Australian Government
Office of the Australian Information Commissioner

'KB' and Veda Advantage Information Services and Solutions Ltd [2016] AICmr 81 (25 November 2016)

Decision and reasons for decision of
Australian Privacy Commissioner, Timothy Pilgrim

Applicant:	**'KB'**
Respondent:	**Veda Advantage Information Services and Solutions Ltd**
Decision date:	**25 November 2016**
Application number:	**CP15/01085**
Catchwords:	**Privacy — Privacy Act — Credit Reporting — *Privacy Act 1988* (Cth) s52 — s 20N — s 20S – s 20P – s 20T —Compensation awarded — Review to be conducted — Civil penalty provision**

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Findings

1. The respondent Veda Advantage Information Services and Solutions Ltd (**Veda**) interfered with the complainant's privacy by:

    - not taking such steps as were reasonable in the circumstances to ensure that certain credit information it collected about the complainant was accurate, up-to-date, and complete as required by s 20N(1) of the *Privacy Act 1988* (Cth) (**the Privacy Act**);
    - not taking such steps as were reasonable in the circumstances to ensure that certain credit reporting information it disclosed was, having regard to the purpose of the disclosure, accurate, up-to-date, complete and relevant as required by s 20N(2) of the Privacy Act;
    - using or disclosing credit reporting information that was false or misleading in a material particular in contravention of s 20P of the Privacy Act; and
    - failing to give each recipient of the incorrect information written notice of correction within a reasonable period as required by s 20S(2) of the Privacy Act.

2. To redress this interference Veda shall within 30 days of this determination:

    - issue a written apology to the complainant acknowledging its interference with the complainant's privacy;
    - pay the complainant $10,000 for non-economic loss caused by the interference with the complainant's privacy;
    - pay the complainant $5,830 to reimburse him for expenses reasonably incurred in connection with the making of the complaint and the investigation of the complaint; and
    - commence a review its procedures in relation to the collection, use and disclosure of court proceedings information, and steps taken to ensure accuracy and correction of this information, and advise me of the results of the review no later than six months from the date of this determination.

Background

3. On or about 19 June 2014, Veda recorded a judgment debt in the amount of approximately $7,000 on the complainant's credit file. The complainant was not the defendant in the case to which the judgment related, and had no relationship with the defendant.

4. However, the complainant and the defendant have a similar name. They also reside in different premises within the same apartment building. Because of similarities between the defendant and the complainant's names and addresses, Veda's automatic matching systems drew a connection between the judgment and the complainant, and recorded information about the judgment on the complainant's credit file.

5. Veda's systems subsequently provided an automated alert to registered creditors of the complainant to notify those creditors of the judgment. Veda confirmed that the information was disclosed to the complainant's credit providers on or about 23 June 2014 (National Australia Bank), 25 June 2014 (American Express) and 2 July 2014 (Citibank).

6. On 29 June 2014, the complainant left Australia for a two-week holiday in Italy. Upon arrival at Rome International Airport, a payment on the complainant's credit card was declined. That evening, the complainant telephoned American Express, his credit card provider. He was told that due to a default judgment notification on his credit file, American Express had suspended his card and he would be unable to make any further purchases.

7. The complainant is a business person and owns two businesses, each of which have a number of suppliers. The complainant had provided details of his Citibank Visa credit card for payment to suppliers. On 1 July 2014, the complainant received a call from two suppliers, who advised that they had tried to charge the credit card but that payment did not go through. They advised that until they were paid, goods would not be supplied. This caused a delay in the delivery of supplies to the complainant's business.

8. On 16 July 2014, upon the complainant's return to Australia, he called Veda to order a copy of his credit report. On 17 July 2014, the complainant received a copy of the credit report and identified the incorrectly listed judgment.

9. On 18 July 2014, the complainant called Veda. The complainant advised Veda of the mistake and requested that the listing be removed urgently. Veda advised the complainant to approach the court for correction, and indicated that Veda would not take action until it heard from the court. The complainant engaged a lawyer to assist him correspond with the court and have his credit file corrected.

10. On 23 July 2014, the lawyer acting for the complainant wrote to the registry of the court alleging that the court had wrongly notified Veda of a judgment against the complainant. On the same day, the court registry replied and confirmed that it had provided accurate information to Veda (that is information about the defendant who had a similar but not identical name and address as the complainant's).

11. On 30 July 2014, the complainant spoke to Veda advising of the court's response and requesting that Veda remove the listing. Veda advised the complainant that it had recorded the listing as per the court information and would not be doing anything until it heard directly from the court.

12. On 7 August 2014, Veda received information from the court that the judgment had been set aside. The next day, Veda removed the listing from the complainant's credit file.

