

Report of Findings

Our File: PIPEDA

MAR 14 2017

Complaint under the Personal Information Protection and Electronic Documents Act ("PIPEDA")

1. The complainant alleges that The Personal Insurance Company ("The Personal"), a Canadian property and casualty group insurance company that specializes in home and auto insurance, collected and used his personal information without meaningful consent and did not identify the purposes for such collection and use when he filed an auto insurance claim. Specifically, he alleges that his consent for the collection and use of his credit score was not meaningful as it was provided during an aggressive interview without an explanation of the purposes for its collection.
2. He also alleges that The Personal collected personal information that was not limited to that which is necessary for the identified purposes. Specifically, he alleges that The Personal requested and obtained his entire credit file from Equifax Inc. ("Equifax"), not simply his credit score, which he viewed as an excessive collection of his personal information.
3. In addition, the complainant alleges that The Personal's collection of an individual's credit score is for a purpose that a reasonable person would consider inappropriate in the circumstances. Specifically, he alleges that this collection of credit score is to determine the financial condition of the insured as part of a payout avoidance strategy.
4. Our Office is unable to find that a reasonable person would consider The Personal's collection and use of credit score for preventing and detecting fraud during the auto insurance claim assessment process to be reasonable. In addition, while The Personal informed the complainant of the purposes for collecting and using his credit score, our Office finds that The Personal did not obtain meaningful consent from the complainant in light of its failure to advise that such collection and use was optional. Our Office further finds that The Personal is not being open about its policies and practices with respect to the collection and use of credit score during the auto insurance claim assessment process.
5. In response to our Office's Preliminary Report of Investigation, The Personal agreed to refrain from collecting and using credit score during the claim assessment process for auto insurance by April 22, 2017, and to conduct a review of its current procedures and processes for the collection and use of credit score for other types of insurance and for other purposes to ensure compliance with our Office's recommendations, by June 30, 2017, or if major system changes are necessary, by December 31, 2017.
6. Accordingly, our Office concludes that this matter is **well-founded and conditionally resolved**.

Summary of Investigation

Background

7. After a motor vehicle accident in November 2012, the complainant filed an accident benefit claim with his automobile insurance company, The Personal. According to the complainant, who lives in Ontario, the Accident Benefit Claims Advisor (the "Advisor") conducted an aggressive telephone interview and requested consent to collect and use the complainant's credit score without an explanation of the purposes.
8. The complainant indicated that he consented to the request in order to "maintain peace and present a spirit of cooperation" but subsequently expressed his discontent at being required to provide consent for the collection and use of his credit score.
9. In a letter dated May 27, 2013, The Personal apologized and explained that requesting consent for the collection and use of credit score was a routine question, and that the question's script made it clear that the consent was voluntary.
10. On September 17, 2013, the complainant requested that The Personal provide him with access to the personal information collected about him, including reports from credit reporting agencies.
11. On November 1, 2013, The Personal responded to the complainant's access request, but refused to provide him with his credit score.
12. In response to a request, on January 6, 2014, Equifax provided the complainant with the following explanation for two inquiries made by The Personal:

November 27, 2012 – insured reported an automobile accident – consumer consent provided to The Personal to obtain credit score – Per Equifax, *the file was found and provided*;

June 18, 2013 (soft inquiry) – on-going relationship – credit score report ordered prior to policy renewal Sept 2013 – Per Equifax, *the file was found and only the score was provided. [Emphasis added]*
13. On account of the differences between these two entries, the complainant believes that The Personal requested and was given his full credit file on November 27, 2012, instead of only his credit score.
14. After expressing discontent to The Personal for its refusal to provide him with his credit score, on January 16, 2014, The Personal provided him with his credit score. However, the complainant rejected that The Personal had limited collection to his credit score, based on information obtained from Equifax on January 6, 2014.
15. In an email addressed to The Personal on February 13, 2014, the complainant indicated that he had "granted consent for a FICO/CREDIT SCORE to be done. You exceeded your authority by pulling the complete file..." Moreover, the complainant indicates that it was not until August 2013 that he was advised that credit score information is used to "facilitate the claim and to prevent, detect and prosecute fraud".

