

**Date: 4 March 2025**

This advice represents the position as at the date the advice provided. Businesses should consult relevant information and guidance on regulators' websites to keep up-to-date with the latest developments.



## **CASE STUDY:** **Data Portability Requests by Data Intermediaries**

**This is an anonymised version of a query submitted to the DRCF AI and Digital Hub ('the Hub').**

The query in this case study has been responded to by the following DRCF regulators ('we', 'us', 'our'):

- Information Commissioner's Office ('ICO');
- Financial Conduct Authority ('FCA'); and
- Competition and Markets Authority ('CMA').

This informal advice is provided in line with the [Conditions for Participation](#).

Our informal advice is provided to a business based on our current understanding of the legal and regulatory frameworks within our remits and how they apply to the business's service. This informal advice should not be treated as an exhaustive account of the issues linked to a business's service or represent an endorsement of their proposed innovation.

Our informal advice is specific to a business's circumstances as described by them in the information they provided to the Hub.

Our informal advice is provided without prejudice to any future regulatory intervention by any DRCF or non-DRCF regulator and is not a substitute for independent legal advice which a business may wish to seek in advance of the launch of their service.

It is ultimately a business's responsibility to assess their position under the law and regulatory regime, with the benefit of independent legal advice as necessary. Recognising that some regulatory regimes are still developing and could change over time, businesses have a responsibility to keep up to date with the latest position.

A non-confidential version of the informal advice provided to the applicant is attached to this case study. This informal advice was provided on 4 March 2025 and represents the position as at 4 March 2025. Businesses should consult relevant information and guidance on regulators' websites to keep up to date with the latest developments.

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## Summary of Query and Response

Business G's query was:

**Business G would like input from the regulators on whether existing regulations and their interpretation would allow individuals to appoint a fiduciary agent (a data intermediary) to enact and manage data portability requests on their behalf and under their instruction.**

- The ICO explains that the UK General Data Protection Regulation (UK GDPR) does not prevent individuals from appointing third parties to act on their behalf in exercising their rights.
- However, if a business acts as a third-party intermediary and makes data portability requests on behalf of individuals, there are a number of additional data protection considerations to bear in mind.
- The FCA explains that if a business plans to operate as a third-party provider (TPP), as outlined in the Payment Services Regulations 2017 (PSRs), they will need to seek registration or authorisation from the FCA, and meet the applicable regulatory requirements. Providing a payment service (such as account information services) without being registered or authorised is a criminal offence.
- The CMA explains that businesses should be aware that they may have responsibilities under consumer protection law. The Consumer Protection from Unfair Trading Regulations (CPRs) prohibit unfair commercial practices by traders which may harm consumers' economic interests. This includes prohibiting commercial practices that contravene the requirements of professional diligence, misleading actions, and misleading omissions.
- The terms of use for a service should also be fair and transparent, as required by the Consumer Rights Act (CRA). This requirement will apply to a business's consumer terms and notices generally in addition to their specific application regarding data protection.

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## **Introduction to the Regulators**

The query has been responded to by the ICO, CMA and FCA. A brief introduction to each regulator has been included below.

Each regulator is responsible for separate legal regimes with different requirements that may be applicable to the same set of facts, and it will be necessary to take steps to comply with each regime as set out.

### **ICO**

The Information Commissioner's Office (ICO) is the UK's independent public authority set up to uphold information rights. The ICO oversees the UK General Data Protection Regulation (UK GDPR), which is relevant to this informal advice.

### **FCA**

The Financial Conduct Authority (FCA) is the UK's financial services regulator with focus on reducing and preventing serious harm, setting higher standards and promoting competition and positive change. The FCA oversees the Payment Services Regulations 2017 (PSRs), which is relevant to this informal advice.

### **CMA**

The Competition and Markets Authority ('CMA') is the UK's lead competition and consumer authority and an independent non-ministerial department of the UK government. The CMA helps people, businesses and the UK economy by promoting competitive markets and tackling unfair behaviour. The CMA enforces the Consumer Protection from Unfair Trading Regulations 2008 ('CPRs')<sup>1</sup> and the Consumer Rights Act 2015 ('CRA') which are relevant to this informal advice.

## **Regulator Response References**

In the table below, we set out the relevant regulator and the respective responses that they have input on. Each regulator is only responsible for the responses within their regulatory remit as noted in the table below.

