Response to the consultation on

The removal of barriers
to the
sharing of non-consensual credit data

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Background

About Experian

Experian is a global leader in providing analytical and information services to organisations and consumers to help manage the risk and reward of commercial and financial decisions.
Combining its unique information tools and deep understanding of individuals, markets and economies, Experian partners with organisations around the world to establish and strengthen customer relationships and provide their businesses with competitive advantage.
For consumers, Experian delivers critical information that enables them to make financial and purchasing decisions with greater control and confidence.
Clients include organisations from financial services, retail and catalogue, telecommunications, utilities, media, insurance, automotive, leisure, e-commerce, manufacturing, property and government sectors.
Experian Group Limited is listed on the London Stock Exchange (EXPN) and is a constituent of the FTSE-100 index. It has corporate headquarters in Dublin, Ireland, and operational headquarters in Costa Mesa, California and Nottingham, UK. Experian employs more than 12,500 people in 32 countries worldwide, supporting clients in more than 60 countries. Annual sales are in excess of £1.7 billion.
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Experian is the largest credit reference agency (‘CRA’) out of the 3 consumer credit reference agencies operating in the UK[1], supplying c80% of the shared personal data used for credit underwriting by the UK financial sector. This amounts to some 150m credit enquiries each year. Experian also provides data for a variety of other purposes such as identification checks for the prevention of money laundering as required under the Prevention of Money Laundering Regulations. Under Regulation 114 of the Representation of the People (England & Wales) Regulations 2001, the CRAs are the only non-public organisations entitled by law to hold the full Register.

[1] There are c 200,000 companies registered as credit reference agencies and licensed under the Consumer Credit Act. Most do not operate any form of operation for the support of credit decisioning but a few others do supply similar services for corporate activities. There are currently just 3 agencies in the UK that operate and supply consumer data for credit referencing purposes.

The Executive Summary

- **The UK has the most effective credit regime** in the world according to the World Bank based on the balance of protections for lenders and consumers and the breadth and depth of information available at the credit bureaux. See http://www.doingbusiness.org/.

- **Good credit systems** ensure that available funds are directed to the best propositions and that default is minimised. One of the reasons for the success of the UK is the highly effective credit bureaux system.

- **The DTI's Overindebtedness Taskforce recommended greater credit data sharing**. Since then lenders have made significant advances in making more data available. By the middle of 2007 all the data that can legally be shared will be on the credit bureaux databases. The only missing information will be that information that may not be made available because the account holder was not notified at the time of opening of the intention to share data. Without exception, were the consumers to open an account with these lenders today, their data would be shared.

- **Good credit decisions** need the fullest information possible of a consumers indebtedness to be available in order that lenders may make decisions to make credit or continue to make credit available in the most responsible way possible. Evidence shows that access to bureaux data is the most effective way of obtaining data.

- **There are other beneficiaries too** because whilst the main and most high profile beneficiaries of this proposal are the relatively small (c90,000) but very important number of consumers that will now be identifiable as worthy of closer examination, there are others that will also be positively effected. These are the consumers that do not use credit but who apply for other financial products for which Prevention of Money Laundering checks must be carried out. Up to 25% of applicants for savings and investment products are likely to be positively assisted in this way.

- **Access to the data will still controlled and protected** as the information may only then be extracted from those databases with the agreement and knowledge of the consumer themselves.

- **Experian recommends that Option 4 should be adopted which is that regulation should enable the sharing of non-consensual accounts without an expressed opt-out for consumers.** The importance of the data and the undue effort required for a limited number of consumers render the suggestion of an opt out unattractive.

The response to the consultation questions

1. **Is seeking consent individually from holders of non-consensual credit accounts a practical solution to gain consumers consent to share data on non-consensual credit accounts? If not, or if you think there is an alternative approach, please give details.**

   Organisations will confirm that it is notoriously difficult to get consumers to respond to any communication unless they see it as being specifically beneficial to them.

   An example might be found in the response rates to marketing activity, which is generally of the order of 1 –2%. Experian regularly sends out questionnaires with consumer files and the response rate to that is c 9 -14 %. Even if there is an incentive such as entry into a draw or donations to charity response rates are known to be still well below 10 %. Calling c 36- 40m consumers direct to solicit their agreement would be extremely costly as it would involve a lengthy explanation and it would likely be seen as an unwelcome contact by many and particularly those that are registered with the telephone Preference Service for example. Furthermore, since many consumers would have >1 account, but with different organisations, a significant proportion of them would be contacted on several occasions which would almost certainly give rise to complaints.