16. On April 17, 2014, The Personal advised the complainant that his credit score was received electronically from Equifax and it was not viewed by anyone at The Personal until the complainant requested access to it.

17. On May 2, 2014, Equifax confirmed to the complainant that The Personal did not request or receive his full credit file on November 27, 2012; rather it only received the complainant's credit score. In response to why the complainant was not provided with a correct response on January 6, 2014, Equifax advised that human errors of this nature were most regrettable and extended its sincere apologies.

18. Dissatisfied with the responses, he filed a complaint with our Office against The Personal.

A. Appropriate purposes

Previous OPC investigation

19. Our Office previously examined the appropriateness of insurance companies using credit scores to assess risk and calculate premiums for home insurance during the underwriting process¹. In this previous investigation, our Office determined that assessing risk and calculating premiums is an appropriate purpose for collecting credit scores. In making this finding, our Office acknowledged that the Ontario government had made the public policy decision to allow credit reporting agencies to disclose an individual's credit information to insurance companies for the purposes of assessing insurance risk during the underwriting stage through the enactment of paragraph 8.1(d)(iv) of Ontario's *Consumer Reporting Act*² ("CRA"). This paragraph states:

8. (1) No consumer reporting agency and no officer or employee thereof shall knowingly furnish any information from the files of the consumer reporting agency, except,

(d) in a consumer report given to a person³ who it has reason to believe,

(iv) intends to use the information in connection with the underwriting of insurance involving the consumer;

Information from The Personal

20. The Personal also informed our Office that the credit score does not influence the amount of claim payout a policy holder may receive.

21. The Personal introduced the use of credit score for Accident Benefit claims in September 2012, after an investigation into the high instances of fraud in accident benefit claims,

¹ Available online at <https://www.priv.gc.ca/en/opc-actions-and-decisions/investigations/investigations-into-businesses/2012/pipeda-2012-005/>.

² R.S.O. 1990, Chapter C.33. The CRA ensures that credit reporting agencies collect, maintain and report an individual's credit and personal information in a responsible manner, an individual's right to know what is being reported about them and to whom, and an individual's right to correct information about them that is inaccurate.

³ "Person" is defined as "a natural person, an association of natural persons, a partnership or a corporation" under subsection 1(1) of the CRA.

particularly in the Ontario market, with the growing trend of staged accidents, fraudulent suppliers and declining economic conditions.

22. According to The Personal, it uses a fraud detection model at the point of filing an accident benefit claim to triage claims. This is done in order to speed up the claim process, resulting in better experience for clients and focused efforts on higher risks, which leads to lower costs and lower premiums for its customers. Credit scores are one of many variables used in the fraud detection model. If certain thresholds are met, a Claims Advisor will be instructed to further investigate the claim's legitimacy, without being told which factors triggered the need for additional investigation. The Personal provided our Office with statistics to demonstrate the effectiveness of credit score in its fraud detection model.
23. The Personal submitted that a reasonable person would consider the collection and use of credit score for the purposes of detecting, preventing and prosecuting fraud, to be appropriate in the circumstances because it believes there is a correlation between low credit scores and increased fraudulent activity.
24. While The Personal could not cite any legislation that specifically allows the use of credit score for auto insurance claims assessment, it did point to subparagraph 8(1)(d)(vi) and subsection 8(2) of the CRA, which state:
8. (1) No consumer reporting agency and no officer or employee thereof shall knowingly furnish any information from the files of the consumer reporting agency except,
- (d) in a consumer report given to a person who it has reason to believe,
- (vi) otherwise has a direct business need for the information in connection with a business or credit transaction involving the consumer, or
8. (2) No person shall knowingly obtain any information from the files of a consumer reporting agency respecting a consumer except for the purposes referred to in subsection [8](1).
25. It is The Personal's belief that it has a direct business need for credit scores in order to detect and prevent fraud, and to control costs and clients' premiums. Moreover, according to The Personal, obtaining a client's credit score is to their clients' benefit as it may result in a faster claim settlement.
26. The Personal advised that it is not aware of anything that prohibits the collection and use of individuals' credit score as part of the auto insurance claim assessment process.

