

complaint

Miss R complains that Capital One (Europe) plc recorded a default on her credit card account even though she had agreed a repayment arrangement.

background

In December 2013, with the help of a charity, Miss R set up a debt management plan (DMP) which covered her credit card account with Capital One. The first payment was made on 10 January. On 27 December Capital One wrote confirming that the plan had been set up, but enclosing a default notice. It said that she could prevent the account from defaulting by cancelling the long term plan, making minimum payments required under the credit card agreement, and making arrangements to pay the overdue amount. It registered a default on 29 January 2014.

Our adjudicator recommended that the complaint was upheld. He said that the default had been registered with less than three months of arrears on the account, and that the account should not have been defaulted where there was an agreement between the lender and debtor. He recommended that Capital One removed the default and paid Miss R £350 in compensation.

Capital One disagreed. It said that once a customer made a long term repayment plan, they had broken the terms of their credit agreement and a default was therefore registered. When it had sent confirmation of the plan it had sent a default notice letter, so Miss R had been made aware of the implications of the plan. It did not think compensation was warranted.

my provisional decision

After considering all the evidence I issued a provisional decision to both parties on 5 August 2015. I summarise my findings.

Advice from the Information Commissioner which applied until the end of December 2013 said that accounts should not routinely be filed as being in default where full payments were less than three months in arrears. It also said that if a payment set out in a DMP was at a level of only a token sum, because that was all that could be afforded, the account should be recorded as a default. Revised advice brought out in January 2014, said broadly similar things.

Miss R said she should not have been sent the default notice in December 2013, as her account was only two months in arrears. She had not made payments due on 28 October and 28 November.

But by the time the default was registered Miss R was actually over three months in arrears against her contractual repayments, as she made no payment in December 2013 and much less than the contractual minimum payment due by 28 January 2014.

To her credit Miss R had cleared the account by December 2014. But when she made the agreement in December 2013 she began paying less than £8 a month: when the balance on the account was over £500. At that level of payment the account would have taken over five years to clear. I had seen nothing to show that Capital One had been told significantly higher payments would be made later. Therefore I did not think it was unreasonable for Capital One to regard it as a token payment and to have issued a default notice in December 2013. I had seen the letter Capital One sent Miss R in December 2013, when agreeing the plan, to let

her know that that would mean it would register a default. So it appeared that she went ahead with the plan and that Capital One froze charges and interest on that understanding.

From what I knew, I did not think I could say that Capital One acted unfairly or unreasonably in recording a default. That was a fair representation of the situation which arose.

However I did think that if possible Capital One should also have recorded that Miss R was in a DMP. That would show that she had acted responsibly in contacting Capital One and making an agreement to pay, rather than just trying to ignore her debt.

So subject to any further comments or evidence from either party, my provisional decision was not to uphold the complaint. But I intended to order Capital One to record that Miss R had a DMP.

Miss R did not take the opportunity to comment. Capital One said that, as well as recording the default, it had also recorded that an arrangement to pay had been made.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Without any further evidence or comment from Miss R I have not changed my view about the recording of the default. However the copy of Miss R's credit record which I have seen does not mention any arrangement to pay or DMP on this account. So, even if it has tried to record this already, I think Capital One should make another attempt to record it.

my final decision

My final decision is that I do not uphold the complaint regarding registration of the default. But I order Capital One (Europe) plc to record that Miss R had made an arrangement to pay (under a DMP) at the relevant time.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 23 October 2015.

Hilary Bainbridge
ombudsman