13. On 12 August 2014, the complainant's representative wrote to Veda to complain about the judgment listed on the complainant's credit report.

14. On 15 September 2014, Veda wrote to the complainant's representative noting that the listing had been removed and that people who had accessed the complainant's credit report had been advised of the removal of the listing.

15. On 30 September 2014, Veda notified the complainant's credit providers that the listing had been removed.

16. On 6 July 2015, the complainant made a complaint to the Office of the Australian Information Commissioner (**OAIC**) under s 36 of the Privacy Act.

Privacy complaint and remedy sought

17. The complainant contends that Veda interfered with his privacy by listing a judgment on his credit file in error, and by failing to inform his credit providers of the mistake as soon as it became aware of the error. The complainant alleges, in summary, that Veda:

    a. did not take such steps as are reasonable in the circumstances to ensure that the credit information it collects, and the credit reporting information it uses or discloses (having regard to the purpose of the use or disclosure), is accurate, up-to-date, complete, and for use or disclosure, relevant, as required by s 20N;

    b. disclosed credit reporting information that was false or misleading in a material particular in contravention of s 20P(2); and

    c. failed to give each recipient of the information written notice of correction within a reasonable period after it became aware of the error, as required by s 20S(2).

18. The complainant seeks a declaration by me that Veda interfered with his privacy, and that Veda provide him with an apology and compensation to rectify the interference. The complainant alleges that as a result of the listing, restrictions were placed on his credit facilities with various credit providers, and that he suffered economic and non-economic loss as a consequence. The complainant also seeks a payment to cover legal costs he states he has incurred as a consequence of the listing, and in the course of bringing this complaint.

19. On 1 October 2015, the OAIC opened an investigation into the complainant's allegations under s 40(1) of the Privacy Act. I have considered the written submissions provided by both the complainant and Veda in the course of the investigation.

20. The matter was not resolved through conciliation and I decided to determine the matter under s 52 of the Privacy Act. Section 52 provides that, after investigating a complaint, I may make a determination:

    (a) dismissing the complaint (s 52(1)(a)); or

    (b) finding the complaint substantiated and declaring that:

    (i) the respondent has engaged in conduct constituting an interference with privacy of an individual and should not repeat or continue such conduct (s 52(1)(b)(i)(B));

    (ii) the respondent must take specified steps within a specified period to ensure that such conduct is not repeated or continued (s 52(1)(b)(ia));

    (iii) the respondent must perform any reasonable act or course of conduct to redress any loss or damage suffered by the complainant (s 52(1)(b)(ii));

    (iv) the complainant is entitled to compensation of any loss or damage suffered by reason of the act or practice the subject of the complaint (s 52(1)(b)(iii));

(v) it would be inappropriate for any further action to be taken in the matter (s 52(1)(b)(iv)).

The law

21. Part IIIA of the Privacy Act regulates consumer credit reporting in Australia. Part IIIA sets out the specific types of personal information that credit providers and credit reporting bodies (**CRBs)** are permitted to collect about an individual for the purpose of inclusion in an individual's credit report. It also provides privacy safeguards in relation to the handling of information, and imposes requirements for CRBs to take certain steps to ensure the accuracy of information they collect.

22. Section 20N(1) states that a CRB must take such steps as are reasonable in the circumstances to ensure that the credit information the body collects is accurate, up-to-date and complete.

23. Section 20N(2) states that a CRB must take such steps as are reasonable in the circumstances to ensure that the credit reporting information the body uses or discloses is, having regard to the purpose of the use or disclosure, accurate, up-to-date, complete and relevant.

24. Section 20S(1) states that if a CRB holds credit reporting information about an individual and it is satisfied that the information is inaccurate, out-of-date, incomplete, irrelevant or misleading, it must take reasonable steps to correct the information.

25. Section 20S(2) states that if the CRB corrects credit reporting information under s 20S(1) and the CRB has previously disclosed the information, it must give each recipient of the information written notice of the correction within a reasonable period.

26. Section 20P states that a CRB must not use or disclose credit reporting information under Division 2 (other than ss 20D(2) and 20T(4)) if the information is false or misleading in a material particular. Section 20P(2) is a civil penalty provision. Section 20P(1) mirrors the requirements of s 20P(2) but is a criminal offence provision. As such, though they are not specified in the provision, the offence has automatic fault elements. These are outlined in the *Criminal Code*,[1] which sets out the general principles of criminal responsibility for Commonwealth laws.[2]

27. Where Commonwealth legislation creating an offence does not specify a fault element, as is the case for s 20P(1), s 5.6 of the *Criminal Code* states:

    1) If the law creating the offence does not specify a fault element for a physical element that consists only of conduct, intention is the fault element for that physical element.

