

The complaint

Mr M complains about contact by Capquest Debt Recovery Limited in relation to a debt that was closed as part of his bankruptcy.

What happened

Mr M has explained that he was made bankrupt and subsequently discharged in 2012. As part of the bankruptcy proceedings, a credit card debt was included with a balance of £894.65. Mr M has explained that when he was discharged from his bankruptcy he believed the account was closed and balance written off.

In August 2023 Capquest sent Mr M a Notice of Assignment that advised the ownership of the credit card debt had been assigned to new owners. Capquest advised there was an outstanding balance of £894.65 at the time of assignment and that it had been appointed to administer the account. Capquest's Notice of Assignment included a Frequently Asked Questions section. To the question, *"what about my current balance?"* Capquest answered *"the obligation to repay hasn't changed, and you still need to repay the balance on your account (which we've detailed within the enclosed letter)."*

Mr M called Capquest to raise concerns that he was being asked to make repayments to a debt that was included in his bankruptcy. Mr M also asked for information explaining how he could raise a Data Subject Access Request (DSAR). During the call, the agent confirmed the account was closed following Mr M's discharge from bankruptcy. Mr M went on to ask Capquest why he was still being contacted about a debt that had been included in his discharged bankruptcy from 2012. Mr M explained the letter Capquest had sent him advised there was an outstanding balance that required repayment. A complaint was raised.

During the call, Mr M gave the agent his current address for the DSAR to be sent to.

Capquest issued a final response to Mr M on 6 November 2023 and confirmed it had taken over administration of the account on behalf of the new owners. Capquest's final response said it had received notification Mr M was discharged from his bankruptcy in 2020. Capquest said Mr M's account hadn't been closed on its systems which caused a Notice of Assignment to be sent to him giving the outstanding balance. Capquest apologised and agreed to pay Mr M £100 for the distress and inconvenience caused.

When Capquest issued its DSAR response it sent it to Mr M's previous address despite having been given his current address. Mr M referred a complaint about this to the Information Commissioner's Office (ICO) which upheld it. The ICO found Capquest had sent the DSAR to the wrong address despite being aware of the new address. Capquest issued another final response to Mr M on 2 February 2024 and apologised for its error. Capquest confirmed a new DSAR response has been issued to Mr M's current address and offered him £150 to apologise.

An investigator at this service upheld Mr M's complaint and asked Capquest to pay him a further £100 to reflect the level of distress and inconvenience its actions had caused. The investigator noted that Capquest had failed to update its records to reflect that Mr M had

been discharged from bankruptcy in 2012. They also thought Capquest had taken too long and made unnecessary errors when complying with Mr M's DSAR.

Capquest didn't agree and said the Notice of Assignment it had sent advised what the account was for and that it was being managed by the Bankruptcy Exchange. Capquest also said Mr M had been advised the account was closed during his call in September 2023. Capquest noted its final response had confirmed Mr M would receive no further contact about the debt. As Capquest didn't agree to settle in line with the investigator's recommendation Mr M's complaint has been passed to me to make a decision.

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.

There are a number of issues at play in relation to Mr M's complaint. I understand Capquest's point that whilst Mr M's account was included in his bankruptcy and that he's not liable for the remaining balance, it remained on the debt owner's books. But I think it's reasonable to conclude that the Notice of Assignment was only sent to Mr M due to an error by Capquest in noting his bankruptcy status on its systems. Had Capquest correctly updated its system, Mr M wouldn't have been sent the Notice of Assignment.

Further, I think Mr M makes a reasonable point when he says the Notice of Assignment made it appear as if he still owed the outstanding balance. The Notice of Assignment specifically says the outstanding balance was £894.65. And it's FAQs section explained the obligation to repay the outstanding balance hadn't changed and that it still needed to be repaid. Whilst I understand the letter is likely based on a template, I'm satisfied that it didn't fairly set out the facts of Mr M's case. And I'm satisfied the Notice of Assignment Mr M received caused an unreasonable amount of distress and inconvenience.

Further issues occurred when responding to Mr M's DSAR when it was sent to the wrong address. I'm pleased Capquest was ultimately able to comply and, after some delays, Mr M has now received the DSAR he asked for.

I've considered how to fairly resolve Mr M's complaint. I can see Capquest offered Mr M a total of £250 for the above issues when responding to his complaints. But, like the investigator, I'm not persuaded that figure is fair. Given Mr M was reasonably of the view that the account in question had been closed and dealt with as part of his bankruptcy arrangements in 2012, I can understand why after such a long period receiving letters about an outstanding balance would be very upsetting. And it's clear there were avoidable mistakes when complying with Mr M's DSAR that delayed it and caused him an unreasonable level of inconvenience.

My view is that a further £100, taking the total award to £350, for the distress and inconvenience caused to Mr M more reasonably reflects the impact of the issues raised on him and is a fairer way to resolve his complaint. So whilst I've read and considered everything Capquest said in response to the investigator, I'm satisfied that an increase of £100 in the offered compensation to Mr M is a fair and reasonable way to resolve his complaint. As a result, I'm going to proceed on that basis and uphold Mr M's case.

I understand Mr M has further concerns about the need for Capquest and the debt owner to retain information about an account that was included in his bankruptcy and discharged in 2012. As our investigator has said, the ICO is the body that regulates how business administer and store consumer information. If Mr M has concerns about the decision to

retain information about this account, he has the right to refer them to that body for consideration.

My final decision

My decision is that I uphold Mr M's complaint and direct Capquest Debt Recovery Limited to settle by paying Mr M a total of £350 for the distress and inconvenience caused (less any compensation already paid).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 4 September 2024.

Marco Manente
Ombudsman