

Review of Australia's Credit Reporting Framework

AFCA submission to the Australian
Government's Issues Paper

June 2024

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Introduction

AFCA is the external dispute resolution (EDR) scheme authorised under the Corporations Act, 2001 (Corporations Act) to deal with consumer complaints about financial products and services. This includes complaints from consumers about credit reporting, lodged against credit provider (CP) and credit reporting bureau (CRB) members of AFCA.

AFCA welcomes the opportunity to provide a submission in response to the Australian Government's review of Australia's credit reporting framework, led by the Attorney General's Department and independent reviewer, Ms Heidi Richards (CR review).

The CR review is examining the overall efficiency and effectiveness of the credit reporting framework in relation to relevant provisions in the Privacy Act 1988 (Privacy Act) and the National Consumer Credit Protection Act 2009 (Credit Act) in enabling effective lending decisions by credit providers while ensuring the personal information of consumers is adequately protected.

Executive summary

The credit reporting framework is a critical piece of financial system infrastructure in Australia. At the heart of the framework is a data set containing personal information relating to 23 million Australian credit accounts. Approximately 94% of regulated credit accounts are currently being reported.¹

The quality, reliability and use of this data set is governed by rules, systems and processes split between credit reporting bodies, industry associations, individual credit providers and regulators. Each participant has a different interest and applies a different lens, set of requirements or statutory responsibilities.

The ultimate end users and intended beneficiaries of this data set are consumers who can access responsibly lent consumer credit and other products and services that meet their needs. The data also supports consumers and lenders to effectively manage financial hardship, where it arises.

The evolution of Australia's credit reporting infrastructure and framework has been distinguished less by purposeful design than an iterative process of expansion and addition. Successive rounds of reform have introduced new requirements and complexity, yet in our experience, are not delivering against the most fundamental requirement that credit reporting data is accurate, consistent, accessible, and capable of ready correction where errors occur.

Unfortunately, the result is a credit reporting framework that is not fit for purpose.

¹ Australian Retail Credit Association (Arca), Credit Data Fact Base, September 2022, Version 10, pg.1, 2 and 5.

AFCA receives around 7,600 consumer credit reporting related complaints each year². These individual complaint numbers have remained relatively stable over time. This may be expected given the triggers for a consumer to raise a credit reporting complaint, typically are:

- after a consumer becomes aware of an adverse credit listing
- following an unsuccessful credit application, or
- because of a privacy breach, identity theft, scam or fraud.

What is surprising is the high volume of systemic issues AFCA continues to identify from the credit reporting complaints we receive. These have not declined over time and illustrate entrenched problems with the current framework.

Part A of AFCA's submission sets out our substantive responses to the key issues raised in the Issues Paper. We are not responding to all the questions in the submission but structure our feedback in line with the headings and relevant questions. Our feedback is organised around the following three key themes:

- **Complexity:** the complexity of the framework including regulatory and administrative arrangements for the efficient and timely update of rules and standards (responding to Part 3 of the Issues Paper)
- **Data quality and poor and inefficient systems and controls:** affecting the quality, currency and reliability of consumer credit data (responding to Part 5 of the Issues Paper).
- **Consumer access and outcomes:** inaccessible systems and processes for consumers to navigate and the crystallisation of risks for consumers least able to bear them in circumstances of financial hardship or financial abuse (responding to Parts 6 and 7 of the Issues Paper)

Part B of this submission sets out AFCA's significant data and systemic issues experience, the evidence base for the observations set out in Part A of the submission.

Measures of success

We consider a fit for purpose credit reporting framework requires:

- Clear lines of responsibility for guidance and regulatory oversight of both Credit Reporting Bodies (CRB) and Credit Providers (CP) as essential to effective administration of the framework and timely, consistent, and fair outcomes.

² A distinct issue category for default listing did not exist before 2020–21.

- An independent regulator assuming the quasi-regulatory functions currently performed by the industry association (ARCA).
- Agile and responsive processes to deliver consistent and timely enhancements to data standards and minimise administrative complexity and consumer harms.
- Easily accessible and navigable processes are essential—in a context of increasing cyber security breaches—where basic data hygiene practices assume ever greater importance.
- Application of a consumer centric lens to simplify the process to obtain a report and to raise and resolve issues where they arise.

Part A: AFCA's key credit reporting observations

The observations in this part of our submission are informed by AFCA's deep credit reporting complaints and systemic issues experience which is set out in detail in Part B of this submission.

AFCA's data evidences persistent and entrenched problems resulting in ongoing complaints to AFCA, complaints that – in an efficient and effective credit reporting framework – would be dealt with by financial firms, CRBs and, where appropriate, by regulatory bodies at a much earlier stage in the process.

1 Complexity and regulatory purpose

The Issues Paper acknowledges the complexity of the credit reporting framework in Australia. This complexity is manifest in every part of the framework.

We consider that this results from a lack of clarity as to the primary purpose of the credit reporting framework. For example, if the primary purpose is to support lenders to make lending decisions and comply with the credit law and general consumer protection laws, that requires a different regulatory design as compared to a primary privacy purpose.

We consider structural changes are necessary to ensure the settings including regulatory design, rule-making, compliance and enforcement powers align to the primary policy purpose to:

- Provide for an efficient credit reporting framework while ensuring the privacy of individuals is respected³ (s 2A of the Privacy Act).
- Support the effective administration of the consumer credit law, particularly responsible lending and hardship obligations, (noting that credit reporting is also relevant to small business lending, particularly to guarantors).
- Ensure that the data collected, disclosed and relied upon by participants is robust and accurate.
- Provide for transparency and clear lines of responsibility and accountability supported by an effective, well-resourced compliance and enforcement framework.
- Ensure that consumers can easily access their data, navigate the system and pursue changes where errors occur.

³ Credit reporting is also used for small business lending particularly for guarantors

1.1 Responsiveness to consumer harms

An efficient and effective credit reporting framework that all stakeholders can have confidence in is one that is flexible and responsive to consumer harms. From AFCA's perspective, the priority harms resulting from the limitations in the current framework relate to:

- data quality (financial firms and CRBs not reporting and amending records consistently, promptly and in line with relevant rules – and standards that are not updated in an efficient and timely way), and
- opaque and complex processes to fix errors and update information.

Responding to these immediate data quality and process design issues will have tangible downstream benefits to lenders and consumers. This will help to ensure that lending applications are assessed based on up to date and accurate information and that consumers can access fairly priced credit and are not burdened with more credit than they can reasonably afford to repay.

