

complaint

Ms F complains that Capquest Debt Recovery Limited (Capquest) has recorded incorrect information on her credit file.

background

Ms F had a mail order debt with a third party that was sold to Capquest. Ms F has explained that the debt is unenforceable and so Capquest should remove the default recorded on her credit file as it is inaccurate. She explains that a recent case in the courts supports her complaint that recording a default without an explanation that the debt is unenforceable is in breach of data protection legislation.

Our adjudicator did not recommend that the complaint should be upheld. She considered that Capquest had not made an error in recording the default in these circumstances and this service could not comment on whether the debt was enforceable. Ms F did not agree and responded to say in summary that Capquest should not be allowed to record misleading information on her credit file.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Ms F does not dispute that the debt is hers. Capquest has said in response to Ms F's complaints that it will not enforce the debt and it has closed the account. It says that the default is a correct reflection of the account and it has refused to remove it.

I can look at what is fair and reasonable in the circumstances and whether Capquest has made an error. Ms F does not dispute that she incurred the debt and I can understand why she has decided not to make any further repayments. But I can't say that Capquest is wrong to record that the account is in default as this is an accurate reflection of what has happened. I understand Ms F's point that this is not the complete picture without the information that the debt is unenforceable.

The question of whether a debt is enforceable is a legal matter and one that can only be decided by the courts. Although Capquest has said that it does not intend to enforce the debt that is not the same as a decision from a court that the debt is in fact unenforceable. So in these circumstances I can't say that Capquest has made any error.

I can appreciate that the default has had an impact on Ms F's ability to obtain credit but I think that if the default was removed this would also give a misleading picture and so I don't think it is fair or reasonable to ask Capquest to remove it.

I appreciate that this is disappointing for Ms F in the light of the legal issues she has raised. She may wish to consider whether the matter is better dealt with in a court.

my final decision

My final decision is that I do not uphold this complaint. Under the rules of the Financial Ombudsman Service, I am required to ask Ms F to accept or reject my decision before 1 June 2015.

Emma Boothroyd
ombudsman