



Privacy Commissioner
Te Mana Mātāpono Matatapu

Inquiry into illion's Arrangement with its related company Credit Simple



Office of the Privacy Commissioner

Final Report

11 September 2020

Contents

Executive Summary	3
Key findings	5
An Inquiry focused on the Arrangement between illion (the credit reporter) and its related company, Credit Simple	6
Part 1: Understanding illion and Credit Simple	11
Credit Simple as a related company of illion and the nature of their Arrangement	11
What information sharing occurs between illion and its related company Credit Simple?	13
Part 2: Does illion’s Arrangement with Credit Simple circumvent the Code?	17
2.1 Is illion using Credit Simple to bundle authorisations for unrelated purposes?	17
2.2 Is illion using Credit Simple to facilitate marketing or direct marketing?	24
2.3 Is illion using Credit Simple’s quotation enquiry service to market credit products to consumers?	30
Findings	35
Appendix A: Inquiry Terms of reference	36
Appendix B: Inquiry conduct and participants	39
Appendix C: Regulatory environment.....	40

Executive Summary

This Inquiry has examined illion's relationship with its related company Credit Simple in accordance with the requirements imposed on illion under the Credit Reporting Privacy Code 2004.

The Code applies to the handling of credit information by credit reporters. The Code applies specific rules to credit reporters to ensure the protection of individual privacy.

In 2010 and 2011 the Code was amended to introduce Amendment Nos 4 and 5 to authorise positive reporting, which is a more intrusive system (due to the collection of significant amounts of credit information).

The introduction of positive reporting was accompanied by strict limits on practice and special safeguards including restrictions on the use and disclosure of credit information for marketing purposes to complement responsible lending practices.

Code requirements were strengthened in 2018 through Amendment No 14 by introducing limits on arrangements with related companies to restrict the use of credit information in marketing activities, making it clear a credit reporter cannot use a related company to circumvent its obligations under the Code, particularly for marketing and direct marketing activities.

illion as a credit reporter is subject to the Code. This inquiry investigates the Arrangement between illion and its related company Credit Simple and whether it complies with clause 5(2) of the Code.

The Code not only places obligations on credit reporters but also ensures related companies are subject to the same obligations under the Code as credit reporters.

illion and Credit Simple as related companies are in an Arrangement created through an Access Seeker Services Agreement (NZ). This Agreement allows Credit Simple to request credit reports on behalf of individuals from illion. However, an individual must authorise Credit Simple to make a request to access their credit information from illion. Credit Simple not only acts as an agent for individuals to gain access to their credit information from illion on the Credit Simple platform. In addition, Credit Simple provides marketing offers and a quotation enquiry service to individuals who use Credit Simple's platform. These marketing offers and the quotation enquiry service, use credit information which is prohibited by the Code. Additionally, Credit Simple uses its registration process to seek unrelated additional authorisations from individuals requesting to access their credit information from illion. Therefore, Credit Simple is engaging in activities that are prohibited by the Code and illion would be in breach if those activities were undertaken by illion.

I have found the Arrangement between illion and its related company Credit Simple circumvents the application of the Code for marketing purposes and the bundling of unrelated authorisations into a statutory right to access. The Arrangement is therefore, in breach of the Code.

The Code was carefully set up to protect vulnerable consumers from marketing and to promote responsible lending. The Arrangement between illion and its related company Credit Simple breaches the Code and risks undermining features of the Code that were created to encourage risk-based pricing and ensure the limited marketing activities permitted by the Code are conducted by credit reporters only.

The Code expressly states that if a credit reporter is in an Arrangement with a related company the Arrangement should not circumvent the application of the Code and the Arrangement should not enable the related company to use or disclose credit information sourced from the credit reporter in way which would breach the Code if the use or disclose credit information were done directly by the credit reporter.

The Code has always ensured that credit information is not used or disclosed for marketing activities. The several amendments to the Code have served to reinforce the restriction on the use and disclosure of the credit information for marketing purposes.

I have found illion in breach of its obligations under the Code, particularly clause 5(2), rules 4(2), 10(1B) and 11(3)(b).



John Edwards
Privacy Commissioner

11 September 2020

Key findings

- Credit Simple is bundling consumer authorisations by presenting an opt-in option to consumers to receive promotional offers contemporaneously with the consumer authorising the use of credit information to establish a Credit Simple account. The Arrangement is therefore in breach of the Code as it has the effect of circumventing rule 4(2) of the Code, prohibiting the bundling of requests for authorisation of an additional unrelated use or disclosure of credit information into an application process for access to information under rule 6 of the Code. This opt-in service to receive promotional offers is also a breach of the prohibition on marketing under Rule 10(1B) of the Code. See part 2.1.
- Credit Simple is engaging in marketing that is prohibited by the Code by providing promotional offers to consumers who opt in to receive them when registering with Credit Simple to access their credit information from illion. This is in breach of the marketing prohibition in rule 10(1B) of the Code as consumer identifying information is treated as credit information in a context where the consumer is seeking access to their credit information from a credit reporter. See part 2.2.
- Up until November 2019 Credit Simple was using credit information in its direct marketing practices such as sending direct marketing emails to consumers with offers filtered based on their credit information. The Arrangement was in therefore breach of the Code as Credit Simple was using credit information sourced from illion for marketing purposes that would be a breach of the Code if used for that purpose by illion under rules 10(1B) and 11(3)(b) of the Code. See part 2.2.
- While illion has confirmed changes to Credit Simple's marketing practice, marketing by Credit Simple remains non-compliant with clause 5(2) and rules 10(1B) and 11(3)(b) of the Code. See part 2.2 and 2.3.
- Credit Simple's marketing activity does not comply with the quotation enquiry exception in rule 11(2)(b)(i)(B) of the Code. Under the Arrangement, illion is disclosing credit information to Credit Simple for the purpose of providing individuals with credit quotations via the Credit Simple platform, without the necessary subscriber agreement with Credit Simple. Hence rule 11(2)(i)(B) does not apply and illion is in breach of clause 5(2)(b) and rule 11(3)(b) of the Code. See part 2.3.

An Inquiry focused on the Arrangement between illion (the credit reporter) and its related company, Credit Simple

Key points

- The Code applies to credit reporters and to their arrangements with their related companies. There are three major consumer credit reporters – Centrix, Equifax (formerly known as Veda) and illion (formerly known as Dun & Bradstreet).
- This inquiry investigates the Arrangement between illion and its related company Credit Simple.
- Marketing prohibitions under the Code complement responsible lending practices that credit providers are subject to, such as the Responsible Lending Code issued under section 9G of the Credit Contracts and Consumer Finance Act 2003.

Why is credit reporting regulated?

Credit reporting agencies have a vital economic role in compiling and evaluating consumer credit information to support good lending decisions. The principles of consumer protection require that credit reporting agencies exercise their responsibilities with fairness, impartiality and in a manner that supports consumer rights.

Credit reporters hold large amounts of often very sensitive information about most of the adult population of New Zealand. This information is collected from credit providers, such as banks, retailers and utilities. It is supplemented from publicly available sources such as official lists of undischarged bankrupts. Very little information is collected directly from individuals.

Credit information, which includes identification information¹ as well as aspects of the credit history of most adult New Zealanders, is made available to businesses that subscribe to the credit reporters' service. Most subscribers are credit providers for whom the system was established.

The Privacy Commissioner issued the Credit Reporting Privacy Code (the Code) in 2004 under the Privacy Act 1993 (the Act). The Code was issued to improve the accuracy of credit reporting, which is an interest that individuals, credit providers and credit reporters all share. The Code applies specific rules to credit reporters to ensure the protection of individual privacy. It addresses how credit information is collected, held, used, and disclosed by credit reporters.

Credit reporters must comply with the requirements of the Code. The Code requires credit reporters take active steps to ensure the protection of credit information against misuse and use credit information only for the purposes allowed for under the Code.

¹ Clause 5 of the Code defines credit information as the following types of personal information – full name, previous name, sex, date of birth, address and any previous information. It also includes supplementary identification information – occupation, any previous occupation, employer, any previous employer, driver licence number and driver licence card number, and NZBN.

The Code enhances transparency and openness of the credit reporting process and provides individuals with a measure of control over the way in which their credit information is handled. It limits secondary uses of credit information, including marketing, and reduces the opportunities for misuse.

The Office of the Privacy Commissioner (the Office) has undertaken two substantial reviews of the Code. The first review in 2009 resulted in the inclusion of comprehensive reporting of individual's credit accounts and repayment account history (also known as 'positive reporting').

Amendment Nos 4 and 5 constituted a major shift in credit reporting. Prior to 2012, credit reporters only maintained negative credit reports, that is defaults, bankruptcies judgements, previous enquiries. A case was made by the industry that allowing positive, or comprehensive credit reporting would allow many people who had otherwise not been able to establish a credit record, and therefore obtain credit, to now do so. Comprehensive credit reporting brings together records of individuals repayments in relation to a number of obligations, such as regularly making their repayments on their credit active accounts (such as utility accounts and the like).

