brought against a trader in counterfeit goods by trading standards for conspiracy to defraud. The results of the original test purchases, which were made to provide evidence of counterfeiting, were not served on the defendants and the prosecution fails. Can the information about test purchases and the trader's customers and suppliers be disclosed to the IP rights holder?

Yes. The new gateway allows disclosure for civil proceedings relating to or arising out of the infringement of an intellectual property right, passing off or the misuse of a trade secret.

Intellectual property right includes a patent, copyright, and analogous or related right, database right, registered or unregistered design right, registered trade mark, topography right, supplementary protection certificate, plant variety right, protected designation of origin or a protected geographical indication.

The fact that the failed prosecution was for conspiracy to defraud and not for an IP offence has no bearing. What matters is the reason why the IP rights holder seeks the information.

10. Can consumers and IP rights holders use specified information they have been given in whatever way they wish?

No. Specified information disclosed via section 241A EA02 must be used by the recipient for the purpose of, or in connection with, civil proceedings or

obtaining legal advice or otherwise for establishing enforcing or defending legal rights. The recipient must not use specified information for any other purpose or pass the information on. However, this does not prevent the consumer or IP rights holder sharing the information with their advisors in the matter.

Consumer and Competition Policy Directorate
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