

UK REGISTRAR SERVES ENFORCEMENT NOTICES ON CREDIT INFORMATION COMPANIES

The UK's Data Protection Registrar, Eric Howe, announced on 29th August that he had served Enforcement Notices on the four main credit reference agencies, CCN Systems, Infolink, Westcot Data, and Credit and Data Marketing Services. This is the first time that the Registrar has used his enforcement powers simultaneously on the main players of an industry.

The Enforcement Notices mean that the Registrar orders the companies to change their methods of processing personal data by reference to the address or previous address of the credit applicant. In future, unless the reference companies are able to overturn these orders by legal procedures, they will be able to use data only about specific individuals.

This decision was very carefully considered, as the Registrar has been holding discussions with the industry for around two years and issued a Preliminary Notice on July 3rd. This document stated that he intended to act and invited the companies to respond by August 6th as to why they should not be served with an Enforcement Notice. The companies have discussed the Data Protection Registrar's requests in depth at the Credit Industry Forum which brings them together with the major lenders, such as banks and finance houses, and credit information users, such as retailers.

The Registrar considers that the companies' methods of processing data contravenes the First Data Protection Principle that data must be processed fairly. The companies have offered some concessions but are not prepared to give up other practices, such as their use of information on other members of the family at the same address.

The opposing arguments are based on rather different grounds:-

The Companies' View

The companies' argument was carefully explained at PL&B's conference at Windsor in October last year by Brian Lord, director of CCN Systems. In brief, the companies' position is based on their contention that:

1. family or cohabitee data provides a statistically highly significant predictor of an individual consumer's behaviour in repaying credit;
2. using such third party data helps to minimise fraud;
3. the negative credit report, which leads to the withholding of credit from those who are likely to have difficulty repaying their loans, protects many people from taking on debt which they will be unable to repay. This helps the individuals and also helps keep lenders' costs down, as they will lose less money in bad debts. This careful lending policy helps keep interest rates lower than they would be otherwise.

The Registrar's View

The Registrar's view is defined by the individual's legal rights.

"When credit reference agencies receive a request from a lender to supply information on an individual applying for credit, they search their files on the basis of the current or previous addresses quoted by the applicant."

"The result is that the lender may receive from an agency information about the credit records of all members of an applicant's current household and also similar information about the occupants of previous addresses at which the applicant has lived. The lender may also receive the credit records of others living in the neighbourhood."

"Therefore, some of the information which the credit reference agency passes to an enquiring lender about an applicant for credit will have nothing to do with that applicant. Nevertheless, this information is sometimes still used in determining whether the applicant should have credit or not."

When the Registrar spoke at the launch of his annual report on July 18th, he added that his policy team had had discussions with other interested parties, such as the Office of Fair Trading, the National Consumer Council (NCC), and the Citizens Advice Bureaux. He had also taken into account the 1989 report of the Jack Committee on Banking Services. The Registrar had fewer problems with "black" or negative information on individuals but considered that there is a problem with "white" information, that which relates to a good repayment record. His preferred solution is to permit those with a good payment record to opt out from data on them being used for credit reference purposes.

What happens next?

Eric Howe has set a deadline of July 31st 1991 for the companies to change their processing systems in accordance with his Enforcement Notices. However, the companies are likely to appeal within 28 days against the Registrar's decision to the Data Protection Tribunal. After the Tribunal has announced its decision, either the credit reference companies or the Registrar may appeal beyond the Tribunal to the higher courts on points of law. As the companies' practices vary, their responses may also diverge.

This report has briefly summarised a fundamental difference of view between the two sides balancing data protection, consumer, industry, and wider societal interests. For more information, we recommend a new publication, Credit and Debt: The consumer interest (174 pages), written by the NCC's Deborah Leonard and published by HMSO, ISBN 0 11 701215 7. £6-95.

To declare an interest, PL&B carried out much of the research used in the book on data protection/credit information in Denmark, France, the Federal Republic of Germany, Norway and Sweden, summarised in Appendix IV.4. PL&B also organized a closed conference in Denmark for data protection authorities to discuss data protection/credit information in September 1989.