

## The complaint

Miss B complains that Capital One (Europe) plc (CapOne) gave her confusing information about her monthly payments, leading to a Notice of Default.

## What happened

Miss B had a credit card from CapOne. In March 2020, the balance was £997.51 and Miss B was on a payment plan, paying £10 a month. Miss B was affected by the Covid-19 pandemic, and her earned income reduced to nothing. In April 2020, CapOne agreed a three-month payment holiday under the pandemic support scheme; there were no payments required and zero interest and fees. In line with the scheme, there wasn't any advice to the credit reference agencies (CRAs). No payments were received after the last payment of £10.18 in March 2020.

In October 2020, CapOne agreed a 'hardship plan' for three months – with no payments, zero interest and fees, but with notification to the CRAs. In January 2021, CapOne agreed a further hardship plan for one month – with no payments required, no interest or fees, but with reporting to CRAs. On 25 January 2021, CapOne sent Miss B a Notice of Default which required payment of £49.90 by 22 February 2021 – or Miss B's account would be defaulted. Miss B paid the amount needed and the default was avoided.

Miss B complained. She said that all along, CapOne's communications were confusing – she couldn't see why payment of the arrears was needed as she'd been told otherwise by CapOne's call handlers and in letters from CapOne. She had paid the amount needed to avoid the default – but as she was on benefits as her only income, she had gone without food and had borrowed money from her mother – which caused a lot of stress and embarrassment and her health was also affected.

CapOne said Miss B had missed a number of payments and because of that, a Default Notice was sent on 25 January 2021, and this needed a payment of £49.90 by 22 February 2021 to avoid the default. They'd reviewed some of the calls between CapOne and Miss B and felt that they'd given her the necessary support she needed.

Miss B brought her complaint to us. Our investigator felt that CapOne acted fairly. Miss B had been sent a number of 'Notice of Sums In Arrears' (NOSIA) letters, which showed the missed payments and amount of the arrears. And CapOne had agreed to a payment holiday in March 2020 and then further payment plans in October 2020, January 2021 and again in February 2021. By the time the default notice was sent, Miss B was five months in arrears, and so by that time it was reasonable for CapOne to send her a Notice of Default. Miss B didn't agree and asked that an ombudsman look at her complaint.

*I then reached a provisional decision which upheld Miss B's complaint. It said:*

The crux of Miss B's complaint is that she wasn't aware that arrears for the missed payments had to be made up in the way that CapOne asked by January 2021 – and that CapOne's communications about that were confusing. I can see that CapOne have followed their processes here – and I don't dispute that. But, strictly following a procedure

or process can lead to an unfair outcome for a customer in the individual circumstances of their situation. I think that's what's happened here. In summary, where they could've done better is in giving Miss B clearer communications about her account, and whether the arrears that she had been building up needed to be paid, and by when and how much. So – it's the communications where CapOne were at fault.

In March 2020, The Financial Conduct Authority (FCA) announced guidance to lenders in response to the effects on customers of the COVID-19 pandemic. All lenders, including CapOne, had to put in place 'payment holidays' on many credit agreements, including credit cards – to help customers who were affected. Customers could ask for a total of two payment holidays, each of three months – whereby payments could be suspended. Missed payments would not be reported to credit reference agencies, although interest would still be debited to the accounts. This support was provided by firms up to the end of October 2020. Payment holidays had to be agreed by lenders. The intention was to provide short term support – usually in cases where customers would be returning to work within a short period of time. And so – where a customer's situation was that they were in longer term difficulty, then payment holidays under this scheme weren't normally agreed.

Looking at what happened here – CapOne agreed a payment holiday for Miss B in April 2020 for a period of three months. It was consistent with the FCA's scheme - although interest was set at zero. Payments weren't required. The terms of the payment holiday were set out in CapOne's letter dated 9 April 2020. The letter said “*..your account will not fall further behind with payments*”. When the payment holiday was due to end, CapOne wrote to Miss B in a letter dated 22 June 2020 to advise her of that. The letter didn't make any mention of paying off the arrears of missed payments and simply said “*...your terms and conditions will go back to what they were before the payment holiday*”. It's not clear if the missed payments were to be counted as arrears but If CapOne were seeking to say that they needed to be paid, I think they should've been clearer.

