

The complaint

Mr S complains Experian Limited sent him advertising materials when he'd asked them to complete a Data Subject Access Request (DSAR). He was also unhappy at being asked to fill in an online form for his DSAR instead of just processing his email as a request.

What happened

I issued a provisional decision setting out what'd happened, and what I thought about that. I've copied the relevant elements of this below, and they form part of this final decision.

On 18 November 2023 Mr S emailed Experian, with the subject line 'subject access request' and included his reference. In the body of the email he asked Experian to use a specific reference, and said:

Please can I have the latest copy of the data you hold about me.

I'm happy to receive either a full report or just the items that have changed since the previous report you sent me.

I would like to receive this in an electronic form. Please do not send me a paper copy.

Mr S went on to provide address details.

Experian replied on 22 November 2023, and said they understood Mr S wanted a copy of his credit report. They said as he didn't want a paper copy, he could receive a passkey which would allow him to see his report online – alternatively he could sign up to their CreditExpert service which would allow him to see his credit report whenever he wanted.

Mr S replied to Experian the same day. He said he wanted to complain about the response to his DSAR, as it follows the same patterns previously when he's asked for this – a failure to process a valid DSAR, and the illegal inclusion of marketing material in breach of the Privacy and Electronic Communications Regulations.

Experian replied on 27 November 2023, and summarised Mr S' complaint as wanting them to provide a DSAR by email. They said they don't send credit reports of DSAR's by email, but they've arranged for a passkey to be sent out to his address – and then he'll be able to log in online. Once the passkey is received, he'll be able to view his credit report online. They asked Mr S to keep the passkey, as their team will email him once the DSAR has been processed, and he'll be able to log back in to see all the data. Experian thought they'd acted fairly.

On 21 December 2023 Experian told Mr S his DSAR was ready to download.

Unhappy with Experian's reply, Mr S asked us to look into things – explaining he was unhappy at being asked to fill in a form, and that they sent him advertising material.

As part of our standard process, we asked Experian for a copy of their file – they provided this, and in doing so said they were sorry there had been an issue in fulfilling Mr S' DSAR. They also suggested Mr S could be clearer in what he was asking for when contacting them.

One of our Investigators considered things, and overall didn't think Experian needed to do anything further.

Mr S disagreed, explaining he'd made it clear he was asking for a DSAR, and their incorrect reply on this had caused him material distress and inconvenience. He also said one of our Investigators had previously said Experian shouldn't be mentioning their CreditExpert product to him. So, the complaint was passed to me to decide.

Before doing so, I arranged for us to gather more information to help me decide the outcome of the case.

From Experian, we asked:

- *Mr S raised his DSAR on 18 November, but it wasn't processed until 21 December, why not? They said Mr S' original email wasn't a DSAR and was requesting a credit report – so they asked him to clarify if he wanted a statutory report, or a full DSAR – and this is why it wasn't done until 21 December – but there was no delay.*
- *We asked for copies of all emails relevant to the DSAR made on 18 November to understand what'd happened. These were provided.*
- *The email confirming Mr S' DSAR was ready was sent 21 December and we asked for evidence of when he accessed it. The evidence showed he accessed it the same day.*
- *In a previous case we said Experian shouldn't be advertising their CreditExpert product to him – and asked why they were still doing this, and whether they could stop. They said they do advise on all their products to all customers so they're treating everyone fairly by offering the same products to all customers. They said this may mean they tell Mr S about their services if he gets in touch again, and there is no definite way to stop this.*

From Mr S, we asked:

- *What more did he want to tell us about the impact this issue had on him – and provided a link to our website which sets out how we approach compensation. Mr S didn't feel he'd been given enough information to be able to answer this question.*

Having considered the responses received, I was satisfied I had enough information to progress this case– and that both parties have been given enough opportunities to provide information.

What I've provisionally 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.

Did Mr S raise a DSAR?

I've set out above what information Mr S put in the first email dated 18 November 2023. The subject line of the email said 'subject access request' – and the body of the text talks about a 'full report'.

Given Experian are a credit reference agency, I suspect the majority of requests they deal with are about credit reports. So, in one way I can understand the confusion caused.

But, Mr S did say in the subject line of his email he was requesting a DSAR. And, in his email of 22 November 2023 he explicitly said he wanted to complain about the response he received after making a DSAR.

Whether Experian should have known Mr S was making a DSAR on 18 November 2023 is probably something for the Information Commissioner's Office (ICO) to determine – but Experian definitely knew Mr S had made a DSAR due to his reply on 22 November 2023. In the circumstances, I think it'd have been reasonable for Experian to have worked on the relevant period to provide the DSAR being from the first contact – rather than the second.

