

## **The complaint**

Mr C complains that Capquest Debt Recovery Limited passed his data to a third-party debt collector unlawfully, without his consent.

Mr C wants Capquest to apologise and pay compensation.

## **What happened**

In April 2024, Mr C received an email from a business I will refer to as O, asking him to make contact regarding a personal matter. Mr C says that when he rang the number supplied by O he heard a recorded message telling him how to make a payment. Mr C said there was no further information and it took several emails to O for it to finally tell him that the information had come from Capquest. O has since returned the debt to Capquest.

Mr C complained to Capquest that it had breached GDPR by supplying his data to O without his consent. Capquest explained that the contact related to an outstanding credit card debt which a third party bought in 2011. Capquest said it had been receiving regular payments against the outstanding debt until August 2020.

In 2023, the original debt purchaser assigned the debt to a third party which appointed Capquest as administrator. Capquest said it issued a notice of assignment to Mr C on behalf of itself and the new owner of the debt. Capquest said that it sent the notice of assignment to Mr C at his last known address.

Capquest said that as part of the notice of assignment, it supplied a link to its privacy policy which says that it works with several partners who it may engage to help manage the debt.

Capquest apologised for any upset caused when O contacted Mr C but didn't agree that it had breached his personal data or that it should compensate him for passing his details to O.

Our investigator did not uphold Mr C's complaint. In summary she was satisfied that Capquest had sent him correspondence about the debt, including details of its privacy notice, to the address it held on file.

She explained that the Financial Ombudsman Service does not have any regulatory powers, so we cannot determine whether Capquest has breached the GDPR.

Mr C disagreed with the investigation outcome. He referred to the GDPR website where it says that consent must be "freely given, specific, informed and unambiguous." Mr C said he never gave his consent to Capquest to share his personal data with O. Mr C said the Information Commissioner Office (ICO) has confirmed that Capquest did not act within the regulations and is picking this up with Capquest.

Our investigator went back to Mr C to explain that the ICO's website states that consent is not always required and that it is just one of six lawful bases for processing personal data. Our investigator invited Mr C to supply a copy of the ICO's response for further

consideration.

Mr C responded by saying the ICO referred him to the Financial Ombudsman Service and that we are employed to support the consumer. He said that his earlier email was as unequivocal as the GDPR website.

### **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.

I am sorry to hear about the distress Mr C felt when O contacted him but I am not upholding his complaint. Capquest was appointed to administer the debt and its privacy notice explains that it will work with partners to help collect the debt. So, I can't fairly find it did anything wrong when it shared information about Mr C with O.

Mr C has raised concerns about Capquest's compliance with the GDPR. This is the legislation which protects how people's personal data is used and gives individuals more rights and controls over how an organisation uses their data. It is not the role of this service to decide whether a business has breached the GDPR. That would be for the regulator, the ICO to decide. Although Mr C says that the ICO thinks Capquest has done something wrong with his data, he has not supplied further evidence of this.

What I have needed to consider is whether or not Capquest has treated Mr C fairly, in line with the policies and procedures it has in place. Having reviewed the letters Capquest sent to Mr C in July 2023, I am satisfied that the debt owner instructed it to manage the debt. The notice of assignment contained a link to Capquest's privacy policy. This policy explains that Capquest will share data with its partner network which includes debt collection agencies. So, by passing Mr C's data to O, Capquest has followed its published process. Although O has since returned the debt to Capquest, I don't find this means it was unreasonable for Capquest to pass Mr C's details to O in the first place.

Mr C has suggested that our service should be on the side of the consumer but this is not correct. Our service is impartial. We resolve individual complaints and can, where appropriate, direct businesses to put things right if they have made a mistake.

I fully appreciate Mr C's upset but for the reasons outlined above, I don't require Capquest to take any action in response to his complaint.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 19 November 2024.

Gemma Bowen  
**Ombudsman**