    2) If the law creating the offence does not specify a fault element for a physical element that consists of a circumstance or a result, recklessness is the fault element for that physical element.

[1] *Criminal Code Act 1995 (Cth)* sch 1 ('Criminal Code').

[2] Section 3A of the Privacy Act states that ch 2 of the *Criminal Code* (except pt 2.5) applies to all offences against the Privacy Act.

Quality of credit reporting information

Section 20N(1) – accuracy at point of collection

28. Section 20N(1) states that a CRB must take such steps as are reasonable in the circumstances to ensure that the credit information the body collects is accurate, up-to-date and complete.

29. The information provided indicates that Veda collected the following information on or about 19 June 2014 for inclusion in a record, being the complainant's credit file:

    - The fact of a court judgment relating to the complainant
    - Court
    - Date
    - Creditor's name
    - Amount
    - Plaintiff number
    - Association / role[3]

30. Veda stated that the court provided it with the defendant's name (first name and surname) and address (unit number / street number, street, suburb, state).[4]

31. The defendant and complainant both have the same surname. They also have similar, but different, first names. They live in different units within the same apartment building, and so have similar, but different, addresses. As a consequence of these similarities, Veda's automated data matching systems incorrectly associated the judgment with the complainant, and listed it on his credit file.

32. Court proceedings information falls within the definition of credit information in s 6 of the Privacy Act. Section 20N(1) requires Veda to take reasonable steps to ensure the credit information it collects is accurate, up-to-date and complete.

33. Because the judgment recorded in the complainant's credit file did not relate to him, the information was inaccurate. This inaccuracy, in and of itself, does not indicate that Veda interfered with the complainant's privacy. Rather, it is necessary to consider whether the steps Veda had in place to ensure the accuracy of the information were reasonable.

34. Veda outlined the steps that it has in place to ensure that credit information is accurate, up to date, and complete:

    - Veda has a customer resolutions department to investigate complaints in accordance with the Privacy Act and the Privacy (Credit Reporting) Code 2014 (CR Code). If an investigation by the customer relations department shows that an amendment or deletion is required, Veda will make the amendment or deletion. Veda also gives individuals who are unhappy with the

[3] The complainant's credit report, Veda, 17 July 2014.

[4] Veda's submission to the OAIC, 4 November 2015, page 2.

outcome of an investigation the opportunity to have the matter re-investigated again at no charge.

- If an individual requests the correction of information on their credit file and provides evidence, Veda will amend the file accordingly.
- Veda uses a confidential matching process to match identity details associated with events (such as court judgments) with matching details on credit information files. This process only returns a file in full if it matches sufficiently to be classed as a strong match. In some instances, there may be another file that matches sufficiently to indicate that it may also relate to the subject of the information provided by the court. In these cases, only the identity details of that file are returned. The file is referred to as a possible match.
- Veda has a dedicated Data Management team whose primary role is to monitor the database and make enhancements both in terms of data quality and matching with respect to the database.

35. Veda also noted that it removed the judgment prior to the complainant writing to Veda, along with notifying the relevant credit providers of the amendment.

36. Veda stated that its matching system takes into account slight typographical errors. Due to only slight differences between the names and addresses of the judgment debtor and the complainant, these appeared to be typographical errors. As a result, the court judgment was listed on the complainant's credit file.

37. In making an assessment of whether or not these steps were reasonable, I have considered the following:

- the size and nature of Veda's business
- how Veda's practices may impact a large number of individuals and credit providers
- the nature of the personal information held by Veda and its data handling practices
- the importance to credit providers and individuals of information on credit files being accurate, balanced against the cost to Veda to ensure that the credit files it holds do not contain incorrect information
- the risk of harm to the individuals concerned if the information is incorrect
- the ease with which any particular step can be implemented.[5]

38. It appears that Veda incorrectly assumed that the information provided by the court contained typographical errors, and as a consequence, wrongly included the court judgment on the complainant's credit file. It took no steps to confirm that was the case before including the listing on the complainant's credit file.

39. The steps that Veda has indicated that it has in place to ensure the accuracy of credit information relating to judgments, in my view, place an undue burden on individuals to identify errors in their credit reports and draw these to Veda's attention. In this case, both the complainant's name and address did not match the information provided to Veda by the court. Once Veda became aware that neither the name or the

[5] Office of the Australian Information Commissioner, *Australian Privacy Principles Guidelines,* [10.6].

address provided by the court were a match, it should have been on notice that further steps were required to confirm the accuracy of the information it had collected.

