

## **complaint**

Mr A is unhappy that Capital One (Europe) plc has applied a default to his credit report. This is because other financial providers have not registered a default.

## **background**

Mr A fell into arrears with Capital One and other lenders. He entered into a Debt Management Plan (DMP) through a debt charity. Capital One told Mr A that it was a condition of accepting the plan that a default be registered as the payments under the plan were now below the contractual ones. It informed him that he could have a notice of correction added to his credit file. Another lender registered a debt as a DMP.

## **our adjudicator's view**

Our adjudicator did not recommend that this complaint should be upheld. She considered that Capital One had sent Mr A a default notice. This made him aware that it would be applying a default on his credit report. Consequently, she concluded that Capital One had not made an error. Mr A responded, in summary, to say that the adjudicator had failed to address his complaint.

## **my provisional decision**

After considering all the evidence I issued a provisional decision to Mr A and Capital One. I summarise my findings as follows:

- Entering a DMP should not automatically lead to the registration of a default against a customer. The bank could alternatively register it as a DMP. There is guidance on this for the bank in The Information Commissioner's Office (ICO) technical guidance to lenders on "Filing defaults with credit reference agencies". Capital One should have exercised discretion, which it failed to do.
- Mr A identified that he was going to have problems meeting the credit card payments. He was commendably pro-active in contacting the debt charity for help and the proposed repayment was accepted almost immediately and was being adhered to ever since. I took the view therefore that he is not one of those customers who has ignored his responsibilities but has always shown a willingness to pay.
- I was not persuaded that Capital One gave proper consideration as to how it should categorise this Debt Management Plan and in view of the ICO guidance and Mr A's responsible approach to his debts, I found that Capital One should have registered a DMP rather than a default in this case.
- As a result of the way Capital One handled the matter I considered Mr A suffered a degree of distress and inconvenience for which Capital One should pay him compensation. I proposed to require Capital One to pay Mr A £100.

Since I issued my provisional decision both parties have had a chance to respond. Mr A responded acknowledging my provisional decision. Capital One says that my conclusions are not correct. In summary, it agrees that a reduced payment plan would not automatically lead to a default but that would only be relevant to short term arrangements where the customer can bring the account up to date within six months. Any arrangement that is set for

longer than this is considered a long term arrangement which will result in a default being recorded.

### **my findings**

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

Following the recent further submission by Capital One I have considered again the ICO guidance. I note that in respect of DMPs the guidance does not use the distinction of short term and long term arrangements or refer to the period of six months. The reference to six months occurs at paragraph 21 of the Guidance in respect of the rather different registration of an “arrangement to pay” but there is no reference to these time periods in the relevant paragraphs 22 to 26.

In reaching my decisions I have regard to industry guidance, as here, but I reach my decisions with reference to what I consider to be fair and reasonable in all the circumstances. Capital One’s further submission does not alter my conclusions. I remain of the view that, in the individual circumstances of this case, a fair outcome is for Capital One to register Mr A’s debt as subject to a Debt Management Programme– rather than a default.

### **my final decision**

My final decision is that I uphold this complaint and in full and final settlement of it, I order Capital One (Europe) plc:

1. to remove the default status registered against the account of Mr A and mark it as subject to a Debt Management Programme over the same period; and
2. pay £100 directly to Mr A as compensation for his distress and inconvenience.

Gerard McManus  
**ombudsman**