B. Over-collection

27. In its representations to our Office, The Personal confirmed that it only requested and received the complainant's credit score from Equifax. As part of our investigation, our Office contacted Equifax to better understand the circumstances under which it provided The Personal with the complainant's credit information.

28. Equifax advised our Office that it did not share the complainant's full credit file with The Personal; it provided The Personal with his credit score. It also advised that as a result of human error, the complainant was provided with inaccurate information on January 6, 2014, which suggested that The Personal had requested and received his full credit file.

C. Identifying purposes, meaningful consent and openness

Information from The Personal

29. The Personal confirmed that it collected the complainant's credit score from Equifax for the purpose of handling his accident benefit claim and determining if further investigation was required, and/or as a tool to detect and prevent fraud.
30. In line with the Insurance Bureau of Canada ("IBC")'s *Code of Conduct for Insurers' Use of Credit Information*⁴, The Personal seeks express consent from its clients for the collection and use of credit score, as follows:

As a standard practice for our Accident Benefits claims, we would like your consent to obtain your current credit score. Collected information will remain confidential and will be used to facilitate your claim and to prevent, detect and prosecute fraud. Do I have your consent to do this?

31. When a client refuses/withdraws consent with respect to accident benefit claims, advisors inform them as follows: "I respect your decision if you do not want to give us consent, and I will handle your claim the same way I do with other clients".
32. The Personal submitted to our Office that, on November 27, 2012, the complainant's response to the request for express consent was entered in the system as "Yes". Accordingly, it is The Personal's belief that the complainant consented to The Personal's collection and use of his credit score, which was voluntary and not a condition of receiving the service.
33. The Personal advised that the call of November 27, 2012 was not recorded as its phone system at the time did not record all telephone calls. It further advised that the complainant's credit score was not attached to, or part of, the complainant's computer file or physical file accessible by the Advisor.
34. The complainant also signed the standard claim form *Application for Accident Benefits* ("OCF-1") for the motor vehicle accident in November 2012, as well as a previous motor vehicle accident. This form advised the complainant that The Personal will collect and use his personal information, either directly from the complainant or from any other person with the complainant's consent, for the purposes of investigating and processing his claims, and preventing fraud, and detecting fraud where there are reasonable grounds to suspect fraud. Collecting and using credit information is not mentioned on this form.

⁴ The Code was issued on January 20, 2012. It provides insurers who use credit information for quoting, underwriting and rating of personal property insurance with voluntary and clear guidelines so that consumers are informed about how their credit information may be used; available online at http://assets.ibc.ca/Documents/Consumer%20Protection/Code_of_Conduct.pdf.

35. On January 3, 2013, the complainant also signed an *Authorization to Obtain and Disclose Information* form, in order to have the same accident benefit claims advisor handle both of his accident benefit claims filed together. This form was witnessed by a Field Claims Advisor for The Personal. By signing this form, the complainant consented to The Personal obtaining from and exchanging information related to his claim from various parties, including credit reporting agencies. He was also informed that this consent was granted for the purposes of analyzing, assessing, investigating and processing his claim. The complainant advised that he did not recall signing this document.
36. The Personal's Privacy Code, available on its website and upon request, states that The Personal collects, uses and discloses a customer's personal information in order to process claims involving its customers and prevent, detect and prosecute fraud, among other purposes. It also advises that The Personal obtains personal information primarily from its customers and it may also collect personal information from other external sources, including credit reporting agencies.
37. Moreover, The Personal included privacy messages in its policy documentation mailed to clients, for both home and auto policies that specifically mention the collection of personal information from credit reporting agencies.

