

## The complaint

Mr D complains Equifax Limited have breached General Data Protection Regulations (GDPR) by allowing companies access to his data.

## What happened

Mr D was contacted by lots of different companies, marketing their products. Mr D raised complaints to two of those companies, who I'll refer to as C and V respectively, asking how they got his details as he didn't have an existing relationship with them. Both of them said they'd legally obtained his details from the open Electoral Register (ER) through Equifax

Because of this, Mr D complained to Equifax on 10 September 2020 about them handing out his personal details and said in his opinion this was a breach of GDPR.

On 11 November 2020 Equifax replied and said they were sorry for the delay in replying to Mr D, but they'd faced several challenges over the last few weeks which had impacted their ability to reply to customers. They said they understood Mr D was upset his data has been passed over to other companies. But, because Mr D didn't have an Equifax account, or an account with another credit reference agency, they weren't able to clear security. They said Mr D would need to provide a passport or driving licence and something to prove his address before they could consider things. They said once received, then they'd be able to investigate, but for the time being the complaint wasn't upheld.

Unhappy with Equifax's response to the issues raised, Mr D asked us to look into things also saying he was unhappy with Equifax's delay in dealing with matters.

As part of that process we contacted Equifax to ask for their evidence. They explained the reason they hadn't investigated is because Mr D didn't pass security. But they added if they'd investigated, they'd have told Mr D to contact his local council to remove himself from the open ER – that's because the open ER allows companies like them to use an individual's name and address for marketing purposes. Equifax also let us know:

- They couldn't say how long Mr D's details had been brokered for – he'd have to do a Data Subject Access Request (DSAR)
- They couldn't confirm which companies had gained Mr D's details – again he'd need to do a DSAR

Mr D also let us know:

- He's endured lots of nuisance calls which he thinks is because of this situation – and said some of the callers are abusive and aggressive
- He's been the victim of fraud which he again thinks is because of this situation

One of our Investigators considered Mr D's complaint. Overall, they found Equifax hadn't done anything wrong.

Mr D didn't accept this, I've summarised what I consider to be his key points most relevant to the outcome of this case:

- Equifax obtained his personal details without his consent
- They shared his details with third parties such as C and V without his consent
- They've breached GDPR
- They had no lawful reason to share his details
- Because of unlawfully sharing his details – he fell victim to fraud and may still be at risk
- Equifax delayed replying to his complaint

Mr D also provided some commentary on V – but I need to make it clear I can only consider the actions of Equifax in this complaint, not any other party.

Finally, Mr D said he felt he'd not been given enough time in his complaint to provide further evidence in support of his case.

In respect of Mr D's last point, I'm satisfied it's appropriate to go ahead and issue this decision now. I say that because the only evidence Mr D has referred to isn't something I think would change the outcome of this complaint.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The key question for me to answer, is whether Equifax have done anything wrong in facilitating access to Mr D's data.

To help answer that, I'll first explain what the open ER is – as that's where Equifax say they got Mr D's data.

The ER lists the names and addresses of everyone who is registered to vote. There are two versions of the ER – the open ER, and the full ER. The open ER is the version of the ER that's available to anyone who wants to buy a copy of it.

So, in essence, if Mr D is registered on the open ER, then anyone is able to buy a copy of those details – which would include Mr D's name and address.

Although I appreciate Mr D's concerns with C and V contacting him for marketing purposes, I'm only looking at this complaint against Equifax. And, because of that, I'm limited to simply considering whether they have or haven't done something wrong in facilitating access.

Here, I've seen both C and V tell Mr D his details are on the open ER. I can't see he's ever told us this is incorrect. And evidence provided by Equifax shows Mr D is on the open ER. In the circumstances, given anyone could buy this data, it doesn't seem to me as though Equifax have done anything wrong in facilitating access to the data.

I know the fraud and the nuisance calls Mr D has been experiencing have upset and frustrated him – and I'm sorry to hear at times he's had abusive people on the phone. While I understand why Mr D might link the events (C and V getting in touch with him experiencing fraud and many nuisance calls) I can't say I've got evidence this is down to Equifax's actions. But, even if it was, for the same reasons I've mentioned above I've seen nothing to

suggest this would have been wrong – given Mr D’s details were on the open ER for anyone to buy.

By appearing on the open ER, Mr D has effectively given his consent for his details to be shared. In the circumstances, I can’t say they’ve breached GDPR – and overall I think they’ve acted fairly.

Regarding Equifax’s delay in replying to Mr D’s complaint, this is something we have to categorise as complaint handling – which our service can’t consider, so I can’t comment on that.

To try and address the contacts Mr D is having, he may want to look into the following organisations:

- Telephone preference service
- Mailing preference service

Both services describe themselves as stopping unwanted contacts – though I don’t know exactly how they work, so if Mr D does decide to use them, he’ll need to make sure he’s fully satisfied in their operation before doing so.

### **My final decision**

For the reasons I’ve explained above, I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr D to accept or reject my decision before 15 April 2024.

Jon Pearce  
**Ombudsman**