Comprehensive credit reporting was expected to bring various benefits to individuals, credit providers and the economy, such as:

- Giving a more complete picture of individuals' credit holdings and behaviour, enabling credit providers to make better risk assessments and thus allow an expansion of lending or better control of risk or a mixture of both.
- Allowing credit products to be tailored to individuals on the basis of their creditworthiness, reducing the costs of credit for some, increasing it for others.
- Increasing competition in the credit industry by access to better information by all players and enabling introduction of new products.
- Opening mainstream credit to parts of the community who may otherwise be excluded due to a lack of information about them.²

Comprehensive credit reporting is a major challenge to the underlying model for privacy and data protection laws, as it involves the systematic "repurposing" of information collected for one purpose (paying one's telephone bill) for an unrelated one, (generating a credit history that can be relied on by other credit providers in assessing creditworthiness, or credit risk).

The aggregation for commercial purposes of such a wide range of commercial transactional information has obvious risks and as such was permitted by amendments to the Code subject to strict conditions and constraints. One of those was to explicitly limit the purposes for which credit information could be used, and to explicitly exclude the use of credit information for marketing purposes.

The second review³ of the Code was completed by the Office in March 2018 and led to Amendment No 14. The changes introduced by this amendment included:

² Information Paper, Amendment No 5 to the Credit Reporting Privacy Code 2004.

³ The Office reviewed the operation of Amendment Nos 4 and 5 which resulted in a release of two reports and recommended changes that were implemented in 2011 and 2012. More information about

- Introducing a prohibition on credit reporters from using a related company (as defined by section 2(3) of the Companies Act 1993) to undertake activities that they are prohibited from undertaking themselves under the Code (clause 5(2)).
- Clarifying and tightening the prohibition on direct marketing to include marketing (rule 10(1B), rule 11(3)(b)).
- Prohibiting the use of bundled authorisations (rule 4) or arrangements with related companies to bypass code requirements (clause 5(2))

How the inquiry arose

This inquiry was initiated in October 2019, following the amendment to the Code (Amendment No 14). This inquiry is a Privacy Commissioner initiated inquiry under section 13(1)(m) of the Privacy Act.

This inquiry examines whether illion is directly or indirectly involved in an Arrangement with its related company, Credit Simple, to circumvent the application of the Code through activities undertaken by Credit Simple or by enabling Credit Simple to use or disclose credit information sourced from illion.⁴ Additionally, formal requests by individuals to credit reporters to exercise Code rights for access, correction or suppression of their credit information cannot be used as an opportunity to cross-sell products to individuals or to seek their authorisation of marketing, debt collection or other secondary purposes.⁵

During the public consultation process for Amendment No 14 and after its introduction, the Office on several occasions between December 2018 to March 2019 sought assurances from illion to ensure it is meeting its obligations under the Code and that it is not in breach of its obligations under the Code, as amended, nor it is in an Arrangement with Credit Simple (its related company) to circumvent its obligations under the Code.

illion confirmed to the Office that it would be in compliance with the changes that took effect from April 2019. Credit Simple, as a related company, met with the Office separately and confirmed that the company is revising its business model to align its operations with the changes introduced by the Code.

As a precautionary measure the Office followed up with illion in May 2019 to understand the changes illion and its related company Credit Simple introduced as a result of the changes introduced by Amendment No 14. In particular illion was asked to provide information on how it was fulfilling its obligations under clause 5(2) and rules 10(1B) and 11(3)(b) of the Code and under section 45 of the Privacy Act. Accordingly, in June 2019 illion provided detail on the information sharing arrangements between illion and Credit Simple and how it believed those arrangements complied with the Code and the changes introduced by Amendment No 14. In this response illion focused in particular on the “quotation enquiry” service. illion asserted in its written

the findings of the review in 2018 are available on the Office website at <https://privacy.org.nz/the-privacy-act-and-codes/codes-of-practice/credit-reporting-privacy-code/amendments-to-the-credit-reporting-privacy-code/#reviews>

⁴ Clause 5(2) of the Code.

⁵ Rule 4(2) of the Code.

reply that the arrangements in place between illion and Credit Simple neither circumvent the application of the Code, nor give rise to credit information from illion being used or disclosed for marketing purposes.

After reviewing illion's written response and examining the information it appeared to the Office that illion's arrangement with Credit Simple circumvents the application of the Code, particularly the Code's restrictions on marketing.

This Inquiry therefore examines whether Credit Simple is performing activities as a related company which, if undertaken by illion, would be in breach the Code.

illion and Credit Simple co-operated fully with the Office throughout this inquiry.

Concerns about compliance with the Code

As a regulatory body the objective of the Office is to ensure credit reporters meet their obligations under the Code. Oversight of Code compliance is an important function and central to the Privacy Commissioner's and the Office's role.

The primary question this Inquiry addresses is whether illion is in an Arrangement with Credit Simple that circumvents the application of the Code in contravention of clause 5(2).

As noted in the terms of reference of this inquiry the following activities by illion/Credit Simple appeared to raise the following specific compliance issues under the Code:

- i. illion's Arrangement with its related company Credit Simple raises an issue whether the effect of the Arrangement may circumvent the Code.⁶
- ii. The Arrangement is set up for individuals to gain access to their credit information from illion, and their credit score.⁷ However, the process to access credit information may have bundled authorisations and unrelated disclosures.⁸ illion's response on this issue and the Office's finding is set out under Part 2.1 below.
- iii. The Arrangement includes ongoing disclosure of consumer credit information to Credit Simple when a change is made to a consumer's credit information.⁹ illion's response on this issue and the Office's finding is set out under Part 2.1 below.
- iv. illion may be facilitating marketing or direct marketing through Credit Simple as illion's consumer credit information is used to filter individuals based on their credit information to offer them credit products on behalf of agencies that use Credit Simple to market their products.¹⁰ illion's response on this issue and the Office's finding is set out under Part 2.2 below.
- v. illion may be disclosing credit information for the purpose of marketing or direct marketing including the facilitation of marketing or direct marketing by Credit

⁶ Clause 5(2).

⁷ Access to credit information is a consumer entitlement under rule 6 of the Code.

⁸ Rule 4(2) of the Code.

⁹ Rule 4(2) and Clause 5(2) of the Code.

¹⁰ Rule 10(2) of the Code.

Simple.¹¹ illion's response on this issue and the Office's finding is set out under Part 2.3 below.

Outline of this report and what it considers

This report is in two parts.

Part 1 provides an overview of the relationship and arrangement between illion and Credit Simple, and how information flows between them.

Part 2 considers three areas of compliance concern before making its conclusions:

1. Is illion using Credit Simple to bundle authorisations for unrelated purposes?
2. Is illion using Credit Simple to facilitate marketing or direct marketing?
3. Is Credit Simple's credit quotation service using credit information, disclosed by illion, to market credit products?

The appendices to the report provide the Terms of Reference to the Inquiry, information on how the inquiry was conducted and context on the regulatory environment.

¹¹ Rule 11(2) of the Code.

Part 1: Understanding illion and Credit Simple

Credit Simple as a related company of illion and the nature of their Arrangement

Key points

- illion is a credit reporter and must comply with the Credit Reporting Privacy Code.
- illion and Credit Simple are related companies and have entered into an Arrangement.

In order to determine whether the Arrangement between illion and its related company Credit Simple circumvents the Code it is first necessary to understand the nature of the relationship between the two companies and how it works.

What is a “related company”?

Amendment No 14 to the Code introduced the concept of a “related company” and a new subclause 5(2) of the Code makes it clear a credit reporter must not be directly or indirectly involved in any understanding, arrangement, structure or agreement with a related company (Arrangement) where:

- a) the purpose or effect of the Arrangement is to circumvent the application of the Code on an activity to be undertaken by the related company; or
- b) the purpose or effect of the Arrangement is to enable the related company to use or disclose credit information sourced from the credit reporter that would be a breach of the Code if the use or disclosure had been made directly by the credit reporter.

The company structures

illion

illion is one of three consumer credit reporters in New Zealand.¹² According to its website, illion is the leading independent provider of trusted data and analytics products and services in New Zealand and Australia, with the company’s consumer and commercial credit registries representing a core element of the region’s financial infrastructure.

In its submission to this Inquiry, illion noted that it is ultimately owned by an Australian company, Credit Data Solutions Pty Ltd (CDS). CDS also owns Credit Simple (NZ) Limited (which operates New Zealand’s Credit Simple platform), as well as a subsidiary incorporated in Australia (which operates Australia’s Credit Simple

¹² Clause 5(1) defines a credit reporter as an agency that carries on a business of reporting to other agencies, for payment, information relevant to the assessment of the creditworthiness of individuals. illion New Zealand Limited is a credit reporter and is governed by the rules set out in the Code.

platforms). The board of directors of CDS are responsible for the governance, control, management and strategic direction of the illion group of companies. The Chief Executive of the illion group reports to the board of directors of CDS and is responsible for the day to day management of the illion group. The Chief Executive of Credit Simple (NZ) Limited – reports to the Chief Executive of the illion group and is responsible for the day to day management of the Credit Simple business in New Zealand.

Credit Simple

Credit Simple (NZ) Limited launched Credit Simple in 2016. Credit Simple is a digital platform enabling consumers to get access to their illion credit score and credit report.¹³ According to its website Credit Simple also provides consumers with access to a tailored suite of credit, insurance, utility and other products based on their individual credit profile. In response to this inquiry, illion has reviewed its website and updated this statement to make clear that the reference to tailoring products based on an individual's credit score only applies in Australia and not in New Zealand.