Research

38. Our Office reviewed research, which suggests that the general public may not be sufficiently informed about insurance companies' use of their credit score. For example, a report by the Canadian Council of Insurance Regulators ("CCIR") noted the following:

One area where all [brokers] recognized they can do a better job was educating the public on the use of credit information. Brokers suggested that consumers are actively being harmed by their lack of knowledge around their credit scores in general as well as the part that their credit scores play in their insurance costs and that this is worsened by the lack of transparency from insurers on the effect of credit scores on the premiums they quote.⁵

39. In addition, a survey commissioned by the Insurance Brokers Association of Ontario ("IBAO") in February 2012 showed that 78% of Ontarians were not aware that insurers were using credit scores for their home insurance⁶, while a consumer survey in Alberta in June 2010 commissioned by the Consumer Representative to the Automobile Rating Board ("AIRB") found that 48% of consumers did not know if insurers were using their credit information.⁷

⁵ Findings Report: *Use of Credit Scores by Insurers*, Canadian Council of Insurance Regulators, November 2012, available online at https://ccir-ccra.org/en/init/Credit_scor/Credit_Scoring_Findings_Report_EN.pdf.

⁶ *Ontarians Support Banning Credit Scoring from Home Insurance*, Insurance Brokers Association Ontario press release, December 7, 2010.

⁷ Quoted in *Issues Paper: Use of Credit Scores by Insurers*, Canadian Council of Insurance Regulators, June 2011, available online at [https://www.ccir-ccra.org/en/init/Credit_scor/CCIR%20credit%20scores%20issues%20paper\(En\).pdf](https://www.ccir-ccra.org/en/init/Credit_scor/CCIR%20credit%20scores%20issues%20paper(En).pdf).

Application

40. In making our determinations, our Office applied Principles 4.2, 4.3, 4.3.2, 4.4, 4.4.1 and 4.8.1 of Schedule 1 of PIPEDA, as well as subsection 5(3) of PIPEDA.
41. Principle 4.2 states that the purposes for which personal information is collected shall be identified by the organization at or before the time the information is collected.
42. Principle 4.3 states that the knowledge and consent of the individual are required for the collection, use or disclosure of personal information, except where inappropriate. Specifically, Principle 4.3.2 states that organizations shall make a reasonable effort to ensure that the individual is advised of the purposes for which the information will be used, and to make the consent meaningful, the purposes must be stated in such a manner that the individual can reasonably understand how the information will be used or disclosed.
43. Principle 4.4 states that the collection of personal information shall be limited to that which is necessary for the purposes identified by the organization. Specifically, Principle 4.4.1 shall not collect personal information indiscriminately. Both the amount and the type of information collected shall be limited to that which is necessary to fulfil the purposes identified. Organizations shall specify the type of information collected as part of their information-handling policies and practices, in accordance with Principle 4.8.
44. Principle 4.8.1 states that organizations shall be open about their policies and practices with respect to the management of personal information. Individuals shall be able to acquire information about an organization's policies and practices without unreasonable effort and this information shall be made available in a form that is generally understandable.
45. Subsection 5(3) states that an organization may collect, use or disclose personal information only for purposes that a reasonable person would consider are appropriate in the circumstances.

Analysis

A. Appropriate purposes

Previous OPC investigation

46. Our Office's previous investigation acknowledged that the Ontario government had made the public policy decision to allow the disclosure of individuals' credit information to insurance companies for the purpose of underwriting, by virtue of subparagraph 8(1)(d)(iv) and subsection 8(2) of the CRA.
47. In contrast, the present investigation does not deal with underwriting insurance. At issue here is whether The Personal's collection and use of the complainant's credit score for the purpose of preventing and detecting fraud during the auto insurance claim assessment process is appropriate.

