

The complaint

Ms S complains that Capquest Debt Recovery Limited (Capquest) unfairly continued to pursue repayment of a debt after it told her that it had marked her account as settled and closed on a goodwill basis in January 2021.

What happened

Ms S had an outstanding credit card debt that was sold to Capquest Investment Limited in March 2012. In March 2017 Capquest received a letter from Ms S asking it to write off the outstanding balance and close the account as she was not in a position to clear the debt due to ill health and financial difficulties.

Ms S was unhappy that Capquest wrote to her in 2023 asking to review her monthly repayment. She wrote to Capquest to remind it that in January 2021, it had closed her account. Ms S asked Capquest to compensate her for the upset caused.

When Ms S spoke with Capquest in August 2023, she discovered that the debt had been sent to another debt collection business. Ms S was unhappy that a County Court Judgment (CCJ) had been entered against her without her knowledge. Ms S asked that Capquest remove the CCJ.

Our investigator found Ms S's evidence persuasive and thought it likely that Capquest told her in January 2021 that it would close her account. He thought the fact that the agent acting on behalf of Capquest closed and returned her account after the CCJ had been granted, was further evidence that it was likely Capquest would have agreed a medical write off in 2021.

Our investigator asked Capquest to set aside the CCJ and pay Ms S £1,000 compensation.

Capquest disagreed with the investigation outcome. It said it had no record of any contact with Ms S in 2020/2021. Capquest said that when the solicitor it appointed spoke to Ms S in 2021, she said she'd paid a settlement figure to the original creditor. However, Capquest's solicitor has no record of receiving the evidence of the settlement that Ms S said she was going to provide. The solicitor's records also show that it sent a letter to Ms S to the address she confirmed to say that the CCJ was in place.

Ms S said she did not pay a settlement figure to the original creditor. She said that the original creditor offered to close the account given her health issues. But that the communication and follow up that she had was all with Capquest.

Ms S thought it likely that the solicitor merged another account it obtained a CCJ on in 2017. She said she had no knowledge that the solicitor was involved on Capquest's behalf until she complained. Ms S said she has not had any contact with the solicitor about this account.

Ms S didn't think £1,000 compensation adequately reflected the difficulties she had experienced because of the CCJ. Ms S thought £3,000 was a fair award for the stress caused.

After considering the complaint, I issued a provisional decision on 10 September 2024 in which I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is more likely than not to have happened in light of the available evidence and wider circumstances.

I am sorry to disappoint Ms S but having read the available evidence, which includes records supplied by Capquest, I have reached a different conclusion to our investigator and do not intend upholding her complaint.

Capquest confirms that it received Ms S's request to write off the outstanding debt in March 2017. When a consumer makes this kind of request, it is usual for the business involved to ask for evidence to support their request. And I would not expect a business to agree to write a debt off without having seen this evidence. Capquest has supplied a copy of the letter it wrote to Ms S on 8 April 2017 asking her to provide medical evidence to support her request. So, I am satisfied that it responded appropriately to her request.

Capquest says that it never received a response to its letter of 8 April 2017 and Ms S has not said that she responded. This makes it difficult for me to conclude that Capquest decided to write the debt off following receipt of her letter in March 2017.

Capquest's records show that it tried to contact Ms S several times each month between May and July 2017, leaving messages on her landline answer machine asking her to call back. Capquest also has records of sending Ms S SMS texts in May, July, and September 2017. As Capquest received no response, it closed Ms S's financial hardship record in early October 2017. I don't consider this was unreasonable given the fact Ms S did not supply the evidence it had asked for to support her request to write the debt off.

Capquest's records show that it sent Ms S a settlement offer by SMS text in December 2018, before writing to her in June 2019 with copy statements. Capquest sent Ms S a SMS text in January 2020 asking her to make contact but has no record of any reply. In November 2020, Capquest transferred Ms S's outstanding account to a firm of solicitors I will refer to as D.

Capquest does not have any record of making or receiving a call with Ms S in January 2021. When Ms S complained to our service, she said that Capquest called her to say that it was closing her account but this is not reflected in Capquest's records. And the fact that it had already passed her account to D a few months earlier, makes it difficult for me to conclude that Capquest contacted Ms S in early 2021. Particularly as Capquest has also provided systems evidence which shows that none of its agents entered Ms S's account in 2021.

There is nothing in Capquest's notes to indicate that it intended to write off Ms S's debt. Prior to her complaint, Capquest has no record of any contact from Ms S apart from the letter that she wrote in March 2017. I appreciate that Ms S has supplied a copy statement from September 2016 on which she made some handwritten notes. The first one records checking closure of the account on 29 January 2021. The second note relates to the email that Ms S sent to Capquest on 25 March 2021 asking it to confirm the account closure. However, I am unsure why Capquest would have contacted Ms S in January 2021 to say that it was writing the debt off as it had

already passed her account to D a few months earlier. Capquest also says that it has no record of receiving the email that Ms S sent in March 2021. Capquest says that if Ms S had made contact after November 2020, it would have directed her to D to discuss her account. I think this seems likely.

Ms S told us that she had not spoken to D about this debt and suggested that it may have mixed this debt up with another CCJ that D obtained against her in 2017. I should make it clear that I can only consider Ms S's complaint as it relates to Capquest and not D. But having read some of the call notes from D, it spoke to Ms S on 29 July 2021 about the debt passed to it by Capquest. D's notes record Ms S saying she had partially settled the debt with the original creditor so didn't know why D was contacting her. Ms S explained that her personal circumstances impact her finances. There is no mention of a call with Capquest earlier in 2021 when she alleges it said it was going to write the debt off. If the write off had been agreed as Ms S says, I would have expected her to raise this during the call with D.