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<sup>1</sup> Note that the CPRs will be repealed and replaced by the Digital Markets, Competition and Consumers Act 2024 ('DMCCA'), when the relevant part of the legislation comes in force in 2025. However, the informal advice referred to in this response is likely to be substantially unchanged in practice. Recognising that some regulatory regimes are still developing and could change over time, businesses have a responsibility to keep up to date with the latest position.

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Regulator	Relevant Responses
ICO	1, 2
FCA	3
CMA	4

## Response

### 1. Right to Data Portability

- 1.1. Article 20 of the UK General Data Protection Regulation (UK GDPR) provides individuals with the right to request their personal data from a data controller in a structured, commonly used, and machine-readable format, and to transmit this data directly to another data controller. This is known as the ‘right to data portability’.
- 1.2. The UK GDPR does not prevent individuals from appointing third parties to act on their behalf in exercising their rights, including the right to data portability. However, as the third-party intermediary, Business G is responsible for demonstrating that it is entitled to act on the individual’s behalf. If an organisation is approached by a third party, they must satisfy themselves that the individual has authorised this. It is ultimately up to the recipient organisation to determine the evidence they require, and it is Business G’s responsibility to provide this evidence. This is typically required for security purposes and forms part of an organisation’s measures to protect personal data from unauthorised access.
- 1.3. If Business G makes a data portability request on an individual’s behalf, it is important to understand that not all personal data processed by an organisation is covered by Article 20 of the UK GDPR. The right to data portability only applies to personal data that was:
  - Provided by the individual to the organisation;
  - Processed by the recipient organisation under the lawful bases of consent (Article 6(1)(a) of the UK GDPR) or the performance of a contract (Article 6 (1)(b) of the UK GDPR); and
  - Processed by automated means (ie excluding paper files) by the recipient organisation.
- 1.4. Personal data processed under other lawful bases, like legitimate interests or legal

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obligation, and personal data not processed by automated means, are not subject to the right to data portability. Businesses should refer to the ICO's guidance on the [right to data portability](#) for more information on Article 20.

## 2. Additional Data Protection Considerations

- 2.1. **Lawful Basis:** If Business G acts as a third-party intermediary on behalf of an individual, it must establish a lawful basis for processing that individual's personal data. Depending on the specific activities being carried out, this could include the individual's consent (Article 6(1)(a) of the UK GDPR), the performance of a contract (Article 6 (1)(b) of the UK GDPR), or legitimate interests (Article 6 (1)(f) of the UK GDPR). Please refer to the ICO's guidance on [lawful basis](#) for more information.
- 2.2. **Transparency:** As a third-party intermediary, Business G must be transparent with individuals about how their personal data will be processed. Business G must provide clear, detailed written information to individuals, outlining its responsibilities as a data intermediary, the actions it will or has taken with their personal data, and the reasons for those actions. In addition, individuals should retain control over the data portability requests made on their behalf. As such, Business G should provide a mechanism that allows individuals to manage any data portability requests made on their behalf. Businesses should refer to the ICO's guidance on [transparency](#) for more information. For further considerations around transparency, see the section on consumer protection below.
- 2.3. **Purpose Limitation:** Business G's processing of personal data must comply with the purpose limitation principle. This means that the personal data should only be processed for the specific purpose for which the individual has engaged Business G, such as submitting a data portability request and receiving the resulting personal data. Any additional processing must either be agreed to by the individual or compatible with Business G's original purpose. Businesses should refer to the ICO's guidance on [purpose limitation](#) for more information.

## 3. Payment Services Regulation

- 3.1. The Payment Services Regulations 2017 (PSRs) give third-party providers (TPPs) rights of access to payment account data where the payment service user provides consent and the TPP is registered or authorised by the FCA.

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3.2. There are two types of TPPs:

- **Account Information Service Providers (AISPs):** Payment service providers that provide consolidated payment account information to payment service users, offering customers a consolidated view of information from payment accounts they hold with other payment service providers, in one place (e.g. dashboard services).
- **Payment Initiation Service Providers (PISPs):** Payment service providers that enable users to initiate payments directly from their payment accounts (e.g. through third-party apps or websites) without using traditional card networks.

3.3. If Business G operates as a TPP, it will first need to seek registration or authorisation from the FCA and meet the applicable regulatory requirements. Providing a payment service (such as account information services) without being registered or authorised is a criminal offence.

3.4. The PSRs and other open banking regulations (such as the Strong Customer Authentication and Common and Secure Methods of Communication) only regulate access to payment account data. Access to other types of data is out of scope.

