

The complaint

Mr L complains Capquest Debt Recovery Limited told him they'd acquired a County Court Judgment (CCJ) for his debt when they didn't. And he says Capquest have used this information to get him to repay the debt which he doesn't think is fair.

Capquest have used agents to interact with Mr L, and some of those interactions form part of this complaint. As Capquest are ultimately responsible for their agents actions when that agent is acting on their behalf, I'm satisfied it's appropriate to take that into account. In addition, Capquest used to be known by another name when they acquired this debt in 2006. For simplicity though, I will just be referring to Capquest in this decision.

What happened

Mr L says this debt has always been in dispute because it was taken out with his ex-partner more than 20 years ago. He said they had joint debts, and when he'd asked for a copy of the credit agreement no one could provide it. The debt itself has passed through different companies, until Capquest acquired it in 2006.

Mr L says he asked for the credit agreement in 2011 and before but couldn't pursue the matter because he had other things going on. He said Capquest had given him the wrong information and asks why tell him the debt isn't statute barred because of the CCJ, but then admit the CCJ was never granted. Despite this, he says they've still harassed him for payment. Mr L asked for the account to be closed, pay him back some of the money he's paid towards the debt since he was told the debt wasn't statute barred because of the CCJ, pay interest on this money and compensate him.

Capquest's agent at the time replied to Mr L's complaint. They said they were initially instructed on 23 April 2019 by Capquest and when making contact a short while later, asked Mr L to complete a financial statement. They received this, and notification from Mr L he'd set up a standing order for £2 a month – but they said they couldn't accept this because Mr L couldn't afford it. They say he never replied and the £2 continued to be paid. On 8 February 2023 they received a request from Mr L for the credit agreement – which couldn't be provided. But they said this didn't mean the debt was statute barred because Mr L's last payment had been in January 2023 – and the limitation period starts anew for each payment made. They did accept their agent had recently given Mr L the wrong information regarding the CCJ and said sorry for this.

Capquest ultimately issued their own response and said they could see their agent had said sorry for incorrect information and didn't think this meant the balance should be written off. Capquest did though say the account is unenforceable through the courts, so no further action will be taken, but this doesn't mean the balance ceases to exist.

Unhappy with these responses Mr L asked us to look into things, saying Capquest had been taking money from him under the false information he had a CCJ in 2011.

Our Investigator didn't uphold most of Mr L's concerns but thought Capquest should pay Mr L £100 compensation to reflect the incorrect information he was given about the CCJ.

Capquest queried why they were required to pay this given it was their agent who made the error.

Mr L also didn't accept this outcome, saying the £100 compensation doesn't cover what he's been through and we've not given them any penalties for the wrong information.

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 make it clear I can't decide whether the account Mr L is complaining about is unenforceable in court or not – as only a court can decide that. I do though note Capquest have now decided the account is unenforceable. In addition, I can't decide if Mr L has been harassed, as that's a criminal offence and again only a court could do that.

Instead, I'm required to take into account relevant law and regulations, regulators rules guidance and standards, codes of practice and where appropriate good industry practice to reach a fair and reasonable outcome.

It's clear from my reading of Mr L's file he thinks that because Capquest had a record of a CCJ in 2011, they've continued to claim payments from him when they shouldn't have. I don't though agree that's what happened.

Capquest acquired Mr L's debt in 2006. This allowed them to ask for repayment of the debt from then on. Our Investigator explained the regulators rules which in summary says Capquest had to look into any dispute raised but are entitled to still seek repayment of a statute barred debt until the customer says they won't be repaying it.

The evidence I have is Mr L didn't dispute the debt with Capquest until February 2023. I understand he says he disputed matters back in 2011, but this is the earliest evidence he's provided to us.

Up to this point, I've seen Mr L engaging with Capquest's requests for payment and discussing options for paying off the debt. So, it seems Mr L accepted he needed to deal with the debt, albeit I understand under protest as he says this came about as a result of a breakup with his ex-partner.

It was during the same time Mr L asked for a copy of the credit agreement, that Capquest told him they'd acquired a CCJ against him in 2011 in error. Capquest have said in their response of 23 June 2023 that the account is unenforceable through the courts. At this time, they knew the information regarding the CCJ in 2011 was wrong – but also knew the credit agreement couldn't be provided.

So, although I can't decide when the debt became statute barred or why, it would seem it's the failure to acquire the credit agreement which has led to the debt becoming statute barred in Capquest's opinion. With that in mind, I can't reasonably say Capquest have been taking payments from Mr L since 2011 using incorrect information – because until the debt is recognised as statute barred, Capquest can continue to ask for payments unless the customer says they won't be paying it. In other words, I don't think Capquest have continued asking for repayments under the mistaken assumption a CCJ was granted in 2011 – I think they've continued to ask for payments because they understood a valid debt was owing and Mr L hadn't disputed it.

I understand Mr L might expect Capquest to have proven the debt isn't enforceable in court before expecting repayment, but I'm not aware of anything that requires them to do that. Ultimately, it'd appear as though a debt is owed and as Mr L was repaying it without disputing it, there was no reason for Capquest to carry out further investigations.

So, in terms of asking Mr L to repay the debt over the years I've seen nothing to suggest they've done anything wrong. I also don't think their communication with Mr L when asking for repayment of the debt has been inappropriate or unreasonable. I've read through the correspondence provided and find it to be factual in nature.

I do though agree with our Investigator it's appropriate to hold Capquest responsible for the incorrect information their agent gave. Capquest's agent was acting on Capquest's behalf at the time they told Mr L a CCJ had been granted in 2011.

Mr L has said this caused him to be shocked and very upset – and I'm not surprised. Finding out 12 years after the alleged event Mr L had a CCJ against him is naturally going to be upsetting. I can though see Capquest corrected this information around a week later. So, in the circumstances, I think the impact although acute initially, was limited given the timeframe in which Mr L had the wrong information.

Our Investigator recommended £100 compensation for this issue, and I think that's fair in all the circumstances of this complaint. I've seen Mr L question why the compensation isn't higher and why we're not penalising Capquest.

As a starting point I need to explain it's not my role to penalise Capquest. Our service isn't the regulator that's the FCA – they regulate financial business, but our service looks into individual disputes. And, when doing so, I'm required to consider the impact on an individual for the issues I think Capquest have got wrong. In Mr L's case, the only thing I think Capquest have made an error on relates to him being told incorrectly a CCJ had been granted in 2011 when it hadn't been. In respect of everything else, I think Capquest have treated Mr L fairly. The award isn't designed to be punitive in nature, but to reflect what I consider to be the impact on Mr L for the issues I uphold against Capquest. If I had agreed with all of Mr L's complaints, then I'd have awarded more compensation, but for the reasons I've mentioned above I haven't, which is why the compensation is limited to only one issue – the incorrect information regarding the CCJ.

My final decision

I partially uphold this complaint and require Capquest Debt Recovery Limited to pay Mr L £100 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 14 February 2024.

Jon Pearce
Ombudsman