1.2 Simplification

Like payment system reforms currently underway,⁴ there are inherent complexities to manage in the credit reporting framework depending on whether you are applying a credit law or privacy law lens. This extends from the development of data standards at one foundational end of the spectrum, to users who are relying on credit reporting data to meet different regulatory obligations at the other end. For users to have confidence in the framework, policy and regulatory responsibilities need to be clear and subject to compliance action where breaches occur.

As noted in the Issues paper, the OAIC's remit and objectives primarily relate to privacy and information law issues. Given the nexus between the credit reporting framework and the administration of Australia's consumer credit laws, we consider a regulatory design that is fit for purpose needs to more closely align to the credit law functions with clearer delineation between the privacy and information law obligations and the credit law obligations.

Under current settings, AFCA reports systemic issues we identify to both the OIAC and ASIC. This review presents an important opportunity to clarify and simplify the regulatory framework and ensure the roles, powers, resources and priorities of regulators better align to each regulator's respective expertise and functions.

1.3 Privacy (Credit Reporting) Code 2014 (CR Code) and Australian Retail Credit Association (ARCA) role

As a mandatory code providing operational guidance for the credit reporting sections of the Privacy Act, the CR Code governs the rules and standards for CRBs and CPs, the foundational building blocks of the credit reporting framework.

⁴ See Treasury 2023 consultation on [Payment System Modernisation](#)

Over time the scope of the CR code has expanded materially, and it is timely to consider whether the scope, content and institutional arrangements for administration and oversight of the CR Code, particularly its role in relation to guidance and standards, remains fit for purpose.

AFCA has participated in iterative reviews of the CR Code, most recently responding to an application made by ARCA in December 2023 to vary the CR Code. In feedback to this consultation process, we expressed concern that:

- issues AFCA considers material to the accuracy and consistency of credit reporting information, the likelihood of subsequent complaints, and good consumer outcomes generally are either not being progressed or are partially or wholly referred to other processes/reviews. This leads to uncertainty and a lack of transparency as to if, how and when those issues will be addressed.
- narrowly scoped variations may not respond effectively to the issue to be addressed.

We consider that complexity in administrative arrangements with rounds of consultation led by ARCA and the OAIC respectively, leads to duplication of effort and delayed implementation of priority updates. This complexity also leads to a lack of transparency over the role and influence of lenders and CRBs in the development and progress of relevant code standards and rules.

The complexity of the administrative arrangements, duplication and inherent delay is evident in the volume and common themes we see in complaints involving both CPs and CRBs. Delays in response to issues within the credit reporting framework impact consumers more than other participants. We consider the complex administrative arrangements and structural conflicts compromise the timeliness, efficiency and transparency of essential updates, of benefit to all stakeholders.

The role played by industry associations and code administrative bodies in financial services in setting rules and standards has evolved significantly over time. In line with contemporary regulatory design, we consider that the quasi-regulatory functions currently performed by ARCA should – more appropriately – reside with the responsible independent regulator.

1.4 Consumer impacts

In AFCA's experience, inconsistent application of, and compliance with, CR Code provisions by CPs and between CPs and CRBs (e.g. hardship and RHI reporting) is a frequent occurrence, negatively impacting consumers. Common problems show⁵ a lack of effective protocols and communication between CPs and CRBs, where, for example:

⁵ See systemic issues examples

- CPs fail to notify a CRB that a facility is closed or about corrections
- CRBs fail to ensure CPs are aware about a process change – e.g. CRB no longer sending error notices by email, or
- CPs fail to have a process to address error messages sent by CRBs.

Such errors result in consumer confusion as to who is responsible for the problem and who is responsible for fixing it. We have seen cases where a CP says a correction/amendment was sent to a CRB but it is not evident in the CRB’s data. This causes significant distress to consumers, particularly those experiencing vulnerability.

We consider that clear lines of responsibility for guidance and regulatory oversight of both CRB and CP compliance with the CR Code is essential for effective administration of the comprehensive credit reporting framework and to support timely, consistent, and fair outcomes.

2 Credit data: poor data quality, systems, and controls

Beyond individual complaints lodged with AFCA, it is our systemic issues experience that highlights fundamental data quality issues for both CPs and CRBs. We see poor communication and processes between the CP and the CRB and poor responsiveness on the part of many CPs to credit reporting issues when they inevitably emerge from complaints.

This section of our submission responds to the issues and questions in Part Five of the Issues Paper.

2.1 Common credit reporting issues

The table below shows some of the common credit reporting issues we see in complaints to AFCA. It also shows that the root cause of many of these complaints relate to data quality and poor systems and controls on the part of both reporting CPs and the CRBs. This results in credit reporting records that are not updated in an accurate, consistent and timely way.

Issue	Comment
Failure to update CRBs in a timely manner	This issue covers the breadth of credit reporting from the closure of a credit contract, clearing of arrears, financial hardship arrangements etc.
Failure to ensure financial firms and CRB have clearly accepted formats for: <ul style="list-style-type: none"> • reporting information • rejecting information and seeking amendments 	This issue involves both financial firm and CRB responsibility. We have seen large volumes of consumers impacted in cases where: <ul style="list-style-type: none"> • information was reported by financial firms, but rejected by CRBs and the financial firm did not have any process to

Issue	Comment
<ul style="list-style-type: none"> • addressing exceptional cases • ensuring any change in reporting requirements/process is communicated to all parties. 	<p>address these rejected notices and they were not addressed in a timely manner.</p> <ul style="list-style-type: none"> • Information was reported by financial firms but it was not in the correct format required by the CRB and due to a lack of communication, records were not updated. • Information was reported by a financial firm and rejected by a CRB. However, due to a CRB process change, it did not send any rejected notice back to the financial firm who in turn did not identify that it was not receiving any rejections (or ensure information was updated by the CRBs) for several months.

2.2 Lessons from AFCA’s credit reporting systemic issues experience

Credit reporting issues impacting thousands of consumers typically emerge from a small number of consumer complaints made to AFCA⁶. This is because where credit reporting issues emerge, their impacts are at scale and almost always have a systemic character.

