

complaint

Mr C is unhappy that Capital One (Europe) plc has registered a default against his credit record even though there's an agreed debt management programme (DMP) in place. His other lenders haven't registered a default and he doesn't think that Capital One has followed industry best practice.

background

I issued a provisional decision in relation to this complaint on 10 April 2017. A copy of this is attached, and forms part of this final decision.

Both parties have had the opportunity to review the provisional decision and to submit any further comments for consideration. Mr C is happy with the provisional decision but Capital One disagrees with it.

Capital One believes that it has acted in accordance with the Information Commissioner's Office (ICO) guidelines in issuing a default notice in June 2014 and in reporting Mr C's account as being in default each month since then. They say this because:

- Mr C entered into a long term repayment plan that effectively replaced his original agreement
- there was never any expectation that Mr C would revert to the originally contracted repayment terms
- given the above factors, Capital One considers it appropriate to mark the account as being in default.

my findings

It is a fact that Mr C was not able to meet the terms of his original agreement with Capital One. He had a number of debts that he couldn't manage and so he approached a specialist debt management charity for help. Capital One and Mr C's other lenders were approached by the charity and a debt management programme (DMP) was agreed. At that point Capital One marked Mr C's credit file as being in default. I remain of the view that this is contrary to the ICO's guidance.

Mr C's arrangement with his lenders was entirely in line with the ICO's definition of a DMP. The guidance makes it clear that where a borrower is subject to a DMP managed by a third party (as was the case here) the record filed at credit reference agencies must reflect that the consumer is on a DMP. It should not be marked as default in these circumstances.

The guidance says that a default shouldn't be filed where this sort of arrangement is agreed and the borrower keeps to the terms of that arrangement. Although Mr C later made a different arrangement with his creditors, he again used the debt management charity to gain his various lenders' agreement to the revised schedule. He has maintained that arrangement since. Given the express agreements secured from his lenders, including Capital One, I don't feel that this position should be treated any differently from the original DMP.

It's absolutely appropriate for such financial arrangements to be clearly reported by the credit reference agencies. However, the ICO guidance suggests this should be through

noting the DMP and not through showing the account as being in default. I see no reason for me to take a different stance in this case.

my final decision

My decision is that I uphold this complaint and instruct Capital One (Europe) plc to:

1. remove the default markers against Mr C's account and show it as being subject to a debt management programme
2. pay £100 to Mr C for the difficulties he's had in seeking to get his credit report amended.

Under the rules of the Financial Ombudsman Service, I'm required to Mr C to accept or reject my decision before 5 June 2017.

Richard France
ombudsman

copy of provisional decision

complaint

Mr C is unhappy that Capital One (Europe) plc has registered a default against his credit record even though there's an agreed debt management programme (DMP) in place. His other lenders haven't registered a default and he doesn't think that Capital One has followed industry best practice.

background

In 2014 Mr C fell into arrears with Capital One and other lenders. He entered into a DMP through a debt advice charity. He's been able to keep up the repayment plan, other than for a three month period in 2015 when he had further financial difficulties and wasn't able to meet the required repayments. The lenders were told of this additional difficulty by the debt advice charity and accepted the position. Mr C's financial position is now improved and his debts are much reduced.

Mr C's learned that Capital One has registered default markers against his account with the credit reference agencies. This is in contrast to his other lenders who've marked his credit file to show that a DMP is in place but not that it's in default. Mr C says that the default marker is making it difficult for him to obtain any additional credit and is also impacting upon employment references.

Capital One say they've acted properly in (1) issuing a default notice in June 2014 when the DMP started and (2) continuing to report Mr C's account as being in default since then.

Our adjudicator didn't recommend that this complaint be upheld. He found that Capital One had responded positively and sympathetically to Mr C's difficulties in agreeing to the DMP and suspending interest charges. Also, that they acted correctly in reporting the breach as a default with the credit reference agencies. Mr C disagrees and so the complaint has been passed to me for review.

my provisional findings

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

Mr C found himself in financial difficulties but has acted responsibly in engaging the help of a debt advice agency to arrange a DMP. He has kept to the DMP except for a short period of time and the reason for this was explained to the lenders who accepted it.

Capital One wrote to Mr C in May 2014 to confirm that his account had been set up on a reduced repayment plan. They also said they were issuing a default notice because he was in breach of his credit card agreement. They've reported Mr C's account as being in default each month since June 2014.

All lenders are required to report accurate and up-to-date financial information to the credit reference agencies. It's clear that Mr C wasn't able to keep up the required monthly repayments and it's quite right that this is reflected in his 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") through a series of industry-agreed principles. Principle 3 states that where a DMP is in place the record filed at the credit reference agencies must reflect that the consumer is on a DMP. However, Principle 4 says clearly that *"a default should not be filed if jointly with the lender an*

agreement is reached for an arrangement and you [the borrower] keep to the terms of that arrangement”.

In this case, I consider that Capital One has responded appropriately in supporting Mr C in his efforts to deal with his financial affairs responsibly. It agreed to a revised repayment arrangement under the DMP and Mr C has largely kept to this. In these circumstances it's quite proper that the credit record should show the existence of the DMP. But in light of Principle 4 of the ICO guidance, I'm minded to think it's unfair for Capital One to report Mr C's account as being in default from the point he entered into the DMP, given that he's currently keeping to it.

my provisional decision

Subject to any further comments I might receive from either party 10 May 2017, my provisional decision is that I propose to uphold this complaint and instruct Capital One (Europe) plc to:

1. remove the default markers against Mr C's account and show it as being subject to a debt management programme
2. pay £100 to Mr C for the difficulties he's had in seeking to get his credit record amended.

Richard France
ombudsman