

The complaint

Mr G complains that Capital One (Europe) plc should have declared his account in default when he started a debt management plan, and sought a £35 monthly payment, which wasn't agreed with his debt plan.

What happened

The debt management plan Mr G agreed has run for three years and during this time he's often had to call Capital One to deal with issues, which has caused him a lot of stress and anxiety.

Mr G said the debt plan requires consumers to default accounts, but unlike other businesses Capital One declined. Mr G said he fears Capital One may default his account at any time giving him another six years of defaults. He said Capital One hasn't responded to offers from his debt plan and he's received monthly reminders to make the 'agreed payment of £35', which he never agreed, but is paying outside of his debt plan though he can't afford it.

Mr G said Capital One claimed his debt plan made a revised offer in November 2022 for a monthly payment of £37.17, but wouldn't provide proof. He said the debt plan denied this and said the last offer was £20.87, accepted in January 2022. In August 2022 Mr G said he Capital One told him his payment was late, warning about late charges and requesting immediate payment of £115.53. And then chased the monthly payment of £35. He said that due to his fear of default, he topped up the payment from the debt plan.

Mr G complained to Capital One, but wasn't satisfied with its response that it wasn't obligated to default his account. He said his problems stemmed from Capital One seeking short term solutions Mr G said he had substantial debts and anticipated being in debt management for five years, but Capital One had taken no account of this. Mr G referred his complaint to our service.

Our investigator didn't recommend the complaint be upheld. He said The Information Commissioner's Office says when a consumer is at least three months behind with their payments a default may be registered, but if they enter into a debt plan then a default wouldn't normally be registered unless the terms of the plan are broken.

The investigator said there was never three months arrears on the account. He set out reasons why Mr G's wish for a long-term plan from January 2020 had been frustrated:

- ☐ Capital One is under no obligation to suspend interest at any point, but may do so at its own discretion. It can agree temporary payment arrangements, but it isn't obliged to put a long-term plan in place solely due to the existence of a debt management plan.
- ☐ Capital One can only start a debt plan when there are arrears and this ends when they are paid off. Otherwise, it can apply breathing space and both options suspend interest.
- ☐ When interest is suspended, the minimum monthly payments are greatly reduced. The payment offers or proposals from the debt plan have been below the normal minimum payments on the account, but not when interest is suspended.

□ At various times Mr G made payments over those from the debt plan and this meant that three months of arrears did not accrue, and a default was likely avoided.

The investigator said a default wasn't possible on Mr G's Capital One account when the debt plan started, whereas it might have been possible if it hadn't been included in the plan. He said the debt plan offers and Mr G's choices to pay above the offers meant that a default hasn't been possible since. He said Capital One hadn't done anything wrong by not declaring a default and hadn't managed the account in any way it isn't permitted to do. And Capital One wasn't at fault for a £35 payment plan set in place as of November 2022.

The investigator said the debt plan made an offer for £38.59 after already paying this amount as a one off, but didn't tell Capital One this, or that it would resume paying £20.87 the next month. He said Mr G chose to pay an additional £35 for several months, rather than contact the debt plan, which would have explained what happened and to Capital One and additional payments on top of those being made by debt plan may not have been required.

Mr G disagreed with the investigator and said he hadn't investigated the complaint he was making. He said he told Capital One about his debt plan, but it persuaded him a better approach was to apply 'breathing space'. He didn't realise this didn't involve a default. Mr G said the investigator had made multiple errors and repetitions in payment notation.

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.

About three years ago Mr G was in substantial debt with multiple creditors and sought help via a debt management plan. He thinks Capital One treated the offer from the debt plan as a temporary, six-month solution, whilst it was intended to be, 'for the foreseeable future'. He said the multiple letters, texts and emails he has received from Capital One since then have had a huge impact on his mental health.

I am sorry to see the detriment to Mr G's mental health that his situation and interactions around debt have caused him. I have looked closely at Capital One's handling of his debt to see if it acted in accordance with the terms of the contract that binds them and the rules, and to see if it has treated him fairly as concerns his debt management plan. This includes Mr G's email of 1 October and phone conversation with an ombudsman here on 19 October 2023. I haven't seen much detail of the errors Mr G said the investigator has made with regard to payments and communications, but I've reviewed his findings in this decision.

Mr G thinks that Capital One ought to have declared his account in default when he entered the debt management plan. And that it unilaterally sought a £35 monthly payment, which wasn't agreed with his debt plan. I have reviewed Mr G's account statements, and Capital One's records and the debt plan and payment history.

