

Representative Complaint

INACCURACY OF CREDIT REPORT LISTINGS

This complaint is made under s 38(2) of the *Privacy Act* 1988 (the Act).

Complainant

Consumer Credit Legal Centre (NSW) Inc.
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Surry Hills NSW 2010

Consumer Credit Legal Service
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Respondent

Baycorp Advantage Business Information Services Ltd.
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North Sydney NSW 2059

Alliance Factoring
Locked Bag 5077
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Introduction

The class of members of this Representative Complaint is the same class of members that was the subject of our previous Representative Complaint submitted on 21st April 2006. The previous complaint relates to the failure of the credit provider to inform that personal information may be disclosed to a credit reporting agency. This complaint relates to the inaccuracy of the credit reporting listings.

Description of the Class of Members

This complaint describes a class of members. The class is comprised of individual consumers. The following are common characteristics of the class:

- have a credit report file held by Baycorp; and
- have a default listing, or serious infringement listing, by Alliance Factoring in relation to a Telstra debt.

The class members include both those who are not aware of their credit report listing and those who are aware of their credit report listing by Alliance Factoring either because:

- a) they have requested a copy of their credit report from Baycorp; or
- b) they have been refused credit and have been advised there is an adverse listing on their credit report

Nature of Complaints

This complaint relates to default listings of debts by Alliance Factoring with respect to debts assigned to Alliance by Telstra between 2002 and 2003.¹ Approximately 600,000 class members had such Telstra debts listed with Baycorp by Alliance Factoring.

We note that pursuant to s11B(1)(b)(v)(B) of the *Act*, the Privacy Commissioner has power to make determinations as to corporations to be considered Credit Providers for the purposes of the *Act*. Credit Reporting Determination 1997 No 1 states that 'A corporation which acquires the rights of a credit provider with respect to the repayment of a loan (whether by assignment, subrogation or other means) shall, in relation to that loan, be regarded as the credit provider for the purposes of the *Act*'.²

¹ This range of dates was identified by the Alliance Factoring in its undertaking to the ACCC dated 17 August 2005.

² The original determination was continued by further determinations made by the Privacy Commissioner: Credit Reporting Determination 2002 No 2; Credit Reporting Determination 2003 No 2; Credit Provider Determination No. 2006-1.

It is submitted that Alliance Factoring, as a credit provider for the purposes of Part IIIA of the *Act*, has made a number of inaccurate listings on consumer credit reports.

It is submitted that Baycorp and Alliance Factoring have not fulfilled their obligations under the *Act* and have acted in breach of the *Credit Reporting Code of Conduct* (CRCC).

Questions of Fact

In accordance with s38(2)(d) of the *Act*, we submit that the following questions of fact were common to the class members at the time at which a default listing was made on their credit reports:

- Telstra did not have sufficient procedures to reliably identify individuals
- Alliance Factoring did not have adequate data or appropriate procedures to enable it to establish liability in relation to many, if not all, of the default listings;
- Debts assigned by Telstra included ones that were not due, for example, due to a previous settlement;
- Alliance Factoring did not have adequate complaints handling processes in place to ensure the investigation and resolution of disputes regarding liability;

As a result of the above, the accuracy and integrity of the consumers' default listings by Alliance Factoring are in severe doubt.

Questions of Law

In accordance with s38(2)(d) of the *Act* we submit that the following questions of law were common to the class members at the time at which the default listings were made on their credit reports:

- Baycorp and Alliance Factoring, as credit reporting agency and credit provider respectively, have breached section 18G of the *Act* which requires a credit provider and the credit reporting agency to ensure that information in a report is accurate, up-to-date, complete and not misleading.
- Baycorp and Alliance Factoring, as credit reporting agency and credit provider respectively, have breached section 18J of the *Act* which requires the agency and provider to make the appropriate corrections, deletions and additions to ensure the accuracy of the information.
- Baycorp as credit reporting agency has breached 1.2 of the CRCC (as explained in Commissioner's Note 7) which requires credit reporting agencies to ensure that personal information contained in credit information files is accurate, up-to-date, complete and not misleading.

