

The complaint

Mr H complains Capquest Debt Recovery Limited:

- Aren't a legitimate creditor because they've not provided sufficient proof of legal ownership
- Have refused to consider writing off a debt, even though another lender has
- Hindered his solicitor from gathering relevant information and caused a breakdown in his relationship with his solicitor

What happened

As I understand it Mr H had two accounts with a company I'll refer to as V. They sold these accounts to a debt purchaser, who then instructed Capquest to service them in May 2024.

Mr H initially contacted Capquest because he was unhappy they didn't reply to his solicitors which he says caused a breakdown in the relationship between them. Mr H also said he was entitled to the Deed of Assignment (DOA) to prove Capquest were allowed to ask him to repay this debt. Mr H also mentioned he'd like the debt written off.

Capquest said:

- They accepted they hadn't replied to Mr H's solicitor on a number of occasions when they asked for documents.
- They didn't think they had to provide the DOA to Mr H as this is a business to business document.
- They'd be happy to consider his write off request if Mr H could provide information from his doctor about being permanently unfit for work, and if he completed an income and expenditure form (I&E).

Overall Capquest said sorry for what'd happened about not replying to Mr H's solicitor but didn't think they'd done anything wrong otherwise.

Mr H didn't agree asking for £200 compensation for the issues with his solicitor. In respect of the DOA, he reiterated this is something they had to provide and quoted law, case law as well as regulations and guidance from the Financial Conduct Authority (FCA). And he felt Capquest's request for a doctor's letter, saying he'll never work again is medically unrealistic and breaches the FCA's guidance on vulnerabilities, as well as rules set out by the FCA and the Equality Act 2010. Mr H told Capquest another lender had written off a debt with them, provided his I&E, and said they should now write off the debt or make a settlement offer.

Capquest considered Mr H's write off request, but didn't agree to it, saying his I&E showed he had an income each month, he's in work and is a homeowner – they also didn't think they'd discriminated against him. Capquest made a settlement offer for Mr H to pay off the debt, and also realised they hadn't offered Mr H any compensation for the issues with his solicitor when they'd told him they would, so paid him £150.

Unhappy with this Mr H asked us to look into all of these points – clarifying that in essence all he wanted from Capquest was either for the debt to be written off, or for no enforcement to take place. Mr H also reiterated he didn't recognise Capquest as a valid company to contact him regarding the debt.

Our Investigator found the £150 Capquest had already paid Mr H for the communication issues with the solicitor was fair – and didn't think they'd done anything wrong otherwise.

Mr H didn't accept this. He explained a second creditor had now written off his debt using the same information he'd provided to Capquest, so felt this strengthened his argument that the debt should be written off with Capquest. Mr H referred to the Equality Act 2010 and said the two other creditors had applied the FCA's 'Guidance for firms on the fair treatment of vulnerable customers' correctly. Mr H added his Debt Arrangement Scheme (DAS) would no longer include creditors whose legal entitlement to recover debt is recognised.

Our Investigator still felt Capquest had acted fairly. Mr H didn't and made a number of points. As Mr H didn't accept our Investigators outcome, the complaint's 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 think it's important to explain I've considered all of the information provided by both parties in reaching my decision. If I've not reflected or answered something that's been said 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.

How I'll be deciding this case

Before getting into the specifics of the outcome I've reached, I just wanted to set out how I'm required to decide the outcome.

This is explained by the FCA in the Dispute Resolution (DISP) rules.

DISP 3.6.1 says

The Ombudsman will determine a complaint by reference to what is, in his opinion, fair and reasonable in all the circumstances of the case.

And DISP 3.6.4 says

In considering what is fair and reasonable in all the circumstances of the case, the Ombudsman will take into account:

(1) relevant:

(a) law and regulations;

(b) regulators' rules, guidance and standards;

(c) codes of practice; and

(2) (where appropriate) what he considers to have been good industry practice at the relevant time.

I can see Mr H has referenced DISP and how we're required to decide cases, but I still thought it helpful to reiterate this. I'm required to take into account various elements of the law and rules and guidance Mr H has referred to – but ultimately I'm required to decide things on a fair and reasonable basis.

