

The complaint

Mr P complains that Capital One (Europe) plc has unfairly increased his minimum monthly payment as a result of being in persistent debt on one of his credit cards.

What happened

Mr P has two credit card accounts with Capital One. On card ending 5318, Mr P has been very near the credit limit of £2,000 for some time. In April 2021, Capital One wrote to Mr P as he had paid more in interest, fees and charges over the past 18 months than he had towards the amount borrowed and so he was considered to be in persistent debt.

As a result, it notified Mr P that in 30 days' time it was changing the minimum payment from 1% to 3% of the balance, plus interest and fees. This meant Mr P's minimum payment would increase from £64.26 to £104.15. It wrote again to Mr P on 2 June 2021 to explain the new minimum payment was now active. No changes were made on the other card account but an increase in repayments was suggested.

Mr P complained pointing out that Capital One wasn't complying the Financial Conduct Authorities (FCA) rules on persistent debt as it couldn't take such action unless he had been in persistent debt for 36 months. And although a number to contact was provided if it wasn't affordable, he was only offered a payment plan.

Capital One didn't think it had done anything wrong but did pay Mr P £100 as a gesture of goodwill. Not happy with that Mr P asked us to look into the matter, explaining that two of his existing loans will be paid off soon which means he will be able to pay more into the debt but at the moment, the increase is unaffordable.

Overall, our investigator didn't think it was wrong for Capital One to increase the minimum payment but did think it should have done more when Mr P contacted it to explain the increase was unaffordable. But she thought the £100 compensation payment was sufficient redress for this.

Mr P has asked for the matter to be referred to an ombudsman. He remains of the view Capital One have acted sooner than it should have done, and it isn't treating him with forbearance.

I issued my provisional decision on 24 August 2021 explaining why I was minded to uphold this complaint. I set my findings out below:

The FCA introduced rules for lenders of credit cards to notify its customers if they were in persistent debt, what that meant and what steps could be taken. These can be found in CONC 6.7.27R onwards in the regulator's handbook of rules and guidance.

Capital One wrote to Mr P in April 2021. At the point it had been assessed that he had paid more in interest, fees and charges in the proceeding 18 months than he towards the borrowing. So it was right that Capital One wrote to Mr P about that. However, I'm

not persuaded it was fair or reasonable, or in keeping with the rules for it to decide that Mr P's minimum payment was increasing from 1% to 3% of the balance, plus interest and fees.

At the 18 month point the rules at CONC 6.7.27R (4) say Capital One must:

- (a) notify the customer that, in the preceding 18 months, the amount the customer paid comprised a lower amount in principal than in interest, fees and charges;*
- (b) explain that increasing this level of payment would reduce the cost of borrowing and the amount of time it would take to repay the balance;*
- (c) encourage the customer to contact the firm to discuss the customer's financial circumstances and whether the customer can increase the amount of payments without an adverse effect on the customer's financial situation;*
- (d) warn the customer of the potential implications if the customer's payments comprise a lower amount in principle than in interest, fees and charges in two consecutive 18-month periods; and*
- (e) provide contact details for not-for-profit debt advice bodies and encourage the customer to contact one of them.*

It seems to me that the 18-month notification is an education piece, designed to encourage customers who are in persistent debt to pay more if they can. And if the customer is still in persistent debt in 36 months, then a lender can take firmer action such as suspending the account and other such steps. But there is nothing in the rules at the 18 month point of this process that entitles Capital One to increase the minimum payment in the way that it has. Indeed, at (c) it's quite clear that it is supposed to encourage discussions about an increase and whether an increase can take place without an adverse effect on the customer's financial situation [my emphasis].

Capital One went far further and made the decision to increase Mr P's minimum payment without any discussion with him to understand his financial circumstances. I'm given to understand that he isn't able to afford an increase at the current time because of existing borrowing that he is repaying. Far from assisting Mr P with ways in which he can improve his persistent debt, Capital One's actions could have an adverse impact if they haven't already done so; it could put his account into arrears when the previous minimum payments were being met.

Whilst I understand an increase in payments is a positive step in the long run, particularly as that will mean Mr P's borrowing is paid off sooner and will cost him less, it isn't supposed to cause more financial hardship. It seems to me that once Mr P notified Capital One that he couldn't afford the increase, and in keeping with (c) above, Capital One should have reduced the minimum payment back to what it was and had further discussions about what steps Mr P could take to help ensure he comes out of persistent debt as soon as he is able. I'm not currently minded to find that Capital One has treated Mr P fairly.

I have considered that Capital One appears to have made this a contractual change to the credit agreement. But it doesn't appear from the terms of the agreement that it can change the minimum payment in the way that it has. The only part of the agreement that speaks to changes is the 'Variation' section. And this only refers to changes in credit limit or the applicable interest rate. There is nothing within this section about changing the minimum payment amount. And I can't see anything else within the agreement that allows this change.