Credit Simple is a related company of illion

illion has been clear in its representations to us prior to and during this Inquiry, that illion and Credit Simple are related companies¹⁴ and as such meet the test set out under section 2(3) of the Companies Act 1993.

In its submission to the Office, illion also noted that it has a commercial relationship with Credit Simple, in which illion provides products and services to Credit Simple for a fee. illion and Credit Simple acknowledge that they have an arrangement, and this was confirmed during the inquiry's examination.

¹³ A consumer can also access their credit report and credit score directly from illion.

¹⁴ A related company has the meaning given in [section 2\(3\)](#) of the Companies Act 1993. A company is related to another company if –

- (a) the other company is its holding company or subsidiary; or
 - (b) more than half of the issued shares of the company, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital, are held by the other company and companies related to that other company (whether directly or indirectly, but other than in a fiduciary capacity); or
 - (c) more than half of the issued shares, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital, of each of them are held by members of the other (whether directly or indirectly, but other than in a fiduciary capacity); or
 - (d) the businesses of the companies have been so carried on that the separate business of each company, or a substantial part of it, is not readily identifiable; or
 - (e) there is another company to which both companies are related;—
- and related company has a corresponding meaning.

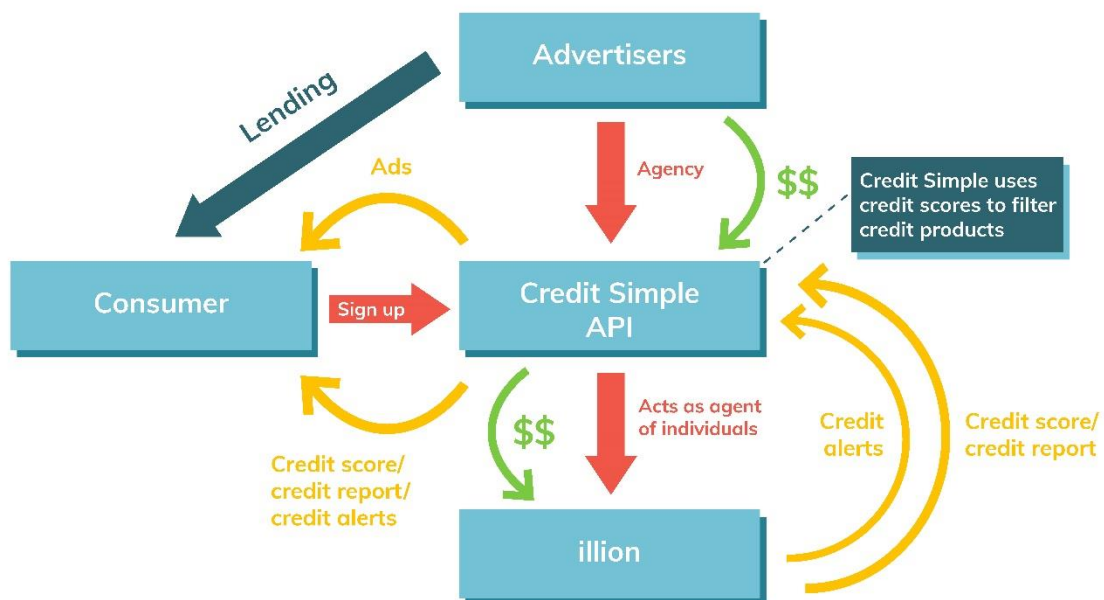
What information sharing occurs between illion and its related company Credit Simple?

This section outlines how Credit Simple operates and the agreements with illion that enable this operation.

Services provided by Credit Simple

The diagram below is an illustration of how Credit Simple works.

How does Credit Simple work?



Credit Simple provides credit information to individuals

Individuals that register with Credit Simple authorise Credit Simple to act as their agent to request illion to disclose their credit report and score, as well as updates to their credit report, to Credit Simple. Credit Simple notifies individuals that an update or change has occurred on their credit file. This is essentially a monitoring service for individuals' credit information.

Users are unable to opt out from receiving credit information update notifications also known as credit alerts. This process also means an ongoing access notification arrangement is in place between illion and Credit Simple for the purposes of the update service. This is limited to illion notifying Credit Simple that a section of a user's credit report has changed (for example if credit accounts have changed, which may indicate

that a new credit card, utilities or other credit account has been opened in the individual's name or negative credit information). The details of the change, and the individual's updated credit report, are not disclosed to Credit Simple, unless the individual returns to Credit Simple in response to a credit alert and requests access to their credit report.

The registration process for Credit Simple also authorises Credit Simple to disclose credit information to Clear Name, an illion New Zealand Limited service which assists individuals obtain a discount or reduced amount in respect to defaults owing.

Credit Simple offers a "quotation enquiry" service

Credit Simple also offers what it describes as a "quotation enquiry" service through its digital platform, where individuals using Credit Simple opt into receiving credit quotations on the website.¹⁵ As defined in Credit Simple Terms of Use¹⁶, a "Quotation Enquiry Service means a service wherein a user can use Credit Simple to submit a quotation enquiry to participating providers, for a quotation for a loan or other applicable credit product" (quote).

If the user submits a request for credit quotations, the user permits participating providers to use the user's credit score for the purpose of providing credit quotations to the user. Credit Simple also provides offers to its users. Offers as defined in the Credit Simple Terms of Use¹⁷, a "Offer" is when a service where in a user can use Credit Simple to get Offers from participating lenders and providers of other goods and services. The Terms of Use state that these Offers may be filtered on the user's personal information only when the user gives consent to get Offers.

Prior to 1 April 2019 (when Amendment No 14 came into force), individuals registering to use Credit Simple had to agree to receive offers (there was no distinction between offers and quotation enquiry service) at the same time as receiving their credit report and score. This was modified from April 2019 so that individuals registering to use Credit Simple agree to be provided their credit report and credit score and separately agree to receive promotional emails, updates and offers (by ticking the relevant box on the registration screen). This issue relates to the 'bundling' of authorisations and is explored later in this report.

Separate to the opt-in option at the time of registration individuals can also agree to view credit quotations and other targeted offers on Credit Simple – however this authorisation is not provided in the registration process. Individuals agree to the use of their information for these purposes by ticking the relevant box on a "pop up" message that appears when users elect to proceed to the "My Offers" tab on their Credit Simple dashboard.

¹⁵ Credit Simple also markets some products to individuals using information obtained when signing up to the Credit Simple website, which are not credit offers (for instance, signing up to meal delivery services).

¹⁶ Last updated February 2019.

¹⁷ Last updated February 2019.

Credit Simple’s “quotation enquiry” service uses an API¹⁸ to obtain the consumer’s credit score from illion. The Credit Simple platform then runs an algorithm to provide the consumer with credit quotations based on their credit score. Credit Simple acts as an agent for credit providers advertising on its platform under an advertising agreement. Credit Simple confirmed to this Inquiry that it does not pass any credit or personal information on to participating lenders.

Individuals who opt into this service will receive credit quotes from any credit providers whose credit criteria they meet. These credit quotes are displayed to individuals, when they link on the “My Offers” tab on Credit Simple, based on their credit score (which is a part of credit information), rather than being credit quotes for particular products that the individual seeks out. Once a user consents to receiving credit quotes from participating lenders, the user cannot opt out from receiving credit quotes.

Part 2 of this report considers the Code compliance issues with the provision of this service.

illion’s inter-company arrangements with Credit Simple

The key commercial agreements between illion and Credit Simple as part of this Arrangement are an Access Seeker¹⁹ Services Agreement (NZ) and a Non-Disclosure Agreement (NZ).

The Access Seeker Services Agreement

The Access Seeker Services Agreement (NZ) allows Credit Simple to request access seeker reports from illion (credit reports). These reports are requested on behalf of an individual (a consumer of the Credit Simple platform). According to the Access Seeker Services Agreement (NZ) the credit information or credit report will be directly provided by illion to the individual’s account on Credit Simple’s platform or to the access seeker on behalf of the individual.

It is pertinent to note the Code gives individuals the right to ask credit reporters for credit information they hold on them. Accessing credit information is a statutory right under the Code and credit reporters must provide the credit information they hold on the individual. Furthermore, individuals are not required to appoint an agent to get access to their credit information. Finally, Amendment No 14 requires credit reporters to provide a credit score as part of the credit information to the individual. Accessing credit information is free and may take up to 10 working days to get access. If an individual requires immediate access to credit information, a credit reporter may charge a fee not exceeding \$10.²⁰

¹⁸ API (application programming interface) is a set of functions and procedures allowing the creation of applications that access the features or data of an operating system, application or other service.

¹⁹ Access seeker is not defined under the Code but is a term defined in the Australian Privacy Act 1988, which is used in the context of credit reporting information. An access seeker is a person who is assisting the individual to deal with a credit reporting agency and who is authorised by the individual in writing to make a request to access credit information.

²⁰ <https://privacy.org.nz/the-privacy-act-and-codes/codes-of-practice/credit-reporting-privacy-code/credit-reporting-key-messages-for-consumers/>

As required by the Code, illion provides individuals with their statutory access rights, by allowing individuals to access their credit information directly from illion's web platform. That service is not at issue in this Inquiry. The Credit Simple platform is an additional service provided by illion, with additional features, that enables individuals to access their credit information instantaneously and free of charge²¹.