Our experience shows firms routinely under-identify and under-report systemic issues with the result that they are not addressed in a timely way. From our systemic issues work we see firms:

- fail to identify systemic issues that should have been identified at IDR.
- fail to acknowledge that these issues are systemic in nature, based on an overall measure of credit data reported (e.g. firms often dispute that an issue is systemic, even where issues have impacted hundreds if not many thousands of consumers).
- shift responsibility to the CRBs, regardless of the responsibility, involvement, and action/inaction of the firm.
- fail to report breaches to ASIC or the OAIC, and
- fail to acknowledge that identified issues are resulting in poor consumer outcomes.

Compounding the systemic impacts from poor and unresponsive oversight by CPs is the fact that complaints are a lag indicator with consumers typically unaware of an issue unless they are actively engaging with CRBs or are in the process of applying for credit. This further delays the identification and resolution of problems and timely reporting to regulators. It also means other potential issues remain unidentified and beyond the scrutiny of regulators.

A lack of clarity and comprehensive regulatory oversight results in the inefficient identification and resolution of credit reporting issues, regardless of whether the root cause lies with the CP or CRB. This also means that serious systemic issues within the framework do not receive appropriate and timely regulatory attention.

⁶ See AFCA credit reporting systemic issue examples.

2.3 Data quality and data integrity

Assessing credit risk fairly and efficiently requires the robust maintenance of accurate personal information. This includes repayment history and hardship information, data essential to the administration of the responsible lending framework in the Credit Act. This ensures consumers can access fairly priced credit and mitigates the risks of overcommitment and provision of unsuitable credit products.

From an outcomes perspective, AFCA's evidence suggests there are systemic and structural barriers to achieving these objectives.

In individual complaints and AFCA's systemic work we see high error rates with large systemic impacts often resulting in very large rectification and remediation activities (see detailed case studies in Part B). Examples include:

- Failure to ensure that credit file corrections were resolved (an industry wide issue relating to communication between CPs and CRBs)
- Cyber / privacy breaches (which increase consumer demand for credit reports) only to reveal significant data and privacy issues on the extant credit report, such as mismatched consumer records or that one consumer's file has been merged with another consumer's file and shared, resulting in further privacy breaches.
- Low value RHI reporting (e.g. minor or administrative arrears resulting from fees being applied to an account post closure) triggering adverse RHI reporting.
- Incorrect reporting of RHI where a consumer is in a financial hardship arrangement, and
- Reporting of RHI where consumers are in 'arrangements' that firms categorise as non-financial hardship and then continue to report the RHI against the original contractual repayment obligation. We have seen this occur in circumstances where the lender has given the borrower the impression that the repayment obligation is being varied or paused for the period of the arrangement.⁷

Sometimes firms may amend adverse RHI on a 'goodwill' basis (although there is no specific provision of the Act or Code to do so). Absent clear parameters, this approach is applied inconsistently, without transparency and can undermine the integrity of the underlying data. It also means there is no inquiry to identify or acknowledge any underlying issues or trigger any systems review.

2.4 Inconsistency

The adoption of clear standards, consistent processes and timely review of those standards and processes will materially enhance the quality, consistency and

⁷ [ASIC Report REP 782 Hardship, hard to get help](#) (pg 103-104)

consumer understanding of reported data. We consider such efforts will also result in a reduction in administrative cost for firms and in complaints.

For example, under current settings:

- there is no minimum amount set for RHI reporting. In AFCA’s experience, firms themselves adopt inconsistent minimums. As RHI does not record the amount overdue, the same code may record arrears of a few cents to many thousands of dollars.
- The current minimum for negative RHI reporting is \$150. We consider that review of the materiality threshold applying before negative RHI is reported is necessary to minimise administrative complexity for CPs, consumer harms and downstream complaints.
- While there are requirements to disclose mandatory reporting of credit reporting information to consumers, the timing of these disclosures can vary. Inconsistent approaches adopted by CPs and poor communications results in consumer confusion and inevitably, complaints.

2.5 Data definitions

AFCA has provided feedback to both ARCA and OAIC consultations in relation to credit reporting definitions. We consider the process for reviewing and updating the definitions needs to be revisited, to centre data quality and data integrity in the process.

Threshold concepts such as the definition of ‘Month’ has led to varying interpretations by industry, and it remains uncertain when this and other definitional issues will be addressed effectively under the current code review process.

Changes that may involve more costly systems updates need to be effectively prioritised and managed over time to provide stakeholders with confidence that identified data issues remain on the agenda.

Responsibility and oversight for the currency of data definitions should fall within the remit of the independent regulator for development, consultation, implementation and oversight.

2.6 Paid representatives (credit repair/ debt management firms)

Paid representative complaints to AFCA

Credit repair and debt management firms (DMFs) lodged 6,463 credit reporting complaints over the past 3 financial years and to 30 April 2024. This represented 22% of all credit reporting complaints received by AFCA over the relevant period. The

average resolution rate⁸ of these cases is 46%, compared with 59% for cases without a paid representative.

Endemic and unresolved data quality issues have provided fertile ground for the emergence of a credit repair / debt management industry which leverages high error rates, complexity and consumer confusion.

Absent rigorous standards, compliance effort and where warranted, enforcement action by regulators, there is limited incentive for CPs or CRBs to address these data quality issues.

While the emergence of these firms highlights poor data quality and consumer complexity, in AFCA's experience their business models and conduct raise two issues in the complaints handling process:

- adoption of a scatter gun – one size fits all approach – to lodging complaints at AFCA. For example, firms may fail to specify the underlying issue in a complaint or cooperate with AFCA information requests and processes. This introduces cost and inefficiency into AFCA's complaints handling process; and
- the risk that misaligned incentives may result in CPs agreeing to remove a legitimate default listing from a credit file simply to avoid the cost of a complaint (an issue commonly raised by AFCA member firms).

Removing accurate listings risks undermining the integrity of credit reporting data with the potential that borrowers who should not receive further credit, may do so.

From 1 July 2021, providers of debt management services were required to hold a credit licence with an authorisation that covers 'debt management services' and to be members of AFCA. While AFCA has not received a significant number of complaints about these firms (around 100 complaints over the relevant period), issues typically relate to the service received, its relatively high cost and low value to consumers.

Conduct and outcomes of credit reporting complaints to AFCA

Outcomes of credit reporting complaints lodged by paid representatives and by consumers directly, shows that:

- unrepresented consumers tend to reach an earlier resolution than complainants represented by DMFs; and
- credit reporting complaints represented by a DMF are twice as likely to fall outside AFCA's Rules than complaints lodged by a consumer directly.⁹

This suggests that to justify their high fees, some DMFs will continue to pursue complaints at AFCA that lack meaningful prospects of success.