Miss B then contacted CapOne in October 2020 – to say that she was still struggling as she had no earned income and couldn't afford to pay the payments of £10 a month. I've listened to the call. And because it was clear that Miss B was in long term financial difficulty, CapOne couldn't agree a further payment holiday – so agreed to a 'hardship plan' for three months. This included no monthly payments, zero interest and fees – but the plan was to be notified to the CRAs. I think that was the right solution for Miss B in her situation.

On the call, I heard CapOne's adviser clearly spell out the terms. And he also said that Miss B was then two payments behind – in arrears. Miss B said that she didn't want the account to default – as that would make things difficult for her. CapOne's call handler said that what would happen was that the 'payment arrangement' (as the plan was called) would be notified to the CRAs, but the account was “*not in default at the moment*” – which was accurate and the correct information to give to Miss B. He went on to say that by January 2021 – Miss B could be four payments in arrears – and so Miss B may have to pay more than £10 per month then.

But – Miss B then said that at the end of the plan, in January 2021 – she still wouldn't be able to afford any more than £10 a month. And in response, CapOne's advisor said “*we will be in touch in January 2021 to review*” and “*...we will have that conversation in January 2021...*” CapOne wrote to Miss B on 14 October 2020 to confirm the agreement and the letter said “*We'll contact you at the end of the arrangement to look at the options available...*”

And so – Miss B was given the clear impression that CapOne would be in touch in January 2021 to discuss her situation again – towards the end of the payment plan period. And then

– there could've been a discussion about her circumstances – and an agreed way forward could then have been found.

But unfortunately – that didn't happen. There's no indication in CapOne's notes of any outbound calls. Nor is there a letter evidenced which asks, for example, for Miss B to get in touch.

And then – CapOne gave Miss B another payment plan for a month from 16 January 2021 – and sent her a letter with its details. It looks like CapOne took this decision without speaking to Miss B. The plan was on the same terms as in October 2020 – no payments were required, with zero interest and fees, but with reporting to the CRAs. The letter said *"Your statement will still refer to paying minimum payments. Please continue to pay what is affordable to you."* In other words – I can see that Miss B would've reasonably thought that no payments were needed as part of the plan. There wasn't any mention of a requirement to make any payments or pay off the arrears.

And then – CapOne sent Miss B a Notice of Default dated 25 January 2021. But I think it was reasonable for Miss B to be confused by that – because CapOne hadn't been in touch as they'd promised in the conversation on 12 October 2020 and in the letter dated 14 October 2020. And – Miss B had just been advised that CapOne had agreed a further one- month payment plan with no formal payments needed.

I noted that Miss B was sent several 'Notice of Sums in Arrears' (NOSIA) letters – which recorded the missed payments. But also – these letters said, *"If you are on a payment plan or other arrangement then this notice doesn't change your payment plan or arrangement - please just carry on as agreed with us."* And on the call on 12 October 2020– the call handler said the NOSIAs would be sent every two months *"but (they) don't affect the (payment) arrangement"*. And so – Miss B was entitled to think they could be ignored.

Miss B's account was in arrears by five payments by the time of the default notice – and so CapOne followed their processes in sending it. For an account that was five months in arrears – that was a reasonable decision. But – the combination of mixed and unclear communications meant that Miss B wasn't ever clearly advised that she would have to repay the arrears, and how much and by when – until the Notice of Default was sent on 25 January 2021. And by then – Miss B was surprised and upset to receive it and had no alternative but to find a way to pay the amount needed to avoid the default - £49.90. Which she did – by borrowing money from her mother and going without food. She's described to us how embarrassing that was and how much stress and embarrassment that caused her; and how it affected her health. And so, for this – I think it's only reasonable that CapOne should pay some compensation. And in line with what our service would expect to see - I propose this to be £150.

#### Responses to the provisional decision:

Both Miss B and CapOne agreed with the provisional decision. Miss B gave her bank account details for payment of the compensation of £150.

I now need to make a final 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.

As both Miss B and CapOne agreed with the provisional decision, I won't be departing from it.

### **My final decision**

I uphold this complaint. Capital One (Europe) plc must:

- Pay Miss B £150 for distress and inconvenience. Miss B had asked that this is paid into her bank account – we will forward details of it to CapOne.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 28 June 2022.

Martin Lord  
**Ombudsman**