   A correlation to the degree of effort and difficulty might be found with the efforts that many lenders have been making to ensure that they hold complete and correct consumer details on their databases. This has involved a 7 year effort using a variety of activities including direct contact and many lenders have still had to resort to other means to ensure that they have up to date information because consumers do not habitually respond to communications.

2. **Can lenders reliably and satisfactorily assess the extent of a consumer's ability to repay borrowing by demanding documentary evidence from the consumer? Please give reasons for your answer.**

   There are four main reasons why asking a consumer to provide information on their finances is not a practical solution to the issue:

   - Most consumers do not keep adequate and accurate records that are easily accessible to answer this question if they are asked
   - Consumers certainly do not carry such information with them
   - The time and effort that has to be taken to collect such information direct from a consumer is only financially viable for the largest loans such as mortgages. Small value lending, offered at highly competitive rates, would not be economically viable unless the cost of such products to the consumer was to rise significantly. Logistically, it would also be hard to manage for remote transactions such as within a store and would almost certainly result in certain products becoming less attractive and, at worst withdrawn were this methodology to become the norm.
   - Consumers most at risk, and even many who are not, habitually miss out information either

- because they have forgotten it - perhaps it relates to an infrequent commitment such as an annual charge or
- They want to present themselves in a better light in order to ensure they get the credit that they have applied for.

Even if a lender does get access to a full and complete record of a consumer's commitments; it is how they manage those commitments that is predictive in terms of their ability to manage their debts going forward. That can only be determined from seeing the records on the payment performance.

At present, whilst a majority of accounts are supplied to the shared databases, accounts opened before lenders joined up to the system or before the Data Protection Act was brought in are not available. This is estimated to be c45 – 50m accounts. As a result, the credit commitments for some consumers are understated. Whilst lenders can still obtain sufficient information to predict likely payment performance, indebtedness calculations would undoubtedly be improved with fuller data. A recent study by Experian based on a very large sample of un-shared accounts conservatively estimated that some 90,000 highly or overindebted individuals are not currently identifiable. Access to this missing data would greatly improve the ability of indebtedness tools such as Experian Consumer Indebtedness Index to identify at risk individuals and enable lenders to manage them appropriately.

3. In what cases do you consider that the sharing of non-consensual data would be proportionate? Please give evidence to support your position and of how practical it would be (in your view) to produce a workable definition of the different types of consumer.

Assuming this refers to consumers who are:

1. Credit active and either already overindebted or in danger of becoming overindebted
2. Credit active but not currently overindebted
3. Not credit active

Evidently, the consumers in the first category would likely benefit from this data being shared as they would be identified by either existing or future lenders as consumers that should be treated differently. However, consumers in the second category whilst not currently overindebted and not appearing to have problems could move into the first category if their circumstances change. Research for the DTI Overindebtedness Taskforce by Professor Elaine Kempson identified that most people get into difficulties when their circumstances suddenly change due to an event such as illness, job loss or having a baby. Furthermore, many people move back out of difficulty as their circumstances change again for the better. These points have also been documented in DTI annual reports. Thus the population in category 1 will be interchanging with categories 2 & 3.

There are various surveys and reports that seek to measure the percentages of people that are experiencing difficulty. One measure states that some 20%[2] of the population consider their debts to be somewhat of a burden and a further 5% consider their debts to be a heavy burden, logically some, if not all, of this 25% of consumers are worthy of scrutiny.

[2] DTI Annual Report 2005

Likewise, according to an FSA survey [3] 31% of people say they keep up with payments with a struggle from time to time. That same FSA survey says that 70% have made no provision for any drop in income such that even a small change in circumstances, or a sudden large bill, could have a significant impact on their ability to pay their debts.

Therefore, the population that are in or near difficulty is a constantly changing population and, given that only 30% people have made any provision for a drop in income, most people could be vulnerable to a greater or lesser degree, if something were to happen. The current benign environment coupled with the existing credit management by lenders has kept the situation relatively stable but were there to be a downturn in the economy even more people could be impacted.

However, it is also true to say that credit active consumers are not the only potential beneficiaries of wider data sharing. The non financial elements of the shared credit data are also used in ID and Prevention of Money Laundering products to facilitate swift and effective electronic verification of identity for any product subject to the requirements. This covers Accountancy firms, Solicitors and, of course Savings and Investment providers.