⁸ Closed at AFCA's initial stage of Registration and Referral

⁹ OTR with paid representative (16%) OTR with no paid representative (8%)

Other concerning conduct we have seen in complaints involving these firms includes:

- Potentially misleading conduct where a firm may select and present to a consumer the lowest CRB score even though that score may not represent the score a lender will use to assess a loan application, giving consumers a false impression of their position.
- Firms proposing repayment arrangements to lenders that are unaffordable to consumers but likely to be accepted by lenders. This approach then triggers the payment of 'success fees' to the DMF, amplifying consumer hardship.
- High consumer costs, application of 'success fees', litigation threats.

AFCA supports further consideration of conduct obligations that may mitigate consumer harms that result from the conduct of DMFs. This may include measures such as:

- a codified best interest duty obligation.
- requirements to avoid conflicts of interest.
- requirements to advise consumers that they can access firms' Internal dispute resolution (IDR) process and AFCA free of charge and to notify them of free sources of assistance such as direction to the National Debt Helpline (NDH).

2.7 Algorithmic decision-making and bias

AFCA does not have direct experience of the performance and outcomes from the proprietary algorithms used by Australia's three CRBs. However, we note that credit scores can differ materially between each of the three bodies, a fact most consumers are generally unaware of.

Data quality and data integrity are essential to producing fair credit scoring outcomes. We support greater transparency as to the inputs and methodologies producing individual credit scores. This is particularly important as credit decision making becomes increasingly automated.

Well-resourced regulators with appropriate powers and expertise have a critical role to play providing oversight and promoting transparency over credit scoring models. This extends to ensuring that decisions made based on proprietary data models are explainable, transparent and fair and subject to appropriate governance arrangements. This is essential to consumer trust and confidence and managing consumer risk and the opportunities of innovation.¹⁰

¹⁰ We note the relevant principles in [Australia's AI Ethics Principles | Australia's Artificial Intelligence Ethics Framework | Department of Industry Science and Resources](#)

2.8 Credit Enquiries

Credit enquiry complaints are the second most common credit reporting issue in AFCA complaints, after default listings. These complaints show that consumers do not understand the:

- context in which a credit inquiry may be made
- implications of a credit inquiry on a credit report (that the inquiry will remain on a credit report for a period of time), or
- cumulative consequences of multiple credit inquiries on a credit score.

AFCA notes the OAIC is currently considering a proposed update to the CR Code that would facilitate 'soft' credit enquiries to support shopping around for consumer credit but, mitigating the risk that a 'soft' inquiry may damage their credit score.

While this proposal has some potential to address the volume of consumer complaints about credit inquiries, it also risks introducing further complexity into the framework. This may arise in circumstances where credit providers may inconsistently apply and record 'soft v hard' inquiries. The efficacy of this intervention is therefore uncertain in a context of widespread consumer confusion.

We consider that clear, prominent and appropriately timed consumer communications in both online and offline application forms is necessary to advise consumers when an inquiry will be made and of the implications of that inquiry.

2.9 BNPL reforms

Government is currently consulting on reforms to bring BNPL into the regulated credit framework. Under the proposed settings, which have not yet been introduced to Parliament, BNPL lenders would only need to obtain negative credit reporting information if the BNPL credit contract is under \$2,000 and will not be required to obtain information about existing credit liabilities in this credit check.¹¹

We consider that excluding information about existing liabilities devalues the utility of the credit check as a means of assessing a consumer's true financial position. We support transparency for all lenders about all consumer credit liabilities, including BNPL loans.

It is not uncommon for AFCA to receive complaints involving vulnerable consumers with multiple BNPL contracts alongside other existing (including secured) lending. In AFCA's experience, the relatively low value of an individual BNPL loan can be a poor proxy for consumer harm with the stacking of BNPL products contributing to debt spirals.

¹¹ This section does not take into account any changes to the draft legislation and reflected in in the Bill (Responsible Buy Now Pay Later and Other Measures) Bill 2024) introduced into the Parliament on 5 June 2024.

We consider access to information about existing credit liabilities is essential to mitigating the risk that vulnerable consumers or those in existing financial hardship do not receive unsuitable BNPL loans.

3 Consumer experience and outcomes

This part of the submission focuses on the consumer experience and outcomes and responses to the questions in Part 6 and 7 of the Issues paper.

3.1 Access and use of credit reports

Credit reporting is poorly understood by consumers. It is not until a trigger event occurs (a data breach, a denied credit application, scam or fraud) that most consumers will begin to engage with the system and find the:

- high effort and high frictions involved in obtaining a credit report, including:
 - > choice architecture (decision context created by the CRB website design) that may channel a consumer toward the paid report over the free¹²; and
 - > search engine optimisation tools that may similarly channel a consumer toward debt management firms and CRB's paid service offerings.
- lack of clarity about the need to obtain a copy of a credit report from each of the three CRBs to have a complete picture of their credit file.
- lack of clarity about the different information each CRB may hold and that individual credit scores may materially differ from one CRB to another.

As the Issues Paper sets out, credit reporting data is increasing in importance to ensure consumer access to essential products and services (mobile phones, utilities and consumer credit). In this context, we consider that all participants in the credit reporting framework have a role to play in simplifying processes and managing the risks that materialise where consumers cannot navigate or engage more seamlessly and effectively with the system.

Currently the onus is on consumers to actively seek out information from credit providers and CRBs when credit reporting issues become evident. We consider there are opportunities to engage consumers with more targeted communications at points in time when credit reporting is more relevant, such as when a customer relationship is first established, in engagement about financial hardship or when arrears arise. This is likely to be more helpful to consumers, than lengthy and poorly timed disclosures.

¹² Choice architecture refers to the features in an environment that influence consumer decisions and actions including website design. See ASIC Regulatory Guide RG 274: Product design and distribution obligations (RG.274.45)

In an environment of increasing cyber security breaches where data hygiene is becoming increasingly important, the accessibility and navigability of the credit reporting framework assumes greater importance.

AFCA supports initiatives such as adoption of shared identity and verification approaches and establishment of a one-stop credit report system. Efforts to respond to data quality, access and process issues to reduce frictions and complexity are first order priorities to resolve. Confusing consumer communications are of limited value while the system is so opaque and replete with errors.