Source of Inaccurate Credit Report Listings

It is submitted that the contraventions detailed above are the product of four primary difficulties in the assignment of Telstra debts to Alliance Factoring and collection practices of Alliance Factoring:

- 1) Telstra assigned over 600,000 debts to Alliance Factoring in 2002 to 2003. At the time these old debts were incurred, Telstra did not have the level of procedures necessary to reliably identify the individual, and that these procedures were less reliable than procedures adopted by credit providers using the credit reporting system at the time and the procedures currently used by Telstra;
- 2) Alliance Factoring as assignee did not have sufficient documentation to support any independent verification procedures to ensure that any listings made are accurate;
- 3) The debts sold by Telstra to Alliance included some amounts that were not owed due to factors such as the previous settlement of a dispute or consumer bankruptcy, and hence any subsequent listings made for these debts are misleading and deceptive;
- 4) Alliance Factoring have not put in place adequate complaint handling procedures to investigate and resolve assertions that a debt is not owed and a credit report listing is incorrect.

In these circumstances, we submit that Baycorp and Alliance Factoring are in breach of ss 18G and J of the *Act* and 1.2 of the CRCC.

Lack of identifying information collected and generated by Telstra

It is submitted that the character of transactions undertaken by consumers with Telstra render the personal information supplied to Telstra inappropriate for the purposes of assignment or listing of defaults on credit reports.

Debts claimed by Telstra are likely to relate to telephone accounts. The threshold identification requirements for a telephone connection were not, and still are not, as stringent as those required to obtain more traditional forms of credit (such as personal loans). For personal loans, there is a formal identification procedure involving primary identification such as a passport. It is our understanding that Telstra has the bare minimum identification requirements including name, address and date of birth only. It follows that the information gathered is less likely to accurately and conclusively identify the person by whom the debt is owed.

The effect of this is that a number of default listings are made even though Telstra and by virtue of Determination No 1, Alliance Factoring as credit provider cannot discharge their duty under s 18G of the Act requiring them to ensure that information in a credit report is accurate, up-to-date, complete and not misleading.

The case studies below relate to consumers who have been successful in having the default removed. However, in all cases this was only after receiving advice and assistance from a consumer agency or the ACCC – assistance that was sought after the consumer received (often over a long period of time) an inadequate response to their dispute from Alliance Factoring.

Case Study 1

Mr H was contacted by Telstra in 2000 regarding an unpaid mobile phone bill. Mr H asserted that the account was not opened by him and provided his drivers' license number. Telstra confirmed that this was not the drivers' license number attached to the account and it was closed. On 21 September 2005, having become aware of a default listing, Mr H contacted Alliance who had been assigned the debt and required payment.

This is indicative of the inadequacy of the information provided to Alliance in two respects. Firstly, it suggests that the only piece of identification required to open the account was a drivers' license; and that this was not compared with the name and address given when the account was opened. This point is strengthened by the fact that Telstra was willing to accept that the account was not Mr H's when his drivers' license number did not match that attached to the account.

Secondly, Telstra informed Mr H that the account had been closed and that the debt was not payable by him. However the debt was assigned to Alliance with the personal information of Mr H. This is demonstrative of a situation where a 'tranche' of debt includes an amount that Telstra has previously agreed was not owing.

Case study 2

Mr G contacted Alliance regarding an assigned Telstra debt in his name. On contacting Alliance to attempt to determine whether the debt was incurred by him, Mr G found that his name and birth date were correct. However, the address was not an address where he had lived and that the drivers' license number was not his.

Case Study 3

Ms G was contacted by Alliance with reference to an owing Telstra debt in 2002. The address listed against the account was an address where Ms G had never lived.

Case Study 4

Ms T contacted Alliance in 2006, after applying for a credit report and noticing a default listing. Ms T was told that she had an unpaid Telstra bill and that correspondence had been sent to an address where she has never lived and with which she has no association.

Each of the instances cited in Case Studies 2, 3 and 4 are indicative of the low threshold identification requirements for the connection of a telephone account at the time, and the absence of an adequate process for Alliance Factoring to verify identity. Where some information relates to a consumer, but other information does not, it is extremely difficult for the consumer to establish whether or not the debt is in fact owed by that consumer. In these circumstances, we submit that the credit listings made by Telstra or Alliance Factoring are inaccurate because they cannot satisfactorily ensure that they are pursuing the right person for the debt and hence there is a wide margin for error in any credit listings made.

Lack of documentation for adequate verification procedures

The difficulties faced by Alliance Factoring in ensuring accurate credit listings due to the insufficient identifying information as collected by Telstra is further exacerbated by the fact that it does not have its own independent verification procedures.