40. It was not reasonable in the circumstances for Veda to assume that the identifying information which it had collected from the court contained typographical errors, without taking any steps to confirm that this was the case. Listing a judgment on an individual's credit file can have serious consequences for the individual in question, and is a step that should not be taken lightly.

41. After the listing occurred, the complainant did attempt to draw this issue to Veda's attention. While I accept that Veda removed the listing prior to the complainant's representative making a written correction request, I observe that:

    a. The complainant called Veda twice to advise that the judgment had been incorrectly listed on his credit report.

    b. Veda incorrectly advised the complainant that it had recorded the listing as per the information received from the court (in fact the information that it received from the court referred to a different individual).

    c. The judgment was removed when the court advised Veda that it had been set aside, not as a result of any step taken by Veda in response to the information provided by the complainant.

42. For the above reasons, I find that Veda did not take reasonable steps to ensure the credit information it collected was accurate, up-to-date and complete. As such, Veda breached s 20N(1) of the Privacy Act.

Section 20N(2) – use or disclosure

43. Section 20N(2) states that a CRB must take such steps as are reasonable in the circumstances to ensure that the credit reporting information the body uses or discloses is, having regard to the purpose of the use or disclosure, accurate, up-to-date, complete and relevant.

44. Veda confirmed that the credit reporting information was disclosed to the complainant's credit providers on or about 23 June 2014 (NAB), 25 June 2014 (AMEX) and 2 July 2014 (Citibank).

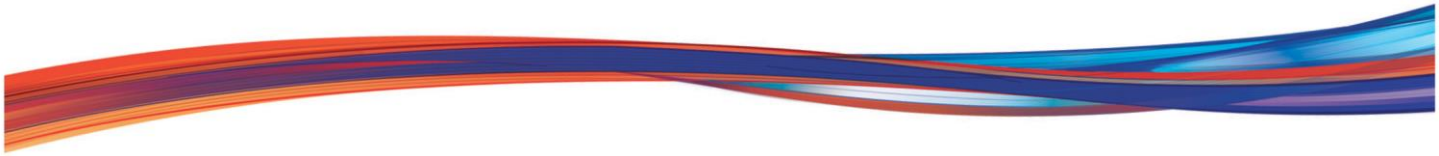
45. For the same reasons I found that Veda did not meet the requirements of s 20N(1), I find that Veda did not take reasonable steps to ensure that the credit reporting information it used or disclosed was, having regard to the purpose of the use or disclosure, accurate, up-to-date, complete and relevant, and that Veda breached section 20N(2) of the Privacy Act.

Section 20P – False or misleading credit reporting information

46. Section 20P(2) states that a CRB must not use or disclose credit reporting information under Part IIIA Division 2 (other than ss 20D(2) and 20T(4)) if the information is false or misleading in a material particular.

47. The disclosures referred to in para 44 above, were made under s 20E(3)(a). As such s 20P(2) applied.

48. As the credit reporting information that was disclosed to the complainant's credit providers related not to the complainant but to another individual, I am satisfied that the information disclosed was false or misleading in a material particular, and that Veda breached s 20P(2).



49. Although I am satisfied that Veda breached s 20P(2), I am not satisfied that it did so with intention or recklessness sufficient to make out the fault element of s 20P(1), a criminal offence provision which largely mirrors the obligation in s 20P(2).

50. Section 20P(2) is a civil penalty provision. As I have determined that Veda contravened a civil penalty provision, it is open to me to apply to the Federal Court or Federal Circuit Court for a civil penalty order against Veda under s 80W of the Privacy Act.

51. I do not intend to apply for a civil penalty order against Veda at this time. In reaching this decision I have had regard to the factors outlined in para 38 of the OAIC's *Privacy Regulatory Action Policy*. The primary reason I do not propose to seek a civil penalty order is because I am satisfied that the contravention can be adequately remedied through mechanisms other than a civil penalty order, namely, this determination under s 52 of the Privacy Act, requiring Veda to review its practices and pay compensation to the complainant.

Correction of credit reporting information

Section 20S(1)

52. Section 20S(1) states that if a CRB holds credit reporting information about an individual and is satisfied that the information is inaccurate, out-of-date, incomplete, irrelevant or misleading, the CRB must take reasonable steps to correct the information.

53. It appears that Veda became satisfied that the credit reporting information listed on the complainant's credit file was inaccurate when it received notification from the court that the judgment had been set aside on 7 August 2014.

54. This occurred before the complainant had made a written correction request to Veda. While the Privacy Act does not define the term 'correction request', Veda's privacy policy at the time indicated that a correction request could be made by post or email, not by phone.