3.2 Corrections to credit reporting data

As set out earlier in this submission, complaints to AFCA typically relate to the accuracy of credit reporting data. The cost of responding to systems issues commonly arises in Code consultation processes. In our experience however, the costs from lack of timely investment in systems and processes are impacting in other ways, such as complaints, lack of consumer confidence and poor consumer outcomes.

This review presents an opportunity to apply a consumer centric lens to credit reporting, simplifying the process to obtain a report, raise and resolve issues on an individual and systemic basis.

We note for completeness that while CRBs are members of AFCA and have IDR processes, they are not required to hold a credit licence and are therefore not required to meet the IDR standards in RG 271.

3.3 Financial Hardship and Financial Hardship Reporting (FHI)

The hardship obligations in section 72 of the National Credit Code¹³ are critical protections for consumers. These protections provide consumers with an opportunity to work with their lender to resolve their financial hardship, potentially avoiding the need to sell a home, for example, with all the attendant stress and disruption involved.

In May 2024, ASIC released *Report 783: Hardship, hard to get help: Lenders fall short in financial hardship support*¹⁴ which sets out multiple failings by lenders in their responses to consumer hardship, including failures to:

- consistently identify a hardship notice and for the collections team to refer a customer for hardship assessment.
- provide timely or any assistance to customers in hardship.
- provide appropriate information about hardship, including eligibility.
- ensure hardship assessment processes were not contributing to the stress and frustration of already vulnerable customers.
- effectively articulate hardship outcomes, and

¹³ Schedule 1 of the National Consumer Credit Protection Act 2009

¹⁴ [REP 783 Hardship, hard to get help: Lenders fall short in financial hardship support | ASIC \(Rep 783\)](#)

- correctly report hardship arrangements to CRBs.

Specific findings relevant to credit reporting included that lenders were not always clear about the effect of the hardship assistance when advising customers that they had approved their hardship notice (e.g. the fact that interest and arrears would accrue). Lenders did not always clearly articulate what would happen next and provided inconsistent and sometimes inaccurate information about credit reporting impacts.¹⁵

These findings align with AFCA's experience of:

- lenders failing to identify and respond to financial hardship effectively, and
- inconsistent approaches to the reporting of hardship arrangements to CRBs.

Financial firms reporting financial hardship

As set out earlier in this submission, AFCA sees inconsistent practice in two key scenarios:

- where a CP continues to report adverse RHI, rather than FHI because they have failed to properly identify and define the financial hardship, despite a consumer having an understanding that they had entered some form of an 'arrangement' with their lender. AFCA has seen some CPs take this approach with 'time to sell arrangements', and
- where a CP incorrectly reports RHI against the contractual repayment obligation rather than FHI obligation that should show that the consumer *has met* their repayment obligation under the hardship arrangement.

We note that there is work underway between credit providers and ARCA to develop common scripting and templates to inform customers of the impact of financial hardship arrangements on credit reporting. These initiatives however, (which only apply to ARCA members), do not have broader industry application. We see considerable variation in how firms communicate with consumers in this area. This needs to be addressed as it is currently causing consumer confusion and harm.

These are long-standing and well-known concerns and an area where proactive regulatory oversight would be beneficial.

AFCA's complaints experience shows widespread consumer misunderstanding about FHI reporting. We note that:

- while there is a hardship arrangement in place, the borrower's repayment history will be based on the new arrangements. So long as borrowers meet those new obligations, this will show on their credit report as repayments being up to date (a

¹⁵ Pg 2 - Rep 783

better outcome than having late or missed payments affecting a consumer's credit score in the absence of a hardship arrangement),

- while CPs are required to report FHI on a consumer's credit file, this is not necessarily a bad thing because an FHI code is not a factor that affects an individual's credit score (if the hardship arrangement is sustainable and supports the consumer to resolve their financial hardship, however this is not the outcome in a significant number of hardship arrangements).¹⁶
- the FHI will expire from the consumer's credit file before the RHI does, so the RHI will show repayments as having been met (without any FHI information) after 12 months has passed.

In addition to poor or inaccurate communications to consumers about the credit reporting impacts of a hardship application, data and process issues may again result in different consumer outcomes from RHI reporting, because:

- CPs do not consistently flag that a consumer is in a hardship arrangement, an issue aggravated by automatic processes which are then sometimes supplemented by the addition of manual flags.
- Outcomes and processes may differ depending on whether an issue is managed in a collections team or a specialist hardship team, and
- some CPs (and finance brokers) may subtly (and in some cases, more directly) discourage consumers from accessing financial hardship arrangements, adversely affecting their credit scores.

ASIC reported that 35% of customers dropped out of the hardship assessment process on at least one occasion. This is consistent with the fact that AFCA receives relatively few complaints relating to FHI, representing less than 1% of credit reporting complaints to AFCA (see table 3 pg. 21).

From a credit reporting perspective, this means that:

- consumers in financial hardship will have adverse listings on their credit reports because of the unaddressed hardship. This is in line with our experience where we are seeing hardship elements in other credit reporting complaints such as RHI (see below), and
- the FHI complaints AFCA receives relate only to those consumers who persisted in the hardship application process. This suggests that – but for lenders' poor responses to hardship in the first instance – FHI complaints to AFCA may be significantly higher.

¹⁶ Pg 110 - Rep 783

The combination of poor hardship responses by lenders, inconsistent reporting, poor communications and low consumer confidence – that may dissuade consumers from seeking hardship assistance – means it is difficult to have confidence that FHI reporting is delivering on its potential to improve the quality of lending decisions.

3.4 Consumer Vulnerability: Financial hardship and abuse

We tend to see financial abuse including family violence issues in credit reporting complaints in circumstances where:

- adverse RHI data is recorded, typically following unaddressed financial hardship (e.g. one-party ceases payments on joint loans), affecting a victim-survivor's ability to secure new housing or other essential services.
- credit reporting is used as a weapon in family violence with credit cards opened within minutes through online portals in the name of victim-survivors without their knowledge, with every application registering on their credit score. This builds an inaccurate and potentially damaging picture of their financial health.

The impacts can be devastating, materially affecting the victim-survivor's ability to rebuild their lives.

We understand that victim-survivors who have experienced / fled circumstances of family violence (including financial abuse and coercive control) are likely to struggle to achieve financial autonomy where adverse information is recorded on their credit file. The current iteration of the credit reporting code does not have any relevant provisions to respond to family violence and we support proposals to extend the code to do so. Under AFCA's fairness jurisdiction, we generally expect firms to remove adverse RHI in these circumstances.