It is a particularly valuable service for users of remote service providers such as web-based share dealing and savings accounts and when providers are unable to positively identify consumers in this way their only other alternative is to call for paper documentation such as passports or driving licences. Most consumers are understandably reluctant to send off original documents for this purpose and frequently find themselves excluded from the very best rates for this very reason. We at Experian Ltd have handled a number of consumer complaints because of just this issue. Indeed, the older non-credit active consumer is the most likely to be impacted in this way, as they are the most likely to be applying for investment products.

Although accurate figures are not available for this population a correlation might be found with the numbers of people that have to be manually checked when applying for their credit file as this system also uses the electronic ID checking service. Currently, over 25% of applicants for consumer credit files are manually reviewed and some 11% asked to provide additional documentation. Of those about half do not respond and whilst some of these will almost certainly be invalid applications some will be people who do not want to send in their original paperwork. So, it is fair to say that >25% of applicants will be impacted in some way.

4. **Do you consider that legislation to permit the sharing of non –consensual data would breach the Article 8 ECHR rights (right to privacy) of consumers? Do you consider that any breach would apply to all consumers, or only to consumers that were not at risk of being over-indebted, or only to non-credit active consumers?**

We do not consider that the sharing of non-consensual data would breach the Article ECHR rights (right to privacy) of consumers because of the important benefits that would ensue.

It is almost impossible to determine which consumers fall into which category as described above. This issue is already explored in more detail in the response to question 3.

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[3] DTI annual report 2006

There are actually very few lending books in the UK today that are not, to a greater or lesser degree, already shared with credit reference agencies.

This proposal is about ensuring that every account on every lending book is shared and not just those that were opened after a certain date. For some considerable period of time there were some lenders that did share and some that did not. There is no evidence to show that whether or not data was shared ever influenced the choice of lender made by consumers. Indeed there were some lenders in the early days that offered consumers the opportunity to opt out of their data being shared and, bearing in mind that data sharing was relatively new at the time, few ever did. Official statistics are not available but anecdotal evidence suggests opt –out rates were in the region of 5 - 7%.

Most consumers will already have many of their account shared already and are benefiting from the improved benefits that the system has brought to the UK Credit Market in terms of increased competition, choice and lower prices. Thus this is not a new data sharing initiative but more a mechanism to ensure that the data that is shared is complete and accurate and available in the most convenient and efficient way to the lender and the consumer alike.

It is arguable that to share this data is in the legitimate interests of the lender to share the data as it not only enables them to make better lending and account management decisions but also is proved to incentivise consumers to pay on time.

Since the data will not be used in any way that is different to the other shared information such that the data will be stored centrally and only made available with the consent of the data this proposal only seeks to create a level playing field.

5. **What restrictions do you consider should be placed on lenders when sharing non-consensual data? Please give evidence where possible about the costs and benefits of such restrictions.**

Evidently the existing controls contained within the Principles of Reciprocity should and will be maintained for this data set too. The data should also be assumed to have been provided under the same terms as is covered within the current version of the fair obtaining clauses agreed with the Office of the Information Commissioner. See Appendix A.
Since the data cannot in any case be used for the creation of marketing lists or sold for generation of other outbound activity there are already entirely suitable protections already in place.

Before any sharing can take place evidently lenders must notify consumers of the intention to share data and a short form of the condensed fair processing notices should be made available with information on how to find out more if required. Other communication must explain clearly what data is and is not shared as there are many misconceptions such as whether actual transactions are shared (they are not) and information on current accounts that are in credit, neither of which are shared.

6. **What restrictions do you consider should be made concerning the types of data that could be shared?**

The data should be shared on exactly the same basis as existing shared credit information and should meet the same data quality, accuracy and completeness requirements.

7. Do you agree that if the sharing of data on non-consensual credit accounts was to occur, consumers should be given the opportunity to object to their data being shared? What form should this opt-out take?

It could be argued that given the importance of the data that no opt out should be permitted. However, it may also be considered to be politic to offer consumers a one off opportunity to opt out when they are notified that their data is to be shared and how it will be used. If this option is adopted consumers must be given a deadline for responses after which their data will be shared. It would be helpful if consumers could then opt back in if they find that opting out disadvantages them. However, no further opportunity to opt out should be given as it would cause technical problems if data is being added and taken away on a regular basis.