Communication with the solicitor

As I understand it Mr H is no longer disputing the issue regarding Capquest's communication with his solicitor. But, for completeness, I've thought about Capquest's outcome here and I'm in agreement with the £150 they paid Mr H – so I won't go into any further detail regarding this.

Do Capquest have to provide the DOA

Mr H has talked about the law – including case law – as well as the FCA's rules as requiring Capquest to provide the DOA. Mr H says because Capquest haven't provided this, then they're not allowed to ask him to repay the debt.

Capquest say this is a business to business document, and isn't something they'd provide to Mr H. They say sending the Notice of Assignment (NOA) is sufficient.

I'm aware there are some court cases which other consumers said a consumer is entitled to see the DOA – and there are other court cases which businesses say a consumer isn't entitled to see the DOA.

Mr H believes legally he's entitled to the DOA – and if that were the case then I'd expect all court cases to have reached the same conclusion – which they don't seem to have.

I'd also expect debt companies to have sought legal advice on this point as it's one that comes up regularly, and it seems likely to me debt companies wouldn't continue to deny their customers access to this document if the law said they were required in every case to provide it.

In addition, the FCA sets out what's expected of financial businesses in the Consumer Credit Sourcebook (CONC) rules. CONC 6.5.2 says:

(1) Where rights of a lender under a regulated credit agreement are assigned to a firm, that firm must arrange for notice of the assignment to be given to the customer:

(a) as soon as reasonably possible; or

(b) if, after the assignment, the arrangements for servicing the credit under the agreement do not change as far as the customer is concerned, on or before the first occasion they do.

[Note: section 82A of CCA]

(2) Paragraph (1) does not apply to an agreement secured on land.

(3) A firm may assign the rights of a lender under a regulated credit agreement to a third party only if:

(a) the third party is a firm; or

(b) where the third party does not require authorisation, the firm has an agreement with the third party which requires the third party to arrange for a notice of assignment in accordance with (1).

If legally debt purchasers had to provide the DOA to their customers, then I'd expect the FCA to have reflected that in their guidance – but they don't. Instead, they say a NOA is sufficient to say the debt has been transferred from one party to another.

Given all of the above information, I'm not satisfied Mr H's request for the DOA is one Capquest are required to fulfil. So, I don't require them to provide the DOA to Mr H.

In the circumstances, I'm satisfied on a fair and reasonable basis the NOA fulfils its purpose of confirming to someone their debt has been transferred to another party. And I'm satisfied it's sufficient for Capquest to rely on this when contacting Mr H for repayment of the debt.

Have Capquest acted fairly in saying they wouldn't write off Mr H's debts

In summary, Mr H says Capquest should write off his debts with them because:

- He's a vulnerable customer and Capquest have ignored the FCA's guidance on this.
- Other creditors saw the same information, applied the same FCA rules, assessed the same health conditions and reached a different more reasonable conclusion – by writing off the debts.
- He's disabled, and has suggested Capquest have ignored a number of key issues when considering whether to write off his debt – including only considering things on a static present day snapshot – when the FCA's guidance on vulnerability requires Capquest to have taken a forward looking approach.

I'd like Mr H to be aware I've carefully reviewed all the documents he's provided. But, as this decision is published on our website, I've been deliberately vague about his health conditions to respect his privacy.

I'd also like Mr H to know I've genuine sympathy for the difficult situation he finds himself in. But, being impartial means I have to critically think about what a fair and reasonable outcome is.

There is no question in my mind Mr H qualifies as a vulnerable customer under the FCA's guidance for dealing with vulnerable customers. And I've seen a medical professional suggest Mr H is likely to qualify as a disabled person.

So, I agree Mr H is a vulnerable customer, is likely disabled, and as such his request for a medical write off should be considered against that background.

Capquest say because Mr H has a surplus income every month, is working, and owns a home, they didn't agree they should write off his debt.

I think it's important to explain there are no rules or regulations that require a business such as Capquest to write off a debt. This includes the FCA's guidance on vulnerability Mr H has heavily referenced. None of this explicitly says Capquest must write off someone's debt in specific circumstances.