But even if I'm wrong about that, and Capital one can make such a contractual change,

I'm not persuaded it is fair and reasonable for it to do so. This doesn't appear to be a change to all cardholder's minimum payments (it doesn't apply to Mr P's other card account with it, for example) such that all customers are subject to the same increase. It appears solely to relate to Mr P's persistent debt. And I already found above that I don't find the increase in keeping with the rules or that it has been done fairly. So even if this is a contractual change, I don't find it fair and reasonable in the circumstances.

Putting this right

I'm currently minded to uphold this complaint and require Capital One to:

- *rewind the minimum payment increase as if it never happened; and*
- *if Mr P has made a payment/s of the higher amount, this can either remain as a credit to the account to reduce the balance or Capital One should refund it to Mr P – Mr P will need to let me know his preference in response to this provisional decision; and*
- *if Mr P's credit history has been adversely affected as a result of the increase, Capital One should remove that data.*

If Mr P chooses to have the overpayment refunded to him, then I will also require Capital One to pay 8% simple interest per annum on that amount from the date of payment to the date of settlement.

I consider Mr P has also been caused distress and inconvenience as a result of what has happened. He has had the worry of not being able to afford his credit card repayments despite meeting the previous minimum payments. And he has been put to the inconvenience of having this matter put right. I find £200 compensation to be a fair reflection the impact of this has had, inclusive of the £100 already paid. I therefore also require Capital One to pay Mr P an additional £100.

Mr P replied. He explained that since the matter had been referred for a decision, he had, as a result of the minimum payment increase, been forced to enter into an IVA agreement for this and other debts. He says this will now have an effect on his credit file for six years. He believes Capital One should repay his contractual payments under the IVA of £200 a month. He is now worried about his position at work and believes Capital One should clear all of IVA debts as he wouldn't have been in an IVA but for its actions. Mr P has provided information to show he entered into discussions about the IVA on 18 August 2021.

Capital One also responded. It said although its intention was to meet the spirit as well as the letter of the regulation, it does have provisions in place whereby a customer can contact it about proposed minimum payment increase at that point in a persistent debt cycle and the minimum payment can be reduced back to 1%. It acknowledges that didn't happen with Mr P when it should have done. It therefore agrees with my proposed redress. It also explained there were no increases proposed on Mr P's other account as that was already at a 3% minimum payment level.

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.

Capital One has agreed that things didn't go right here, and it could have reverted Mr P's minimum payment to 1% when he got in touch to say he couldn't afford the minimum payment increase. So the only thing left for me to consider is Mr P's points in response to my provisional findings.

Mr P has entered into an IVA, and as he knows this will have an adverse impact on his credit file. But I'm not persuaded it would be fair or reasonable for Capital One to pay his IVA debts as a result of what happened.

Mr P was told when the matter was being referred for a decision that the ombudsman might reach a different outcome to the investigator. And presumably he asked for a decision because of the very reason he disagreed with the investigator's findings and wanted a different outcome. So I'm surprised he took that action before we determined his complaint. And if his situation was such that he couldn't wait because his finances wouldn't allow him to, then it seems that an IVA was likely, in any event.

But even if I'm wrong about that, Capital One had previously offered for Mr P to enter a payment arrangement. He didn't want to do that because of the impact on his credit file. Yet he has now entered a process which will have far greater impact. Capital One was willing to discuss repayment arrangements and so I'm satisfied there were other options open to him in relation to this and an IVA wasn't his only choice. As such, I'm not persuaded Mr P had to enter an IVA – rather, I'm satisfied he chose to do so, despite knowing he could have negotiated lower repayments on this credit card account.

I therefore find no basis on which to find that Capital One's actions alone have caused Mr P to enter into an IVA. It follows that I don't fairly find any basis on which to ask it to repay some or all of the debts within the IVA. For the sake of completeness only, even had I found differently, I still wouldn't have found it fair or reasonable for it to repay his debts – the borrowing was his, presumably on items or services he has had the benefit of; so whether or not he was in an IVA, the debt was/is his.

For those reasons, I remain of the view the redress I proposed in my provisional decision is a fair resolution to this complaint.

Putting things right

I uphold this complaint and require Capital One to:

- rewind the minimum payment increase as if it never happened; and
- if Mr P has made a payment/s of the higher amount, this can either remain as a credit to the account to reduce the balance or Capital One should refund it to Mr P – Mr P will need to let me know his preference in response to this decision; and
- if Mr P's credit history has been adversely affected as a result of the increase, Capital One should remove that data.

If Mr P chooses to have the overpayment refunded to him, then I will also require Capital One to pay 8% simple interest per annum on that amount from the date of payment to the date of settlement.

I consider Mr P has also been caused distress and inconvenience as a result of what has happened. He has had the worry of not being able to afford his credit card repayments despite meeting the previous minimum payments. And he has been put to the inconvenience of having this matter put right. I find £200 compensation to be a fair reflection the impact of this has had, inclusive of the £100 already paid. I therefore also require Capital One to pay Mr P an additional £100.

My final decision

For the reasons given, I uphold this complaint and require Capital One (Europe) plc to

compensate Mr P as set out above. As noted, Mr P will need to let us know whether he wants the overpayments to remain on the account or to be refunded to him, should he accept this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 22 October 2021.

Claire Hopkins
Ombudsman