Our experience shows that Alliance Factoring does not have the adequate procedures in place to verify the accuracy of the information collected and generated by Telstra before pursuing a consumer for payment or making a default listing. Alliance Factoring as assignee credit provider cannot rely on information handed over by Telstra, but must make their own inquiries in order to discharge their obligations under 18G.

Alliance Factoring pursues some individuals for these debts where there is a lack of documentation to support their claim that the debts are owed. In our casework and advice experience, Alliance Factoring has admitted to consumers who have demanded copies of contracts that these are not held by Alliance but are instead held by Telstra.

In order to establish that a disputed debt is owed, Alliance should be able to produce the contract under which it said to have arisen and sufficient consistent information to identify the person who entered into that contract. However the case studies suggest that Alliance does not cross reference the information with which it is supplied to determine its accuracy. Indeed it is unable to produce documentation which proves that the debt has accrued to a consumer. Rather, where a consumer disputes the debt on the ground that it was not incurred by that consumer, Alliance requires the consumer to provide sufficient documentation to disprove the debt – conduct that is likely to

mislead, and is in breach of the ACCC-ASIC Debt Collection Guideline 2005 (Clause 12).

The following case studies show Alliance Factoring pursues debts without sufficient records that such debts were legitimately owed. Any credit report listings made in the course of collecting such debts are not accurate in compliance with s 18G of *the Act*.

Case Study 5

Mr. H complained to Alliance Factoring, over a period of time, that the “debt” they were claiming had been incurred fraudulently and had been resolved with Telstra some time ago. When Alliance continued to pursue him for payment, Mr. H asked for a copy of the contract. After two months, Alliance advised that they did not have a copy of the contract but suggested that Mr. H. go to the original phone dealer to request a copy. As Mr. H never opened the account, he had no idea who the original dealer was.

This is indicative of the fact that no enquiry is entered into by Alliance at the time of, or after assignment, as to whether the debt can be verified. Production of the contract is particularly important where the information initially collected to identify the debtor is inaccurate or scarce as in this instance, where Mr H’s name was used with someone else’s drivers’ license number to open the account.

Case Study 6

Mr G contacted Alliance regarding a debt assigned by Telstra that had accrued in his name, having become aware of a default listing. Mr G concedes that he was suffering from mental illness during the period in which the debt accrued and hence has only a vague recollection of events, but was certain that the telephone account was not his. On contacting Alliance to determine whether the debt was incurred by him, Mr G found that the address and the drivers’ license number attached to the account were not his.

During a long process of “badgering” by Alliance, he was requested to produce a range of documents to help prove he didn’t own the account. These included:

- A letter from a Justice of the Peace;
- Medical records;
- A copy of his drivers’ license; and
- Two additional forms of proof of address.

It is again apparent in this scenario that a drivers’ license is the only form of formal identification that was required to open the account and that the license was not cross referenced with the other information provided either on entry into the contract or at a later stage by Alliance.

Case Study 7

Ms G was contacted by Alliance with reference to a 2002 Telstra debt. The address listed against the account was an address where Ms G had never lived. Ms G advised Alliance that the account was not hers and provided her license details and other documentation confirming her identity to Alliance. Nonetheless, a default listing was subsequently made on her credit report.

This is another example of inaccurate information leading to a default listing, without any verification procedure. Again, an unacceptable onus was placed on the consumer to prove that a debt did not belong to them by providing additional documentation to Alliance.

Case Study 8

Ms N had identification stolen. This ID was then changed and used by someone else to set up a mobile phone account. The account was then sent to Ms N who paid it in her ordinary course of paying her bills. Ms N then after realising one of the bills was for a mobile phone, something she did not possess at the time, contacted the telecommunications company. They refused to believe her and passed on the account to a debt collector. Thankfully after seeking help from the Telecommunications Industry Ombudsman a contract was found showing that it indeed wasn't Ms N that set up the account. The telecommunications company refunded her money but Ms N later discovered that there was a default listing on her credit report related to the wrongful debt.

Case Study 9

Mr S was pursued by Alliance regarding a mobile phone contract with Telstra. Mr S never had a mobile phone contract with Telstra and as such was wrongly targeted by Alliance. Mr S has a default listing regarding this debt and this can have adverse effects on him while he is waiting for the dispute to be resolved. To make matters worse pressure was put on him to pay money to the debt collector if he wanted to get his default listing removed, a listing that should never have been there in the first place.

