

The complaint

X complains that Capital One (Europe) plc agreed a repayment plan for X's credit card only to then default X's account.

What happened

I issued my provisional decision on 14 November 2023, and this is what I said:

I've considered the relevant information about this complaint.

Based on what I've seen so far, there will be a different outcome to what our investigator proposed.

Before I issue my final decision, I wanted to give everyone a chance to reply.

I'll look at any more comments and evidence that I get by 12 December 2023. But unless the information changes my mind, my final decision is likely to be along the following lines.

The complaint

X complains that Capital One (Europe) plc agreed a repayment plan for X's credit card only to then default X's account.

What happened

On 1 March 2023, Capital One sent X a default notice letter. This set out that X's credit card account was overdue by £224.15 and, to prevent a default, this had to be paid by 29 March 2023. This letter also set out a number of actions to avoid a default and mentioned that a default would be reported to Credit Reference Agencies (CRA's).

On 6 March, X called Capital One to explain changes in X challenging circumstances. X explained X vulnerable position was proving challenging in the short-term, and a discussion took place on affordability, breathing space and payment plans. X said the agent "clearly stated that in order for me to ensure the account does not default I would need to pay a higher amount of £71.00 by 29th March 2023". On 24 March 2023, X paid £71.00 towards X account. However, Capital One still actioned a Statement of Default on 3 April 2023.

X complained to Capital One as X felt X had been misinformed and treated unfairly. Also, X considered the information registered to CRA's to be defamation. Capital One said their default action was correct and a plan to pay £71 per month hadn't been agreed.

X complained to our service and during the process Capital One maintained their version of events but, to resolve the dispute, made an offer to remove the default after 6 monthly payments of £70. X was unhappy with this offer. X thought it indicated that they knew they had acted incorrectly yet were refusing to offer the original plan for £70 which X paid before the given deadline of 29th March 2023.

Upon her final review our investigator considered that Capital One had made an error and said the default should be removed and a plan of £70 should be implemented.

However, Capital One said they would only agree to lift the default after six monthly payments of a higher amount. They also said that X outstanding balance had not changed, and interest and fees no longer apply due to the default. But explained the arrears have increased since the account defaulted due to X not making any payments.

So, this case has been referred to me to look at.

What I've provisionally decided – and why

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 have a different view to the investigator and I'm not upholding this complaint.

This is because I can't see that Capital One acted unfairly or unreasonably when defaulting X's account. Also, I can't see that X was ready to agree a plan that would've enabled Capital One to lift the default before the deadline date.

However, recognising X's challenging position here, I'm pleased to see that Capital One is still willing to help a customer, with characteristics of vulnerability, by offering a plan. I appreciate this will be a higher amount due to X not making payments and this has previously been offered and rejected.

I first considered whether Capital One's 29 March 2023 deadline, to pay £224.15, was fair and reasonable. Although X was open and honest about X financial difficulties and I empathise with X's very difficult circumstances, I think it was. I say this as there is evidence that X broke the terms of X Credit Agreement by not paying monthly minimum payments and Capital One had informed X of this on 1 March 2023.

The dispute here is about whether or not Capital One agreed to a £70 monthly plan to avoid the default before the deadline on 29 March 2023. So, I listened carefully to the call X had with a Capital One representative on 6 March 2023 to see what was agreed.

I found the representative to be both clear and helpful. She said the only way to get the account down and avoid a default would be to pay £224.15 or, as that was clearly unaffordable, for a £70 monthly payment plan to be set up before the 29 March 2023 deadline. However, after completing an expenditure review, which highlighted this would be challenging for X in the short-term, a plan wasn't agreed. Instead, it was left for X to consider whether X could afford this and although it was clear X had no desire to default on X account, X said, "I'll be back in contact" and the representative said, "call us back".

