
- **Response to the
Financial Conduct Authority
Credit Information Market
Study's Terms of Reference**



Financial Conduct Authority Credit Information Market Study

Privacy International's response to
Terms of Reference

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About Privacy International

Privacy International (PI) is a leading charity advocating for strong national, regional, and international laws that protect the right to privacy around the world. Founded in 1990 and based in London, PI challenges overreaching state and corporate surveillance so that people everywhere can have greater security and freedom through greater personal privacy.

Within its range of activities, PI investigates how peoples' personal data is generated and exploited, and how it can be protected through legal and technological frameworks.

PI employs technologists, investigators, policy experts, and lawyers, who work together to understand the technical underpinnings of emerging technology and to consider how existing legal definitions and frameworks map onto such technology.

PI is frequently called upon to give expert evidence to Parliamentary and Governmental committees around the world on privacy issues and has advised, and reported to, among others, the Parliament of the United Kingdom, the Council of Europe, the European Parliament, the Organisation for Economic Co-operation and Development, and the United Nations.

Issues to consider

Privacy International welcomes further exploration of the credit market by the Financial Conduct Authority (“FCA”), as this is an area that has deep implications for people’s lives, and their human rights.

The credit sector has undergone a great deal of changes over recent years, not least when it comes to the data that is used to make decisions: as the CEO of Zest Finance famously said, “All data is credit data”¹. This means that the credit sector touches all aspects of people’s lives, in both the sources of data that are used for credit decisions and the implications for behaviour change that go along with this.

However, the true implications of these changes are often not fully appreciated by the financial industry. Similarly, organisations in civil society and human rights are only just beginning to understand the consequences of these new issues for their fields of interest.

Issues that should be considered in the work include:

- **Credit data (whether ‘traditional’ credit data; data from Open Banking sources, or other sources of data like social media) are hugely revealing of people’s lives far beyond the state of their financial affairs.** For example, such data is very revealing about sensitive issues like an individual’s mental health, ethnicity, religion etc. This means that there has to be consideration of the privacy and data protection issues raised by this data. There’s also a need to consider what the discriminatory impact of the use of data in this market, particularly when used in conjunction with automated decision-making.
- **The affects upon consumer behaviour of this use of data in the credit sector extends beyond the choices they make surrounding financial products.** With the breadth of the sources of data used, there is the risk of affecting behaviour beyond the financial sphere. For example, an individual’s social network is an important factor used by some alternative credit scorers: do we then see a person change their social network, and the individuals with whom they interact, to make it more likely to be offered credit? This means that credit has an impact on the behaviours of people and a potential ‘chilling effect’ on how we interact as a society, with associated concerns about the manipulation of behaviour – whether deliberate or accidental by the providers of financial services.
- **It is essential to investigate the data broker role of the credit reference agencies.** Where they get data, what they do with the data, who they share the data with, for what purpose and what the consequences of this are. As the study is looking to explore the business model of the Credit Reference Agencies, it is essential that their role as data brokers is not ignored. It has an important impact on the business models of Credit Reference Agencies, the interests of consumers, and potentially the broader credit market.

¹ Cited in Privacy International’s research into the fintech sector:
<https://privacyinternational.org/sites/default/files/2017-12/Fintech%20report.pdf>

There is a lack of transparency as to data collection/ sources², data contributors, how data is then processed, profiling practices and who the data is shared with, for example:

- Other data brokers, such as Acxiom³
- Ad tech companies, such as Quantcast⁴,
- Local authorities, Equifax and Experian have dedicated public sector offerings⁵
- Law enforcement, such as Experian's Mosaic⁶ or Equifax.⁷
- Political campaigns, for example Experian data is used by political parties in the UK (as well as elsewhere, the US and Brazil) or Aristotle is both a credit reference agency and a political data company⁸
- Advertisers etc

This data gathering, profiling and sharing may have far reaching consequences for people's lives, yet it is extremely difficult for individuals to understand how their information is used, the consequences for them and to exercise their rights.