The 2021 independent review of the Privacy (Credit Reporting) Code 2014 (Code Review) proposed changes to recognise that Australia's credit reporting framework needed to address domestic and family violence¹⁷. This included a recommendation to amend the CR Code to include domestic abuse as an example of circumstances beyond the individual's control.

ARCA's submission to the Code Review in February 2022¹⁸ confirmed that it was progressing an amendment to the Principles of Reciprocity & Data Exchange (PRDE) which would exempt a credit provider from its contribution requirements in situations

¹⁷ [2021 Review of CR Code](#)

¹⁸ [Arca Submissions](#)

of domestic abuse. We also note limitations in the application of the PRDE which does not currently apply to some of Australia's largest banks.

AFCA supports interventions to respond to the intersection between credit reporting and family violence and financial abuse. Rules and processes need to be clear, comprehensive, applied by CPs and accessible for victim-survivors and their advocates. Such measures should clearly apply to all types of credit reporting information, including FHI.

We recognise that such measures will only partially respond to the issues due to the lag between the time of RHI reporting and the impacts becoming evident to the affected person or their advocate.

We do not support the extension of access to credit reporting data for additional providers such as real estate agents until core issues relating to data quality, systems and controls are addressed.

PART B

4 AFCA’s credit reporting complaints experience

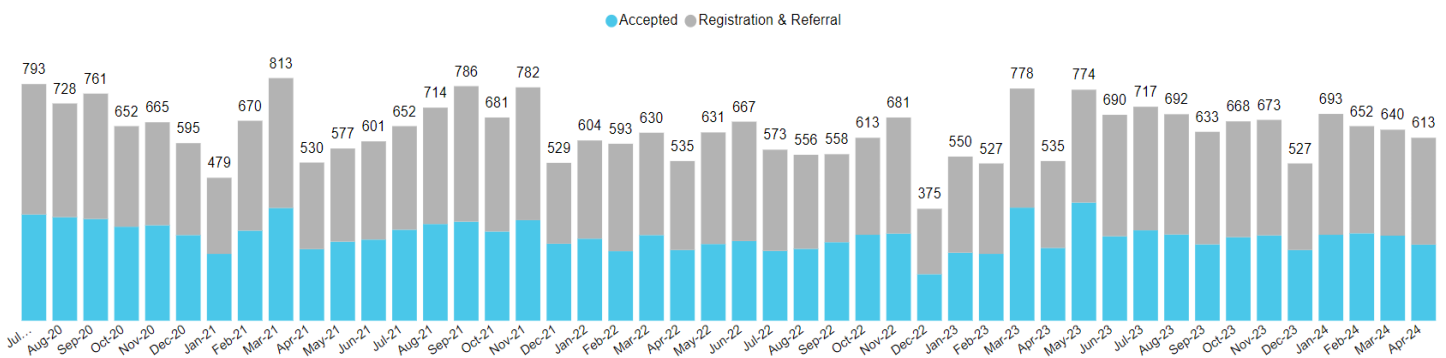
This section sets out the detail of AFCA’s complaints experience.

4.1 AFCA complaints data

Over the past 3 financial years (1 July 2021 – 30 June 2023), and to 30 April 2024, AFCA received 29,375 credit reporting complaints (approx. 7,600 individual consumer complaints each FY).

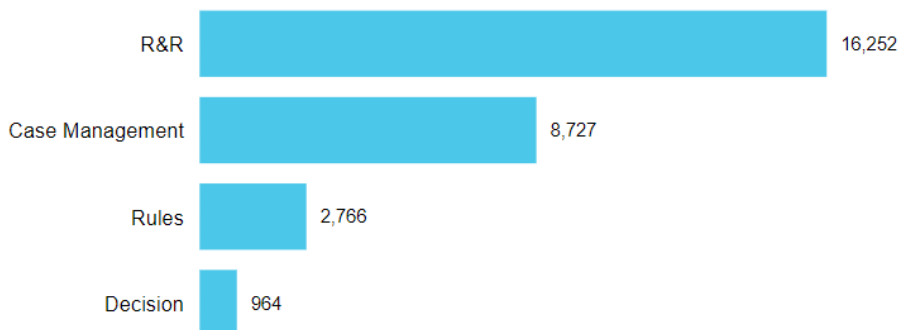
Of these complaints, approx. 74% were received against 25 AFCA members.

Table 1: Volume of complaints received per month between 1 July 2020 – April 2024¹⁹²⁰



Most credit reporting complaints during this period closed at AFCA’s Registration and Referral (R&R) stage (56%), with a further 30% closed at case management. Approximately 10% of these complaints closed at Rules review and 3% at Decision (see below).

Table 2: Volume of complaints closed at each closure status



The top 4 issues in credit reporting complaints relate to:

¹⁹ The table above shows all credit reporting complaints during the period and of those the complaints accepted. Accepted complaints are those that do not close at Registration and Referral and progress to Case Management.

²⁰ A distinct issue category for default listing didn’t exist before 2020–21.

- Default listing
- Credit inquiry
- Repayment history information (RHI) and
- Credit score

Table 3: Top issues raised during the period

IssueName	Complaints received	Complaints accepted
Default Listing	12,172	5,254
Credit Enquiry	6,990	2,843
Repayment History Information	6,769	3,970
Credit Score	2,218	679
Other	1,237	651
Unknown	244	4
Financial Hardship Information	166	102
Total	29,375	13,157

5 AFCA's credit reporting systemic issues experience

Systemic issues investigations into credit reporting issues, involving both CPs and CRBs are a common feature of AFCA's (and predecessor schemes') systemic issues work.

In the past 3 financial years and to 30 April 2024²¹, AFCA identified 16 credit reporting systemic issues impacting around 270,409 consumers.

The following six systemic issues are presented in case study form. Appendix 1 sets out a brief summary of the 16 systemic issues cases that AFCA reported to regulators (OIAC and ASIC) on an identified basis.

The case studies evidence:

- the types of issues AFCA identifies in credit reporting complaints and the consumer impacts
- how financial firms respond to the identified issues, and
- a need for more targeted regulatory oversight.

Key themes from AFCA's systemic issues experience are reflected in the body of this submission relating to credit data, complexity of administrative arrangements and consumer experience.

Systemic Issue 823516: multiple credit file inquiries in a single application

A financial firm made multiple credit enquiries for the same credit application in error, with potentially broader impacts on consumers credit scores.

