

11 August 2020

Office of the Privacy Commissioner
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Submission concerning the revised Credit Reporting Privacy Code

Overall the Official Assignee is comfortable with the suggested changes contained in the proposed changes to the Credit Reporting Privacy Code.

There is however some drafting and wording changes that the Assignee would like to suggest to ensure consistency between the Credit Reporting Privacy Code and the Insolvency Act 2006 as follows:

Interpretation - credit information

Clause (i) of the 'Interpretation' of "credit information" refers to "information relating to summary instalment orders...". The name "summary Instalment order" was replaced with "debt repayment order" by section 69 of the Regulatory Systems (Economic Development) Amendment Act 2019 on 13 January 2020. The Credit Reporting Privacy Code should be reworded accordingly.

The Assignee also notes that clause (i) simply states that credit information means "information relating to summary instalment orders (now debt repayment orders) or judgements for monies owed that have been entered against an individual;" however, the next clause (j) specifically identifies the "adjudications, discharges, suspensions of discharges and annulments of bankruptcy;" and "entry to, and termination and discharge from, the no asset procedure;". The Assignee believes that clause (i) relating to debt repayment orders should be similarly specific to clause (j) so as to include the 'making, cancellation and completion of debt repayment orders'.

The Assignee further notes the inclusion of information relating to 'judgements for monies owed' but the code does not appear to include information related to 'proposals'. Proposals are legislated in Subpart 2 of Part 5 of the Insolvency Act 2006. The process involves the debtor making a proposal to creditors for the payment or satisfaction of their debts including partial satisfaction. Once the proposal is accepted by 50% of creditors that represent 75% of the debt value, the debtor then applies to the court to have their proposal approved. The Assignee believes that if the interpretation of credit information is to include debt repayment orders and judgements for monies owed to be reported, then it should also include information related to proposals.

Overall, the Assignee is suggesting that clause (i) could be reworded as follows:

"information relating to the making, cancellation and completion of debt repayment orders or judgements for monies owed or creditors proposals that have been entered against an individual."

This makes it clear that credit reporters need to be reporting the full history of debt repayment orders, judgements for monies owed and proposals in the same way as they would insolvency information.

Schedule 1 – Maximum Reporting Periods

Column 1 currently lists “Multiple insolvency events...” with a corresponding ‘indefinite’ reporting period. The Assignee has previously received enquiries and complaints where there has been confusion regarding what is an ‘insolvency event’, with some credit reporters incorrectly including compositions, proposals and debt repayment orders as detailed in Part 5 of the Insolvency Act 2006. However, section 449A of the Insolvency Act 2006 clarifies that only Bankruptcies and No Asset Procedures are included for the purpose of multiple insolvency events that can be reported indefinitely.

For the sake of clarity, the Assignee suggests rewording the entry in column 1 of schedule 1 to:

“Multiple NAP or Bankruptcy events (as provided in Insolvency Act 2006, section 449A).”

Schedule1 also includes reference to credit information related to “Summary instalment orders”. As identified above, summary instalment orders were renamed ‘debt repayment orders’ in January 2020 and so this reference should be reworded accordingly.

Column 2 of schedule 1 details the maximum reporting period for summary instalment orders (now debt repayment orders) as “5 years from date of order”. Section 449 of the Insolvency Act 2006 inter-alia requires the Assignee to report information in respect of people who are subject to a current debt repayment order. This means that these debtors’ details are added to the register when an order is made and removed when the order is completed or cancelled. While section 349 of the Insolvency Act 2006 enables payments under a debt repayment order to be spread over a period of up to 5 years if justified by special circumstances, the default period is just 3 years. The Assignee regularly receives complaints from debtors who have completed their orders within 3 years that their credit reports continue to show that they are subject to a debt repayment order for 5 years. The response from credit reporters is that they are complying with the Credit Reporting Privacy Code, which they are. In order to remove this anomaly between the wording of the Insolvency Act 2006 and the Credit Reporting Privacy Code the Assignee would like to see the code set a maximum reporting period of the ‘duration of the order’. This same duration should also be applied to the reporting of ‘proposals’ as identified above. The Assignee notes that credit information relating to “Judgements” is able to be reported for 5 years from date of judgement. This term appears to be consistent with the maximum reporting period for other credit defaults, however both debt repayment orders and proposals have defined terms based on the order or the approved proposal and so this defined term should be applied to both of these pieces of credit information.

The Assignee suggests rewording Schedule 1 as it currently relates to “Summary instalment orders” to:

Types of Credit Information	Maximum Reporting Period
Debt Repayment Orders and Insolvency Proposals	For the duration of the order or proposal