Under the Access Seeker Services Agreement (NZ), Credit Simple gives individuals access to their credit report and credit score sourced from illion. For individuals to gain access to their credit report through the Credit Simple platform, individuals first must create an account with Credit Simple and agree to appoint Credit Simple as their agent to get access to their credit report and credit score from illion. As mentioned above individuals are not required under the Code to appoint an agent to get access to their credit information (but they are entitled to do so). Individuals can directly request their credit information from credit reporters. In this case, individuals can ask illion to give access to their credit information without appointing Credit Simple as an agent.

The Non-Disclosure Agreement

The Non-Disclosure Agreement (NZ) between illion and Credit Simple ensures Credit Simple takes all reasonable measures to keep information disclosed from illion confidential. The purpose of disclosing information from illion to Credit Simple is to give effect to the Access Seeker Services Agreement (NZ).

The Non-Disclosure Agreement (NZ) includes as an appendix a 'Short Form Subscriber Agreement'. This Short Form Subscriber Agreement is an exact reproduction of Schedule 3 – Subscriber Agreement as set out in the Code prior to Amendment No 14 of the Code. A subscriber agreement for purposes of the Code is a contract between an agency and the credit reporter to gain access to the credit reporter's information database subject to certain safeguards.

This agreement and the status of its appendix "Short Form Subscriber Agreement" is discussed further below in relation to the quotation inquiry service provided by Credit Simple.

²¹ illion and Credit Simple both provide access to credit information instantly and free of cost.

Part 2: Does illion's Arrangement with Credit Simple circumvent the Code?

Part 2 considers the fundamental question: does illion's Arrangement with Credit Simple circumvent the Code? To answer this question this Inquiry considers three areas where the Office is concerned that illion (and its Arrangement with related company Credit Simple) does not comply with the Code:

- is illion using Credit Simple to bundle authorisations for unrelated purposes?
- is illion using Credit Simple to facilitate marketing or direct marketing?
- is illion using Credit Simple's quotation enquiry service to market credit products?

2.1 Is illion using Credit Simple to bundle authorisations for unrelated purposes?

Key points

- The Code prohibits Credit reporters from bundling additional unrelated requests for consents into individuals right to access, correction or suppression (rule 4(2) of the Code).
- illion is compliant with rule 4(2) of the Code when individuals exercise their rights to access credit information directly through illion.
- When individuals exercise these rights via Credit Simple, they are required to consent to receiving credit alerts and are presented with an option to receive updates from Credit Simple and offers from Credit Simple's participating lenders and providers of other services of other goods and services.
- The opt-in authorisation sought from individuals to provide updates and offers is an unrelated consent added into the application process facilitating individuals access rights under the Code and therefore Credit Simple is bundling unrelated authorisations.
- The Arrangement between illion and Credit Simple has the effect of circumventing the application of the Code to the access procedure for complying with the individual's request to exercise their rights under the Code, the Credit Simple platform, as regulated under clause 5(2) of the Code
- illion through its Arrangement with Credit Simple is in breach of clause 5(2) and rule 4(2) of the Code.

How does the Code regulate bundled authorisations?

Bundled authorisation (or bundled consent), is the bundling together of consent to a wide range of uses and disclosures of personal information without giving the individual an opportunity to choose which uses and disclosures they agree to and which they do not, often sought as part of the terms and conditions of a service.

Amendment No 14 introduced a subrule 4(2) making it clear that a credit reporter must not bundle requests for access to credit information under rule 6²², to include additional unrelated uses or disclosures of credit information. For example, when an individual makes a request to access their credit information, the credit reporter cannot use that opportunity to seek unrelated authorisations or bundle consents into processes giving effect to statutory rights. The Amendment therefore clarified that credit reporters must not take requests by individuals to exercise rights of access, correction or suppression under the Code as an opportunity to cross-sell products or seek consent to marketing, debt collection or any other unrelated purpose.

Under the Act, access to personal information is a statutory right. This also means that access to an individual's credit information under the Code is also a statutory right.

Why does bundling matter?

Bundled consents can be an unfair means of collection in many contexts, as they may mislead individuals as to whether consent is voluntary and to what is being consented to. It would be particularly inappropriate for agencies to incorporate a commercial side-arrangement into its processes giving effect to a statutory right.²³

By way of example, an individual will be obliged to supply identifying details, including name and address, when making a request for access to credit information. The credit reporter must not request the individual as part of an access request to also consent to, say, to purchase the credit reporter services or for disclosure to a third party (such as an insurer, debt collector or credit broker).


Is illion bundling consumer authorisations?

The access service available directly through illion, requires individuals to only agree to illion providing their credit report and credit score (see picture below). illion does not bundle other consents into individuals right to access credit information. Therefore, illion's own access service complies with rule 4(2) of the Code.

²² The prohibition also applies to requests for correction to credit information under rule 7; or suppression of credit information under rule 11 of the Code.

²³ Information paper on Amendment No 14 <https://privacy.org.nz/assets/Uploads/CRPC-Information-paper-on-Amendment-No-14-A598211.pdf>

← → ↻ creditcheck.illion.co.nz/auth/login/login ☆ ⓘ ⋮



Get your free credit report

Enter the fields below to get started with your free credit report and score. This check won't affect your score.

Email address

Password

 SHOW

9 characters minimum One number One uppercase letter One lowercase letter

I agree to illion providing me with my credit report and score ?

By proceeding, you accept our [Terms of Use](#) & [Privacy Policy](#).

[Continue](#)

Already registered? [Log in](#)

Is Credit Simple bundling consumer authorisations?

← → ↻ creditsimple.co.nz ☆ ⓘ ⋮

✕

Register to continue

By proceeding, you accept our [Terms of Use](#) & [Privacy Policy](#).

Email address

Password SHOW

9 characters minimum One number One uppercase letter
One lowercase letter

I agree that you can provide me my credit report, score and alerts (this is required to create a Credit Simple account). ?

I'd like to receive promotional emails and updates from Credit Simple, as well as offers from Credit Simple's partners. ?

[Continue](#)

Already registered? [Login here](#)

The credit monitoring service

The Credit Simple model is set up to allow individuals to appoint Credit Simple as their agent to make a request for access to credit information on behalf of individuals. To initiate this process individuals are required to register with Credit Simple to gain access to their credit information. When registering with Credit Simple, individuals are authorising illion to disclose to Credit Simple whenever there is an update to an individual's credit report. illion has confirmed to this Inquiry that this update is limited

to illion notifying Credit Simple that a section of a user's credit report (for example updates to credit accounts) has changed.

Individuals will then be updated whenever illion makes changes to account information or credit files. This could include changes and additions to defaults, adding credit enquiries, additions in judgements, bankruptcy information, changes and additions of directorships, credit file access and additions to file notes.

Accordingly, under the Credit Simple operating model, individuals cannot access their credit report and credit score without also consenting to receiving credit alerts (a monitoring service). Users are unable to opt out from the monitoring service. The issue this Inquiry considered is whether this is a bundled authorisation inserted into the Credit Simple registration process for individuals.

The Inquiry considered if this process also means an ongoing access notification arrangement is in place between illion and Credit Simple for the purposes of the credit alerts service. However illion has confirmed that this is limited to illion notifying Credit Simple that a section of a user's credit report has changed (e.g., if the Accounts section has changed, which may indicate that a new credit card, utilities or other account has been opened in the individual's name). The details of the change, and the individual's updated credit report, are not disclosed to Credit Simple, unless the individual returns to Credit Simple in response to a credit alert and requests access to their credit report. However, the Access Seeker Agreement (NZ) does not expressly state that illion will include credit alert information in 'Access seeker reports'²⁴ to Credit Simple.

In their submissions to this Inquiry, illion and Credit Simple have stated their view that a 'credit alert' is directly related to an access request (and therefore, not an "unrelated use" for the purposes of rule 4(2) of the Code.

The Office has considered this question and notes that the Code's restriction on bundling in rule 4(2) applies to **unrelated** use and disclosure. Authorisation of related use or disclosure of credit information is not expressly restricted and may therefore be included in application processes for access to credit information under rule 6 of the Code.

In terms of what amounts to an unrelated use, the Information Paper for Amendment No 14 makes clear that rule 4(2) of the Code prohibits a credit reporter from bundling an authorisation to allow disclosure to a third party such as an insurer, debt collector or credit broker, and that it is inappropriate to integrate commercial side-arrangements into processes giving effect to the statutory right of access. This also applies to arrangements between a credit reporter and a related company.

The question is whether credit alerts that notify individuals of the fact of a subsequent change to their credit report is a disclosure of credit information that is unrelated to an individual's access to their credit information. A credit alert notification is a prompt to

²⁴ According to the Access Seeker Agreement NZ between D&B (now illion) and CDS (Credit) NZ Limited, Access Seeker Reports refers to a range of products provided by illion and may include a credit report, or a credit score or a credit report and a credit score or any other format agreed between the parties.

an individual that a change has been made to their credit report and allows the individual the opportunity to seek access to their credit information to check the change has been made. It is an invitation to the individual to access their credit information to check for accuracy.