²¹ Time period of data provided in AFCA's submission.

In its initial response, the financial firm advised it did not consider the issue to be systemic and therefore reportable. AFCA sought further information about 17 IDR complaints given more than one credit file enquiry was made over the course of a loan application.

Six months after AFCA's initial inquiry, the firm advised that two of the 17 complaints related to a known system issue that occurred two years previously.

The root cause of the incident was a technology release in May 2020. This had the unintended consequence of causing additional credit file enquiries being reported to CRBs for 14,110 customers (a prior credit file enquiry for each of these customers was incorrectly re-reported to CRBs at the time of the release).

The financial firm confirmed it identified the incident 3 months after the technology release and all incorrect credit file enquiries were removed by the CRBs shortly thereafter. The financial firm confirmed the incident was assessed at the time, and that it did not consider the issue to be a reportable matter. AFCA did not agree. AFCA reported the systemic issue to ASIC in May 2023.

Systemic Issue 937590: Failure to update liability information

Multiple complaints referred to AFCA's systemic issues team suggested a financial firm was failing to act on customer requests to close their Buy Now Pay Later (BNPL) accounts and subsequently failing to update liability information on credit files.

After the firm received AFCA's systemic issues notice and prior to its response, the financial firm closed the product to new customers and confirmed existing accounts would be closed shortly.

The firm confirmed it had received 65 account closure complaints in the relevant period but had not identified a systemic issue.

AFCA determined this matter to be systemic based on the circumstances in the 65 complaints. This included cases where account closures were delayed, credit files were not updated within the required time frame and account closures were not reported to CRBs. AFCA also continued to receive complaints against the financial firm indicating further accounts had not been closed correctly.

In response to AFCA follow up, the financial firm disclosed that at the time of closing the product, it identified 193,312 inactive accounts where there had been no activity for at least 12 months. Once identified the firm closed these accounts and communicated the closures to Credit Reporting Bodies (CRBs), so the accounts would be reflected as closed, with the result that all consumer credit files were subsequently corrected.

The firm also outlined the process followed to close and report all other accounts after the product was ceased, including accounts that were incorrectly marked as active 'due to data inconsistencies with the bureaus' (n2097).

The resolution of this systemic issue took more than 18 months. AFCA initially reported the systemic issue to ASIC and the OAIC in December 2022 and updated its report to the regulators in March 2024.

Systemic Issue 863461 Failure to ensure CRB corrections are actioned

In January 2022, the financial firm became aware that for more than six months it was not receiving notification of rejected correction requests from the CRB. The financial firm said the CRB did not inform it of this change in process.

From June 2021 to July 2022, there were 832 correction requests rejected by the CRB where it did not provide any notification by email to the financial firm. In response to AFCA's systemic issues investigation the financial firm advised that 'This incident was not reported to ASIC as [firm] did not view the circumstances of the complaint to be reportable to ASIC'.

While the firm failed to ensure that the CRB processed its correction requests and identify that the relevant CRB notifications had ceased, it considered the systemic issue was with the CRB.

AFCA's view was that the firm should have become aware much sooner that the CRB was no longer communicating rejected correction requests by email. If the firm identified and addressed this issue in a timely manner, it may have reduced the impact on consumers.

The firm advised AFCA that the CRB had not reinstated notifications for unactioned correction requests. As a workaround, since March 2022 the firm met with the CRB on a weekly basis to work through resolving rejected correction requests.

AFCA identified a further complaint after the start of the firm's weekly meetings with the CRB where it took up to five months for a correction to be made on the customer's credit file. While the delay may have been caused by the CRB's failure, we were concerned about the time frame and that the complainant's representative had to notify the financial firm twice about the unmade correction.

AFCA was also concerned that these events indicated ongoing communication breakdowns between the firm and the CRB or issues with the method the firm chose to report corrections.

In December 2022, AFCA reported this matter to ASIC and the OAIC as an unresolved systemic issue. It did not appear that the method chosen by the firm for

reporting corrections was operating effectively. We recommended that the firm consult with ARCA and the CRB to address ongoing issues.

Systemic Issue 939433 Failure to action returned files from CRBs

Several complaints referred to our systemic issues team indicated that credit Liability Information (CLI) remained on consumers credit files after the credit was terminated or otherwise ceased to be in force.

As a result of AFCA's request for information, the financial firm confirmed that the root cause was a process failure.

The financial firm advised it:

- has an automated process to provide the relevant CRB with updated CLI monthly
- did not have an effective process in place to action return files, where the CRB required further information to update consumer credit files
- initially detected 875 failures between December 2021 and February 2021. In subsequent responses, the financial firm confirmed this went back to January 2018.
- confirmed the issue impacted consumer credit facilities including Personal Loans, Home Loans and Overdraft Accounts.
- implemented an interim solution upon receipt of AFCA's letter to ensure that files rejected by the CRB were actioned and corrective action taken where necessary.
- implemented processes and controls in May 2023, to ensure that notices rejected by the CRB are actioned and corrective action taken where necessary.
- identified all accounts impacted by this issue and lodged a total of 1,967 correction requests with the CRB.

AFCA reported the systemic issue to ASIC and the OAIC.

Systemic Issue 939432 Failure to inform CRBs of repaid and closed credit facilities

The financial firm failed to notify the relevant CRBs when a credit facility had been repaid and the contract terminated, within the required notice period. This issue appeared to also cause RHI reporting to continue after the facility was repaid.

The root cause of the issue was difficulties in identifying backdated closed accounts. As this issue only arises in exceptional circumstances, the financial firm

maintained that whilst systemic, it did not impact a significant percentage of its customers.

The firm identified 2,500 impacted members after it commenced voluntary credit reporting in May 2021. The firm confirmed that it reported a breach of the CR Code to the OAIC and outlined the measures it had taken to address the breach, including reporting these accounts as closed (with approx. 60 having 'bureau errors', that were being worked through).

The firm also acknowledged that while it monitored its compliance with the CR Code, it had not specifically reviewed compliance with s6.4 of the CR Code (the subject of AFCA's review). The firm advised that it was implementing formal reviews of the CR Code delineated into the specific sections to ensure there is future compliance with all provisions.

This systemic issue was reported to ASIC and the OAIC in March 2023, and resolved in June 2023.

