

## **The complaint**

Mr P complains that Capquest Debt Recovery Limited are reporting a default to the Credit Reference Agencies (CRA).

## **What happened**

Mr P had a debt with a lender I'll refer to as "V". In September 2019, V sold the debt to a company I'll refer to as "Company A". Company A defaulted Mr P's account and reported this to the credit reference agencies – it recorded the default date as being April 2021.

Later, in May 2023, Company A sold the account to another company, "Company I". Company I then instructed Capquest to service the debt on its behalf.

Mr P complained to Capquest on a few occasions. In summary, his complaint was that he felt the debt should be statute barred, and that the default had been reported on three separate occasions when he says it should have only been reported once. But overall, he didn't think the account should be reported to the CRA's at all, and that the debt should be written off.

Capquest responded to Mr P's complaint and said that the default itself should stand, however, it backdated the date the default was recorded with the CRA's to December 2019. It also said that it would stop reporting the default, which it later said was a mistake.

An Investigator considered what Mr P had said, however they felt that Capquest weren't the firm responsible for reporting the default, and so Mr P should direct his complaint to Company I. Ultimately, the Investigator didn't uphold the complaint on this basis.

Mr P didn't agree with the Investigator and so the complaint was passed to me to decide on the matter.

I previously issued my provisional decision on this case. It was my intention to come to the same outcome as the Investigator, but for different reasons. Because of this, I wanted to give both parties the chance to respond with anything else they wanted me to consider before I came to my final decision on the matter.

I have copied my provisional findings below, which also forms part of this final decision.

*"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint."*

*Having considered everything, I am currently of the view that this complaint shouldn't be upheld."*

*An Ombudsman has already provided their position on jurisdiction in relation to Mr P's complaint and explained to him which parts of his complaint this Service can and can't consider. So, this provisional decision will purely focus on Mr P's complaint about the default. And, given that there are a few different companies involved in Mr P's account, I*

want to make it clear that in this provisional decision, I can only consider the issues that I feel Capquest are responsible for.

I'm aware our Investigator said Capquest wasn't responsible for the things Mr P complained about because Company I were responsible for these. But, in my view, by appointing a regulated debt servicer (Capquest in this case), Company I passes on responsibility for all actions under Article 60B(2) to Capquest. So, I'll be taking the approach that Capquest is responsible for the activity of exercising the lender's – in others words the owner of the debt (Company I) – rights and duties under a regulated credit agreement. So, I'll be considering the complaint against Capquest.

Capquest only took over the servicing of this account in May 2023, and it continued to report the default as Company A were reporting it, which is what I would have expected it to do. I can see that Mr P has provided this service with various pieces of evidence which he says proves that the default had been reported against him on three separate occasions, and that the default has been removed and been reapplied. But I can only look at how Capquest have reported this default. And I can't see that it has done this more than once, and so I can't fairly find it has done anything wrong here.

Capquest did agree to backdate the date of the default to December 2019, which I can see from both the evidence it's provided this service, and the evidence Mr P has provided that it has carried out this action. I don't think Mr P has disputed this too much from what I can see. However, for completeness, I'm satisfied that this was the right thing to do. I say this because when Company A took ownership of the account from V, the account hadn't defaulted. Mr P then made no payments to Company A towards the debt. Guidance produced by the Information Commissioners Office (ICO) states that an account should default when it is between three to six months in arrears. In this case, when Company A purchased the account and Mr P didn't make a payment it was ultimately in arrears and it should have defaulted sooner than when it did in April 2021. Capquest decided that the default should be backdated to three months after Company A purchased the account, which I think is fair in the circumstances. And this means that the default will remain on Mr P's credit file for less time than it would have done had Capquest not taken this action.

I understand it must have been frustrating for Mr P when Capquest mistakenly told him the default would stop being reported, only to find out later that it would remain until December 2025. While Capquest made a mistake in what it told Mr P, this doesn't mean that it should follow through with what it originally said. A credit report is supposed to be an accurate reflection of how an account has been managed, and for the reasons I've already explained, I think Capquest are doing this correctly.

I accept that Mr P doesn't think that the reporting of this account or the default should be on his credit report at all. I'm sorry to disappoint Mr P, but I don't currently agree. There is still an outstanding debt which Mr P owes; repayments haven't been made towards the debt, so these things should be reported on his credit file as this is an accurate reflection of how the account has been managed.

I note that Mr P says the balance relates to some transactions he doesn't feel he should have to pay for, and that he can no longer dispute with V or the retailer. But this doesn't mean that Capquest should write off the balance of his account and cease reporting to the CRA's. In order for me to order Capquest to take this action, I'd have to be persuaded that it had done something wrong, and I'm not currently persuaded that it has.

I'm sorry to disappoint Mr P with this provisional decision. I can see how strongly he feels about his case. But as I've explained, I'm not persuaded Capquest has done anything wrong here and so I can't uphold his complaint."

Capquest responded to the provisional decision to say it had nothing further to add.

Mr P responded to the provisional decision, and I have summarised his main points below:

- The court have already decided that Mr P doesn't owe a debt.
- My decision states that Capquest have made mistakes without penalty
- The Financial Conduct Authority (FCA) states that the account can't be reported more than once, but I have accepted it has been reported numerous times.
- There's nothing to stop Capquest defaulting the account again after December 2025.

### **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.

Having considered everything again, it is still my decision not to uphold Mr P's complaint. I'm sorry that this decision will come as a disappointment to him. However, I'll address his points below.

I haven't seen any evidence that the court made a judgement on anything relating to Mr P's complaint. I can see that Mr P has provided a copy of a claim form he sent to the court in relation to the retailer from where he purchased some goods using his account with V. But Mr P hasn't sent this Service any evidence to confirm what the outcome of the court case was. Or that the court has considered that this debt should be written off. Mr P is right in saying that it might not be appropriate for me to consider the same thing the court has, but as I've explained, I haven't seen evidence of any judgement made by the court.

My decision did say that Capquest made a mistake in what it told him about the reporting of the default. But Capquest has already paid Mr P an award which I think is a fair amount to cover this mistake. So I won't ask it to do anything more here. This Service doesn't penalise firms if it gets something wrong, we simply consider the impact of a mistake and ask them to do something to put it right, as far as reasonably possible.

The provisional decision didn't make the finding about how many times Mr P's account had defaulted. In any event, I can only consider the actions of Capquest here, and I haven't seen anything to suggest that it has reported a default more than once. I'm satisfied that it is correctly reporting Mr P's account.

Mr P has raised concerns that Capquest will default his account again in December 2025. I haven't seen any evidence to suggest it will do this. Mr P will need to contact Capquest in the first instance after December 2025, if he has concerns with how his account is being reported then.

### **My final decision**

For the reasons set out above, I don't uphold Mr P's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 7 April 2025.

Sophie Wilkinson  
**Ombudsman**