Case Study 10

Alliance Factoring alleged Mrs C had a Telstra landline debt of \$1300. The address for the phone was for a property Mrs C had never lived in and Mrs C never had an account with Telstra. Mrs C sent a letter witnessed by a JP to Alliance Factoring disputing the debt, followed by a Statutory Declaration dated October 2005.

In 2006, Mrs C continues to receive multiple telephone calls requesting payment late at night and early mornings. In March 2006 Mrs C received a letter from Alliance Factoring requesting:

1. a copy of driver's licence or passport

2. statutory declaration stating Mrs C did not open that account
3. confirmation of Mrs C's residential address at the time the debt was incurred in the form of any 3 of the documents below:
 - lease agreement at a different address
 - group certificate
 - bank statements
 - utility accounts in client's name

A default listing has been placed against Mrs C. The dispute continues.

Case Study 11

Alliance Factoring contacted Ms K about a Telstra debt in early 2005. Ms K never had an account with Telstra. Alliance Factoring's details about the debtor were very similar to Ms K's, but were incorrect in regards to her date of birth and address. Ms K was sent a dispute pack which she returned complete with a statutory declaration and a copy of her driver's licence around September 2005. Ms K still receives phone calls every 2-3 days and Alliance Factoring has placed a default listing on her credit report.

Case Study 12

Mr L was contacted by Alliance Factoring on the 27 September 2005 in its continuing pursuit of a statute barred debt. CCLC wrote to Alliance Factoring requesting that they immediately remove the default listing from our client's credit report and provide documents and information in relation to the alleged debt. That letter was dated 26 August 2005 and a follow up letter was sent on 19 September 2005. A response was not received and on 27 September 2005 Alliance Factoring contacted Mr L again to pursue the debt. CCLC did not receive any acknowledgement of our dispute.

Misleading listing of assigned debts

It is further submitted that information generated by Telstra as to the nature and quantum of the debt is inappropriate for the purpose of assignment due to the level of accuracy. The case study below suggest that debts assigned to Alliance Factoring include those which Telstra has agreed not to pursue payment, and has communicated that intention to the debtor. These debts are often more appropriately described as 'losses' and as such it would be misleading, in breach of s 18G, to include their listing in the debtor's credit report.

The following case studies (as well as Case Study 1 above) illustrate this problem.

Case Study 13

The Consumer Law Centre (Vic) acted for Mr M in 2001 in connection with a debt accrued to Telstra. In October of 2001 Mr M received a letter from Telstra's lawyers confirming that the debt was to be written off. The circumstances in which the debt was incurred involved the exploitation of the mentally impaired consumer by a third party, such that it would be inappropriate to enforce the debt. Notwithstanding that correspondence, Alliance contacted Mr M in a letter dated 2 April 2003, requesting payment of the same debt. Alliance have since acknowledged that the debt is not to be pursued.

Absence of a Complaints Handling Procedure

The problem of inaccurate default listings has been magnified by the absence of an effective complaint handling procedures on the part of Alliance Factoring. In this respect we refer to the investigation by the ACCC into the debt collection practices of Alliance Factoring leading to the enforceable undertaking by Alliance Factoring dated 17 August 2005.

Following the receipt of a number of complaints against Alliance Factoring, the ACCC conducted an independent investigation into these complaints and identified one of the matters of concerns as "inappropriately listed debts that were in dispute with a credit reporting agency".

This investigation resulted in an enforceable undertaking by Alliance Factoring that it will implement a number of changes to its debt collection practices, including the establishment of an accessible, visible and responsive complaints handling procedure as required by the Australian Standard on Complaints Handling.³ This accords with our experience of dealing with Alliance Factoring's weak complaint-handling procedures.

The examples below indicate that there has been little (or no) improvement since the enforceable undertaking was given. Where inaccurate listings cannot even be properly identified, disputed and any issues resolved, we submit that Alliance Factoring is not discharging its obligation under s 18J of the *Act* to make appropriate corrections, deletions and additions to ensure the accuracy of the information. In these circumstances we submit that Alliance Factoring cannot properly discharge its obligation under 18G of the *Act* to ensure that information is accurate, up-to-date, complete and not misleading,

Alliance Factoring, as credit reporting agency and credit provider respectively, have breached section 18J of the *Act* which requires the agency and provider to make the appropriate corrections, deletions and additions to ensure the accuracy of the information.