Provincial legislation: The CRA and Insurance Act⁸

48. The CRA prohibits organizations from obtaining credit information except for certain limited purposes such as those related to: credit decisions, collection of a debt, employment decisions, underwriting of insurance, determining a consumer's eligibility under a statute or regulation or any decision where there is a direct business need for the information in connection with a credit or business transaction involving the consumer. The development of a list of such purposes is likely demonstrative of the sensitivity of credit information.
49. The Ontario *Insurance Act* does not allow the use of credit information, including credit score and credit rating, for the underwriting of auto insurance coverage for private passenger automobiles. Specifically, automobile insurance companies in Ontario are prohibited from using credit information in their risk classification system for automobile insurance⁹, and prohibited from using credit information and credit score to decline to issue, to terminate or to refuse to renew a contract of automobile insurance.¹⁰ This is likely why credit information is not included in the consent language found in standard insurance forms approved by the Financial Services Commission of Ontario ("FSCO").
50. While the *Insurance Act* specifically prohibits the use of credit information for underwriting with respect to auto insurance, despite the fact that the CRA permits the disclosure of an individual's credit information to insurance companies for the purposes of assessing insurance risk during the underwriting stage, both provincial statutes are silent on the use of credit information during the claim assessment process for auto insurance.
51. The Personal was unable to cite any legislation or regulation that specifically permits the practice of collecting and using credit scores for the purpose of preventing and detecting fraud during the claim assessment process. Instead, it claimed that such collection and use fell under "a direct business need for the information in connection with a business or credit transaction involving the consumer", pursuant to subparagraph 8(1)(d)(vi) and subsection 8(2) of the CRA.
52. While our Office acknowledges that the claim assessment process is "a business transaction involving the consumer", the question is whether the detection and prevention of fraud during the insurance claim assessment process meets the standard of "a direct business need for [credit score]".
53. In the Bell Relevant Advertising Program ("RAP") investigation¹¹, our Office's interpretation of subparagraph 8(1)(d)(vi) and subsection 8(2) of the CRA was that targeted advertising did not meet the standard of "a direct business need for [credit score] in connection with a credit or business transaction involving the consumer". We noted:

⁸ R.S.O. 1990, Chapter I.8.

⁹ Sections 410 to 417 of the *Insurance Act* and subsection 16(4.2) of Regulation 664 of the Revised Regulations of Ontario 1990 (Automobile Insurance).

¹⁰ Subsection 237(1) of the *Insurance Act* and subsection 5(2) of Regulation 664 of the Revised Regulations of Ontario 1990 (Automobile Insurance).

¹¹ PIPEDA Report of Findings #2015-001, available online at <https://www.priv.gc.ca/en/opc-actions-and-decisions/investigations/investigations-into-businesses/2015/pipeda-2015-001/>.

We see such provincial legislation as reflecting the recognition that measures of credit worthiness, such as credit scores, are only to be used for certain limited purposes directly related to decisions with important financial implications for the consumer and the organization concerned. Bell's use of credit score information to design targeted ads clearly extends beyond these recognized purposes. Given this, we see the use of credit score information for the purposes of the RAP as clearly inappropriate.

54. While The Personal may have a business need to detect and prevent fraud generally, The Personal has not demonstrated that it has a "direct business need" for credit score to detect and prevent fraud as part of an auto insurance claim assessment process. Our Office believes that The Personal's interpretation of subparagraph 8(1)(d)(vi) and subsection 8(2) of the CRA is broad and as such, it does not provide a sufficient basis upon which a credit reporting agency can furnish, and an insurance company can obtain, an individual's credit score information, during the auto insurance claim assessment process.

The four-point test

55. The jurisprudence establishes that to determine whether an organization complies with subsection 5(3), a four-part test is applied, namely: (1) Is the collection, use or disclosure of personal information necessary to meet a specific need?; (2) Is the collection, use or disclosure of personal information likely to be effective in meeting that need?; (3) Is the loss of privacy proportional to the benefit gained?; and (4) Is there a less privacy-invasive way of achieving the same end?¹²
56. On the basis of the information currently before our Office, including the statistics it has submitted, The Personal has failed to demonstrate that the collection and use of credit score is necessary and effective in preventing and detecting fraud during the auto insurance claim assessment process.
57. In light of the above, we are unable to find that a reasonable person would consider The Personal's collection and use of credit score for preventing and detecting fraud during the auto insurance claim assessment process to be reasonable, pursuant to subsection 5(3).

