

complaint

Mrs W complains that Capquest Debt Recovery Limited pursued her for payment of a debt which wasn't hers. She says its actions affected her ability to obtain a mortgage. The complaint is brought on her behalf by her husband, Mr W.

background

The background to this complaint is set out in my provisional decision dated 6 October 2017, a copy of which is attached. I concluded that Capquest should've carried out an investigation earlier than it did and, if it had, it wouldn't have recorded a default on Mrs W's credit file. I explained why I didn't think it was fair for Capquest to compensate Mrs W for a fixed rate mortgage offer which was declined, but I concluded it should pay her £266.29 for the one month her and her husband had to pay a variable rate on their mortgage. I also thought it should pay her £150 for the trouble and upset caused and reimburse her for the cost of her and her husband's subscription to access their credit files.

Capquest agreed with my provisional decision.

Mrs W sent evidence of the cost of obtaining their credit files. This was higher than she'd originally said – the total cost being £374.75.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Neither party has provided any new information so I see no reason to depart from my earlier conclusions.

Mrs W has provided evidence to show that she and her husband paid £374.75 in subscription fees to obtain copies of their credit files. So I'm satisfied that Capquest should reimburse this amount.

my final decision

My final decision is that Capquest Debt Recovery Limited should:

1. Pay Mrs W £266.29 to reimburse her for the additional mortgage interest she had to pay for one month.
2. Pay Mrs W the cost of her associated fees for opening an account with the credit reference agency - £374.75
3. Pay Mrs W £150 for the trouble and upset caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 4 December 2017.

Elizabeth Dawes
ombudsman

copy of provisional decision

complaint

Mrs W complains that Capquest Debt Recovery Limited pursued her for payment of a debt which wasn't hers. She says its actions affected her ability to obtain a mortgage. The complaint is brought on her behalf by her husband, Mr W.

background

Capquest purchased the debt from the original lender in April 2013. In January 2014, Mrs W wrote to Capquest to dispute the debt. Capquest contacted the original lender and recorded a default on Mrs W's credit file. But it didn't tell Mrs W what it had done, or why it still thought the debt was hers.

In October 2016 Mrs W's joint mortgage application with her husband was unsuccessful. She obtained a copy of her credit report and saw the default. She contacted Capquest which led to an investigation. Capquest concluded that the debt arose as a result of fraudulent activity on Mrs W's dormant account. It arranged to close the account and remove the default from her credit file.

Mr W told us that the fixed interest period on their joint mortgage was due to expire and in October 2016 they'd applied to another lender. They wanted another fixed rate mortgage and they wanted to consolidate credit card debts. They say that by the time the default was removed, the fixed rate deal they'd wanted had been withdrawn so they remortgaged with their existing lender. They want compensation for the additional interest they had to pay – on the variable rate mortgage and on the credit card accounts.

Our investigator concluded that Capquest should've done more to investigate the debt when it received Mrs W's letter in January 2014. She thought Capquest should pay Mrs W £150 for the trouble and upset it'd caused. She didn't think Capquest should compensate Mrs W for the mortgage application being declined because no formal offer was made – it was subject to underwriting.

Mrs W didn't agree. She said, in summary, that:

- They'd planned to remortgage and take additional borrowing to clear credit card debts. These debts were in Mr W's name but related to purchases for both of them.
- They approached a lender which was offering a rate of 0.99% fixed for two years. But their application was declined due to "adverse credit". If the default hadn't been on Mrs W's credit file, they would have been accepted and would have proceeded with this lender.
- By the time the default had been removed, the 0.99% offer was no longer available. Mr and Mrs W chose to stay with their existing mortgage provider and agreed a mortgage, which included additional borrowing of around £17,000 for the credit card debt, at a fixed rate of 1.75%. Mr and Mrs W have calculated their loss to be just over £3,000.
- Mrs W and her husband had to pay for Experian accounts to support their complaint. This has cost them £329.78.

my provisional findings

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

Capquest brought the debt from the original lender in April 2013. I find, and Mrs W accepts, that it acted in good faith when it contacted her to seek repayment of the debt.

In January 2014, Capquest received Mrs W's letter in which she disputed the debt and asked it to provide evidence that it was hers. Capquest didn't respond to this letter. It didn't contact Mrs W again but it recorded the account as in default and this was reflected on her credit file.

When Mrs W complained in October 2016, it carried out a full investigation and concluded the debt had arisen as a result of fraudulent activity on a dormant account. I find that it could and should have carried out this investigation in January 2014. And, if it had, it wouldn't have recorded a default on Mrs W's credit file.

The default has now been removed and Mrs W should be put back in the position she would've been in if the default hadn't been recorded.

When Mr and Mrs W approached a third party lender to apply for a mortgage, their application was declined. The lender told us that their application was declined "*due to an adverse credit register search*". Mr W has provided us with a copy of his credit file and with a copy of Mrs W's credit file after the default was removed. I can see from this that it would be extremely unlikely that they would be declined for credit and that it was only the default that resulted in an unsuccessful application. This is further supported by the third party lender who has told us a successful decision in principle was completed in December 2016 – after the default was removed.

But I can't conclude with enough certainty that, if the initial credit check had been successful, that the application would have resulted in a mortgage offer or that Mr and Mrs W would've chosen to accept an offer. Their application would have been subject to underwriting and there's a possibility it would've been declined for another reason. Mr W told us that he later realised it was easier to borrow additional money from his existing mortgage provider. So it's possible Mr and Mrs W wouldn't have proceeded with the third party lender.

So, after careful consideration, I can't order Capquest to compensate Mr and Mrs W for a mortgage that, with no default on Mrs W's credit file, may still not have been agreed or proceeded with.

I can see that Mr and Mrs W's monthly mortgage payments stayed the same on their existing fixed rate mortgage until March 2016 when it moved to a standard variable rate. By April 2016 Mr and Mrs W had agreed a new fixed rate mortgage. I think this could've been arranged earlier, if Mrs W hadn't had a default recorded on her credit file. In March 2016 Mr and Mrs W paid £1,035.85. In April they paid £769.56. So I think Capquest should pay Mrs W the difference - £266.29.

Mr and Mrs W told us they needed to obtain copies of their credit files to support their complaint. They've told us this cost them £329.78 – they first subscribed around a year ago. I think it's fair and reasonable that Capquest refund this cost, on receipt of evidence from Mr and Mrs W.

Our investigator recommended Capquest pay Mrs W £150 for the trouble and upset she's been caused. I consider this to be fair and reasonable.

my provisional decision

My provisional decision is that I'm minded to conclude that Capquest Debt Recovery Limited should:

1. Pay Mrs W £416.29 (being £266.29 plus £150).
2. On receipt of evidence, refund Mrs W the cost of her associated fees for opening an account with the credit reference agency.

Elizabeth Dawes
ombudsman