

## DECISION

### Summary and outcome

1. The complainant, Mr SI, states that Linkt Melbourne (Linkt), operating as CityLink, has incorrectly placed a payment default on his credit file for an amount of \$311.02. He submits, via his lawyers, that this error was in breach of the Credit Reporting Code of Conduct (CRCC) as:
  - a. It failed to issue a separate section 6Q notice and section 21D notice for the full account balance to Mr SI before listing this payment default and has failed to comply with the Privacy Act and CRCC;
  - b. Mr SI was not living at the address registered on the Linkt account at the time of the default listing and was unaware of the alleged debt until he obtained a copy of his credit file in August 2019.
2. Mr SI seeks to have the payment default removed from his credit file.
3. Linkt advises that:
  - a. Mr SI opened a monthly post-pay account in November 2015 and made regular timely payments until 14 June 2016;
  - b. Payment failure notifications were sent to Mr SI's registered email address on 29 June and 2 July 2016, followed by an account statement and an overdue letter being issued by post. Linkt advises that this fulfils the requirements of s6Q of the Privacy Act and s9 of the CRCC;
  - c. In August 2016, following no response from Mr SI, the matter was referred to a debt collection agency. After no success in recovering the debt, the matter was escalated to a tier 2 debt collection agency in November 2016;
  - d. A Letter of Intention to Default was sent via post on 21 June 2017. No response was received and a credit default was listed on 31 July 2017; and
  - e. Linkt advises that it is willing to update the credit default listing to 'Paid in Full' status if the debt is fully paid by Mr SI.

## Background

4. The complainant, Mr SI, first made a complaint to the TCO Tolling Customer Ombudsman (TCO) on 12 September 2019.
5. Over the course of the complaint, Mr SI paid the full amount of \$311.02. As a result, Linkt has updated the default listing to a 'Paid in Full' status.
6. He now seeks either:
  - a. A detailed response from Linkt about various matters relating to the terms and conditions of the account contract; or
  - b. The removal of the payment default.

## Current position of the parties

7. Linkt provided the information sought by Mr SI's lawyers on 1 October 2019 and 19 November 2019.
8. In response, Mr SI advised that:
  - a. Merely updating the credit listing to a 'Paid in Full' status is insufficient
  - b. As CityLink is not a credit provider, it is not eligible to place a payment default on Mr SI's credit file
  - c. Linkt has not provided all the information sought
  - d. Linkt has not complied with the CRCC, Privacy Act nor with the Equifax terms of trade.

## Discussion

9. When making a decision, I am required to examine all the available information and to reach an outcome which is fair to both parties and is based on the 'balance of probabilities.' This means that where the parties do not agree on an issue, I need to decide whether it is more likely than not that a particular event did, or did not, happen.

## Privacy Act

10. Section 6Q of the *Privacy Act 1988* (the Privacy Act), as it was in July 2017, relevantly set out the meaning of default information as:

*'information about a payment (including a payment that is wholly or partly a payment of interest) that the individual is overdue in making in relation to consumer credit that has been provided by a credit provider to the individual if:*

- a. *The individual is at least 60 days overdue in making the payment; and*
- b. *The provider has given a written notice to the individual informing the individual of the overdue payment and requesting that the individual pay the amount of the overdue payment; and*
- c. *The provider is not prevented by a statute of limitations from recovering the amount of the overdue payment; and*
- d. *The amount of the overdue payment is equal to or more than:*
  - i. *\$150; or*
  - ii. *Such higher amount as is prescribed by the regulations.'*

11. As can be seen by the above facts, the debt of \$311.02 was of a sufficient amount and had been overdue for more than 60 days. Written notices had been provided via email and post. Finally, the debt was not subject to a statute of limitations at the time.

12. Linkt (and CityLink before it) falls within the definition of a credit provider (in relation to its post-pay accounts) as set out at section 6G(2) of the Privacy Act as it is an organisation which provides credit in connection with the supply of services (i.e. the toll road) and the repayment, in full or in part, of the amount of credit is deferred for at least 7 days.

13. As a result, it appears that s6Q of the Privacy Act was complied with.

14. Section 21D of the Privacy Act states that:

*'(1) A credit provider must not disclose credit information about an individual to a credit reporting body (whether or not the body's credit reporting business is carried on in Australia).*

*(2) Subsection (1) does not apply to the disclosure of credit information about the individual if:*

*(a) the credit provider:*

*(i) is a member of a recognised external dispute resolution scheme or is prescribed by the regulations; and*

*(ii) knows, or believes on reasonable grounds, that the individual is at least 18 years old; and*

*(b) the credit reporting body is:*

*(i) an agency; or*

*(ii) an organisation that has an Australian link; and*

*(c) the information meets the requirements of subsection (3).*

15. The Tolling Customer Ombudsman is an external dispute resolution scheme which has been recognised by the Office of the Australian Information Commissioner since 2013. By virtue of the account information held by CityLink, Linkt was aware that Mr SI was older than 18 years old at the time.
16. I am satisfied that the information met the requirements of ss(3) and that it was reported to an appropriate credit reporting body. As a result, Section 21D appears to have been complied with.

### Credit Reporting Code of Conduct

17. The Credit Reporting Code of Conduct (the CRCC) has since been repealed, but in July 2017 when the credit listing was made, it was known as the *Privacy (Credit Reporting) Code 2014 (Version 1.2)*.
18. Clause 9 of the CRCC provides more detail about requirements in respect of s6Q of the Privacy Act. Notably, it prevents disclosure of overdue payments to a credit reporting body if the individual has made a hardship request, and states that Section 6Q and Section 21D notices must be sent separately at least 30 days apart. These must be sent to the individual's last known address at the time of dispatch.
19. The debt arose on or around 14 June 2016. To be compliant, the section 6Q notice had to be issued once it was 60 days overdue – namely after 13 August 2016. This appears to be the point where the matter was referred to the first debt collection agency.
20. It appears to be on 21 June 2017 that the notice complying with section 21D was sent. This is after the required 30 day period after the section 6Q notice was sent.
21. I am satisfied that the notices were sent to the postal address provided in connection with the CityLink account which was the last known address of Mr SI.
22. As a result, I am satisfied that the CRCC was also complied with.

### Removal of the credit listing

23. I am satisfied therefore that there was no error made by CityLink in making the original credit default listing in July 2017. As there was no error, and the debt is not statute barred, there is no basis for deleting the default from the Equifax file.
24. I note that Equifax advises that it will otherwise investigate and remove default information if the listing was a result of unavoidable circumstances and the individual has entered into a new arrangement with the credit provider. This does not appear to be the case here.
25. Under the credit reporting regime, a default can only be actively removed when a mistake has been made. The listing will remain on Mr SI's credit file, classified as 'Paid in Full' for five years.

## Determination

26. I am satisfied that, in the circumstances, Mr SI has not established his complaint against Linkt, despite being given the opportunity to do so.
27. For the reasons set out above, there are no further actions that Linkt are required to undertake.
28. I remind the parties that under the TCO Tolling Customer Ombudsman process, my decision is not binding on Mr SI and that he can seek relief in any other forum.

**Nicolas Crowhurst**  
**Interim TCO Tolling Customer Ombudsman**

**Dated: 2 December 2019**