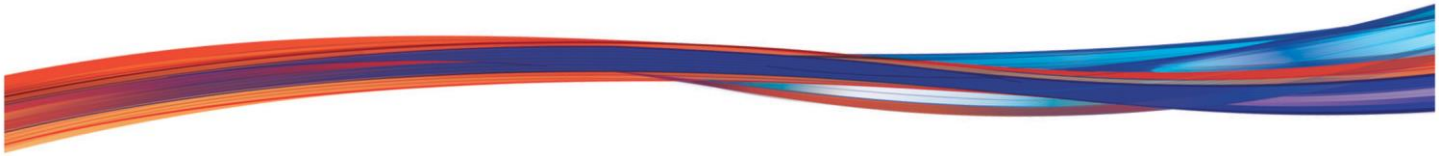
55. I am satisfied that by removing the judgment on 8 August 2014, Veda took reasonable steps to correct the information after it became satisfied that the information was inaccurate, out of date, incomplete, irrelevant or misleading. As such, I find that Veda did not breach s 20S(1) of the Privacy Act.

Section 20S(2)

56. Section 20S(2) states that if a CRB corrects credit reporting information under s 20S(1), and the CRB has previously disclosed the information, it must give each recipient of the information written notice of the correction within a reasonable period.

57. Veda corrected the credit reporting information on 8 August 2014, and gave each recipient of the information written notice of the correction on 30 September 2014. The question is whether this constitutes a reasonable period for the purposes of s 20S(2).

58. The judgment was disclosed to the complainant's credit providers on or about 23 June 2014 (NAB), 25 June 2014 (AMEX) and 2 July 2014 (Citibank), which was respectively about 4 days, 6 days and 13 days after it was listed on the complainant's credit report on or around 19 June 2014. In contrast, it took approximately 52 days for Veda to give written notice of the correction to the complainant's credit providers, after it became aware that the information was incorrect.



59. I am not satisfied that it was reasonable for Veda to take approximately 52 days to provide written notice of the correction, when it was able to notify the complainant's credit providers of the (incorrect) judgment in a significantly shorter period. This is especially so given the complainant had put Veda on notice that his credit facilities had been cancelled in his letter of 12 August 2014, and requested that Veda address the inaccuracy urgently.

60. According to Veda's website, Veda is the leading provider of credit information and analysis in Australia and New Zealand. It communicates with credit providers in the normal course of its business operations and therefore should have the capacity to communicate with credit providers quickly and at no great cost. Veda has provided no explanation for why it took 52 days to notify the complainant's credit providers or how this constitutes a reasonable notice period in the circumstances.

61. I also note that Veda did not provide written notice of correction until approximately two weeks after it had advised the complainant in writing that it had notified all his credit providers of the removal of the judgment.

62. For these reasons, I find that Veda failed to meet the requirements of s 20S(2).

Appropriate declaration and remedy

63. During the complaint process the complainant advised that he sought an apology, financial compensation, and an award of costs against Veda.

64. Section 52(1)(iii) of the Privacy Act supplies the governing criterion for the assessment of damages to be awarded following an interference with privacy. It states that damages will be 'by way of compensation for any loss or damage suffered by reason of the act or practice the subject of the complaint'.

65. According to s 52(1AB) this loss or damage includes:

    (a) injury to the feelings of the complainant or individual; and

    (b) humiliation suffered by the complainant or individual.

66. In assessing compensation I am guided by the following principles on awarding compensation, summarised by the Administrative Appeals Tribunal (AAT) (Full Tribunal) in *Rummery*[6]:

    a. where a complaint is substantiated and loss or damage is suffered, the legislation contemplates some form of redress in the ordinary course

    b. awards should be restrained but not minimal

    c. in measuring compensation the principles of damages applied in tort law will assist, although the ultimate guide is the words of the statute

    d. in an appropriate case, aggravated damages may be awarded

[6] *Rummery and Federal Privacy Commissioner and Anor* [2004] AATA 1221, [32]. In setting out the factors relevant to compensation awards under the Privacy Act, the AAT considered the Federal Court's approach to the assessment of damages under the *Sex Discrimination Act 1984* (Cth) in *Hall v A & A Sheiban Pty Ltd* [1989] FCA 72.

e. compensation should be assessed having regard to the complainant's reaction and not to the perceived reaction of the majority of the community or of a reasonable person in similar circumstances.

Economic loss

67. The complainant notes that three credit facilities were restricted as a result of Veda's conduct and that these have not been restored to their former level despite the removal of the judgment from his credit report.

68. The complainant has provided notices from credit providers advising that his credit limits were reduced because of the information on his credit report.

