

## **The complaint**

Miss C is unhappy because Capital One (Europe) plc hasn't agreed to remove the default marker it placed on her credit file in relation to her credit card account.

## **What happened**

Miss C opened a credit card account with Capital One in 2014.

In 2022 Miss C fell behind with payments due to extreme mental health issues which meant she was unable to respond to correspondence or make Capital One aware of her circumstances.

In October 2022 Miss C called Capital One and set up breathing space on the account with an agreement to pay £20 per month. Interest and fees were frozen,

On 5 November 2022 Capital One issued a default notice. This advised Miss C that £274.58 needed to be paid to the account by 3 December 2022 to prevent default. Payment wasn't received and the account defaulted on 7 December 2022.

Miss C contacted Capital One in May 2023 and asked Capital One to remove the default on the grounds of her ill health at the time the account was defaulted. She enclosed medical evidence. Capital One said it was unable to remove the default.

Miss C complained to Capital One. In response, Capital One said it had assessed Miss C's situation and reviewed her medical evidence but said it didn't think it would be right to remove the default based on the payment history at the time of the default.

Miss C remained unhappy and brought her complaint to this service.

Our investigator didn't uphold the complaint. They said that Capital One had a duty to report accurate data to the credit reference agencies which would include the default.

Miss C didn't agree. She said that if she hadn't been unwell, she wouldn't have missed payments and the default wouldn't have been applied to her credit file. Miss C said she felt that she'd been discriminated against by reason of her disability. Miss C said that the default being on her credit file for the next six years would put her at a disadvantage when applying for credit.

## **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've reviewed the terms and conditions of Miss C's credit agreement. These say that Capital One can take steps to end the agreement if the minimum monthly payments aren't made.

I've reviewed the account history and I can see that Miss C had missed three consecutive payments at the time the default notice was issued. The relevant guidance (Principles for the

Reporting of Arrears, Arrangements and Defaults at Credit Reference Agencies) says that a default can be recorded when an account is three months in arrears. By the time Capital One issued the default notice on 5 November 2022, the account was three months in arrears.

Having regard to the guidance and the terms and conditions of the account, I'm unable to say that Capital One made an error when it defaulted the account.

I understand why Miss C would like the default marker removed from her credit file. However, Capital One is under an obligation to report accurate information to the credit reference agencies. In reporting the default, Capital One were accurately reporting the state of the account at that time.

Miss C has made reference to her illness and her inability to make any decisions during the time when payments to the account were missed. I've reviewed the medical evidence and I'm sorry to hear that Miss C has been unwell. Miss C has raised some points about The Equality Act 2010. I've taken what she's said into account but I'm unable to make a determination under that piece of legislation. Only a judge or tribunal can do that.

However, I have gone on to consider whether Capital One treated Miss C fairly. This service expects a business to treat customers who are experiencing difficulties positively and sympathetically. In this case, I can see that Capital One wrote to Miss C about the arrears and signposted her to agencies who could provide help. Capital One agreed breathing space on the account when Miss C called in October 2022 to explain her personal circumstances. Capital One also agreed a payment plan with Miss C.

I'm satisfied that Capital One took positive steps to help Miss C. This didn't prevent the account from being defaulted – only payment in full of the arrears by 3 December 2022 would've done that. I haven't seen any evidence to suggest that Capital One treated Miss C unfairly.

Taking everything into account, I haven't seen anything to suggest that the default was reported in error. Therefore, I'm unable to ask Capital One to remove it.

### **My final decision**

My final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 19 February 2024.

Emma Davy  
**Ombudsman**