

The complaint

Miss L says Capital One (Europe) plc should have reported her credit card account as having defaulted sooner than it did. She says this will result in the default remaining on her credit file for longer than necessary.

What happened

Briefly, Miss L's account started in August 2021. Capital One was contacted by a debt management company (DMC) in December 2021 to confirm it was acting on her behalf.

Miss L believed her account ought to have defaulted in March 2022 at the latest, by which time she said she'd been in a debt management plan (DMP) for three months. She was unhappy that Capital One hadn't reported a default until February 2023 as this would take longer to fall off her credit file than if it had been reported sooner. She complained to Capital One.

Capital One rejected Miss L's complaint. It said it had been entitled to report the default when it did. Following this, Miss L brought her complaint to this service.

One of our investigators looked into the complaint but didn't recommend that it should be upheld. They believed it was fair for Capital One to delay the reporting of the default in the circumstances. For example, because of the payments Miss L made into the account in both January and July 2022.

As Miss L didn't agree with the investigator's findings, the complaint was passed to me to review afresh.

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.

It's not in dispute that Miss L fell behind with her account payments. Or that Capital One was made aware of the involvement of a DMC that was brought into deal with Miss L's debts for her.

What is in dispute is whether Capital One was entitled to wait until 2023 before reporting the default.

Having carefully considered all the issues around this, I don't uphold the complaint. I'll explain why.

Miss L's referred to guidance from the Information Commissioners' Office (ICO) regarding when a default might be recorded on someone's credit file. According to its current guidance, this would be when a consumer's at least three months behind with their payments. And it would expect a default to be registered by the time the consumer's six months behind with their payments.

Applying this to the circumstances of Miss L's case, it's certainly true that in total the issues she had in paying for the credit continued over an extended period of around a year. While at least three months' arrears may have accrued at stages, as I've explained Capital One wasn't obliged to report a default on those grounds alone. For instance, it might be reasonable in the circumstances for a lender to wait until additional arrears accrue (up to six months' worth) before reporting. And I've taken into account here that Miss L's account statements show she made payments in excess of her contractual minimum monthly payments, and to clear her arrears, in both January and July 2022.

Given that these payments were made, I don't consider that Capital One unfairly delayed recording the default. I've thought carefully about what Miss L says regarding feeling penalised for trying to pay her arrears back sooner. And also that she only paid these sums after receiving two money gifts – and not because of a sustained change in her financial situation. But it remains that those payments were made towards her account and I believe it was reasonable for Capital One to factor those into its decision as to when to record the default.

More recently, Miss L's also suggested Capital One shouldn't have defaulted the account at all because she was in a payment arrangement with it. I accept there's been some confusion around a call between Miss L's DMC and Capital One in February 2022. From reviewing a transcript of the call (no recording has been provided), I'm satisfied the latter did suggest some form of arrangement was in place for Miss L to pay £1.18. However, Capital One also sent the DMC several letters confirming it couldn't set up a formal payment plan on the account. I note one such letter was sent around a month before the call took place. Further letters stating the same were sent after the call. So, on balance, I think Capital One made it sufficiently clear that no arrangement had been agreed even taking account of the call that took place.

Even if I accepted that a formal payment plan had been agreed (and, for the reasons given, I don't), Miss L's more recent position means this would have been set at £1.18 a month. That was less than the contractual minimum payment and represented no more than a token amount in comparison with the outstanding account balance which, by January 2022, was nearly £400. As such, I'm satisfied this wouldn't have prevented Capital One from reasonably recording a default in the circumstances in any case.

Taking everything into account, I'm persuaded on balance that it was fair for Capital One to report the account as being in default, and for it to have done so when it did.

My final decision

For the reasons given, and while fully recognising Miss L's strength of feeling on the matter, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 25 July 2024.

Nimish Patel
Ombudsman