^{3 3} Available at www.dpc.wa.gov.au/psmd/pubs/psrd/complaintguide.pdf

Case Study 14

Ms G was contacted by Alliance in October of 2002 requesting payment for an assigned Telstra debt. Ms G disputed the debt, on the ground that she had never lived at the address to which the account was attached. Ms G sent documentation to Alliance in 2002 verifying her identity and address, however after two and a half years the only response she had was that the matter would be redirected to Telstra. Further, a default listing was made on her credit file in December of 2003. In October 2005, Ms G contacted Alliance and was told that the file would be finalised within 6 weeks, however Ms G has not heard from Alliance.

Case Study 15

Mr A was contacted by Alliance requesting payment for an assigned Telstra debt. Mr A telephoned Alliance in February 2006 and found that the address, date of birth and drivers' license number were not his and that the debt was for a mobile account which he had never opened. Mr A then disputed that the debt was owed by him and was told that if he refused 'to pay, [he would] be continually contacted by telephone until payment has been resolved'. In addition, on asserting that he would seek legal advice, Mr A was told that he could not seek such advice.

Case Study 16

Mr H was contacted in September of 2005 by Alliance to request payment of an assigned Telstra debt. Mr H telephoned Alliance to dispute the debt. Alliance continued to chase Mr H for the next six months for payment, despite the fact that the debt had been disputed and they were unable to produce the contract from which the debt was said to arise or any information beyond name and address linking the debt to Mr H.

Case Study 17

Ms T contacted Alliance after noticing a default listing on her credit report relating to a Telstra debt assigned to Alliance. Alliance claimed to have sent numerous requests for payments to an address at which Ms T had never lived. Ms T disputed the debt, however she was told by Alliance staff that the best thing to do was to pay the debt. She was told that she had a good chance of having the default listing removed if she paid an apparently arbitrary sum, which she did, though she continued to dispute that the debt was owed by her. Ms T never received any written documentation from Alliance.

Case Study 18

Mr G contacted Alliance after noticing a default on his credit report. Mr G disputed the debt in question as the address and drivers' license number

attached to the account were not his. Mr G had suffered from bi-polar disorder at the time during which the debt accrued. Over a period of three months, Mr G was required to send his psychiatric carer's session notes to Alliance three times, notwithstanding that he had already provided other documentation establishing that he did not reside at the address or hold the drivers' license linked to the account. During the same period Mr G telephoned Alliance 16 times and was told that no progress had been made. The complaint was resolved 6 months after the initial dispute, after Mr G had pursued it through the Telstra Complaints Service, the Telecommunications Industry Ombudsman and his local Member of Parliament. We can see no reason for Alliance to request the documents that were requested, other than to exert pressure on the consumer to pay the sum sought.

Additional Considerations

The inaccuracy issues addressed above are further exacerbated by two related problems:

1. Pursuant to s18E(8)(b) of the *Act*, a credit provider must not pass on information to a credit reporting agency where it does not have reasonable grounds for believing that information is correct. Fair and efficient operation of the credit reporting system therefore relies heavily upon credit providers maintaining adequate, accurate records, adequate identification of the 'debtors' and effective systems to deal with disputed listings. Alliance (and Telstra) have failed to meet the requirement that there be reasonable grounds for believing information to be correct, therefore the risk of inaccurate listings is magnified beyond acceptable levels.
2. Many of the relevant defaults have been listed with Baycorp Advantage for over three years. Despite action by the ACCC, Alliance Factoring has failed to address consumer disputes. It would not be appropriate to give Alliance any further opportunity to investigate these disputes while the listings remain.

Nature of Relief Sought

We submit that the Privacy Commissioner should make a determination under s.52 of the Act requiring that Baycorp:

- Remove all default listings on the Baycorp database related to Telstra debts, whether listed by Telstra or Alliance Factoring.

We submit that the Privacy Commissioner should make a determination under s.52 of the Act requiring that Alliance:

- Implement independent verification practices, at least in cases where a debt is disputed, to ensure that all listings are accurate, up-to-date, complete and not misleading;
- Compensate members of the group who have been refused credit on the basis of the Alliance listing, for stress and inconvenience in addition to any financial loss suffered.

We submit that the Privacy Commissioner should make a determination under s.52 of the Act requiring that all credit providers for the purposes of Part IIIA of the Act, in the interest of resolving systemic issues affecting individuals, to:

- Implement independent verification practices, at least in cases where a debt is disputed, to ensure that all listings are accurate, up-to-date, complete and not misleading.