Systemic Issue 870206: Relisting a default listing after identify fraud

An ombudsman determination found the financial firm relisted a default on the complainant's credit file, after determining that the complainant was a victim of identity fraud. We were concerned that this conduct may affect more consumers.

In other cases, the firm reapplied a default after without completing the notification steps required by the CR Code.

The financial firm clarified that in the referred complaint, requests were made to three CRB's to remove all credit reporting information for the account in November 2020 due to "Fraud", and that all three CRB's confirmed this had been actioned. However, during the investigation of a Credit Correction Request for this account in May 2021, the financial firm identified that one of the CRBs failed to remove the default listing.

Root cause A

After the firm raised this issue with the CRB, it was identified that the CRB required the financial firm to explicitly specify in the request to them, what is to be updated/removed from their system. The financial firm instructed the CRB the following: ****Kindly Delete Enquiry, CCLI, RHI for the above account as account was confirmed Fraud****. As the default listing was not specifically mentioned, it was not removed by the CRB and remained on the account within the CRB's system from November 2020 until June 2021.

Root cause B

In May 2021, as a part of the above review and remediation, a request was sent in error to the other CRBs to update their systems to record the default listing (rather than for the default to be removed from the remaining CRB).

It was identified that the Credit Correction Officer failed to correctly review the account to identify the fraud block within the firm's system prior to sending the incorrect request to update the default listing to the other CRBs.

A lookback exercise was completed for all fraud related accounts that were referred to the CRB's to have their credit information removed and that were subsequently relisted. It was identified that there were other accounts impacted including the original complaint account. All were subsequently rectified.

Separate review

In April and May 2021, the firm conducted a review on the consistency of default listings across all three CRB's and identified that for some accounts the default listing was not appearing across all three CRB's and was only reflecting in either one or two CRB's. As part of the remediation for this issue, the default listings were updated to those CRB's where the default listing was missing, to ensure consistency across all three CRB's.

Appendix

Summary of recent credit reporting systemic issues

Note that shaded cases were used as case studies in the above.

SI Case	Definite systemic issue	Outcome
679813	Failure to issue 21D notices prior to listing default. 457 customers impacted.	Change to process to include issue of 21D notice. Removal of default listing from consumer credit file.
702632	Incorrect reporting of RHI on balances that represented fees only. System issue impacting 39,000 customers.	System changes to prevent issue from occurring. Correction RHI information on all impacted customers. NFL where complaint raised relating to impact of incorrect RHI.
799069	Incorrect reporting of RHI on interest only loans, where the repayment date was misaligned to reporting. 650 cases identified impacting 525 loans.	System and process changes implemented to prevent issue from occurring. Consumer credit files correct. Apology letter sent to impacted customers.
823516	Duplication of credit enquiries due to a system error impacting 14,110 customers. Error occurred May 2020 and identified from customers complaint in August 2020. Other duplications occurred due to human error, where a staff member commenced a second application where an existing application was on foot.	Correction of consumer credit files. Rectification occurred before systemic issue investigation commenced.
835593	RHI reporting not suppressed when the complainant was in an active hardship arrangement. Issue related to a control failure. There were 4 underlying failures identified impacting a total of 17,394 customers.	Process/system changes made to prevent the issue from re-occurring. All consumer credit reports impacted were corrected.
836344	Incorrectly listing credit defaults on consumer credit files where the loan was in the name of a company. 296 loans identified.	Removed default listing from consumer credit file previously noted a principal borrower.
847547	Treatment of rewards redemption (cashback) following closure of a credit card had the impact of reopening the account causing liability and RHI information to be reported to CRBs. 14 customers	Change to system/process to prevent issue from reoccurring. All consumer credit files impacted were corrected.

SI Case	Definite systemic issue	Outcome
	were impacted by incorrect liability and RHI being reported.	
863461	Failure to ensure credit file corrections were resolved. This issue is considered an industry wide issue and relates to how the credit providers interact with credit reporting bodies. 832 instances of a failure to implement corrections were identified with 107 requiring further action to be taken.	The financial firm was updating its processes and communication with credit reporting bodies relating to credit file corrections. AFCA did not consider this issue to be resolved and reported to ASIC & OAIC the issue is not resolved.
870206	Failure to ensure that credit file corrections were resolved. Incorrect credit reporting after account deemed to be fraud.	Introduced new controls to validate corrections were actioned by Credit Reporting Bodies. Introduced new processes and controls to ensure credit reporting for fraudulent accounts does not impact the consumers credit file.
925710	Failing to meet the requirements of the CR Code to wait 14 days after declining a hardship request before proceeding to list a default. 701 accounts customers identified as being impacted by this issue.	New systems and controls to prevent the issue from reoccurring. All defaults incorrectly reported removed.
933834	Failure to ensure that credit file corrections were resolved. We consider this to be an industry issue that relating to interactions between credit providers and credit reporting bodies.	Introduced new controls to ensure that credit file corrections are actioned by credit reporting bodies and all rejections are remedied.
933835	Incorrect credit reporting on individuals that hold third party authority for portfolio loans. 21 customers impacted.	Removed incorrect credit report from the authority holders credit file and put in place ongoing correction protocols until system fixe implemented.
937590	Failure to close BNPL product when requested by customer. Failure to update liability information on consumers credit files. This product was withdrawn from sale.	In Feb. 2023, the firm conducted a review of 193,312 inactive accounts where there has been no activity on the account for at least 12 months. It took the necessary steps to ensure these accounts were close and communicated the closures to Credit Reporting Bodies (CRBs) so the accounts would be reflected as closed. All consumer credit files have now been corrected.

SI Case	Definite systemic issue	Outcome
938077	Failure to notify credit reporting body of credit facility closure. 224 loans identified. Failure to ensure credit file corrections were resolved. 441 cases identified.	New processes and controls and exception reporting to ensure that credit reporting bodies are notified when credit is repaid. Corrected all consumer credit files impacted. Introduced new processes and controls to ensure that credit file corrections are resolved with credit reporting bodies and all rejections are resolved.
939432	Failure to notify credit reporting body of loan closure. 2500 loans identified. Failure of automatic system to detect exceptions.	New controls /staff training put in place to prevent the issues from reoccurring. All impacted consumer credit files corrected.
939433	Failure to notify credit reporting body of loan closure. The underlying issue in this matter related to data rejection by credit reporting bodies. 1,967 impacted files.	New processes and controls established to ensure this issue does not reoccur. All impacted consumer credit files have been corrected.