B. Over-collection

58. Our Office also considered whether The Personal limited its collection of the complainant's personal information to that which was necessary for the purposes identified, namely, whether The Personal requested or obtained more than the complainant's entire credit file from Equifax, as opposed to his credit score.
59. Although the complainant strongly expressed the belief that The Personal requested and obtained his entire credit file, there is no evidence to support this allegation. While Equifax initially appeared to advise the complainant that his entire credit file has been provided to The Personal, Equifax later advised that this was an error.

¹² *Eastmont v. Canadian Pacific Railway*, 2004 FC 852 (CanLII) at paragraph 127, available online at <http://www.canlii.org/en/on/onsc/doc/2014/2014onsc2026/2014onsc2026.html>.

60. Without actual evidence of receiving more than the complainant's credit score from Equifax, our Office cannot find that The Personal contravened Principles 4.4 and 4.4.1.

C. Identifying purposes, meaningful consent and openness

Identifying purposes

61. The complainant claims that although he provided his consent for The Personal to obtain his credit score, the Advisor did not identify the purposes for such collection and his consent was therefore not meaningful. First, our Office considered whether The Personal identified the purposes for which they were collecting and using his credit score.
62. To demonstrate its compliance with Principle 4.2 and 4.3.2, The Personal provided our Office with the standard script used by its Accident Benefit Advisors when beginning an insurance claim. This script explains the purpose for which credit score is collected, namely, to facilitate the insurance claim and to prevent, detect and prosecute fraud.
63. There is no direct evidence to demonstrate exactly what the Advisor said to the complainant on August 27, 2012, as audio recordings were not a normal practice at the time; the evidence before our Office is the complainant's allegation that the Advisor did not identify the purposes for which it was collecting his credit score and The Personal's records indicating that the complainant responded "yes" to the scripted question, which explains the purposes for collecting credit score. Accordingly, our Office is unable to conclude that The Personal failed to identify the purposes for its collection of the complainant's credit score.
64. Also, as part of our investigation, our Office reviewed various instances where the complainant would have been informed of the purposes for which it collected and used credit score, including the IVR message used in August 2011, the *Authorization to Obtain and Disclose Information*, the privacy messages in policy renewal documentation and The Personal's Privacy Code. These indicated that The Personal collects and uses the personal information of its customers, obtained from them directly or from other parties, including credit reporting agencies, for the purposes of analyzing, assessing, investigating and processing claims, and preventing and detecting fraud.
65. Our Office acknowledges that there is room for improvement in each of these notifications (discussed below under *Openness*). However, taking all of these notifications as a whole, in addition to the script used by the Advisor on November 27, 2012, our Office believes that the complainant was informed of the purposes for which his credit score would be collected and used. Accordingly, there is no evidence upon which our Office can find that The Personal did not identify the purposes for which it collects personal information.

Meaningful consent

66. It is now necessary to turn to the issue of whether the consent provided by the complainant was meaningful. While our Office has determined that The Personal did not fail to inform the complainant of the purposes for the collection and use of his credit score, we find that it did not adequately inform the complainant that such collection and use was optional.

67. While The Personal submitted that the credit score question's script made it clear that the consent was voluntary, the script, as written, shows "(Mandatory)" at the end of the question. Therefore, the language of the script as read to insureds does not clearly indicate that consent is optional. While The Personal submitted that "(Mandatory)" means an Accident Claims Advisor must ask the question, this could also be construed as an indication to staff that consent to this question is required.
68. In *Englander v. Telus Communications Inc.*, the Federal Court of Appeal held that "[a] consent is not informed if the person allegedly giving it is not aware at the time of giving it that he or she had the possibility to opt out."¹³ This is consistent with PIPEDA Case summary #142, where a bank's failure to make a reasonable effort to ensure an individual understood that their Social Insurance Number was optional, resulted in a finding that the applicant could not have given meaningful consent.¹⁴
69. The Personal failed to make a reasonable effort to ensure that the complainant understood that collecting credit score was optional, consistent with the expectations established in Principle 4.3.2. Accordingly, our Office finds that The Personal did not obtain meaningful consent from the complainant, as stipulated in Principle 4.3.