Given that, it's Capquest's choice about whether they should or shouldn't write off someone's debt. What I can consider, as I can see Mr H is aware, is whether Capquest have done so fairly and reasonably taking into account his specific circumstances.

In general terms, I think it's helpful to explain I'd usually expect a financial business to write off a debt in situations where someone is unlikely to ever improve their financial situation. This could be for a variety of reasons such as someone is retired, doesn't own their own home – or for example someone is medically retired and have doctor's evidence saying they won't ever work again.

I've seen Capquest have referenced this specifically – saying Mr H has been told he can work. Mr H has suggested it's medically impossible to get a letter saying he'd be

permanently unfit for work. In his situation this doesn't apply, but I did want Mr H to know I have seen situations where doctor's have confirmed someone is permanently unfit to work.

Mr H has also said he only works part-time, and he calls it "supported functioning" which allows him to work without collapsing. All of Mr H's medical records show this – so I completely accept Mr H is working part-time and his characterisation of things. But, crucially, he is working.

Because Mr H is working, this means he's earning money, and it's possible his financial position could potentially improve in the future. I accept Mr H may feel differently given his chronic conditions I don't know, but objectively it's at least possible. To me, this means Mr H could improve his income, which means he'd be in a better position to repay this debt.

I'm conscious Mr H has said his income is barely subsistence level. Again, there is no reason for me to dispute this – but Capquest said the I&E he completed showed he had a surplus income. I accept it may not be much he can afford to pay, but the I&E suggests he can at least pay something towards the debt.

Capquest have also said Mr H owns a house – Mr H says they've noted this but not considered whether he's got any releasable equity. I agree, it's unlikely they have. But, I don't think this changes anything. I say that because it's an asset Capquest seem to see as a possible future option for recovering the outstanding debt. This doesn't seem unfair or unreasonable to me given most people prioritise paying their mortgage and property prices in general increase in value over the longer term.

Mr H has said we didn't take into account:

- Fragility of his earnings
- Future deterioration
- Medical instability
- Sustainability
- Harm risk

I accept these points are entirely reasonable for Mr H to raise and that they are things he'd be concerned about. But, I'm only considering whether Mr H's circumstances at the point he made the request to Capquest to write off the debt. If Mr H was in a position where it's shown he'd never be able to improve his financial position then I'd likely agree a write off is appropriate. And if Mr H's circumstances unfortunately change for the worse in future, then he'd be entitled to ask Capquest to consider his write off request again, taking into account his new circumstances.

Overall, I've not been persuaded that Mr H's individual circumstances mean he shouldn't be required to pay back the debt. Mr H doesn't dispute the debt as being valid, has an income which can make payments towards it, is currently working (albeit in a limited capacity) so his financial situation could improve, and has a home which could in future be used to repay the debt. While I completely agree Mr H is vulnerable and likely disabled, I think in his specific circumstances it's not unreasonable for Capquest to ask him to repay the debt.

I'm aware Mr H believes Capquest haven't made a fair decision because other creditors have chosen to write off his debt. But, I don't think that means automatically Capquest haven't treated him fairly for the reasons I've mentioned above. So, I don't think the other creditors writing off his debt is a justification for this debt to be written off. I'm aware Mr H has referenced his DAS when making this point, but I don't think the existence of the DAS makes any difference to whether the debt should or shouldn't be written off.

Other issues

- Capquest passing Mr H's account to another debt servicer – I can see this concerned Mr H when Capquest said they were going to do this, as he didn't think they should given his complaint and medical write off request. But, as I've found Capquest didn't do anything wrong, I've seen nothing to make me think I should uphold this point.
- Forbearance – given I've found Capquest are treating Mr H fairly by asking him to repay the debt, it's possible they'll get back in touch with him following this decision. I say this because I'm unclear on the status of the DAS at this time. If Capquest do contact Mr H, then I'd remind them they're required to treat him fairly and reasonably – including only asking him to repay what he can afford to repay.

My final decision

For the reasons I've set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 18 February 2026.

Jon Pearce

Ombudsman