The ICO says Experian had one calendar month to complete the DSAR unless the request is especially complex. Experian haven't said that the request was complex, only that they did it in time – seemingly because they don't accept Mr S had made the DSAR on 18 November, rather than 22 November. But, as the request wasn't completed until 21 December 2023, I'm not currently satisfied it was completed in time. I'll come back to this at the end.

Experian asking Mr S to apply online for his DSAR

In the 22 November 2023 email – the first reply to Mr S' email of 18 November 2023 – Experian said:

We do not supply credit reports via email, however, you can receive a passkey which will allow you to view the report online. Please click on the below link and follow the order online steps.

In the circumstances, I can't agree Experian told Mr S he had to apply for the DSAR online – I think this stemmed from their confusion about his initial request. I think it's clear they believe he's asking for a credit report – albeit incorrectly as I've mentioned above.

Experian continuing to advertise products to him

Again, in the 22 November 2023 email, Experian say:

Alternatively, we also have a subscription service called CreditExpert where you can get daily access to your credit report and score and unlimited access to the following great features and more:

- . Your Experian Credit Score (updated daily)
- . Your Experian Credit Report
- . Telephone support from our expert team
- . Personalised tips to help you understand and improve your score

If you're not sure which to pick, here's a comparison of what we offer.

And the 'we offer' part of the above text is hyperlinked to Experian's website.

Mr S is correct in saying that a previous Investigator here suggested Experian should stop sending marketing material to him – which is why I arranged for us to ask why they had continued to do so. Although our Investigator suggested it, they can't direct Experian to do something or not do something in the same way an Ombudsman can.

Experian's explanation for this is it's something they do to ensure all customers know about the products they offer – and they do this to ensure they treat everyone fairly.

At face value, this explanation doesn't seem unreasonable. Mr S hasn't said why including information about their products is something he's not prepared to accept. He has said it's illegal under the Privacy and Electronic Communication Regulations (PECR).

Mr S hasn't been specific about what part of PECR he thinks Experian are breaking. But I should explain my role is to decide things on a fair and reasonable basis – taking into account the law and regulations, regulators' rules and guidance, codes of practice and, where appropriate, what I consider to be good industry practice at the time.

So, I'm not bound by the law – and if I think something is fair and reasonable then I just need to explain why I'm departing from the law. But, here, I don't know which specific part of PECR Mr S is concerned about so I'm unable to do that – and given Experian's explanation seems reasonable, I don't think they're doing anything wrong on this point.

Summary

As a starting point I want to make it clear I'm happy to consider any additional evidence either Mr S or Experian provide – and that could change the outcome I've reached. So, if either party does have further information to provide, I'd encourage them to do so.

But, at this point, I've decided I don't think Experian did ask Mr S to submit his DSAR online, nor do I think their suggestion he could find his credit report on their paid product to be unreasonable.

I do though think Experian made an error regarding Mr S' DSAR – so I need to consider whether I think compensation is appropriate.

Deciding compensation isn't an exact science. I need to look at what Mr S has told us, and consider what impact I think that's had. And every mistake doesn't necessarily warrant a compensation payment if I decide the impact is relatively small and in keeping with 'general' frustration people can experience dealing with day to day issues. Things can and do go wrong, so to award compensation I need to be satisfied Mr S was inconvenienced more than something that might be expected in every day life.

To help me decide this, I've looked at what Mr S told us when he first contacted us. In our complaint form, we ask 'How have you been impacted – financially or otherwise?'.

Mr S has said his complaint is based on the inconvenience caused by this particular failure – and the cumulative impact of previous failures. Mr S has said he's had significant inconvenience and frustration at not being able to access his personal data in a timely fashion and not being able to trust Experian to look after it properly. And he's had to spend significant time and effort spent keeping track of his request because he can't rely on Experian to reply properly.

While I understand Mr S has had previous complaints, that isn't going to be something I consider here – on the basis those complaints have been dealt with separately.

In this case, from what I can see, the following has happened:

- 18 November 2023 – Mr S probably raises a DSAR
- 22 November 2023 – Experian misunderstand his request
- 22 November 2023 – Mr S replies and says he wants to complain about the failure to process the DSAR

- 23 November 2023 – Experian clarify if Mr S is asking for a copy of his credit report, or a DSAR?
- 23 November 2023 – Mr S replies and says a DSAR
- 23 November 2023 – Experian confirm they'll process a DSAR
- 24 November 2023 – Experian ask Mr S if there is anything they can do before they issue their final response
- 24 November 2023 – Mr S replies 'Fix your process properly so this stops happening repeatedly?'
- 27 November 2023 – Experian issue their final response
- 21 December 2023 – Mr S received his passkey and accesses the DSAR

I don't doubt it would have been frustrating for Mr S to have his first request misunderstood, and then to have to say a further two times he wanted a DSAR.