Having considered their operation, we have reached the conclusion that credit alert notifications are sufficiently related to the individual's entitlement to access that they are **not an unrelated disclosure** of credit information and therefore do not infringe the restriction in rule 4(2) on bundled authorisations. If an individual no longer wishes to receive credit alerts, they can unsubscribe from this service. However, best practice is to give the individual the express choice to opt-out from receiving such a credit monitoring service.

The Clear Name service

The registration process also enables Credit Simple to disclose credit information to Clear Name, a service managed by illion to assist individuals obtain a discount or reduced amount in respect to defaults owing. The registration process includes bundled consents for an unrelated use and disclosure, which would not be obvious to individuals when signing up to Credit Simple. Clause 9 of Credit Simple's privacy policy²⁵ states that when individuals use Credit Simple's credit information access services to access their credit information, individuals authorise Credit Simple to disclose information to Clear Name on behalf of individuals. This means illion is using Credit Simple to not only bundle unrelated authorisations into a statutory right of access but illion is also using Credit Simple to market the Clear Name online service of debt repayment to individuals.

In the Inquiry, Credit Simple explained that this reference was overlooked and inadvertently retained after Credit Simple updated its consent process to reflect Amendment No 14. It was overlooked due to the fact that the Clear Name service has had very limited focus in New Zealand (Clear Name has only had one partner, from March 2019, to offer a discount or reduced amounts in respect to defaults owing). However, clause 9.1 of Credit Simple's updated privacy policy (last updated June 2020)²⁶ continues to state that when a consumer uses the Credit Information Access Services to access credit information, the consumer authorises Credit Simple to disclose information to Clear Name, on behalf of the consumer.

Promotional emails and offers from Credit Simple partners

When this Inquiry commenced Credit Simple required that registering individuals must opt-out from receiving promotional emails from Credit Simple and offers from Credit Simple's participating lenders and providers of other services of other goods and services. The requirement to unbundle authorisations came into effect on 1 April 2019 and Credit Simple were in breach of this requirement while operating this opt-out basis.

²⁵ Credit Simple Privacy Policy (Last updated October 2019) <https://content.creditsimple.co.nz/privacy-policy-2/>

²⁶ <https://www.creditsimple.co.nz/content/privacy-policy>.

During the inquiry, illion and Credit Simple submitted that in December 2019 changes were made by Credit Simple to implement a fully unbundled consent process. For example, an individual can elect to use Credit Simple to access their credit report without seeing any offers at all. In practice, Credit Simple had shifted to an 'opt-in' basis for receiving promotional emails and offers from participating lenders.

In the following section we set out our finding that despite changes made by Credit Simple, the use of an opt-in to promotional marketing on the registration page does not comply with the restrictions on bundled authorisations under clause 4(2). In addition, we've set out our finding that the opt-in to promotional marketing on the registration page does not comply with the restrictions on marketing under rule 10(1B).

Is Credit Simple bundling individual authorisations for unrelated purposes (marketing and offers)?

The authorisation sought to gain access to credit report, credit score and credit alerts is unrelated to the authorisation Credit Simple seeks to get from individuals to send Credit Simple updates and offers from Credit Simple's participating lenders and providers of other services of other goods and services. This Inquiry therefore considered whether Credit Simple has bundled authorisations in place for an access request to credit information.

Individuals can register to use Credit Simple and access their credit report without consenting to receiving promotional emails or offers from Credit Simple's partners. illion has moved other consents to a "just in time" consent process. The Office considered the proximity of the authorisations referred to above (placing them side by side) and whether this has the effect of bundling unrelated authorisations.

Rule 4(2) of the Code prohibits the bundling of unrelated use or disclosure **into application processes** to access credit information. Although the authorisations sought are separate tick boxes (that are not pre-ticked), both appear on the Credit Simple registration page in close proximity. The issue is whether having both tick boxes on the registration page amounts to bundling unrelated authorisations for purposes of rule 4(2) of the Code. This turns on whether the registration page is integral to the application process for requesting access to credit information.

As Credit Simple is attracting consumers to its platform for the primary purpose of accessing their credit information held by illion, and registration on the Credit Simple platform is a prerequisite to the access request, the Office finds that the registration page is the point on the Credit Simple website that represents the application process for access to credit information for purposes of rule 4(2) of the Code. This means that unrelated authorisations should not be included in such proximity. Unrelated consents should not be presented together.

Therefore, illion's Arrangement with its related company Credit Simple is in breach of the Code, as its effect is to circumvent the application of the Code to the process for complying with consumer requests to exercise their rights under the Code, via the Credit Simple platform, as regulated under rule 4(2) of the Code.

Due to the Arrangement illion is in breach of clause 5(2) and rule 4(2) of the Code.

In addition, The Code restricts credit reporters and related companies from using credit information for marketing purposes. Enabling individuals to opt in to receiving promotional marketing offers from Credit Simple's participating lenders and providers of other services raises concerns under rule 10(1B) of the Code and is explored in Part 2.2 of the report.

2.2 Is illion using Credit Simple to facilitate marketing or direct marketing?

Key points

- illion is prohibited under the rule 10(1B) of the Code from using credit information it holds for marketing and direct marketing to individuals. In addition, illion is also prohibited rule 11(3)(b) of the Code from disclosing credit information for any purpose related to marketing or direct marketing, including facilitating of marketing or direct marketing by a subscriber or any other agency.
- Credit Simple gains access to credit information only because of the 'Access Seeker' Arrangement it has with illion.
- As a related company of illion, until November 2019 Credit Simple was using credit information sourced from illion under the Arrangement between illion and Credit Simple.
- Credit Simple undertook filtering of credit offers based on credit information sourced from illion. This is a marketing activity and is not pre-screening under the Code.
- illion was in breach of clause 5(2)(b) and rules 10(1B) and 11(3)(b) of the Code as its Arrangement with Credit Simple facilitates marketing by Credit Simple and illion discloses credit information to Credit Simple for a purpose related to marketing.
- Credit Simple made some changes to the way in which it uses credit information sourced from illion in response to this Inquiry in late 2019.
- Despite the changes made by Credit Simple, illion remains in breach of clause 5(2)(a) and 5(2)(b) and rule 10(1B) of the Code.

How does the Code regulate marketing and direct marketing?

The Code expressly restricts credit reporters from using credit information for any purpose related to marketing or direct marketing purposes.

As specified in Rule 10(1B) of the Code, illion must not use credit information for any purpose related to marketing or direct marketing. illion must not facilitate marketing or direct marketing by a subscriber²⁷ or any other agency, illion should not develop a tool or service for subscribers, or provide such a tool or service to subscribers, for the purpose of:

- assisting subscribers to assess the likelihood that an individual might accept an offer of credit or insurance in relation to credit, or variation of credit or insurance; or
- otherwise to target individuals for offers of credit or insurance.²⁸

²⁷ Clause 5 of the Code defines a subscriber as an agency that has entered into a subscriber agreement with a credit reporter.

²⁸ Rule 10(1B) of the Code.

The Code also restricts a credit reporter from disclosing credit information for any purpose related to marketing or direct marketing, including facilitating marketing or direct marketing by a subscriber or any other agency.²⁹

The Code only permits the limited use of credit information by credit reporters to screen direct marketing lists provided by subscribers (credit providers). This pre-screening is to ensure that credit-related marketing is not sent to people who probably could not afford new credit or are a bad risk. Pre-screening must be in accordance with Schedule 9 of the Code and is only available to a credit provider for credit related marketing and comes with a set of conditions that need to be fulfilled before pre-screening can be done.³⁰ These conditions include requiring credit providers to be regulated in some manner (either externally or by being a member of a self-regulatory association that binds members to responsible marketing practices).

Is illion facilitating marketing by Credit Simple?

The Inquiry has considered whether Credit Simple is marketing both credit and non-credit products to consumers.

As explained above Credit Simple uses its registration process to provide an opt-in option to consumers to provide their consent to receive promotional marketing emails and updates from Credit Simple partners'. In addition, and independent of the registration process Credit Simple gives its consumers the option to choose the type of offers they would want to see after they have created a user account on the Credit Simple website. The following options are available under the 'Offers' tab in the users' Credit Simple account:

- Quotations for credit based on credit information;
- Other personalised offers;
- Offers without being personalised.

Below we have examined the different types of marketing available through Credit Simple:

Promotional marketing

Credit Simple offers consumers an opt-in to receiving promotional marketing when they register with Credit Simple for purposes of accessing their credit information held by illion. The Inquiry assessed above whether offering this opt-in on the registration page amounts to bundling authorisations and concluded that the opt-in is not compliant with rule 4(2).

The other issue with the opt-in is that it is not compliant with the Code's restrictions on marketing. Rule 10(1B) of the Code restricts credit reporters (and related companies) from using credit information for marketing purposes. The use of the consumer's personal identifying information for promotional marketing is not compliant with the

²⁹ Rule 11(3)(b) of the Code.

³⁰ Schedule 9 of the Code.

Code. This is because the consumer's identifying information in this context is "credit information". This is discussed further below.

Quotations for credit based on credit information

This issue is discussed below under Part 2.3.

