

complaint

Mr H complains that Capquest Debt Recovery Limited won't pay interest on a refund.

background

In 2012 Capquest acquired a debt that Mr H owed a third party lender. Mr H was in financial difficulties, this account had been in arrears for some time and Mr H was making reduced repayments via a payment plan administered by a free source of money advice. Mr H thinks it was wrong of Capquest to continue to apply interest charges in light of his difficult circumstances.

Capquest agreed to refund interest last year but Mr H feels it should pay interest on that refund as well, at 8% a year. Capquest says the account hadn't defaulted, it was entitled to charge interest and interest was applied correctly at the time. Capquest thinks it is unfair to expect it to pay interest on top of the interest removed last year, as a goodwill gesture.

Our investigator accepts there's no absolute obligation on a financial business to suspend interest when a consumer is in financial difficulties. But, he's satisfied Mr H was facing long term financial problems with little prospect of his income improving when Capquest bought this debt. He thinks Capquest had (or could easily have acquired) enough information to see this and it was wrong to continue to charge interest, in this situation. He acknowledges Capquest has refunded the interest charged now. But he considers it is fair that Mr H should receive interest on the refund - as he was deprived of the use of this money. He recommends Capquest should pay interest on the refund at the rate of 8% a year from the date the money was paid until it was refunded.

Capquest says it's unfair that our investigator looked at information Mr H supplied after Capquest's investigation into his complaint was completed. It asked for an ombudsman to review the matter.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've reached much the same conclusions as our investigator for broadly the same reasons.

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 most likely to have happened in the light of the available evidence and the wider circumstances.

When a consumer finds themselves in financial difficulties, as Mr H did here, a financial business is required to respond positively and sympathetically. What that means will vary depending on individual circumstances - but I accept there's no absolute requirement for a lender to stop charging interest.

Industry guidance¹ in place when Capquest acquired this debt says *“creditors should consider reducing or stopping interest and charges where a borrower evidences he is in financial difficulty and is unable to meet repayments as they fall due or he can only make*

¹ Office of Fair Trading debt collection guidance for businesses engaged in the recovery of consumer credit debts 2003 (revised 2012)

“token” repayments such that his level of debt would continue to increase if interest and charges continued to be applied”.

From information I’ve seen about Mr H’s circumstances at the relevant time, I am satisfied he had been having serious financial problems for several years. He had a significant level of debt, which included the arrears on this account. I think Mr H seems to have made it clear to his creditors that his circumstances were unlikely to improve for the foreseeable future. And I can see he arranged a repayment plan with the help of a third party free advice service to repay multiple debts including this one.

I think Capquest must have accepted Mr H was struggling financially at the time, as it agreed to accept reduced payments under that plan - which seems positive and sympathetic as far as it goes. I’m satisfied Capquest was also obliged to *consider* stopping or reducing interest, in this situation. Our investigator asked Capquest about that. Capquest’s response seems to be simply that it wasn’t *obliged not to* charge interest. Capquest hasn’t supplied evidence to show that it *considered* suspending or stopping interest at the time - or explain why it appropriate to continue to do so.

I appreciate Capquest had to strike a balance here - between the fact that Mr H was in financial difficulties and his obligation to repay what he owed. But, from the evidence I’ve seen (which I’m satisfied would have been available to Capquest at the relevant time), I think it’s reasonably clear that Mr H’s financial problems were going to be permanent (or least very long standing) when Capquest acquired this debt. And Capquest would probably have realised that, if it had considered Mr H’s situation properly at the time. In which case, it’s unlikely to have charged interest in the way that it did. I think it’s fair that Capquest has refunded the interest charged now. But, I’m satisfied Mr H was deprived of the use of that money. And I think the outcome recommended by our investigator seems fair and reasonable, overall.

my final decision

My decision is I uphold this complaint. In full and final settlement I require Capquest Debt Recovery Limited to pay interest at the rate of 8% simple a year on the interest Mr H paid to Capquest in respect of this debt from the date the money was paid by Mr H until the date it was refunded.

If Capquest considers that it’s required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr H how much it’s taken off. It should also give Mr H a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr H to accept or reject my decision before 4 November 2018.

Claire Jackson
ombudsman