

complaint

Mrs B complains that Capital One (Europe) plc has administered her debt management plan badly that it's caused Mrs B great distress.

background

Mrs B complained to this Service. I'll set out a general list of events which started in 2013 and continued until Mrs B complained to Capital One and then complained to this Service in 2017:

- Mrs B is aged in her 80s, she's been suffering from poor ill health due to a long history of cancer, she's had various operations and will be starting another round of chemotherapy for the sixth year. So in 2013, she agreed a debt management plan (DMP) with Capital One and agreed to pay it £1 per month towards her total debt of around £11,683;
- In August 2013, her son paid Capital One £6 in one lump sum and explained this was for the next six months' instalments on the DMP;
- Capital One accepted the payment against the account for one month, but said the account went into default when Mrs B didn't continue to pay £1 per month after that;
- Capital One sent the account to a debt collection agency (DCA), which then started to chase the remainder of the debt of over £11,600 from Mrs B;
- Mrs B then received letters from the DCA requesting payment which caused her stress and which she says may even have aggravated her condition;
- Mrs B's son wrote to Capital One explaining this was stressful for Mrs B in her condition – and he described her ill health and treatment in detail;
- Capital One explained the £1 per month payments couldn't be paid in a lump sum, unless agreed with it beforehand and only then, to a maximum of three months. This was in Mrs B's terms and conditions of the DMP;
- Capital One took the account back from the DCA and put the account into its hardship queue. It explained it couldn't stay in the hardship queue permanently unless Mrs B sent in medical evidence to confirm her situation;
- Capital One told us that getting empty boxes of Mrs B's medication wasn't sufficient to evidence her medical state as it didn't know what the drugs had been prescribed for;
- Capital One also explained that if she didn't want to send in medical evidence, the account could only stay in the hardship queue for three months when the debt position would be reassessed.

Unfortunately for Mrs B – this chain of events happened more than once. So she says the debt was sent again to a DCA, the DCA sent letters to Mrs B which caused her more stress. And Mrs B's son wrote to Capital One to explain the effect this had on his mother. Capital One took the account back from the DCA and placed it in its hardship queue; Capital One asked for medical evidence to keep the account permanently in the hardship queue, but when no medical evidence was sent in, the account was reviewed after three months. As the account was still in default and there was no new DMP, it was sent to a DCA again.

Our adjudicator thought Mrs B's complaint should be upheld. And he recommended that Capital One should pay Mrs B £500 for her distress and inconvenience. He also said Mrs B or her son would have to send Capital One enough medical evidence to get Capital One to put a medical hold on the account or Mrs B would have to send in a new income and

expenditure form to agree a new DMP. Our adjudicator also expected Capital One to act in a positive and sympathetic manner in the light of her current financial difficulties and ill health.

Capital One disagreed with our adjudicator's view and asked for the matter to be reviewed again. It added the following point:

- despite its repeated requests for medical evidence, it didn't receive a letter from a doctor until 2016 confirming Mrs B's medical situation. The doctor's letter was dated in March 2015.

Mrs B - through her representative – also disagreed with our adjudicator's view and also asked for the matter to be looked at again. She added the following points:

- she went through years of unnecessary worry about this debt which had an effect on her health, so she wants more money for her distress and inconvenience;
- she says Capital One didn't make an offer for the debt to be settled for £5,839 in 2015. She says this offer was first made in 2017.

my findings

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 I've decided I'm going to uphold Mrs B's complaint. And I'm going to make an award of £500 for Mrs B's distress and inconvenience. I know this will be a disappointing result for Mrs B and Capital One, so I'll explain why.

I can see from the history leading up to the complaint that Mrs B's son's payment of six months' payment towards the DMP in one lump sum caused a problem for Capital One as it said the terms and conditions of the DMP meant payment had to be made at the rate of £1 per month as agreed. Mrs B's son was trying to take the stress of the debt repayment from Mrs B for a few months. But Capital One could only accept three months payment in advance – and only then if there was a prior agreement. I understand her son's point that he didn't know about the terms and conditions, but his mother was still bound by them as she was the account holder. Capital One also accepts it made a mistake in August 2013 – it says it should've written back to Mrs B or her son at that time to say £1 per month had to be paid, rather than paying several months' payments in one go. So I'm satisfied Capital One did something wrong here which lead to further stress for Mrs B.

Capital One also accepts it made a mistake when it wrote to Mrs B's son on 23 Feb 2015. It said it wouldn't pass the debt to a DCA or ask for medical evidence on a permanent basis. It said in the same letter it wouldn't ask for any payments from her but it explained it would write once a year to tell her of the outstanding balance – although it wouldn't contain a demand for payment. So Mrs B was right to assume for a time that neither Capital One nor a DCA would chase her for the debt. I think it must have been very upsetting for Mrs B when she found out this letter was sent by mistake. So I'm satisfied Capital One did something wrong here which lead to further stress for Mrs B.

Mrs B also complains that she'd asked Capital One to send all letters to her son who was acting on her behalf, but it still sent letters to her direct – which caused her more stress. Capital One explained that although most letters were sent to her son, there were some automatic letters which were sent to Mrs B as she was the account holder. And it said the

terms and conditions of the credit card agreement did require that Capital One wrote to Mrs B when payments were missed. As Mrs B was the account holder, I think it's likely that not every letter could've been sent to her son. So I don't think it would be fair or reasonable to say Capital One did anything wrong here.

Due to Mrs B's added stress, her son detailed her medical state in his letters sent to Capital One. The debt was then put into the hardship queue but Capital One said it could only stay in that queue for three months, unless Mrs B sent in medical evidence. I accept that sending in photocopies of her empty medication boxes wouldn't have been enough as Capital One wouldn't have known what the drugs were for. I can also see that a description of her medical conditions from her son wouldn't have been enough to evidence her situation. And it does seem that Mrs B had a written letter from her doctor in 2015 although this was only sent to Capital One in 2016. But I accept from the doctor's report I've seen that Mrs B has been and continues to be ill. And I accept that she probably did suffer stress due to Capital One's mistakes.

Mrs B said an award of £500 doesn't really pay her back for the stress caused or her aggravated ill health. But this Service only makes modest awards – we don't award damages in the same way as a court does - so taking everything into account, I agree with our adjudicator that £500 is a fair way to settle this complaint.

Capital One says it dealt with Mrs B positively and sympathetically and that it offered in 2015 that she could settle the debt for £5,839. It also concludes that as Mrs B didn't send in formal medical evidence despite its repeated requests – although she did send in her empty medication boxes – so it says there were mistakes made on both sides. Mrs B says Capital One didn't offer in 2015 that she could settle her debt for £5,839 as it suggested. I haven't seen the original offer, but I think Capital One treated Mrs B positively and sympathetically in making the offer. And I would expect Capital One to continue to treat her positively and sympathetically as it now knows of her financial situation and her medical health.

I agree with our adjudicator that if Mrs B wants to keep her account in Capital One's hardship queue permanently, then she'll probably have to send enough recent formal medical evidence to encourage it to do so. But if she doesn't want to send in any formal medical evidence, then she'll probably have to complete another income and expenditure form to agree a new debt repayment plan.

It follows that I'm going to uphold this complaint. I know this will be a disappointment to both parties.

my final decision

My final decision is that I uphold this complaint and I require Capital One (Europe) plc to pay Mrs B £500 for her distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 19 February 2018.

Amrit Mangra
ombudsman