Mr G said, *'The first thing [the debt plan] asks you to do to start the DMP process is to default your accounts'*. I can see that this is what Mr G wanted to happen, but I haven't found this advice from his debt plan. Its website states, *'You will probably get default notices if you are on a debt management plan... This is because you pay less than the minimum monthly payment amounts.'* And the debt plan goes on to warn of the adverse effects of a default, such as the debt being passed to a collection agency and the potential refusal of the debt plan offer by a creditor.

Mr G said his other creditors put his accounts into default around January 2020, which gave the defaults a six-year timescale that he also desired for his Capital One account. I can understand Mr G's wish for certainty about his account status and the end date of the

defaults. However, there was nothing to stop a lender from defaulting his account in 2020 and subsequently if he didn't maintain payments under the plan or an arrangement to pay and so there was no guarantee that he would avoid future defaults, though I can see he has managed his debt as well as possible.

Because a default wasn't registered on Mr G's Capital One account he is aware that it can't be managed in the same way as his other accounts that were defaulted by other creditors. The nature of an account changes once defaulted as it becomes a repayment account, whereas the terms and conditions of the original credit agreement with Capital One still applied to both parties. The debt plan Mr G entered into has the effect of not causing a default to be registered by Capital One, whereas a default will follow three months of non-payment in other circumstances.

From what I've seen, there hasn't been a reason for Capital One to put a default on Mr G's account from January 2020, other than at his request, not least because he has made additional payments to prevent arrears. As to setting up a debt plan, Capital One can only do this when there's arrears to the account, and this has only been the case at certain times since the plan started. Capital One isn't under any obligation to apply forbearance or 'breathing space' at other times in order to suspend interest, and doesn't have to suspend interest due to an offer of payment from the debt plan. However, Capital One has applied forbearance as it wasn't required to default Mr G's account, not in error as Mr G states. I can see that Capital One offered this course of action to Mr G on his initial contact and he agreed. I don't think it was required to treat him differently or with greater forbearance in relation to the arrears on his account, when Mr G realised that he wanted long-term assistance.

I can see that this different treatment was undesirable to Mr G, and he has said that it caused him difficulties. Mr G said he no longer wants to worry about either the account defaulting or Capital One inventing offers that weren't made, or terminating already accepted offers. The investigator has set out to Mr G in detail the debt and payments from January 2020 onwards, beginning with a three-month plan agreed for £37.17 with interest suspended. I don't intend to reproduce the investigator's list of transactions as this has already been sent to Mr G, however I have reviewed these against his account, and I think they are accurate.

Mr G said he was left with no choice but to make overpayments. The investigator said Mr G chose to pay an additional £35 for several months, rather than contact the debt plan, which would have explained what happened with regard to the plan payments. Had he done so, I don't think the additional payments on top of those being made by the debt plan would have been required and a review of the debt plan and the communications bears this out. In that respect, I agree with the investigator that Mr G did have a choice. But I don't think an inadvertent over-payment sets a new 'offer' within the debt plan or shows that Mr G has favoured one creditor over another.

The payment transactions; the suspensions of interest; the communications and the points where the arrangement to pay expired all adhere to the pattern of action that we would expect Capital One to follow in the circumstances. Mr G fears he has been adversely reported by Capital One during the period of his indebtedness. We aren't aware of any defaults and his credit file is likely to reflect that he has had an arrangement to pay.

Mr G is seeking reassurance that a long-term agreement can be made that protects him and his credit file for the future and respects the agreement in place with his other creditors. Those agreements are almost three years old now and I hope Mr G can see from his careful approach to debt management that he has every reason to believe that he can continue to emerge successfully from his former debt situation.

I think the nature of Capital One's treatment of Mr G since entering a debt management plan was in accordance with the terms and conditions of the account agreement. I also think Capital One treated Mr G fairly in the circumstances of his complaint as although it approached his indebtedness with relatively short-term payment arrangements, at times these suspended interest and greatly reduced his monthly payments.

Mr G says Capital One's short-term approach to alleviating his debt problem meant that his account did not default, and he fears that Capital One's actions could be devastating to him. If in the future, he finds Capital One has impacted him in this way, it is open to him to bring a new complaint in respect of whatever new actions Capital One may take.

I note that Capital One has recently refunded some of its charges to Mr G, though I haven't considered this as it is not part of his complaint.

My final decision

For the reasons I have given it is my final decision that the complaint is not upheld.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 7 December 2023.

Andrew Fraser
Ombudsman