

The complaint

Miss R complains about a debt that was acquired by Capquest Debt Recovery Limited.

What happened

Miss R opened a credit card in 2001 with a business I'll refer to as C that fell into arrears and was closed. In January 2013 Capquest took over administration of the account. A payment plan was subsequently agreed for Miss R to make repayments of £11.03 a month. Miss R maintained the payments, reducing the outstanding balance.

Capquest says it wrote to Miss R on 9 March 2023 and asked her to make contact to discuss the payment plan with an aim of reviewing her circumstances. When no response was received, Capquest says it sent a second letter on 23 March 2023 asking Miss R to contact it to discuss whether there was potential for the payment arrangement to be reviewed. Capquest's letter advised that if no response was received by 5 April 2023 the account would be passed to solicitors acting on its behalf to commence legal action. On 6 April 2023 Capquest wrote to Miss R again and said that as no contact had been received her account would be referred to its solicitors.

On 14 April 2023 Miss R spoke with Capquest and raised a complaint explaining that she found its contact threatening. Miss R asked Capquest to provide a copy of the original credit agreement from C and it raised a request.

Capquest issued a final response on 6 June 2023 and said it had sent Miss R two letters requesting contact to complete an income and expenditure assessment in order to review her payment plan but received no response. As a result, Capquest said it had followed the right process by instructing solicitors. Capquest agreed to leave the existing payment plan in place and said it had contacted C to raise a query regarding the credit agreement. Capquest denied Miss R's request to write off the outstanding balance and invited her to go online to complete a review of the existing arrangement.

Miss R referred her complaint to this service and it was passed to an investigator. During the investigation, a response from C was received advising Miss R to contact Capquest for information about her account. C also confirmed that a PPI refund it had made in relation to the credit card was made directly to Miss R's representatives rather than being used to reduce the outstanding balance. Capquest later advised that whilst the account may not be enforceable (due to the lack of credit agreement) the debt still exists and can be collected.

The investigator didn't ask Capquest to take further action to resolve Miss R's complaint. They thought Capquest had reasonably asked Miss R to revisit the payment plan when it wrote to her in March 2023. Whilst the investigator noted Miss R had told us she didn't receive Capquest's first two letters, they were satisfied the correspondence was sent as claimed. The investigator didn't agree that Capquest had acted unfairly by sending letters and advising the account could be referred to its solicitors. Whilst the investigator agreed Capquest hadn't shown whether the debt was enforceable, they felt it could still contact Miss R to discuss repayment options.

Miss R asked to appeal so her complaint has been passed to me to make a decision.

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'm aware I've summarised the events surrounding this complaint in less detail than the parties involved. No discourtesy is intended by my approach which reflects the informal nature of this service. I want to assure all parties I've read and considered everything on file. I'm satisfied I don't need to comment on every point raised to fairly reach my decision. And if I don't comment on something, it's not because I haven't considered it. It's because I've focused on what I think are the key issues. My approach is in line with the rules we operate under.

In her submissions, Miss R said that a PPI complaint relating to her credit card with C had been upheld in her favour. C has confirmed that a refund was issued after Miss R complained and paid by cheque to a claims management company that was acting for her. So whilst I understand there was a PPI complaint C upheld, I'm satisfied that didn't impact the outstanding balance of the debt held by Capquest.

Capquest has explained Miss R's existing payment plan had been in operation for several years and that information it found on her credit file indicated she may've been able to increase payments. As a result, despite maintaining the existing payment plan, Capquest wrote to Miss R on two occasions in March 2023 and asked her to make contact to complete a review. I've looked at Capquest's records and letters sent. Whilst I understand Miss R may not have received them, I'm satisfied the letters were sent to her as claimed by Capquest.

Miss R received the 6 April 2023 letter from Capquest and called it. Miss R also raised a complaint and asked for supporting information like the credit agreement from C. Miss R also said she found Capquest's correspondence to be unnecessarily threatening. I've looked at the letters Capquest sent. I agree that the tone was serious and that Capquest advised failure to engage could lead to legal action. But I haven't been persuaded that Capquest acted unfairly overall.

Ultimately, Miss R had been making payments at the same level for several years. Businesses can ask a customer to revisit a payment arrangement and complete income and expenditure assessments to show whether the existing plan remains affordable. And Capquest has explained that because of information on Miss R's credit file, it felt there may've been a possibility for Miss R's payments to increase – repaying the balance sooner. I'm not persuaded it was unreasonable for Capquest to contact Miss R to request a review of the existing payment plan and her circumstances.

After Miss R made contact, asked for a copy of her credit agreement with C and raised a complaint, Capquest agreed to leave the existing payment plan in place. It confirmed the account wasn't passed to its solicitors. C hasn't subsequently provided a copy of the credit agreement it had with Miss R to Capquest. I can see that Capquest has advised that whilst the debt may not be enforceable, it's still outstanding. I haven't seen anything that suggests the outstanding balance has been repaid. So I'm not persuaded it's unreasonable for Capquest to contact Miss R to discuss repayments, whether the debt is enforceable or not.

I'm very sorry to disappoint Miss R but as I haven't been persuaded that Capquest acted unfairly in its contact with her I'm not telling it to do anything else.

My final decision

My decision is that I don't uphold Miss R's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 5 January 2024.

Marco Manente
Ombudsman