These problems are demonstrated in Privacy International's complaint about Experian and Equifax to the UK Information Commissioner.⁹ The submission sets out in detail why the data practices of Experian and Equifax fall below the standards in the General Data Protection Regulation and the Data Protection Act 2018, including in relation to transparency, lawfulness and fairness.

In considering the issues highlighted above, please consider the following resources from Privacy International:

- Privacy International's Data Protection complaints against credit reference agencies, data brokers and ad tech: <https://privacyinternational.org/advocacy/2426/our->

² For example, parenting sites fined by the ICO, Emma's Diary and Bounty provided data to Experian and Equifax, see Privacy International's complaint on Experian and Equifax <https://privacyinternational.org/sites/default/files/2018-11/08.11.18%20Final%20Complaint%20Experian%20%26%20Equifax.pdf>

³ See Privacy International's complaint in relation to Acxiom and Oracle <https://privacyinternational.org/sites/default/files/2018-11/08.11.18%20Final%20Complaint%20Acxiom%20%26%20Oracle.pdf>

⁴ See this explainer <https://staging.privacyinternational.org/long-read/2433/i-asked-online-tracking-company-all-my-data-and-heres-what-i-found> and Privacy International's complaint in relation to Quantcast, Criteo and Tapad <https://privacyinternational.org/sites/default/files/2018-11/08.11.2018%20Final%20Complaint%20AdTech%20Criteo%20%26%20Quantcast%20and%20Tapad.pdf>

⁵ For example, re Experian see reporting on the use by Durham Police for their Harm Assessment Risk Tool, relating to risk of reoffending <https://bigbrotherwatch.org.uk/all-media/police-use-experian-marketing-data-for-ai-custody-decisions/>; other Police forces in England and Wales are also listed as using Mosaic, for example Cambridgeshire Constabulary <https://www.blpd.gov.uk/foi/foicontractview.aspx?contractid=10596> and Lancashire Police <https://www.blpd.gov.uk/foi/foicontractview.aspx?contractid=30995>

⁶ For example, Experian Mosaic Public Sector Guide <https://www.experian.co.uk/assets/marketing-services/brochures/mosaic-ps-brochure.pdf> and in use, for example in Tower Hamlets https://www.towerhamlets.gov.uk/Documents/Borough_statistics/borough_mosaic_profile_final.pdf; Equifax's public sector gateway https://www.equifax.co.uk/public-sector/public-sector-gateway/en_gb

⁷ Equifax have a bespoke data and analytics products for justice and law enforcement, https://www.equifax.co.uk/public-sector/justice-and-law-enforcement/en_gb Devon & Cornwall Police are listed as having a contract <https://www.blpd.gov.uk/foi/foicontractview.aspx?contractid=36991>

⁸ For example, re Experian data <https://ourdataourselves.tacticaltech.org/posts/psychometric-profiling> and re Aristotle the CRA <https://www.aristotleint.co.uk/> and Aristotle the political data company <http://aristotle.com/>.

⁹ <https://privacyinternational.org/sites/default/files/2018-11/08.11.18%20Final%20Complaint%20Experian%20%26%20Equifax.pdf>

[complaints-against-acxiom-criteo-equifax-experian-oracle-quantcast-tapad](#) In particular the complaint against Equifax and Experian; <https://privacyinternational.org/sites/default/files/2018-11/08.11.18%20Final%20Complaint%20Experian%20%26%20Equifax.pdf>

- Privacy International's report from 2017, 'Fintech: Privacy and Identity in a New Data Intensive Sector', : <https://privacyinternational.org/report/998/fintech-privacy-and-identity-new-data-intensive-financial-sector>
- On the use of new data sources, including social media, please see this article: <https://privacyinternational.org/long-read/2323/fintechs-dirty-little-secret-lenddo-facebook-and-challenge-identity>

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