Other personalised offers

Credit Simple users' are given the option to select 'Other Personalised Offers' under the 'Offers' tab on their Credit Simple account. These other personalised offers are filtered on credit information such as name, address etc. User authorisation is not a valid basis for Credit Simple to use credit information for marketing or direct marketing purposes.

Credit Simple's participating lenders considered their offers to be marketing

During the course of the Inquiry we interviewed some of Credit Simple's participating lenders. These participants considered Credit Simple to be another marketing mechanism to advertise their credit offers. In other words, Credit Simple was another referral channel. Most Inquiry participants submitted that a credit score was applied to individuals before their credit products were offered to individuals.

Most Inquiry participants considered using Credit Simple because it offered targeted marketing based on credit scores. A majority of participants said they would see less value in Credit Simple if the facility to target market and the ability to filter individuals based on credit scores was removed from Credit Simple.

Use of credit information in marketing

Until December 2019 all individuals using Credit Simple were displayed credit offers from participating lenders on their main Credit Simple dashboard, which displayed their credit score and the page which displayed their credit report. This was despite them opting out from receiving credit offers.

Credit Simple also sends direct marketing emails to Credit Simple users. During this inquiry illion confirmed that in November 2019 Credit Simple updated its direct marketing practices so that no credit information is used in connection with the content of direct marketing emails. This means prior to November 2019 Credit Simple was using credit information in its direct marketing practices. In other words, Credit Simple used credit information sourced from illion through the Arrangement between the two related companies. As a result, illion was in breach of clause 5(2)(b) and rules 10(1B) and 11(3)(b) of the Code. illion's response is that this practice reflected the fact that Credit Simple initially included direct email communications in the credit quotation enquiry service (see discussion below) and subsequently reviewed that practice. However, Credit Simple continues to use credit scores sourced from illion to provide its quotation enquiry service wherein Credit Simple relies on the user's authorisation to provide the service.

illion, also, confirmed that changes were made to more clearly separate access to credit information and other advertising on Credit Simple. The changes made in December 2019 included removing credit scores from the 'Offers page' and removing advertising banners which included credit offers from the credit report page and the main page carousel. The Inquiry team's use of the Credit Simple platform confirmed that up until December 2019 offers were displayed on the consumer's main page as well as on the bottom of the credit report page. The two Inquiry Credit Simple users were presented with different offers. Both the users had opted out from receiving offers. The fact the offers differed raises concerns that credit information was used to filter credit offers. illion submits the difference in credit offers could be influenced by other factors but has not yet detailed what those factors might be.

Credit Simple's use of credit information in marketing practices according to its relevant documentation has been inconsistent. According to Credit Simple's Terms of Use clause 1.1 offers are filtered based on the individual's personal information (other than the individual's credit information) and only if the individual consents to offers. Credit Simple's FAQs³¹ contradict this, however by stating that offers are based on the individual's credit profile (which includes credit score). The two documents provide contradictory information, which is confusing for individuals. Credit Simple's response is that its FAQs were inadvertently incorrect and have now been updated.

Even following this update however, the use of personal identifying information for marketing purposes is not compliant with the Code. This is because identifying information in this context is "credit information" as discussed in the following section.

Personal information or credit information?

illion and Credit Simple put forward the argument to this Inquiry that Credit Simple uses personal information received from individuals, rather than credit information received from illion, for marketing purposes and so are not in breach of the Code.

The Privacy Commissioner does not accept this position.

It is important to note that Credit Simple has structured its business around the access seeker services it provides individuals. Individuals use Credit Simple to gain instant access to their credit information sourced from illion. Individuals provide their identifying information for the primary purpose of gaining access to their credit information. Individuals cannot gain access to offers without requesting to access their credit information. The identifying information needed to gain access to credit information via Credit Simple is:

- First name
- Middles name(s)
- Last name
- Date of birth
- Gender
- Residential address (and previous address if lived less than three years)
- Mobile number

³¹ <https://www.creditsimple.co.nz/content/learn#1472781055185-364786e7-1214>

- Proof of ID type (New Zealand Driver Licence or New Zealand Passport. In case of NZ Driver Licence – number and version are collected and for passport – number and expiry date are collected).

Credit Simple is obtaining this identifying information from individuals for the purpose of providing access to credit information sourced from illion. Credit Simple is using the access seeker agreement with illion to obtain the identifying information from individuals (for access purposes) to use it to market credit products to Credit Simple consumers.

Individuals provide the same identifying information to illion when they make a request to access their credit information directly from illion. Excluding the contact number, all the other types of personal information collected by Credit Simple amount to credit information as defined under clause 5 of the Code.

illion is forbidden to use credit information (which we have concluded includes the identifying information mentioned above) for any activity related to marketing or direct marketing. Providing identifying information to illion for purposes of an access request results in that identifying information being treated as credit information under the Code. The arrangement between illion and Credit Simple under which Credit Simple obtains identifying information from individuals for purposes of providing access to credit information held by illion would circumvent the Code if the identifying information collected by Credit Simple is not treated as credit information. The fact that illion is doing so through its relationship with Credit Simple puts illion in breach of clause 5(2)(b) and rules 10(1B) of the Code.

Credit Simple was not undertaking ‘pre-screening’

The Code does permit limited marketing activities in one way: it provides for ‘pre-screening’ to assist credit providers to meet their responsible lending obligations.³² illion has never submitted to the Office that Credit Simple is providing a ‘pre-screening’ service. However, for completeness we provide a brief overview of ‘pre-screening’ in this section.

Pre-screening as defined under the Code can be conducted by credit reporters only on the request of credit providers.

Credit Simple has submitted that they use credit scores to filter individuals and accordingly offers are made available to individuals. Credit Simple does this by connecting the illion bureau and Credit Simple users using APIs. While many who advertise on Credit Simple may meet the requirements of pre-screening under schedule 9, the system of providing credit information to Credit Simple via API does not require this.

Accordingly, while Credit Simple appears to be using credit information to filter individuals and display credit offers to individuals that meet a specific band of credit score, it is not the pre-screening process defined under the code.

³² Amendment No 5 introduced pre-screening and allowed credit reporters to use credit information for marketing purposes to screen individuals.

illion is facilitating marketing by Credit Simple to consumers

The credit information that Credit Simple collects from individuals at registration or at sign-up is used for marketing purposes in breach of the Code. As a related company Credit Simple is restricted from using credit information for marketing or direct marketing purposes. User authorisation is not a valid basis for Credit Simple to use credit information, for marketing or direct marketing purposes.

Clause 5(2)(b) of the Code states that the purpose or effect of the Arrangement between the credit reporter and the related company should not be to enable the related company to use or disclose credit information sourced from the credit reporter that would be a breach of the Code if done directly by the credit reporter.

In this instance, until November 2019 the Arrangement between illion and Credit Simple was circumventing the application of the Code since Credit Simple was using credit information sourced from illion for marketing purposes. If illion conducted the same marketing activities as Credit Simple as a credit reporter it would be in breach of the Code. In addition, illion was in contravention of rule 10(1B) of the Code as Credit Simple was using credit information sourced from illion to filter offers to Credit Simple consumers. illion was also in breach of rule 11(3)(b) of the Code for disclosing credit information to Credit Simple for marketing purposes.

As of result of this Inquiry Credit Simple reviewed its practices and from November 2019 discontinued the use of credit information sourced from illion for direct marketing purposes. However, Credit Simple still continues to source credit information from illion to provide its quotation enquiry service and still continues to use credit information for other marketing offers. As a related company Credit Simple cannot undertake activities which illion is prohibited from performing under the Code. Marketing is one such activity that illion cannot perform. The arrangement between illion and Credit Simple circumvents the marketing restrictions on illion under the Code. Therefore, illion is in breach of clauses 5(2)(a), 5(2)(b) and rule 10(1B) of the Code.

Accordingly, we conclude that illion has and continues to use its Arrangement with its related company, Credit Simple, to use credit information for marketing in a manner that would breach the Code if illion were to undertake this marketing activity themselves.

2.3 Is illion using Credit Simple's quotation enquiry service to market credit products to consumers?

Key points

- illion is disclosing credit information to Credit Simple to provide credit offers to Credit Simple users.
- Credit Simple is not offering a quotation enquiry service as envisaged by the Code, rather it is using credit information from illion to market credit offers.
- Credit Simple is not acting as an agent for participating lenders in order to get access to credit information to provide quotation enquiries to Credit Simple users.
- The exception in rule 11(2)(b)(i)(B) does not apply as there is no evidence that Credit Simple is acting as an agent for a credit provider for the purpose of providing the individual with a quotation of the cost of credit, nor is the disclosure to Credit Simple made in accordance with a subscriber agreement.
- illion is in breach of rule 11(3)(b) of the Code for disclosing credit information to Credit Simple for marketing purposes.

In Part 1, there is a description of Credit Simple's credit quotation service. This section examines whether this service complies with the Code.

How does the Code regulate quotation enquiries?

In 2011, Amendment No 5 to the Code authorised (but did not require) credit reporters to disclose credit information to enable subscribers to provide an individual with a quotation for credit (commonly referred to as quotation enquiries).

While 'quotation enquiry' is not a defined term in the Code, it is an enquiry made by a credit provider to credit reporters, in order to give an individual a quote of the cost of credit.³³ This quotation does not need to result in an offer of credit. Credit reporters must not use information derived from such an enquiry to create or influence a credit score.