I also don't doubt it would have been frustrating for the DSAR to then not be completed within one month from his first request on 18 November 2023.

Although I understand Mr S has said he's experienced significant inconvenience and frustration, I'd need to be satisfied having to reiterate his request on two occasions in quite short emails added up to that – and I'm not currently persuaded sending them adds up to significant frustration.

In addition, again I don't doubt the delay in receiving the DSAR is disappointing – and I do think Experian have got this wrong – but Mr S hasn't pointed to a specific impact as a result of receiving his DSAR three days later than he otherwise should have.

Pulling all of this together, I'm not currently satisfied the impact of Experian's short comings is enough to award compensation. So, although I think Experian have made some errors, I don't currently intend on upholding this complaint or requiring them to do anything further.

Responses to my provisional decision

Experian replied and said they accepted my provisional decision.

Mr S replied and didn't. I've summarised what I consider to be his key points as follows:

- Provided some information about what constitutes a PECR violation – which included guidance from the ICO
- Provided information from the ICO about recognising a subject access request – and says my provisional decision doesn't take this guidance into account
- In respect of the impact on him, Mr S didn't think it appropriate to completely disregard what'd happened previously with Experian. He said every previous experience has led to a situation that's negative has stressed him out.

Finally, in terms of a remedy, Mr S said an apology could be a remedy without any monetary award, and the 'complaint not upheld' section didn't make sense to him either – as I'd said they had made mistakes.

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'll address Mr S' concerns in order.

PECR violation

I thank Mr S for providing this information, and I have read everything he's sent to us to ensure I still reach the right outcome on this point.

Essentially, Mr S maintains that sending him marketing is a violation of the law. And based on my understanding of the information provided by Mr S I'd need to be satisfied the inclusion of CreditExpert met the definition of '*defined marketing*' as set out in the law. I think that'd require a wider reaching legal analysis of Experian's emails, which isn't something I'm able to do. With that in mind, I still think Experian's explanation for sending Mr S the details of CreditExpert isn't unreasonable.

Mr S may want to raise this specific issue with the ICO to determine if they believe Experian are treating him unfairly. My role is to consider individual disputes, and in Mr S' case I'm not persuaded all the evidence he's provided means I can or should order Experian to never tell him about CreditExpert again – not least because it seems this is intrinsically part of their systems – meaning it's very likely future contact may include this. If he'd like to, Mr S could raise his concerns with either the ICO or the Financial Conduct Authority to see if they're able to consider. Neither I or this Service has the power to change Experian's processes. I'm required to look at individual complaints and in doing so, I don't think Mr S has been treated unfairly.

ICO's guidance on recognising a subject access request

The first paragraph of the guidance Mr S has shared, which is the most relevant, says:

An individual can make a SAR verbally or in writing, including on social media. A request is valid if it is clear that the individual is asking for their own personal data. An individual does not need to use a specific form of words, refer to legislation or direct the request to a specific contact.

Mr S says this means even if he'd just been asking for a credit report, it'd still have been a DSAR as a credit report is clearly personal information. Redirecting him to an online form was inappropriate even if they believed he was just asking for a credit report.

I think there's two things we're dealing with here – the DSAR, and the credit report.

In terms of the DSAR I have set out why I think Experian probably didn't grasp this properly – but I can't agree with Mr S at all when he says if he asks for a credit report that's a DSAR. A credit report contains personal information, so I get why Mr S would say this with reference to the ICO guidance, but these things have to be considered in context.

Experian is a credit reference agency. I'd expect virtually all of the requests they get for any kind of information is for what's on someone's credit report. So, when someone says 'they want their report' or uses the word 'report' without things being as clear as they could – I think Experian will see that person as asking for their credit report. And, a credit report and a DSAR are two separate requests that can be made for data – and to most people will have different meanings.

In respect of Experian redirecting Mr S to the online form, I remain of the opinion this was due to their confusion over what he'd asked.

The impact on Mr S – plus my remedy and outcome

I am sorry to hear of the cumulative impact on Mr S. I have read everything he's said and it's clear he's incredibly frustrated with them.

In terms of my remedy and overall outcome I'm sorry Mr S doesn't feel this is good enough. I do think Experian have made some errors, here, but I think they were all resolved very quickly with Mr S and / or didn't have a significant enough of an impact to direct any remedy.

In the circumstances, I didn't think any compensation was due. I also didn't think ordering Experian to say sorry to Mr S for what happened was necessary for two reasons. On one hand they resolved the problems relatively quickly and / or there was limited impact, and on the other I didn't think in Mr S' case, a forced apology would really hold much value given his general feelings towards Experian.

My final decision

Given all of that, I still don't uphold this complaint. The category of this case being a 'non-uphold' essentially means I don't think Experian are required to do anything or take any further action.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 6 January 2025.

Jon Pearce
Ombudsman