I have thought about whether the original creditor agreed to write the debt off before it was sold to Capquest in 2012 or at some point after, but don't think this seems likely. I say this because when Ms S wrote to Capquest in March 2017, she asked it to close the account and remove the outstanding balance on a goodwill basis. It seems unlikely that Ms S would have made this request to Capquest without referencing an earlier agreement to close the account if the original creditor had already agreed to write the debt off.

Although our investigator noted that D closed and returned the account to Capquest after it obtained the CCJ, Capquest says the account was returned but not closed. It may well have been the case that Capquest or D took a commercial view on whether D continued to pursue repayment. But I don't think this means that the debt had been written off. So, it doesn't change my decision that Capquest didn't treat Ms S unfairly when it referred the debt to D.

Overall, I am not persuaded that Capquest incorrectly told Ms S it was writing the debt off. As no payments had been received, I don't consider it was unfair to pass collection of the debt to D. This means that I don't intend requiring Capquest to pay compensation or arrange for the CCJ to be removed.

If Ms S wants to remove the CCJ, I suggest that she take independent legal advice on how to go about this.

Further submissions

Capquest confirmed that it didn't have anything to add in response to my provisional decision. However, Ms S was very unhappy and asked to see the evidence which I had relied on to reach my provisional decision.

After supplying this evidence to Ms S, she has come back with the following objections:

- My findings differ significantly from those of our investigator even though he carried out a detailed analysis of the case
- I have not taken the time to speak with Ms S ahead of issuing my provisional decision
- I have made inaccurate and misleading references, statements and inferences in my provisional decision

- My findings support a catalogue of misinformation from Capquest, together with the misuse of confidential information gathered by D. Ms S thinks that evidence gathered in a court case which she attended in person, has been inappropriately used against her.
- Ms S wants another ombudsman to conduct a final review of her complaint.
- Ms S wants Capquest to pay £3,000 compensation if the final review finds in her favour or not less than £1,000 as recommended by our investigator. She wants Capquest to apologise, confirm closure of account and remove the CCJ from her credit file.

Ms S has again explained the personal health and financial difficulties which she experienced. Ms S explains that she was not aware of the CCJ and was not given the chance to attend court to present evidence in response to the court claim.

Ms S says that at no point did Capquest ask her to supply medical evidence but she had been asked to supply this evidence at an earlier court hearing involving D and a different credit card company.

Ms S says that the CCJ obtained in the earlier case made it difficult to find alternative accommodation when she became homeless.

Ms S says that during this time of upheaval, she kept the same mobile number and email address so Capquest could have contacted her at any point.

Ms S does not think she is mistaken in believing that a Capquest advisor told her on 29 January 2021 that the account was closed and settled. Ms S recalls this as a positive moment at a time of great personal challenges.

Ms S says that by challenging my decision, she hopes to bring about positive change for others who have experienced debts being sold after they were closed.

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 first want to say that I am sorry to learn of Ms S's unhappiness with my provisional decision. I fully understand that it must have been a shock to receive my findings when they are so different to those of our investigator. However, the nature of our two-step process means that it will sometimes be the case that an ombudsman reaches a different decision to that of an investigator.

In Ms S's case, I have reached a different conclusion because of the evidence supplied by Capquest and the way that I have interpreted this evidence. As we had enough evidence for me to consider this complaint, I didn't find it necessary to call either party ahead of issuing my provisional decision.

Although Ms S says there are inaccuracies in my provisional decision, she has not pointed to specific elements which makes it difficult for me respond. But overall, I am satisfied that the timeline I have referred to in my provisional decision is an accurate reflection of the information supplied to us.

Based on the information we have, it appears that Capquest did try and contact Ms S on her

landline, mobile and in writing. I don't have enough evidence to conclude that Ms S told Capquest she had moved, so I don't consider it was unreasonable to continue to use her last known address.

Ms S says Capquest didn't ask her to provide medical evidence to support the medical write off but this is not what the evidence suggests. I appreciate that Ms S changed address in early October 2017 but Capquest requested the medical evidence some months before she moved, without any response. I realise that Ms S may not have received Capquest's letter but I am satisfied that it was sent.

If Ms S considers that Capquest or D have somehow misused evidence from an earlier court case, she can raise her concerns with them direct. But based on what I have seen, I can't fairly find that Capquest did anything wrong in the way that it handled Ms S's account.

It may be worth explaining that once the CCJ was issued against Ms S, the original credit agreement with the lender fell away. The balance that Ms S owes from that point on has been owed under the CCJ, not the original credit agreement. Debts owed as a result of a CCJ aren't regulated agreements. So, any collection activity carried out by Capquest since the CCJ was obtained, is not a regulated activity which the Financial Ombudsman can consider a complaint about.

If Ms S is unhappy about the way D obtained the CCJ and wants to apply to set it aside, I recommend that she take independent legal advice. Organisations such as Citizens Advice may be able to help her further.

For the same reasons I set out in my provisional decision, I don't have enough evidence to conclude that Capquest wrote the debt off in 2021. As the debt remained outstanding, I don't consider it was unreasonable for Capquest to refer the debt to D. It follows that I don't require Capquest to take any action in response to Ms S's complaint. I do however remind Capquest of its obligation to treat Ms S fairly when it comes to discussing any repayment arrangements with her.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 12 December 2024.

Gemma Bowen
Ombudsman