

The complaint

Mr K complains that Capquest Debt Recovery Limited (Capquest) attempted to contact him using a phone number that no longer belonged to him, when he had requested all contact should be by email.

What happened

Mr K had a credit card account which was opened in 2013. At some point after this Mr K ran into financial difficulties and the account was sold on to a debt purchaser (DP1), in July 2017. DP1 later sold the account to another debt purchaser DP2 in May 2023. DP1 and DP2 have at different times appointed various debt collectors(DC) to service the account. Capquest has been one of those appointed to work on the account and has done so at different times, most recently from 12 March 2024.

In March 2024 Capquest were trying to reach Mr K to discuss setting up a payment plan to pay the outstanding balance on his account. They used a third-party company to conduct a trace and that trace returned a mobile phone number for Mr K, which Capquest say was linked to other accounts he has been or is associated with.

Capquest used the phone number to send one text message to Mr K asking him to get in contact with them, and a further two with letters attached containing details of the account, including the outstanding balance.

Mr K complained to Capquest about this as he says the number no longer belonged to him as he had given the phone away. He also said he had made requests to have his account marked as no phone contact previously, and so this should never have happened.

Capquest responded to his complaint they said: they could see in the account notes they held, he had previously made similar complaints about being contacted on other numbers that he'd said didn't belong to him and these numbers had been removed from the system at the times of his complaints. But they had never been notified this particular number wasn't one they should use. However, they had removed it from their systems as a result of his complaint.

They also said they had no record showing Mr K had asked not to be contacted by phone and they couldn't see that they or the other DC's had ever agreed to that.

Mr K was unhappy with this and brought his complaint to this service. Our investigator didn't uphold his complaint. In summary they said:

- They thought Capquest's text messages containing the letters were inappropriate as Capquest hadn't verified the number belonged to Mr K. But as Mr K had given this service that same number, as his contact number, when bringing the complaint to this service, they couldn't say the information had reached a third party. So couldn't say that there had been any detriment as a result of the mistake. Therefore, didn't feel it was appropriate to award compensation.

- they hadn't seen any evidence that Mr K had ever told Capquest he didn't want to be contacted by phone.

Mr K didn't agree with the investigator's findings and responded saying:

- When he was completing the complaint form online the number must have been auto-filled onto the form by software on his computer, and it's unfair of us to rely on this to decide the case.
- While the number had been his previously, he had since given the phone away, and he wasn't able to provide any evidence to support this as it was a "pay as you go" phone and he hadn't let the phone provider know he had given it away.

As no agreement was reached the matter has 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 realise that I've summarised this complaint in less detail than the parties and I've done so using my own words. I've concentrated on what I consider to be the key issues. The rules that govern this service allow me to do so. If I've not reflected something that's been said in this decision it's not because I didn't see it, it's because I didn't deem it relevant to the crux of the complaint. This isn't intended as a discourtesy to either party, but merely to reflect my informal role in deciding what a fair and reasonable outcome is.

This also means I don't think it's necessary to get an answer, or provide my own answer, to every question raised unless it's relevant to the crux of the complaint. Where there's a dispute about what happened, I've based my decision on what I think's more likely to have happened in light of the evidence.

Before I explain my findings I think it would be useful to explain my role here is not to punish a business for making a mistake or getting something wrong, it's to think about the impact of any such mistake and to put the consumer, in this case Mr K, back in the position they would have been in, had the error or mistake not happened.

Capquest have provided evidence of account notes they held and have also gathered historical account notes from previous DC's to answer Mr K's complaint. Having looked through these notes in detail I haven't seen any evidence showing Mr K has ever explicitly requested that he should not be contacted by phone. I can see, he has in the past asked for specific numbers to be removed from his account as they no longer belong to him, which has been actioned. But that's not the same thing as requesting "No" phone contact. So, I can't say that Capquest did anything wrong in using this method of communication to reach out to Mr K.

There is no dispute that Capquest sent the text messages to the mobile phone number in question. They have put no argument forward, in response to the investigator's opinion, to explain how or what actions they took to verify the number belonged to Mr K before sending the text messages. So, I'm taking it that it's accepted by all, they didn't verify the number as they should have before sending the letters by text. This means it's likely it was inappropriate for them to have been sent.

To decide if I think there has been a detrimental impact caused by the text messages, I have to think about the likelihood that they have been seen by a third party. In doing this I've

considered the following points.

- Capquest have provided evidence showing the trace result from the third party. This shows that Mr K and the phone number in question were linked on multiple occasions up until March 2024 when the text messages were sent.
- Mr K said the third party who now has the phone told him about the messages verbally, so he isn't able to provide proof they were seen by a third party.
- Mr K gave us the same phone number, when completing our online complaint form in June 2024 (albeit he says this was an error caused by auto-fill software)
- Mr K isn't able to provide any evidence to show that the phone is no longer his, other than telling us he gave it away.

Having thought about this carefully, I'm not satisfied the texts caused any detriment. I say this because Mr K hasn't been able to provide anything to support what he has told us about the phone not belonging to him. And while I accept what he has told us may be true it's hard for me to be persuaded by this over the more tangible evidence listed above. Namely, that he and the number were linked up until the text messages were sent in March 2024. Alongside the fact, this was the number provided to us in his complaint form in June 2024, three months later. I have considered what Mr K said about the auto-fill software but as this was some months after he would have given the phone away, I think it's reasonable to believe even if he hadn't updated his number on accounts he was associated with, he likely would have updated his number on his own devices by that time.

Based on this, I can't confidently say it's more likely than not, the texts were seen by a third party, and so on balance I'm satisfied there was no detriment caused by Capquest sending them. Therefore, I won't be asking them to do anything differently here.

My final decision

For the reasons set out above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 3 January 2025.

Amber Mortimer
Ombudsman