

The complaint

Mrs N complains in her capacity as a guarantor of a commercial loan. She complains that Federal Capital Ltd unreasonably issued a bankruptcy petition against her, and charged punitive interest.

What happened

There is some dispute about what happened here. However, everyone agrees:

- In June 2023 Mrs N's limited company, which I will call C, took out a loan from Federal Capital. Mrs N gave a personal guarantee for that loan.
- The loan had a 12 month term and a gross interest rate of 38.9%. The loan repayment schedule set out the due date for 12 monthly payments, which were to be collected by direct debit.
- C made the first three loan repayments by direct debit as planned. However, the fourth direct debit payment, which was due on 25 October 2023, was not paid on time.
- Federal Capital issued a termination notice on 3 November 2023, and made a formal demand for the repayment of the entire loan balance. It also wrote to Mrs N to tell her that it was looking to rely on her guarantee, and to invite her to submit a proposal to repay the outstanding balance. It also said it intended to instruct solicitors if Mrs N did not provide a proposal within five days.
- There was some contact between Federal Capital and Mrs N and her representatives (though the extent of that contact is disputed). By the middle of January 2024, Federal Capital had instructed its solicitors to begin bankruptcy proceedings against Mrs N.
- In mid February 2024, Mrs N's solicitors put forward a payment proposal. Mrs N made the first payment on 28 March 2024, but did not make any further payments under that proposal.
- Federal Capital decided to go ahead with bankruptcy proceedings against Mrs N. The full balance of C's debt was paid on the eve of the 25 April 2024 bankruptcy hearing. The bankruptcy petition was ultimately dismissed, and costs agreed between the parties' legal teams.

Mrs N told us:

- She told Federal Capital in advance that the October 2023 payment was likely to be late. She explained that her company C had been promised a payment by a third party, but that third party had not met its promise – and so in turn C was unable to make payment to Federal Capital.

- She complained about Federal Capital's "brutal, badgering and threatening response" as early as 9 November 2023.
- She kept Federal Capital informed at all times, and tried repeatedly to arrive at a manageable way to repay them. Federal Capital has been totally unhelpful and offered no cooperation at all. Federal Capital has claimed that her solicitors were unresponsive, but in fact the problem was the other way around – Federal Capital did not respond to her solicitors.
- Federal Capital's actions caused a property loan of £2 million to be withdrawn, and could have resulted in her properties being repossessed. She was unable to raise alternative finance with the bankruptcy petition against her record.

Federal Capital told us:

- It tried to contact both Mrs N and C's other director after the October 2023 payment was missed, but it was unable to get in touch with either of them – and so C's loan was terminated on 3 November 2023 as a result of non-contact.
- Mrs N got in touch after 3 November 2023 and explained that C would make the October 2023 payment as soon as it received funds from a third party, but the timing of those funds was uncertain and could be December 2023.
- It spoke with Mrs N again in December 2023 and she said she needed a further three months to make payment. She explained that she had engaged a solicitor, so it made several attempts to contact that solicitor – but those attempts were unsuccessful.
- It was able to agree a repayment plan via Mrs N's solicitor, and it received a payment as agreed on 28 March 2024. However, the next payment was due on 17 April 2024 and was not received. It therefore went ahead with its bankruptcy petition.
- It did not apply any additional fees or charges despite the fact the loan was unpaid for around seven months.
- It is not confident that Mrs N would ever have repaid the debt in full if it had not taken legal action against her.

One of our investigators looked at this complaint, but he did not uphold it. He was satisfied that amount charged by Federal Capital was in line with the terms of the agreement. He also considered that Federal Capital's decision to begin bankruptcy proceedings against Mrs N was reasonable in the circumstances, and he thought that if a suitable payment arrangement had been in place the bankruptcy proceedings would not have gone ahead.

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.

Having done so, whilst I am sorry to further disappoint Mrs N there is very little I can add to what our investigator has already said. My conclusions are:

- Whilst Federal Capital issued its formal demand very quickly indeed, its swift action did not cause Mrs N to suffer any detriment.

- Overall, Federal Capital treated Mrs N fairly.

I explain my findings in more detail below.

I'm aware that there is a dispute between Mrs N and Federal Capital as to whether she contacted it before 25 October 2023 to explain that C's October 2023 payment would be late. But I'm satisfied that I don't need to explore that point in order to make a fair decision on this complaint. Regardless of what happened before 25 October 2023, everyone agrees that C's 25 October 2023 payment was not made on time.

The terms and conditions of C's loan allowed Federal Capital to terminate the agreement if C "fail[ed] to pay any Repayment when due under this Agreement within 5 days of the due date". The fact Federal Capital was permitted to terminate the agreement after only five days does not necessarily mean that it was fair for it to terminate the agreement so quickly. But in this case, neither C nor its guarantors made any payment towards the loan between September 2023 and March 2024. In these circumstances, I can't see that it would have made a material difference if Federal Capital had waited a little longer before making its decision to terminate the loan.

Similarly, there is a dispute between Mrs N (and her representatives) and Federal Capital about communications during early 2024. But again, I don't think I need to make any findings on that aspect of the dispute. Regardless of any communication difficulties, Mrs N didn't make any payments towards the loan until March 2024. At that point, Federal Capital had already demanded full repayment of the debt – and I think that demand was reasonable in the circumstances.

The bankruptcy petition was understandably extremely distressing to Mrs N, but I don't think it would be fair for me to criticise Federal Capital for issuing it. Federal Capital had not received full payment for the loan, and it had not been able to negotiate a payment plan. In any event, the costs associated with the bankruptcy proceedings have already been agreed by the parties. As an ombudsman, it would not be appropriate for me to interfere with that agreement.

Mrs N is also deeply unhappy with the interest rate charged on the loan, but I've seen no evidence to suggest that Federal Capital charged any more than the terms and conditions entitled it to charge. I'm aware that some of Federal Capital's competitors have charged lower rates to other businesses in other circumstances, but that does not mean that Federal Capital has done anything unfair. I'm satisfied that the total amount of interest due was clearly stated in the agreement signed by both parties.

My final decision

My final decision is that I do not uphold this complaint against Federal Capital Ltd.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs N to accept or reject my decision before 22 April 2025.

Laura Colman
Ombudsman