However, this option should be considered in the light of the significant costs that would ensue for lenders. Each lender would have to amend their systems to hold a yes/no flag and also enable their extraction process to read the flag. With > 550 lenders already sharing and more joining all the time, the case would need to be very strong to justify the costs of changing each and every one of these systems.

It might also be argued that if an opt out is offered it would be helpful for lenders to know so that they can ask the consumer to supply the information on their other commitments at application. Again, this would involve even more costs, not only for all the lenders to create flags but also to read the returned information form the credit reference agencies. There would also be significant development at the credit reference agencies themselves. These costs would be very significant for what is likely to be a relatively small proportion of consumers.

On balance therefore we consider that an opt-out should not be offered.

8. What other barriers are you aware of that may prevent the sharing of data that could help identify whether a consumer is over-indebted?

There are naturally technical challenges for some organisations to share what will be older accounts where the data quality may be less good that might be required. Inevitably some lenders will have some work to do in this area.

Additionally, there are other data that could also assist in identifying overindebted consumers. Any other information on debts can only be of value so data on student loans, utilities, rent and council tax and any other large commitments may also prove valuable in making decisions on certain consumers.

9. Are the principles of reciprocity a significant deterrent against the use of shared credit data to identify individuals for marketing purposes? Does SCOR provide a suitable forum for the governance of consumer credit data? If not, what additional safeguards are needed?

The Principles of Reciprocity do provide a powerful control over the use of shared data because credit reference agencies put system and contractual controls in place to support them. However, is it misleading to suggest that the only barrier to prevent any abuse of shared data, whether for marketing or not, is the Principles of Reciprocity and SCOR.

Other protections include:

- The Data Protection Act 1998 would be breached were the data to be used for this purpose as the fair obtaining clauses would make it quite clear how the data may be used and this not covered. Thus any such use would be a breach.
- The contracts between credit reference agencies and clients also lay down how the data may be used as well as referring to the Principles of Reciprocity and the Data Protection Act 1998.
- Credit reference agency systems for the supply of shared data are tightly controlled to prevent data being used in this way.
- Self-regulation by the industry, including the credit reference agencies has been effective for over 10 years. Any perceived breach of any of the Principles is raised either with the credit reference agency concerned or with SCOR and is then rigorously investigated. There has been no wilful and deliberate breach of any Principle to date and no breach of the veto on the use of shared data for marketing at all.

Conclusion

There are a number of benefits for consumers and lenders alike in making this last tranche of information available in the same way that more recently opened accounts are already shared.

Evidently those consumers at risk of overextending themselves will be more likely to be identified by lenders when they either apply for more credit or indeed by their existing credit providers. This is then likely to lead to the lenders either refusing to provide more credit and directing the applicant to debt advisors or, in the case of an existing customer, considering other strategies for managing the consumer.

The potential numbers of additional highly indebted consumers that could be identified has been estimated at c90k, which is a not inconsiderable number of people. It could be argued, that in terms of reduction of stress and damage, this alone is sufficient. The potential to better manage consumers such that people deal with their difficulties at an earlier stage has the potential to reduce the stress experienced by consumers who, at worse, have on occasion taken their own lives.

At the same time, many if not all the consumers in question are likely to already have some accounts already shared by other organisations so this is not a new initiative, rather an extension of an existing arrangement to ensure that a full picture is available. Consumers have benefited from the system that enables lenders to provide simple and swift access to credit and the competition that has resulted in such a wide choice and competitive rates. The information cannot be used for marketing or to target consumers and can only be accessed with their own consent so the impact is controlled and there should be no need for consumers to have concerns that their privacy is being breached.

But borrowers are not by any means the only beneficiaries; in a world where most financial services are at risk of abuse by fraudsters and money launderers, the majority of law-abiding people are increasingly inconvenienced by checks designed to identify the few miscreants. From the increased checks at airports to the requirements to perform extensive and robust identification checks on those applying for financial services we are all increasingly becoming used to our daily lives being impacted as authorities seek to identify criminals. Most people use financial services at some stage, if they do not borrow money they do open accounts, take out investments and save. Again, the most competitive products are often provided remotely where the performance of ID checks is vital and the availability of electronic information has facilitated the development of new and better products. Increased availability of information should significantly reduce the impact and inconvenience to law abiding consumers which is currently running at >25%.

This proposal effectively “squares the circle” and provides clear benefits to all concerned lenders, the economy and consumers and is to be commended.

Experian recommends that Option 4 should be adopted which is that regulation should enable the sharing of non-consensual accounts without an expressed opt-out for consumers.