23 June 2014	Correspondence from NAB confirming his credit limit was reduced by $1,500 to $18,500 based on information received from Veda.[7]
25 June 2014	Letter from AMEX stating that complainant's new credit limit has been revised to $13,100 from $40,000. The balance on the card at that time was only approximately $30 less than the revised credit limit, effectively preventing the complainant from making any new purchases with this card.[8]
25 June 2014	Letter from AMEX confirming that based on information received from Veda: Effective immediately, the complainant's AMEX card will no longer be available for use for a minimum period of 6 months. All charging privileges had been revoked. The credit limits on the account(s) may be reduced.[9]
2 July 2014	Correspondence from Citibank noting that Veda had advised of a default and his credit facility had been suspended.[10]
30 September 2014	Veda advised the complainant's credit providers that the judgment had been removed as it was listed in error.
23 May 2016	The complainant advised the OAIC that his credit facilities are still restricted.

[7] Letter from NAB to the complainant, 23 June 2014.

[8] Letter from AMEX to the complainant, 25 June 2014.

[9] Letter from AMEX to the complainant, 25 June 2014.

[10] Letter from Citibank to the complainant, 2 July 2014.

69. The complainant has provided a copy of his credit report for 17 July 2014, which shows that, other than the judgment incorrectly listed by Veda, there were no other judgments, or overdue accounts listed on the complainant's credit report at that time.

70. I am satisfied that the disclosure of the judgment by Veda resulted in the imposition of restrictions on the complainant's credit facilities by his credit providers, and that as of 23 May 2016, his credit facilities had not been restored to their former level.

71. The complainant says the restrictions have caused him great financial losses, however he has not particularised his loss, except to say that the restrictions prompted suppliers of his business to express concern, and made it necessary for him to quickly arrange alternative payment arrangements.

72. Veda argues the evidence provided by the complainant which suggests that restrictions have been placed on his credit facilities do not show economic loss.

73. On some instances, courts have allowed the recovery of compensation for the loss of use of a plaintiff's money, in the form of expenses incurred and opportunity costs arising from the withholding of money.[11] However, this is not a case where the complainant's own funds have been withheld from him. Rather, the complaint has lost the ability to access *credit*. Had he accessed the credit, he would eventually have been required to repay any money advanced to him, possibly with interest. In these circumstances it is difficult to determine that that the complainant has suffered economic loss, absent compelling evidence.

74. The complainant asserts that he used his credit facilities to run his business. I have no reason to doubt that this was the case. He indicated that once he was advised by his suppliers that payments on his credit card had not gone through, he organised alternative payment arrangements to ensure supplies were not disrupted. The complainant has not provided any evidence to show that these alternative arrangements involved borrowing money at a higher cost than would have been available to him under his previous credit facilities.

75. The complainant noted that even with alternative payment arrangements, deliveries were delayed by a week. However, he has not provided any evidence to substantiate that he suffered an economic loss as a result of the delay.

76. I am of the view that the complainant has not provided sufficient evidence to establish that he suffered economic loss.

77. The complainant did incur legal costs to have the listing removed. However, as discussed below, I have decided that the complainant's legal costs should be reimbursed as reasonable expenses incurred to bring the complaint under s 52(3). As such, I have not considered whether any portion of those costs should be awarded as compensation for economic loss, as it would be inappropriate for the complainant to be paid twice for the same expense.

Non-economic loss

78. The complainant says that he suffered embarrassment, reputational damage and humiliation as a result of Veda's conduct.

79. The complainant relevantly states:

[11] See, for example, *Hungerfords v Walker* [1989] HCA 8; (1989) 171 CLR 125.

> With no credit on credit cards I had to manage my time in Italy on very limited funds with no scope for shopping or taking side tours. In short a holiday costing over $20,000, booked and planned with much anticipation was ruined.
>
> …
>
> On the night of 1st July 2014 (Rome time) I received a call from two suppliers to advise that they have tried to charge the credit card provided but it is not going through and until invoice is paid goods will not be supplied. In fact one supplier asked me if the business was going alright.

80. His representative submits:

> The first our client knew of the default was when he tried to use his American Express card, only to be told that it was declined. He was embarrassed and shocked
>
> …
>
> Moreover, our client was contacted by suppliers to his business complaining that his Citibank credit card was not accepting the long standing direct debit payments (See attached credit card statement from June 2014 as proof that our client had these arrangements in place). This caused our client further embarrassment and humiliation.

81. Having considered and given weight to the statements made by the complainant and his representative, I am satisfied that Veda's act of recording an incorrect judgment on the complainant's credit file has caused the complainant loss of enjoyment, distress and humiliation, and for this reason an award of damages is appropriate.

82. The complainant noted that almost two years after the disclosure, his credit facilities have still not been restored to their former level despite Veda notifying his credit providers of the removal of the listing. Veda argued that it is not responsible for any decision made by his credit providers after they were notified that the entry had been corrected, as any assessment would be in line with the credit provider's internal lending policies.