In addition, Capital One followed this up the next day with a breathing space email which included the following:

- 'you are at risk of being defaulted*
- To help you at this difficult time, we're stopping interest and fees on your account.*
- We won't call you. but we are always here if you need to speak to us.*
- It's important that you contact us if your situation changes'*

So, I'm satisfied that the onus was on X to contact Capital One before the deadline where X decided X could afford regular payments of £70 per month.

X feels that the representative should have been more considerate and offered a lower plan option (an amount less than £70) and, although I can understand X's vulnerability and requirement here, I found the representative acted in a responsible way. She discussed

support services, offered and explained low breathing space payments but ultimately, because of the amount of debt X owed, lower payments just wouldn't bring X's account up to date within the required business timeframes to avoid a default.

Although X paid the £71 prior to the default deadline on the 24 March 2023, and this may have indicated X could afford the potential plan discussed on 6 March 2023, I can't see any evidence that X got back in contact with Capital One to further discuss and agree the plan. So, having listened to the call, I'm not persuaded that there was confusion about the plan being agreed and / or a £71 payment prior to the 29 March 2023 being sufficient action to stop the default.

Furthermore, the reason X didn't agree the plan on 6 March was because X had to consider X ability to be able to consistently pay £70 (or more) per month and X's later comments on 1 April 2023; that the plan amount should've been lower, X had lot of expenses this month, X was now short of money having paid the £71 on 24 March 2023 and needed an extra month, I think it is more likely than not that X wasn't yet in a position to commit to a regular payment of £70 prior to the deadline.

Although X dismissed the following offer from Capital One:

"While we are unable to offer a 12-month plan moving forward, we would be able to set a payment arrangement for a maximum of 6 months. However, these payments would be higher than the original plan offered at £70.00 per month, the customer would need to call us to discuss this further to check affordability. The arrangement would need to be set on the account within the next 30 days. Once the 6 payments were consecutively made with no breaks in the payment arrangement, we would remove the associated default."

I can't see that Capital One have explained their reasoning here and I can understand X thinking this indicates they did make an offer and didn't act correctly. So, before I make a final decision, it would be helpful if Capital One can clarify the reason for their offer. I found that X contacted Capital One after 29 March 2023 deadline, which had been communicated verbally and in writing, and two days before the default was registered. So, as their representative, later, indicated a payment plan could've still been agreed at a late stage, I also considered whether Capital One should've contacted X to further discuss payment plans on this date or 24 March 2023 when X made a £71 payment.

I didn't think this was a reasonable expectation because of the short timeframe. Also, as mentioned above Capital One had been very clear that X needed to make contact.

Furthermore, even if it had been possible, due to X's comments I'm not persuaded that X was in a position to agree a plan starting in March.

So, having considered all the above, I'm not upholding this complaint.

My provisional decision

For the reasons I've given above, it's my provisional decision not to uphold this complaint.

I'll look at anything else anyone wants to give me – so long as I get it before 12 December 2023.

Unless that information changes my mind, my final decision is likely to be as I've set out above.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and

reasonable in the circumstances of this complaint.

In my provisional decision, I gave both parties the opportunity to provide any comments or new information they might wish me to consider before I moved to a final decision.

Capital One clarified the offer they made wasn't because they'd made an error. They said it was because:

"The customer may have been under the impression that X payment would prevent the default, and our offer is based on the intention behind the payment X made".

X disagreed with my provisional decision and said:

- It feels "very biased" as *"The focus often shifts to the onus being on myself whilst mentioning in another sentence that the account have defaulted due to the arrangement not being set on the account correctly. I see not much mention of the agent at Capital One explaining how the system works and why the account defaulted being there error going as far to say this should not have happened. There system did not recognise the £71 payment was made was the exact words of the agent. Was this call listened to ?"*
- It feels *"a rushed response and I have been discriminated and my circumstance is being used against me to uphold this complaint in the favour of Capital One". "You mention alot about what Capitol One have said and less about the number of calls and contact I made to prevent this from happening. No further payments were made as I was told this would be investigated further. The have affectively agreed to remove the default on the basis of them receiving 6 months of payments first. This was either correct or not why was it on the basis of anything if they had received these payments but were willing to leave my account in a default state for a further 6 months which would have an adverse affect on myself/credit file. What I was asking for was simply for the payment plan I wanted to pay to be reinstated and the default removed.*

In order to fully understand X's response, I asked X some follow up questions and I appreciate X's response.

