

The complaint

Ms H complains that Capquest Debt Recovery Limited is chasing her for debt she says she didn't apply for or benefit from.

What happened

In mid-2020, Ms H says she received a letter from Capquest chasing her for a debt it says she'd taken out through a third-party business in 2006. Ms H contacted Capquest to dispute the debt as she denies applying for or benefitting from it.

Capquest looked into Ms H's claim and contacted the third-party business where the debt had originated for further information. It also asked Ms H for evidence of where she was living at the time the account was opened; but she was unable to provide this.

Capquest's investigation concluded that it was unable to uphold Ms H's complaint. It highlighted the following reasons for this:

- The address Ms H said she was living in at the time the account was opened matched the address given on the application.
- The surname Ms H was using in her email address correspondence with Capquest matched the surname given on the application.
- Despite the account showing on Ms H's credit file since 2014, she'd not disputed it earlier.
- The address was changed on the account several times and items were delivered to addresses associated with Ms H.

Ms H remained unhappy with Capquest's decision to hold her liable for the debt. She pointed out that some of the contact details associated with the account didn't match her own. And she denied living at some of the addresses at the time the account was associated with them. As she remained unhappy, Ms H contacted our service to look into the matter again.

An Investigator considered the evidence provided by both parties and concluded that Capquest had made an error. They thought Capquest had failed to evidence that Ms H could be associated with the account and pointed out the lack of a credit agreement further supported Ms H's claim. For those reasons, they recommended that Capquest stop chasing Ms H for the debt and remove any reporting of it from her credit file.

Capquest disagreed. It highlighted a number of reasons why it felt it'd acted fairly in the circumstances. Capquest reiterated the points already highlighted above but added:

- It'd investigated the claim to the best of its ability but found no indicators of fraud.
- Ms H changed her testimony regarding where she lived in 2006 at the point it asked her for evidence of this.
- Capquest acted in good faith in purchasing the debt from the original lender and couldn't be held accountable for the errors caused by a third-party business.

- It acknowledged that the credit agreement was no longer available and therefore the debt was unenforceable. But it felt it was still entitled to chase Ms H for the debt.

As Capquest disagreed with the Investigator's assessment, the matter was passed to me for a decision to be made.

On the 16 December 2021 I issued provisional findings to both parties outlining that I was minded to not uphold the complaint. My provisional findings were as follows:

'Prior to issuing my findings, I think it important to acknowledge some of the difficulties in this complaint which I will consider with each point.

The original debt was taken out in 2006; which is over 15 years ago. This presents a number of issues when weighing up evidence as most documentary evidence is no longer available, and recollections can be stretched when it comes to accuracy. As such, I'll be considering the evidence that is available and deciding what I think is more likely based on the balance of probabilities.

It isn't in dispute that Ms H lived at the address placed on the application form when the credit was applied for in 2006. This means that whoever made the application for credit knew Ms H's personal information and was confident enough to make it with the knowledge that correspondence would be sent to her legitimate address. This isn't typical when dealing with complaints involving the theft of someone's identity as a fraudster wouldn't naturally want to alert their victim to the fact that they'd applied for financial products in their name. Having said that, due to the passage of time I'm unable to say with confidence that any post was sent to Ms H's home address.

As well as the account opening address being accurate, Ms H originally informed Capquest when discussing her claim that she lived at another address when the account was opened. As I've highlighted above, due to passage of time I haven't added too much weight to this. But the address Ms H originally provided is one of the addresses the account was changed to during the time it was opened. And it was also one of the addresses where goods were delivered to that were purchased using the credit.

Ms H says that the dates on the account which show when she was living at the address aren't in line with when she did in fact live there. But she hasn't been able to evidence the dates of where she lived at any given time during the account's history to support this. I think this adds further weight to Capquest's argument that the account seemed to fall in line with Ms H's address history and where goods associated with the account were sent.

In addition to the above I find some of the characteristics of the account management to be unusual; had a third-party been responsible for the opening and use of the account.

Between the account opening in 2006 and the date of the last purchase, the person in

control of the account changed Ms H's name from the original name set up on the account to another surname legitimately used by Ms H. They'd also made payment toward the debt and waited until 2010 to purchase a number of items using the credit. This is behaviour not conducive to what I'd expect to see in cases of fraud. Typically, a fraudster wouldn't change the name on an account if it made no difference in utilising the credit. I also wouldn't have expected them to make payment toward the debt or wait 4 years to spend the credit available.

Experienced fraudsters, or even opportunists, tend to set up accounts fraudulently and spend on them quickly to avoid detection and risk closure of the account. And I find it

unlikely that if they'd got away with setting up and using the account, that they'd wait 4 years to use it and then pay off some of the balance spent. This is contradictory to the purpose of deliberately using a third-party's information to obtain credit without their permission.

I also find it unlikely that Ms H took so long to realise that the debt existed, and that adverse information had been reported on her credit file. This would have meant that Ms H never received any of the correspondence sent to any of the addresses legitimately associated with her regarding the account or for repayment of the debt. It also means that Ms H wouldn't have checked her credit file or likely have applied for any financial products which would have alerted her to its existence considering the adverse information.

In conclusion, the collective facts I've highlighted above persuade me that it's more likely than not that Ms H applied for and used the credit; or provided permission for a third-party to do so on her behalf.

Capquest has already acknowledged that a credit agreement can no longer be produced for the debt and that it deems it to be legally unenforceable. But I agree that it still has the right to ask Ms H to repay the debt.'

Both parties were given until 5 January 2022 to provide any further comments or evidence prior to issuing a final decision.

Capquest had nothing further to add. But Ms H submitted a number of documents supporting the dates she resided at a number of addresses. She also submitted documentation supporting a change of name, and the date this was carried out. She continued to defend that she'd not applied for, nor benefitted from, the debt being pursued.

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.

Ms H has now provided a number of documents to evidence her place of residence at various dates throughout the time the account was active.

Having compared the dates and addresses in that documentation with those held on the account, it would appear they broadly coincide with each other. I find that this goes further in supporting the findings highlighted in my provisional decision above.

Furthermore, Ms H has provided a number of birth certificates in support of her testimony. Having reviewed the date of these birth certificates, they also appear to broadly coincide with orders placed on the account for maternity and babywear.

For these reasons—and those highlighted in my provisional findings—I remain persuaded that Ms H was more likely than not responsible for the debt for which she's being pursued. I therefore won't be directing Capquest to do anything further.

My final decision

For the reasons I've given, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 21 January 2022.

Stephen Westlake
Ombudsman