

## **complaint**

Miss C complains that Capquest Debt Recovery Limited obtained a County Court Judgment (CCJ) for a debt she says she's already settled. She wants the CCJ set aside and the entry removed from her credit file.

## **background**

Miss C tells us that several years ago she fell into financial difficulty. As a result she says a CCJ was issued for a debt she owed to a company I'll call V. She says this was settled in May 2012 and a certificate of satisfaction issued. Miss C tells us she's now become aware of a CCJ made against her in May 2017. She says this relates to the same debt that was previously repaid. She says she didn't receive notice of the court hearing as she'd moved address.

Capquest told us that it bought this debt in November 2010. It says a payment arrangement was agreed but subsequently cancelled by Miss C - although she later made two payments. It said it had been unaware of any address change and had issued the court claim to the last known address it had for Miss C. And it said it could not find any record of previous legal action being taken in relation to this account.

I issued a provisional decision on this complaint on 25 April 2019. I said that I was not minded to uphold the complaint as I did not have the power to set aside a CCJ.

Both parties have since replied and I thank them for their responses. Capquest has said it had nothing to add. Miss C expressed her disappointment at my provisional view. She said she thought that - whilst the CCJ couldn't be proved to relate to the older debt - I hadn't taken into account the lack of correspondence from Capquest. And that as a result she'd been unable to defend herself against the CCJ.

I'll deal with these points in more detail in my final decision below - but as I've not been provided with any further evidence I'm not minded to change my provisional view.

## **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'm sorry Miss C has found herself in this situation. It must have been an unwelcome surprise to learn about the CCJ which was made in 2017. Particularly when she believed she'd already repaid the debt.

In trying to resolve complaints, we listen to what the parties tell us, and we look to documentary and other evidence to help us reach a decision. This is in combination with our fair and reasonable remit. And where evidence is unclear or contradictory - as some of it is here - I have to make my decision on the balance of probabilities. That is to say I decide what is the most likely explanation to account for what's happened.

It's also important that I should emphasise that this service can only issue decisions - and require businesses to take actions - which fall within the range of powers we've been given. For reasons I'll explain later this limitation is highly relevant to my decision here.

Having looked at the evidence, I think there has been some degree of misunderstanding between the parties, and this service, about both the sequence and factual circumstances of events. This is understandable, as several years have elapsed since the occurrences - which eventually led to the current position - first occurred.

The evidence I've seen shows Miss C had opened two catalogue accounts - with V and L. Whilst owned by the same parent group, the businesses are run as separate entities. And whilst both Capquest and V have been involved in different aspects of accounts held by Miss C - this has not always been at the same time. For various reasons, Capquest and Miss C have also not been in regular contact. And so there are gaps in the evidence which is available to me.

Capquest purchased one of the accounts, from V, in November 2010. The balance at the time was £545.36. This is the account for which it eventually secured a CCJ in May 2017. That judgment was in the sum of £520.17.

On 15 May 2012 Miss C obtained a certificate of satisfaction (record of a settled debt) in respect of a CCJ which had been made in October 2011. This related to a debt in the amount of £362.60. There's no direct evidence that the CCJ relates to the account held by L - but records show that account was closed in May 2012 with no outstanding balance. So whilst it's possible the two events might be coincidental, it seems more likely that they are linked.

It was Miss C's belief that the two CCJ's relate to the account she held with V. And she considered that - in obtaining the 2017 judgment - Capquest had acted in a way which amounted to an abuse of court process. So she asked Capquest to agree to set aside the order by consent. And when it declined to do so she complained to us.

To set aside the judgment of a court involves a very specific process, which is set out in the Civil Procedure Rules (CPR). As Miss C has made reference to these, I needn't go into great detail as she's obviously aware of them.

But an application to set aside a CCJ can only be dealt with by a court - it's not something over which this service has any jurisdiction. And the issues which Miss C raised in response to my provisional decision - regarding the lack of correspondence and the resultant inability for her to defend the proceedings - are matters relevant to whether the CCJ should be set aside.

So I can assure Miss C I have not ignored these aspects. But for the reasons I've explained I'm not able to take any action about these matters which would assist her.

It still remains open to her to make a set aside application to the court. Although I accept she would face considerable difficulty given she now appears to accept there is no way she can show the old debt - to which the certificate of satisfaction refers - relates to the same debt as the CCJ. And without such proof it's unlikely a set aside application would succeed - given the requirement to show a real prospect of successfully defending the claim.

Although this service cannot deal directly with the issue of a set aside application, I can look at whether or not I think Capquest has acted fairly. That includes considering whether it had reasonable grounds in the first place for seeking to enforce the debt by making the application which resulted in the CCJ.

The available evidence does not support Miss C's contention that the certificate of satisfaction and the CCJ of 2017 relate to the same debt. If anything, the evidence would lead me to think that different debts were involved. I've discounted the fact that the two court case references are different - I don't think this is persuasive evidence that the accounts are different. If the application in 2017 had been mistaken - and I'm not making any finding it was - the court would have issued a different case reference anyway, as the applications were made six years apart.

I've seen evidence of two separate accounts in the name of Miss C. The certificate of satisfaction is for a different (lesser) sum than the more recent CCJ. And one account was closed in 2012 at around the same time the certificate of satisfaction was issued. I've already said I think it's probable the certificate related to that account. And Capquest had no involvement with that account.

In these circumstances I think Capquest had reasonable grounds for believing it was entitled to enforce the debt it owned through the County Court. And where a CCJ is made - and is not settled within one month - it is entered on the Register of Judgments. As this is a record of a judicial decision it's not something I have jurisdiction to alter.

I should clarify that the CCJ is not itself a default - and it's not recorded as a default on a credit file. CCJ's are listed separately and are obtained from public records. So to have the entry removed from her credit file Miss C would need to have the judgment set aside and then have it removed from the Register of Judgments.

In summary, I don't think it would be fair and reasonable to say Capquest had done anything wrong. And whilst I'm aware it will come as a disappointment to Miss C I'm not upholding her complaint.

### **my final decision**

For the reasons given above my final decision is I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 14 July 2019.

Stephen D. Ross  
**ombudsman**