

complaint

Mrs D complains that Capital One (Europe) plc registered a default on her credit file and won't remove it.

background

Mrs D was made redundant in early 2012. She contacted Capital One immediately. Capital One agreed a long term payment plan with Mrs D and stopped adding interest to her credit card account ("account"). Mrs D maintained the agreed monthly payments and settled her account in early 2017.

Mrs D and her husband applied for a mortgage in early 2017. They say they were declined for this mortgage because Capital One had recorded a default on Mrs D's credit file in March 2012.

Mrs D says she only agreed with Capital One (over the phone) in 2012 to a repayment plan, not to her account being registered in default. And recordings of the calls made would support this. She also says that the income and expenditure form she signed – opting for a long term payment plan – makes no reference to a default registration, whereas the more recent version of the same form does.

Mrs D says had she been given correct and complete information she wouldn't have agreed to a long term payment plan.

Capital One says it doesn't keep call recordings as far back as 2012. But it said that Mrs D would have been given (with her income and expenditure form) an insert detailing the consequences of opting for the long term payment plan. It also provided us with copies of a payment confirmation letter and default notice it says was sent to Mrs D in late February 2012.

Our investigator didn't recommend the complaint be upheld. He was satisfied that Capital One had made no mistake in recording the default.

Mrs D didn't agree and so the matter was passed to me.

I issued a provisional decision on this case in April 2017. In summary I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

All lenders are required to report accurate and up-to-date financial information to the credit reference agencies. It's clear that Mrs D wasn't able to keep up the required monthly repayments and it's quite right that this is reflected in her credit file. The question here is around Capital One's decision to record the account as being in default.

In considering this issue, I've looked at the guidance issued by the Information Commissioner's Office ("ICO").

Past ICO guidance (published in 2007) said:

"The term 'default', when recorded on a credit file should be used to refer to a situation when the lender in a standard business relationship with the individual decides the relationship has broken down". Indicators include:

- Referral to a collection agency
- No satisfactory proposals for repayment
- Payments haven't been received for six months

More recent ICO guidance (published in January 2014) lists five principles for the reporting of arrears, arrangements and defaults at credit reference agencies:

Principle 3 states that where a lender agrees to a reduced or revised payment, this should be reflected on the borrower's credit file. However, Principle 4 says that where an arrangement is agreed a default shouldn't normally be registered unless the terms of that arrangement are broken.

In this case, I consider that Capital One responded appropriately in supporting Mrs D in her efforts to deal with her financial affairs responsibly. It agreed to a revised repayment and Mrs D kept to this. Therefore I think it's quite proper that Mrs D's credit files should show the existence of the arrangement.

But in March 2012, when the default was registered, I can't see that it could be said that the relationship between Capital One and Mrs D had broken down. For example Capital One hadn't referred Mrs D's account to a collection agency, a repayment proposal had been agreed and Mrs D had made a number of payments to the account in the previous six months. I'm also mindful that Mrs D didn't, as far as I can see, break the terms of the arrangement agreed.

Taking the above into account, and what Principle 4 of the ICO's recent guidance says (albeit I appreciate that this was published after March 2012), I'm minded to think it's unfair for Capital One to have reported Mrs D's account as being in default. I also think that Mrs D should be fairly compensated for the difficulties she's had in seeking to get her credit record amended.

I uphold this complaint.

Capital One (Europe) plc should:

- Remove the default marker against Mrs D's account and show it as only having been subject to an arrangement.
- Pay £100 to Mrs D for the difficulties she's had in seeking to get her credit record amended.

Mrs D accepted my provisional decision and said she had nothing further to add.

Capital One didn't accept my provisional decision. In summary it said:

- It didn't agree with my interpretation of the ICO's recent guidance (published in January 2014).
- Based on its interpretation of this guidance it had acted correctly, fairly and appropriately in registering Mrs D's account in default.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I don't agree that I interpreted the ICO's recent guidance incorrectly, at least in the particular circumstances of this case. But even if was to accept that I did, I'm not persuaded such an interpretation is material to the outcome of this case.

The ICO's recent guidance didn't come into effect until January 2014. Therefore it's my view that what is material to the outcome of this case is the ICO's guidance that was in place in March 2012, the time at which Capital One registered Mrs D's account in default.

As I said in my provisional decision the ICO's guidance in place in March 2012 (published in 2007) said:

"The term 'default', when recorded on a credit file should be used to refer to a situation when the lender in a standard business relationship with the individual decides the relationship has broken down". Indicators of a relationship that has broken down are:

- Referral to a collection agency
- No satisfactory proposals for repayment
- Payments haven't been received for six months

Having considered again the relationship in 2012 between Capital One and Mrs D, I remain of the view it couldn't be said to have broken down. Capital One didn't refer Mrs D's account to a collection agency, a repayment proposal was agreed (and quickly) and Mrs D had made a number (if not all) of the payments required of her in the six months before March 2012.

So taking everything into account I remain of the view it was unfair for Capital One to have reported Mrs D's account as being in default. I also remain of the view that Mrs D should be fairly compensated for the difficulties she's had in seeking to get her credit record amended.

my final decision

I uphold this complaint. My final decision is that Capital One (Europe) plc must:

- Remove the default marker against Mrs D's account and show it as only having been subject to an arrangement.
- Pay £100 to Mrs D for the difficulties she's had in seeking to get her credit record amended.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 15 June 2017.

Peter Cook
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