83. The complainant's credit report of 4 November 2015 shows that there were no adverse listings on the complainant's credit report on or about the date Veda advised his credit providers that the listing had been removed as it was listed in error. However, the complainant has not provided any information from his credit providers to suggest why they did not remove the restrictions. Without some clarification from the complainant's credit providers as to the reasons for their assessment, I am unable to find that Veda is responsible for any losses resulting from the restrictions after 30 September 2015.

84. In deciding the appropriate damages for non-economic loss I have had regard to amounts awarded in previous privacy determinations. I have previously summarised these in *'IY' and Business Services Brokers Pty Ltd t/a TeleChoice*[12] and *'IQ' and NRMA Insurance, Insurance Australia Limited*[13].

85. In *'S' and Veda Advantage Information Services and Solutions Limited*[14], I awarded the complainant $2,000 for the distress and anxiety caused by reason of Veda's failure to take reasonable steps to ensure that the personal information contained in the complainant's credit file was accurate, up-to-date,

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[12] *'IY' and Business Services Brokers Pty Ltd t/a TeleChoice* [2016] AICmr 44 [53]-[56].

[13] *'IQ' and NRMA Insurance, Insurance Australia Limited* [2016] AICmr 36 [65]-[69].

[14] *'S' and Veda Advantage Information Services and Solutions Limited* [2012] AICmr 33.

complete and not misleading. In that matter I was satisfied that the complainant suffered stress and anxiety, even though I was not convinced that she was actually refused credit as a result of the listing.

86. I consider the loss suffered by the complainant in the present matter to be much more serious because Veda's disclosure of the erroneous listing to the complainant's credit providers resulted in the imposition of restrictions on three credit facilities, which in turn caused embarrassment, loss of enjoyment, distress and humiliation to the complainant. These restrictions were in place for a number of months before Veda advised the complainant's credit providers that the judgment had been removed. Despite being put on notice of the restrictions by the complainant, Veda did not advise the complainant's credit providers of the removal of the listing within a reasonable period.

87. As well as the impact of the privacy breaches on the complainant, and the above factors, I have taken into account the multiplicity and seriousness of the breaches, including the fact that I have found that Veda were in breach of a civil penalty provision by using or disclosing credit reporting information that is false or misleading in a material particular.

88. Having regard to the circumstances and the relevant factors, I conclude that an appropriate award of compensation for non-economic loss is $10,000.

Reimbursement for expenses

89. The complainant has requested that Veda pay $5,000 in legal fees related to the complaint.

90. Section 52(3) of the Privacy Act gives me the power to include a declaration that the complainant is entitled to a specified amount to reimburse the complainant for expenses reasonably incurred in connection with the making of the complaint and its investigation.

91. In relation to his use of legal representation, the complainant relevantly stated:

> I received my credit file on 17th July 2014 and noted a default judgement dated 11th June 2014 for $7124 by a [name redacted]. I have never known anyone known by the name of [name redacted] and had no idea about the so called court judgement. I had no alternative but to engage a solicitor to approach the court and get details of judgement to decide further course of action.
>
> …
>
> At 3:30PM on 30th July 2014 I spoke with Veda and advised the court response and requested that Veda should look into the information received from the court and correct mistake and remove default notification from my credit file ASAP. Veda responded that they have recorded as per court information and they will not be doing anything till they hear directly from the court. In short after Veda response I had no avenue left to pursue but to take the matter through the complaint process. I then contacted [name redacted] to formally complain to Veda and seek resolution as continued restrictions on my credit had been causing me great financial losses.

92. I accept that it was reasonably necessary for the complainant to seek professional assistance to deal with the erroneous listing on his Veda credit report.

93. The complainant has provided the OAIC with invoices dated 12 February 2015 ($330), 2 June 2015 ($3,300), and 14 December 2015 ($2,200) as evidence of costs he incurred in connection with the complaint and its investigation. These invoices indicate that the costs were incurred directly in relation to the complainant's dispute with Veda.

94. While two of these invoices relate to periods prior to the making of the complaint to the OAIC on 6 July 2015, taking into account the information provided in the invoices and the complainant's statement, I am satisfied that these expenses were incurred in connection with the making of the complaint. I note that in accordance with section 40(1A) of the Privacy Act, the OAIC does generally require complainants to complain to the respondent about the act or practice prior to making a complaint to the OAIC.

95. Although I am satisfied that the complainant's costs were incurred in connection with this privacy complaint, s 52(3) does not have the effect of automatically transferring a complainant's legal expenses to the respondent. Rather, s 52(3) provides me with a discretion to declare that a complainant is entitled to a specified amount to reimburse the complaint for 'expenses reasonably incurred … in connection with the making of the complaint and the investigation of the complaint.'

