

Section 13(1)(m) inquiry into illion and Credit Simple's arrangements

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 Privacy 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 Privacy 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.