

The complaint

Ms S has complained that Capquest Debt Recovery Limited have been pursuing her for a debt which she says was fraudulent and was not taken out by her.

What happened

This complaint surrounds a catalogue account that was taken out in 2001 in a name similar to Ms S's.

In 2021, Capquest contacted Ms S about this debt, and she disputed taking it out. Capquest asked for proof of her address from 2001, but Ms S didn't still have any. Capquest concluded that there was no fraud. Capquest were not able to provide any standard evidence which showed that this was Ms S's account, but continued to pursue her.

Our investigator looked into things independently and asked Capquest for standard evidence to show whether this was Ms S's debt or not, but Capquest didn't provide any. So our investigator upheld the complaint, and directed Capquest to cease pursuing Ms S and to pay her £250 compensation for the stress they'd put her through.

Capquest didn't agree, though they did say they'd now stop pursuing Ms S as the account was probably statute barred. They provided some notes from their fraud investigation. The complaint's been passed to me to decide.

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 need to consider whether Capquest were entitled to pursue Ms S for this account or not.

Broadly speaking, the onus was on Capquest to show that they were entitled to do so.

In this situation, I'd expect Capquest to either provide substantial evidence that this particular person owed this particular debt, or to cease pursuing them. Such evidence could be things like a signed credit agreement, records of the checks that were carried out, a notice of assignment to show who genuinely owns the account now, and so on. But Capquest haven't provided any of the key evidence needed here, despite our service chasing them for such information repeatedly.

Capquest have provided the records of their fraud investigation, which as far as I can see only shows that their investigation was poor. They put the onus almost entirely on Ms S to prove this was not her account, which was the wrong approach. And they seem to have based much of their conclusions on her inability to provide proof of address from 2001 – even though it's unreasonable to require her to have such information from over two decades ago, long past the time where it would've been expected for her to keep it, and even though they don't seem to have had anything substantial to show that this actually was her debt.

Further, I understand that Ms S lived with an ex-partner at the time who she says defrauded her previously. And it's notable that the name on the account was not spelled the same as Ms S's actual name. Even if we put Capquest's lack of evidence or investigation aside, this does not inspire confidence that this was actually Ms S's account.

The relevant regulations required that Capquest did not ignore Ms S's dispute, and that they did not continue pursuing her without clear justification and evidence that her dispute was not valid. But it looks like Capquest could not reasonably evidence that this was Ms S's account. It follows that they should have put this matter to rest back in 2021, instead of dragging it out all the way until now.

As our investigator explained, Ms S was understandably distressed at being chased for a debt when, as far as she could see, she was the victim of fraud. Capquest did not treat this with the proper sensitivity, not least by placing the onus on Ms S to prove this *wasn't* her debt using decades-old documents she wouldn't still reasonably have. Capquest's unfair and unreasonable approach, as well as their failure to co-operate with our service, then extended this period of stress to about a year. That all needs to be put right.

Putting things right

I direct Capquest Debt Recovery Limited to:

- Disassociate this account from Ms S and make sure she is no longer pursued for it, if they have not done so already;
- Remove any related entries from Ms S's credit file, if any remain; and-
- Pay Ms S £250 compensation for the trouble and upset caused.

My final decision

For the reasons I've explained, I uphold Ms S's complaint, and direct Capquest Debt Recovery Limited to put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 18 October 2022.

Adam Charles
Ombudsman