

complaint

Ms U complains through a relative about charges applied to her credit card by Capital One (Europe) plc. She would like it to refund the difference between the payments she made and the debt, pay compensation for mis-sold payment protection insurance (PPI), cancel the debt and remove it from her credit report. She also wants Capital One to pay her compensation for the distress and inconvenience caused.

background

Ms U applied for a credit card with Capital One in 2005. Her credit limit was £200. A direct debit was then set up to collect the minimum payment each month. Ms U made two cash withdrawals in April 2007, which together with transaction fees, exceeded the credit limit and her account remained over its credit limit until April 2009 - when Capital One issued a default notice.

Ms U says the payments and the direct debit date were instigated by Capital One. She also says she was asked to sign a PPI application form but didn't need the cover - and as she did not understand bank statements, she relied on Capital One. She says she partly exceeded the credit limit because of the PPI payments, she does not know why direct debits from April 2007 onwards did not match the minimum payment shown on the statements, and Capital One allowed the account to exceed the credit limit. Despite not using the account again, a variety of charges and fees were added for 26 months which has affected her credit report.

Capital One says default charges were applied because of Ms U's management of the account and over limit fees are added if balances exceed the credit limit. Ms U accepted the terms for the account and the default charges have been correctly applied. It says it will not write off the debt, the account defaulted in May 2009, and it will remain on Ms U's credit file for six years as removing it would be giving inaccurate information to credit reference agencies.

The adjudicator partly upheld the complaint but considered it was Ms U's responsibility to manage her account and she was bound by its terms and conditions - even if she had not read or understood them. The direct debit had been set up correctly, late payment fees were not applied to the account until January 2009 when the direct debit was returned unpaid, and charges from April 2007 were due to Ms U exceeding the credit limit. She had been sent statements requesting additional payments and even if PPI had not been applied to the account she still would have exceeded her credit limit due to her spending.

The adjudicator though considered the account should have been defaulted earlier as Ms U exceeded the credit limit and was in arrears. Had it been, it would have prevented the debt building up. And whilst the information recorded on Ms U's credit file was accurate it would have been recorded sooner.

The adjudicator recommended Capital One should refund all charges and interest applied to the account from October 2007, together with the PPI payments (if they had not been previously refunded) as the PPI payments would have been cancelled if the account had defaulted. She also recommended it should amend Ms U's credit file to reflect that the default should have been recorded in October 2007 rather than April 2009 and to pay Ms U £100 for the inconvenience caused.

Capital One disagrees. It says, in summary:

- Although Ms U was paying the minimum amount by direct debit each month it sent monthly statements telling her the outstanding balance. It was her responsibility to manage her account and she exceeded her credit limit in April 2007.
- It can only record a default if an account is at least three months in arrears. As Ms U was making the minimum payments until the direct debit was cancelled, her account did not fall into arrears and it would have been wrong to record a default in October 2007 just because she had exceeded the credit limit in April.
- The statements sent to Ms U told her she had to make a separate payment to cover the over limit amount and had she done so default charges would have been avoided. Charges were applied in line with the account terms and conditions, so it will not refund them.
- Had it been able to discuss the matter with Ms U it may have been able to set up a payment arrangement, but when it spoke with her in January 2009 she refused to make a payment. It says it next spoke to Ms U in March 2009 when she told it about her financial difficulties and it sent her an income and expenditure form - but as it was not returned a repayment plan was not agreed.

In response to the adjudicator's assessment Ms U's relative asks:

- Why Capital One did not take an earlier payment to avoid a £40 charge at the very start of the account.
- Why the direct debit payment did not usually match the minimum payment given on the statements.
- How Capital One can justify taking £511.51 against a total card usage of £257.30.
- Why Capital One did not include in the minimum payments the additional fees and whether the reason was to increase profits by placing customers in debt.
- Why Capital One did not write and explain what was happening with Ms U's account.

She says Ms U relied on verbal communication with Capital One, paid the money requested each month and has paid in excess of her actual borrowing - without understanding how the account operated. She also makes further comments about the PPI applied to the account, but as this is subject to a separate complaint, the adjudicator was unable to comment on it.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I come to the same conclusion as the adjudicator for broadly the same reasons.

I appreciate Ms U's relative says it was Capital One who chose the direct debit payment date and amount and Ms U relied on it as she did not understand the statements. But I find nothing to indicate that Capital One might reasonably have known about Ms U's difficulty with the statements. In signing the terms and conditions for the account Ms U agreed to be

bound by them. Until January 2009, the fees applied to the account did not result from the direct debit being paid late, but from the account exceeding its credit limit. So I do not find Capital One made an error in setting up the direct debit.

Ms U's relative questions why Capital One did not take an earlier payment to avoid a £40 charge at the very start of the account. As the adjudicator explained, it is for a customer to manage their accounts and as there was no direct debit in place at the time Capital One could not have taken a payment.

Ms U's relative also asks why Capital One did not write and explain what was happening with the account. I am satisfied that the statements it sent did inform Ms U she needed to make further payments to bring the account within its credit limit and that the minimum monthly payments did not include payment for the over limit amount. As she did not make further payments fees continued to be applied to the account. I understand Ms U's relative's point that if the PPI payments had not been debited Ms U would not have exceeded the credit limit. But I find it was the cash withdrawals together with Ms U's spending on the account which caused the account to exceed its credit limit.

I understand why Ms U's relative asks how Capital One can justify taking £511.51 against a total card usage of £257.30, but it is for Capital One to set the level of fees and charges applied to an account - and they were set out in the terms and conditions, which Ms U accepted.

Yet despite Ms U exceeding her credit limit for two years, Capital One says it did not refer the account to its collections department as minimum payments were being met. As Ms U did not clear the excess on her credit limit, charges continued to be applied each month and a debt built up. It says in line with the Information Commissioner's Office (ICO) guidance it can only record a default if an account is at least three months in arrears

Capital One seems to be saying that it would have continued to apply over limit charges indefinitely if Ms U had continued to make her minimum monthly payments. That doesn't seem fair to me. The ICO guidance in force at the time says a default should indicate a situation when the relationship between the lender and borrower has broken down. One example of that is where the *"customer has not made satisfactory proposals in response to a demand for repayment"*.

In the particular circumstances here, I see no real reason why Capital One didn't default the account sooner. Not only had Ms U exceeded her credit limit, she did not clear the excess either - despite Capital One sending her statements telling her she had to make separate payments to cover the over limit amount. It seems that situation would have continued indefinitely had Ms U's direct debit not stopped. Had the bank defaulted the account sooner it would have stopped the charges building up further.

For this reason I partly uphold this complaint and I find it is fair and reasonable for Capital One to make the adjustments to Ms U's account and her credit file as set out below and to pay to her £100 for the distress and inconvenience caused.

Whilst Ms U's relative also raises further issues about the PPI applied to the account, as this is subject to a separate complaint I am unable to comment on it here.

my final decision

My final decision is that I partly uphold this complaint and I require Capital One (Europe) plc to:-

1. refund all charges and interest applied to the account from October 2007. If the debt is still outstanding then this amount should be refunded to the debt,
2. refund all PPI payments from October 2007 (if no refunds have previously been made) as this would have been cancelled if the account had been defaulted. If the debt is still outstanding then this amount should be refunded to the debt,
3. amend Ms U's credit file to reflect that the default should have been recorded in October 2007 rather than April 2009, and
4. pay Ms U £100 for the inconvenience caused. This should be paid direct to Ms U and not used to reduce any debt outstanding.

Naseem Malik
ombudsman