Quotation enquiries were enabled to help utilise the power of comprehensive credit reporting for personalised risk-based credit offers, while ensuring that individuals were not penalised for shopping around for the best credit terms.

As a result of the 2018 Code review, the Code was amended to ensure credit providers (through subscriber agreements) could provide quotation enquiries if offering risk-based pricing in a credit product. In these situations, the price of credit is not known until a credit check is made. In such cases individuals would be able to obtain a quotation for the cost of the credit (which would involve a credit check against the individual) without leaving a 'previous enquiry' record on their file that may in turn affect their credit score for future borrowing. This change was made to support the prudent

³³ Amendment No 5 Information Paper <https://privacy.org.nz/the-privacy-act-and-codes/codes-of-practice/credit-reporting-privacy-code/credit-reporting-privacy-code-amendment-no-5/>

and competitive practice of ‘shopping around’ for a good credit rate by ensuring that consumers can enquire about the price of credit without risking their credit scores.

The Code specifies when a credit reporter can disclose credit information for a quotation enquiry. Rule 11(2)(b)(i)(B) of the Code states “that a credit reporter may disclose credit information for the purposes of a quotation enquiry pursuant to a subscriber agreement that complies with schedule 3 and when the individual authorises the disclosure to the subscriber or its agent.” The key elements required to disclose individual credit information for a quotation enquiry is that the disclosure is in accordance with a subscriber agreement as defined in schedule 3 between the credit reporter and a subscriber, the individual’s authorisation for the disclosure and the disclosure is made to a credit provider or a credit provider’s agent.

A subscriber agreement means a written agreement providing a subscriber with access to credit information held by the credit reporter.³⁴ A subscriber is an agency that has entered into a subscriber agreement with a credit reporter.³⁵ As set out above, when relying on rule 11(2)(b)(i)(B) to disclose credit information, the credit reporter must be satisfied that the information is disclosed in accordance with a subscriber agreement that complies with schedule 3 of the Code. Schedule 3 includes safeguards to ensure that the subscriber meets its obligations under the Code. Different subscribers may have different levels of obligation depending on their access rights under the Code. Schedule 3 set out the information that must be included in a subscriber agreement where applicable.

How do quotation enquiries work in practice?

An inquiry participant (a credit provider) explained the process they follow to provide individuals with a quotation for their credit product. The process is:

- An individual creates an account with the credit provider and agrees to their terms and conditions.
- The individual requests the quotation for the cost of credit.
- The credit provider obtains access to the individual’s credit information from a credit reporter.
- If the individual does not meet the credit provider’s credit criteria the individual would fail to receive a quote (ending the application process).
- If the individual meets the credit criteria they are presented with a quotation and provided with a credit application to complete.
- Once a credit application is completed, the credit provider again obtains access to the individual’s credit information. This time round the access will be recorded on the individual’s credit report as a previous enquiry.

Credit Simple considers that its platform uses illion’s quotation enquiry service

Credit Simple submitted to this inquiry that its platform enables consumers and lenders to utilise illion’s quotation enquiry service. Credit Simple does this by connecting the

³⁴ Defined in clause 5(1) of the Code.

³⁵ Defined in clause 5(1) of the Code.

illion credit bureau and Credit Simple users using APIs. According to Credit Simple, from a user's perspective, Credit Simple delivers a quotation enquiry, following the user's consent, across multiple lenders simultaneously (as opposed to a one-to-one enquiry process on an individualised lender by lender basis). The service is an automated process and does not involve the sharing of credit information with lenders. Credit Simple clarified that its quotation enquiry service only applies to credit quotations and not to any non-credit products displayed on the Credit Simple platform.

As noted in Credit Simple's submission, its users get access to this service by explicitly agreeing to use it by accepting a pop-up notification on the relevant section of the Credit Simple website. Individuals can see their credit quotations if they actively click on the offers tab on their Credit Simple dashboard. Credit quotations are filtered by credit score.

This service as noted above is provided to consumers when they consent to receive credit quotations based on their credit score which is sourced from illion.

Rule 11(2)(b)(i)(B) of the Code allows for the disclosure by the credit reporter to the credit provider or the credit provider's agent for the purposes of providing a quotation of the cost of credit to the individual. However, for the reasons set out below, Credit Simple's credit quotation enquiry service does not qualify under rule 11(2)(b)(i)(B) of the Code as key elements of this rule are not evident in the process adopted by Credit Simple.

As illion does not comply with rule 11(2) of the Code it is in breach of rule 11(3)(b) by disclosing credit information to Credit Simple for purposes of its credit quotation service. illion is also in breach of clause 5(2)(b) as its related company Credit Simple is sourcing credit scores from illion and uses it to provide its quotation enquiry service.

Rule 11(2)(b)(i)(b) of the Code does not apply by virtue of the following analysis:

(i) illion, through Credit Simple, is facilitating offers for credit rather than quotations

On reviewing the service provided by Credit Simple, the Inquiry has concluded that the individual does not receive a quotation or quote setting out the cost of credit. Instead, they receive a general marketing offer that is not sufficiently personalised according to the individual's creditworthiness to be considered a firm quotation.

While the Code does not define a "quotation enquiry" it is based on the ordinary understanding of the term quotation being a "formal statement setting out the estimated cost for a product or service" (OED)³⁶. Schedule 3 of the Code sets out requirements for subscriber agreements making it clear that the Code envisages a quotation enquiry taking place in the context of "risk-based pricing for a credit product ... that involves obtaining access to credit information held by a credit reporter to fix the price offered to an individual based on their credit worthiness" (Sch3: cl10). The wording of

³⁶ Oxford English Dictionary

clause 10 of schedule 3 also expects that the quotation provided would not vary after the consumer applies for the credit product by making a credit application to the credit provider. This provides the consumer confidence to apply for credit product knowing that, while it will impact their credit score, it is has been tailored to their circumstances.

Individuals using the Credit Simple service are not receiving a quotation of credit as authorised by the Code. Rather, this activity is closer to pre-screening where credit information is used to remove individuals that do not meet the credit criteria from a direct marketing list supplied by a credit provider. While pre-screening is permitted under Schedule 9 of the Code, it can only be undertaken by credit reporters. Credit Simple is not a credit reporter.

(ii) No evidence that Credit Simple is acting as an agent for participating lenders

Credit Simple's privacy policy states that Credit Simple collects credit information from illion on behalf of participating lenders to enable participating lenders to provide a quote for credit products³⁷.

The agreements in effect between illion and Credit Simple are the Access Seeker Agreement and the Non-Disclosure Agreement. The agreement in place between Credit Simple and each participating lender is an Advertising Agreement. This agreement sets out the terms on which the Credit Simple platform displays advertisements to Credit Simple members.

Credit Simple has submitted to this Inquiry that it acts as an agent of its participating lenders when requesting access to credit information from illion to present Credit Simple users with credit quotations.

However, there is no reference in the template Advertising Agreement provided by Credit Simple that states that the participating lender appoints Credit Simple as their agent to get access to credit information from illion to offer quotes for their credit products to Credit Simple users. Furthermore, inquiry participants were not aware of an agency relationship between themselves and Credit Simple. Nor has Credit Simple provided evidence to confirm an agency relationship with its participating lenders.

From engagement during this Inquiry, the Office understands that Credit Simple has prepared an updated Advertising Agreement although this has not yet been provided or assessed by the Office.

It is important to note that even if the agreements were in place Credit Simple and illion would still be in breach of the Code unless the activity falls within the limited permitted marketing activities under the Code.

³⁷ Credit Simple Privacy Policy (last updated October 2019) Clause 6.1(c)
<https://content.creditsimple.co.nz/privacy-policy-2/>

(iii) Credit Simple is not a subscriber to illion

illion and Credit Simple in their written responses to questions and during the examination on oath confirmed that there is no subscriber relationship between the two companies. Credit Simple has confirmed it does not have a subscriber agreement in place with illion that complies with schedule 3 to the Code³⁸. Credit Simple does not have a contract in place with illion to use illion's credit reporting information. However, during the examination on oath, illion and Credit Simple said that, where Credit Simple acts an agent for its participating lenders, they rely on the short form subscriber agreement annexed to the non-disclosure agreement, which applies only in the context of its Quotation Inquiry Service. It does not constitute a subscriber agreement between participating lenders and illion for any other purpose.

As set out above, Credit Simple has not provided evidence that they are in fact acting as an agent for participating lenders. Moreover, illion does not know the identity of the credit provider that is offering the quotation of credit. It only knows that Credit Simple is acting as an agent for credit providers who provide offers on the Credit Simple platform. Accordingly, this agreement also does not meet the requirements of schedule 3 of the Code. Again, we understand Credit Simple has prepared, but not yet implemented, an updated Advertising Agreement in response to this Inquiry. However, this Office has not seen or assessed this revised Agreement.

Therefore, on examining if illion is meeting their obligations under the rule 11(2) of the Code, it is evident there is no subscriber agreement between illion and Credit Simple that meets the requirements of Schedule 3. Nor has illion demonstrated Code compliant subscriber relationships with Credit Simple's participating lenders. Accordingly, illion is in breach of clause 5(2)(b) and rule 11(3)(b) of the Code.