Although Capital One confirmed they hadn't made an error, which was consistent with their submissions, due to both X's and Capital One's comments, I again considered all the information on file. This included reviewing the latest submissions and listening to the calls again.

In calls X had both with our service, and with Capital One after the 29 March 2023 deadline, X consistently said X did what was required to avoid a default by paying £71 before the deadline and that's why X has been treated unfairly here. However, I'm satisfied that the 6 March call recording, summarised in my above provisional decision, clearly shows that no plan was agreed. X said X would review X financial situation and get back to Capital One before the deadline

From reviewing the file, I'm persuaded X wanted to avoid a default if X could, however I'm unclear on why X paid the £71 on 24 March 2023. Possibilities include X misinterpreting the representative or only recalling part of the conversation. However, from listening to the 6 March 2023 call and X's comments I find these possibilities difficult to understand. Also, based on X's call with Capital One shortly after the deadline, where X expressed dissatisfaction with the representative for not offering a plan lower than £70 and couldn't really afford this until late April, it appears that X wasn't in a position to request the plan before the 29 March 2023 deadline and required a plan with a lower amount or later start date.

However, although I can't be sure about the reason X paid £71 on 24 March 2023, I found that Capital One clearly explained the position to X, followed this up in writing, said they wouldn't contact X and clearly communicated to X two options to avoid a default. These were paying £224.15 or agreeing a £70 plan before the 29 March 2023 deadline. So, although I empathise with X's situation, as my role is to be impartial and objective, it wouldn't be fair or reasonable to ask Capital One to lift the default when they didn't make an error and X paid £71 without discussing or agreeing a plan.

As X paid the £71 before the deadline and called Capital One after the deadline, but prior to the default action which occurred after 29 March 2023, I did consider whether Capital One should've contacted X or stopped the default.

The £71 on 24 March 2023 was made on-line four working days before the deadline. Even though X was a vulnerable customer, as this was lower than the required £224.15, and a plan wasn't in place, I thought it unlikely and unreasonable to expect a system to alert representatives. In addition, Capital One made it clear both verbally and in writing that they wouldn't contact X and the onus was on X to make contact if X was in a financial position to agree a plan.

X spoke to a Capital One collections representative shortly after the deadline. The representative wasn't sure about the system cycle date and if the default had yet been generated. However, the deadline had clearly passed and, as mentioned above, X was looking for an alternative plan as X explained X was "short" having paid the £71 on 24 March 2023.

I do recognise that, at the compliant handling stage, a Capital One representative did make several comments which suggested Capital One had made an error, such as "the plan wasn't set correctly", "the plan was set up on the £20 rather than the one to avoid the default", "maybe some information may have been overlooked", "maybe we jumped the gun". However, I found the representative's comments to have been speculative. I say this because he didn't have the facts to hand and know a £20 breathing space was agreed, was speaking as he was reading notes and made comments such as "I can't tell you for certain", "the notes don't make an awful lot of sense to me", "I don't want to say the agent is wrong". In addition, the representative was responding to X's explanation of the 6 March 2023 call which, as mentioned, was different to the call recording I listened to.

So, having considered everything again, I'm not upholding this complaint as I can't see that Capital One have made an error with the default.

Finally, Capital One have made an offer to X and although it has taken some time for them to explain their rationale, I think this is a fair and reasonable offer in the circumstances.

My final decision

My final decision is that I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask X to accept or reject my decision before 10 January 2024.

Paul Douglas
Ombudsman