Openness

70. This investigation has allowed our Office to review some of The Personal's notification materials and we take this opportunity to highlight certain shortcomings, especially given research which suggests the lack of awareness by the general public of insurance companies' use of credit score in general. For example, the IVR message used in August 2011 did not identify the type of personal information that could be obtained from "credit reporting agencies" – full credit information versus credit score – nor did it reasonably identify the purposes for which such personal information may be used – "to offer you insurance products and service that best meet your needs" is not specific enough to allow an individual to reasonably understand how such information may be used.
71. Moreover, the *Authorization to Obtain and Disclose Information* form signed by the complainant, as well as the provisions of The Personal's Privacy Code and its privacy messages in its policy documentation, do not specify the type of personal information that could be obtained from "credit reporting agencies". In addition, the script used by advisors/agents when a client refuses/withdraws consent with respect to the use and collection of credit score as part of an accident benefit claim, advises clients that their claim will be handled the same way as other clients, even though this is not the case.
72. Accordingly, it is our Office's finding that The Personal is not being open about its policies and practices for the collection and use of credit score for the claim assessment process.

¹³ 2004 FCA 387 (CanLII) at para. 67, available online at <http://www.canlii.org/en/ca/fca/doc/2004/2004fca387/2004fca387.html>.

¹⁴ Available online at <https://www.priv.gc.ca/en/opc-actions-and-decisions/investigations/investigations-into-businesses/2003/pipeda-2003-142/>.

Preliminary Report of Investigation

73. Our Office issued a Preliminary Report of Investigation on January 26, 2017, recommending that The Personal:

- a. Refrain from collecting and using credit score during the claim assessment process for auto insurance, and provide our Office with confirmation that this practice has ceased, pending a final determination on the issue of appropriate purposes. While already given several opportunities to provide our Office with information with respect to this issue, we are willing to consider additional information in response to this report, including:
 - i. the basis upon which a credit reporting agency can furnish, and it can obtain, an individual's credit score information, during the auto insurance claim assessment process; and
 - ii. evidence to demonstrate that a reasonable person would consider The Personal's collection and use of credit score for preventing and detecting fraud during the auto insurance claim assessment process to be reasonable, with respect reference to the four-point test outlined above;
- b. To the extent that The Personal collects and uses credit score for other types of insurance and/or for other purposes, ensure that:
 - i. notifications to insureds identify the type of information collected, how it is collected and used, and the purposes for which it is collected and used;
 - ii. insureds are advised that providing consent to such collection and use is voluntary, where it is voluntary; and
 - iii. consequences for refusing to provide consent for such collection and use are explained to insureds. For example, it is not accurate to advise insureds that a claim will be handled the same as other insureds, when this is not the case.

Response to Preliminary Report of Investigation

74. In response to our Office's recommendations, The Personal agreed to refrain from collecting and using credit score during the claim assessment process for auto insurance. It confirmed that this practice will cease effective April 22, 2017 with the implementation of required IT systems changes on or before that date.

75. In addition, The Personal agreed to conduct a comprehensive review of its current procedures and processes, in regards to its collection and uses of credit score for other types of insurance and for other purposes, to ensure that our Office's recommendations in 73(b) are complied with on or before June 30, 2017, or if the comprehensive review reveals major system changes, by December 31, 2017.

Conclusion

76. Our Office is satisfied, that, once implemented, the above changes will meet our Office's recommendations. Accordingly, our Office concludes that this matter is **well-founded and conditionally resolved**.