³⁸ The Inquiry terms of reference reflect the Office's understanding that during the oral submissions on proposed Amendment No 14, Credit Simple confirmed it was a subscriber to illion but during this Inquiry, illion has clarified that the reference was in the context of a subscriber access code which has an internal technical meaning between the two companies. It does not mean that Credit Simple is a subscriber to illion's consumer credit reporting database for purposes of the Code.

Findings

The Inquiry has found illion to be in breach of its obligations under the Code under:

- clause 5(2)(a) which restricts illion from entering into an Arrangement with its related company Credit Simple to circumvent the application of rule 4(2) the Code through the Access Seeker Arrangement between illion and Credit Simple. The Office has reached the conclusion that the set up on the Credit Simple platform bundles unrelated authorisations into an individual's right to access credit information;
- clause 5(2)(b) which restricts illion from entering into an Arrangement with its related company Credit Simple to enable Credit Simple use credit information from illion for marketing purposes and that if illion performs the same marketing activities as Credit Simple it would be in breach of rules 10(1B) and 11(3)(b) – *applies to activities prior to November 2019 and the quotation enquiry service Credit Simple continues to provide;*
- clause 5(2)(a) which restricts illion from entering into an Arrangement with its related company Credit Simple to circumvent the marketing restrictions under rule 10(1B);
- rule 11(3)(b) which restricts illion from disclosing credit information for marketing purposes.

Appendix A: Inquiry Terms of reference

Objective

To inquire into whether illion, and its subsidiary Credit Simple, are complying with the Credit Reporting Privacy Code 2004 (the Code), in particular the prohibitions on related company activities.

Authority

The Inquiry is a Privacy Commissioner initiated inquiry under section 13(1)(m) of the Privacy Act 1993 (“the Act”). The Privacy Commissioner has inquiry functions under that section to inquire generally into any matter including any law, practice or procedure, whether governmental or non-governmental if it appears that the privacy of the individual is being, or may be, infringed thereby.

As part of any inquiry the Privacy Commissioner may use his powers to summon witnesses and obtain relevant documentation under section 91 of the Act.

Background

In November 2018 the Commissioner issued Amendment No 14 to the Code. One of the key changes added to the Code was a clause on the use of ‘related companies’. The purpose of the new clause is to ensure a credit reporter does not, directly or indirectly, enter into any understanding, arrangement, structure or agreement with a related company to circumvent the application of the Code or to enable a related company to use or disclose credit information sourced from a credit reporter that would be a breach of the Code if the same use or disclosure had been made directly by the credit reporter.

We have previously engaged with illion to ensure compliance with the changes introduced by Amendment No 14 and on all occasions have been assured that illion is in compliance with the Code. However, despite these assurances there remain reasons to believe that Credit Simple’s operating model and the Arrangement and relationship between illion and Credit Simple is inconsistent with its obligations under the Code.

Matters for inquiry

The purpose of the inquiry is to inquire into whether illion, through its business practices and arrangements with Credit Simple, could be using Credit Simple as a related company to circumvent its obligations under the Code.

Specifically, we are concerned the following activities by illion/ Credit Simple could amount to potential breaches of the Code:

- Credit Simple appears to be marketing both credit and non-credit products to Credit Simple users. We consider that due to its relationship with Credit Simple, illion may be using Credit Simple to circumvent the Code requirements for marketing purposes for both credit and non-credit products.
- If Credit Simple is a 'related company' to illion, the current Credit Simple registration process could amount to 'bundling' under rule 4(2) of the Code.
- Credit Simple users are being offered credit products despite opting out of receiving such offers.
- Credit Simple user credit scores are available for the preceding six months. If Credit Simple is sourcing credit scores directly from illion and Credit Simple is a 'related company' to illion, then illion may be in breach of schedule 1 of the Code for reporting beyond the maximum reporting period (of 2 days).

In October 2018 during the [oral submissions hearing](#) for amendment no 14 Credit Simple confirmed that they are a subscriber to illion. If Credit Simple is still a subscriber then illion may also be in breach of rule 10(1B)(b)(ii) which says that a credit reporter must not use credit information for any purpose related to marketing or direct marketing and must not develop a tool or service for subscribers to assist subscribers to target individuals for offers of credit or insurance.

Exercising the Commissioner's function under s13(1)(m) of the Act to inquire into illion's practices will enable the Office to gather the information it requires from relevant parties to understand the Arrangement between illion and Credit Simple and whether illion is using Credit Simple to circumvent the application of the Code.

The Office will use this information to inform recommendations to improve compliance with the Code that are necessary and desirable on the basis of the inquiry's findings.

Exclusions

The Inquiry will not directly investigate any individual's complaint or concern relating to illion's Arrangement with Credit Simple. However, this does not limit the Privacy Commissioner's investigation powers under Part 8 of the Act.

Individuals who believe their privacy may have been infringed and wishing to consider a complaint to the Office of the Privacy Commissioner can find more information on this process at www.privacy.org.nz.

Commencement of work and reporting requirements

The Inquiry will commence on and may begin considering evidence in October 2019. However, before commencement illion will be informed of the inquiry.

A draft report will be provided to illion prior to being finalised. The report will be publicly released once it has been considered by illion.

Where appropriate, the Privacy Commissioner may make recommendations prior to issuing a final Inquiry report.

Appendix B: Inquiry conduct and participants

This appendix describes the stakeholder consultation process undertaken for the inquiry and list the lenders that have participated.

Inquiry Terms of Reference

The terms of reference for the Inquiry reproduced in the preliminary pages of this report was sent in advance for comment to illion and Credit Simple on 8 October 2019. illion was given a weeks' time to provide comments after which information about the launch of the inquiry and terms of reference was published to our [website](#) on 18 October 2019.

Consultations

The Office of the Privacy Commissioner held the following consultation process throughout the Inquiry:

- interviews with representatives from illion and Credit Simple;
- interviews with representatives from credit reporters, credit providers and utility providers;
- discussions throughout the inquiry with stakeholders.

Information requests

The Office made information requests to several organisations as input into this inquiry. All information requests were in accordance with section 91(4) of the Privacy Act 1993.

In accordance with section 91(1) of the Act, representatives of illion and Credit Simple were summoned on behalf of the Commissioner and examined on oath to give the information for this inquiry.

Documents produced by the inquiry

The following documents were prepared

- terms of reference published on 16 October 2019
- draft report shared with illion and Credit Simple on 9 July 2020
- final report published on 9 September 2020.

Appendix C: Regulatory environment

The Office of the Privacy Commissioner is the national privacy enforcement authority responsible for privacy regulation.

The Office operates under the Privacy Act 1993. The Act sets out the 12 information privacy principles which set out how personal information should be collected, stored, used, and disclosed.

The Act gives the Privacy Commissioner the power to issue codes of practice which means that one or more information privacy principles can be modified to be applied to a specified industry, activity or information.

The Privacy Commissioner issued the Credit Reporting Privacy Code in 2004. The Credit Code applies specific rules to credit reporters to better ensure the protection of individual privacy. The code addresses how credit information is collected, held, used, and disclosed by credit reporters. For credit reporters the code takes the place of the information privacy principles.

The Credit Code was last amended in November 2018 which introduced several changes. The key changes introduced which are relevant to this inquiry are:

Clause 5: Interpretation

clause 5(2): A credit reporter must not be directly or indirectly involved in any understanding, arrangement, structure or agreement with a related company (Arrangement) where:

- a) the purpose or effect of the Arrangement is to circumvent the application of the Code on an activity to be undertaken by the related company; or
- b) the purpose or effect of the Arrangement is to enable the related company to use or disclose credit information sourced from the credit reporter that would be a breach of the Code if the use or disclosure had been made directly by the credit reporter.

Rule 4: Manner of collection of credit information

Rule 4(2): A credit reporter must not bundle a request for authorization of an additional unrelated use or disclosure of credit information into application processes for:

- a) access to credit information under rule 6;
- b) correction to credit information under rule 7; or
- c) suppression of credit information under rule 11.

Rule 10: Limits on use of credit information

Rule 10(1B): Except as provided in Schedule 9, a credit reporter must not use credit information for any purpose related to marketing or direct marketing, including without limitation any of the following:

- a) facilitating of marketing or direct marketing by a subscriber or any other agency;
- b) developing a tool or service for subscribers, or providing such a toll to service to subscribers, for the purposes of:
 - i. assisting subscribers to assess the likelihood that an individual might accept an offer of credit or insurance in relation to credit, variation of credit or insurance; or
 - ii. otherwise to target individuals for offers of credit or insurance.

Rule 11: Limits on disclosure of credit information

Rule 11(2): A credit reporter that holds credit information may disclose the information in accordance with a subscriber agreement that complies with Schedule 3 if the credit reporter believes, on reasonable grounds:

- (b) that the disclosure is authorised by the individual concerned and is made to:
 - (i) [[a credit provider, or that credit provider's agent, for the purpose of:
 - (B) providing that individual with a quotation of the cost of credit;]

Rule 11(3)(b): A credit reporter must not disclose credit information for any purpose related to marketing or direct marketing, including the facilitating of marketing or direct marketing by a subscriber or any other agency.