96. I will not exercise that discretion on every occasion in which a complainant incurs legal or other expenses. Most privacy complaints can be resolved without complainants requiring legal representation. As the OAIC's *Guide to privacy regulatory action*[15] states at paragraph [1.13]:

> The OAIC provides a free, informal and accessible complaint process. Parties do not require legal representation to participate in the complaint handling process or the determination process. Parties generally bear their own costs in the complaint handling process, including any legal expenses.

97. However, in the particular circumstances of this complaint, I consider it was reasonably necessary for the complainant to seek legal assistance. The listing by Veda was clearly an error. Veda provided the complainant with incorrect information about how he could remedy the listing, advising him that the listing was recorded correctly, and that he would need to apply to the court to have the judgment reversed. Importantly, the legal expenses incurred by the complainant are modest, and are not disproportionate to the harm he suffered or the remedy I have decided to award.

98. For these reasons, I have decided that the complainant's legal expenses were reasonably incurred in connection with the complaint, and have elected to exercise my discretion to declare that the complainant should be reimbursed for those expenses. As such, I declare under s 52(3) that Veda should pay the complainant an amount of $5,830 as reimbursement.

99. Had I not decided to award this amount to the complainant as reimbursement, I would consider that at least part of the legal costs the complainant incurred to have the listing removed were an economic loss caused by the privacy breach that should be compensated under s 52(1)(b)(ii). However, that issue does not arise as I have decided that the complainant should be reimbursed for these costs under s 52(3).

Determination

100. I declare in accordance with s 52 of the Privacy Act that the complainant's complaint in relation to ss 20N(1), 20N(2), 20S(2), and s 20P(2) is substantiated. I declare that Veda interfered with the complainant's privacy by:

- not taking such steps as were reasonable in the circumstances to ensure that certain credit information it collected about the complainant was accurate, up-to-date, and complete as required by s 20N(1) of the Privacy Act;

[15] Available online at https://www.oaic.gov.au/about-us/our-regulatory-approach/guide-to-privacy-regulatory-action/chapter-1-privacy-complaint-handling-process.

- not taking such steps as were reasonable in the circumstances to ensure that the credit reporting information it disclosed was, having regard to the purpose of the disclosure, accurate, up-to-date, complete and relevant as required by s 20N(2) of the Privacy Act;
- using or disclosing credit reporting information that was false or misleading in a material particular in contravention of s 20P of the Privacy Act; and
- Failing to give each recipient of the information written notice of correction within a reasonable period as required by s 20S(2) of the Privacy Act.

101.I declare that Veda must:

- Within 30 days, issue a written apology to the complainant acknowledging its interference with the complainant's privacy, in accordance with s 52(1)(b)(ii).
- Within 30 days, pay the complainant $10,000 for loss or damage caused by the interference with the complainant's privacy, in accordance with s 52(1)(b)(iii).
- Within 30 days, pay the complainant $5,830 to reimburse the complainant for reasonable expenses incurred in bringing the complaint, in accordance with s 52(3).
- Within 30 days, commence a review of its procedures in relation to the collection, use and disclosure of court proceedings information, and steps taken to ensure accuracy and correction of this information, in accordance with s 52(1)(b)(ia).
- Within 6 months, advise me of the results of the review, in accordance with s 52(1)(b)(ia).

Timothy Pilgrim
Australian Privacy Commissioner

25 November 2016

Review rights

A party may apply under s 96 of the Privacy Act 1988 to have a decision under s 52(1) or (1A) to make a determination reviewed by the Administrative Appeals Tribunal (AAT). The AAT provides independent merits review of administrative decisions and has power to set aside, vary, or affirm a privacy determination. An application to the AAT must be made within 28 days after the day on which the person is given the privacy determination (s 29(2) of the *Administrative Appeals Tribunal Act 1975*). An application fee may be payable when lodging an application for review to the AAT. Further information is available on the AAT's website (www.aat.gov.au) or by telephoning 1300 366 700.

A party may also apply under s 5 of the *Administrative Decisions (Judicial Review) Act 1977* to have the determination reviewed by the Federal Circuit Court or the Federal Court of Australia. The Court may refer the matter back to the OAIC for further consideration if it finds the Information Commissioner's decision was wrong in law or the Information Commissioner's powers were not exercised properly. An application to the Court must be lodged within 28 days of the date of the determination. An application fee may be payable when lodging an application to the Court. Further information is available on the Court's website (http://www.federalcourt.gov.au/) or by contacting your nearest District Registry.