3.5. To the extent Business G plans to access data about non-payment accounts – such as mortgages, insurance, loans, and motor finance – these are currently out of scope of FCA open banking regulation. For more information, businesses should review the Perimeter Guidance Manual ([PERG 15.3 Q16](#)) and the FCA Approach Document Guidance ([Paragraph 17.75](#)).

## 4. Consumer Protection

4.1. Business G should be aware that it may have responsibilities under consumer protection law.

### *Unfair Commercial Practices*

4.2. The CPRs prohibit unfair commercial practices by traders which may harm consumers' economic interests. A 'trader' is someone who is acting for purposes relating to their business and the CPRs will apply to their activities where they are directly connected with the promotion, sale or supply of goods or services to (or from) consumers. The CMA understands that while consumers may not pay money to use Business G's product, the CPRs will apply to Business G where it supplies it

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to consumers in exchange for providing their personal data. This is because personal data has economic value.

- 4.3. The CMA sets out a non-exhaustive summary of some of the main prohibitions of the CPRs which may apply to Business G's question (for further details, see the published Guidance on Unfair Commercial Practices, below). Where they apply to Business G, the CPRs will prohibit:
- Commercial practices that contravene the requirements of professional diligence (meaning honest market practice and good faith in Business G's field of activity) and which materially distort or are likely to materially distort the economic behaviour of the average consumer. For example, this could include causing harm to consumers' economic interests by failing to abide by published standards of good practice set by regulators.
  - Misleading actions, which occur when i) a business gives consumers false information (about a wide range of things listed in the CPRs) or where a business's practice or its overall presentation in any way deceives or is likely to deceive the average consumer (even if the information is factually correct), and ii) the practice causes or is likely to cause the average consumer to take a different decision. For example, this could include providing false information or misleading information about the security features of Business G's data portability service or telling consumers that it will not share their data with third parties if this is not true.
  - Misleading omissions, which occur when a business fails to give consumers the information that they need, according to the context, to take an informed decision and the average consumer takes, or is likely to take, a different decision as a result. This includes a) omitting or hiding this 'material information', b) providing it in an unclear, unintelligible, ambiguous or untimely manner, or c) if a business's commercial practice fails to identify its commercial intent (unless already apparent from the context). For example, if a consumer's data may be passed on to third parties after using Business G's service, it could be a misleading omission where it fails to tell consumers this before they decide whether or not to use it.

#### *Unfair Contract Terms and Consumer Notices*

- 4.4. The CRA requires that terms in consumer contracts and notices must be fair. Written terms also need to be transparent, which means written in a way that is

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clear and legible, uses plain language, and that enables consumers to properly understand the consequences of a term.

- 4.5. Under the CRA, any contract wording which could have the effect of depriving consumers of protection normally afforded to them under the law is liable to be considered unfair. For example, a term or statement which could be understood as permitting a trader to deal more freely with a consumer's personal data (particularly sensitive personal data) than the law allows – for example, to pass it on more widely – is likely to be open to challenge as unfair.

#### *Consumer Protection Interactions with Data Protection*

- 4.6. The processing of personal data is primarily regulated by the UK GDPR. However, a failure by a trader to comply with data protection law may, depending on the circumstances, constitute an unfair commercial practice under the CPRs.
- 4.7. For example, a trader's failure to comply with the UK GDPR could, depending on the circumstances, contravene the requirements of professional diligence under the CPRs or constitute a misleading commercial practice. In these circumstances, a failure by a trader to be transparent about the collection of consumers' personal data and the fact that it may be used for commercial purposes, or otherwise failing to give consumers a genuine informed choice about how their data will be used, may constitute a breach of the CPRs.
- 4.8. Although an infringement of data protection law will not automatically constitute a breach of consumer law, the CMA is likely to take this into account when assessing the overall unfairness of a trader's commercial practice under the CPRs.
- 4.9. Business G may find the following guidance useful:
- [ICO-CMA joint paper on Harmful Design in Digital Markets](#).
  - [Guidance on the Consumer Protection from Unfair Trading Regulations 2008](#). Note, this guidance on the CPRs is soon to be updated with new guidance under the DMCCA. For further details see: The CMA's [Unfair commercial practices guidance](#)).
  - [Unfair contract terms guidance: CMA37](#) (see paragraphs 2.10-2.14; 4.19-4.24; and 5.35.2).