

## **The complaint**

Mr A complains about how Capital One (Europe) plc (“Capital One”) treated him while facing financial difficulties, ultimately resulting Capital One defaulting his credit card account.

## **What happened**

In May and June 2023, Mr A began to miss payments on his Capital One card. In early August, during a phone call with Capital One, Mr A explained that he’d lost his job and was currently unable to make payments towards his credit card. Capital One completed an income and expenditure assessment with Mr A, to work out how much he could contribute towards repaying the debt.

It was during this call Capital One uncovered Mr A didn’t have sufficient disposable income to make any repayments, and so they applied ‘breathing space’, meaning they’d not expect payment, and would temporarily pause interest and charges. They followed up with a letter on 2 August 2023 confirming this was in place, which explained they’d continue to communicate with him.

In November 2023, Capital One wrote to Mr A to let him know that he’d permanently lost the use of his card and warned his account could default soon. Mr A was unhappy and complained that Capital One weren’t supporting him well enough.

In December, Capital One issued a default notice. Subsequently, Mr A had a call with Capital One where they explained a suitable repayment plan to clear the arrears would be £91 per month. Mr A said this wasn’t affordable so no payment plan was set up. Mr A did make a payment of £91 in December, but it wasn’t enough to prevent the default.

Mr A complained again. Capital One rejected the complaint. They said the information they’d provided him with was accurate and explained the default process. Mr A remained unhappy so he referred his complaint to our service.

An Investigator here considered everything. They found that Capital One had treated Mr A fairly when supporting him through a time of financial difficulties and wouldn’t be asking Capital One to remove the default.

Mr A disagreed with the opinion. He said his main complaint is that he felt Capital One have lied to him and have been adding interest the whole time, and they’ve ignored his pleas to remove the default. Because an agreement couldn’t be reached, the case has been passed to me to decide.

## **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.

Having considered everything, I've reached the same conclusion as the Investigator, and I'm not upholding Mr A's complaint. I know this is likely to come as a disappointment to him, particularly as he's mentioned the potential knock-on effect of a default, so I'll explain my reasoning in more detail.

I've listened to the calls Mr A has had with Capital One between August and December 2023. In the first call, Capital One took Mr A through an income and expenditure assessment and found he didn't have any disposable income. So, they applied 'breathing space' to his account. They explained during the call what this meant, in that this would stop all interest and charges, but missed payments would be recorded and the account could still end up being defaulted. Mr A said he didn't have any choice but to follow through with this. The advisor recommended Mr A reach out to debt charities for more tailored support and advice.

During the call, the advisor was informative and I'm satisfied they showed Mr A empathy. I can't see that the advisor misled Mr A regarding what was likely to happen over the coming months. They took Mr A through the available options and discussed what was most practical and affordable. So, I think Capital One treated Mr A fairly during this call.

The next few calls took place between November and December 2023, and Mr A complains on the calls about the letters he's been receiving regarding the arrears on the account, and notices to default. He said he feels like Capital One don't care about what he's saying they only want to default the account. Capital One explain the reason why the letters are being sent and why he's receiving notices to default. They explain that they're bound by rules and regulations which mean where a payment hasn't been received, they need to take further action. During the calls, the staff members are honest with Mr A about what's most likely to happen and show empathy with his situation. Again, having listened to these I can't see that Capital One have been dishonest with Mr A, and they've treated him fairly in a way we would expect.

In the final call, Mr A phones in December to try and prevent a default. Capital One take him through another income and expenditure assessment and Mr A says he's paying them £20 a month, he could possibly stretch it to £25 if needed. The advisor explained that this would extend his breathing space, stopping interest and charges, but it wouldn't stop the default. To stop the default they'd need to receive £91 per month, which Mr A agrees isn't affordable for him.

The advisor asks if she should apply breathing space for him to prevent interest and charges being applied, but Mr A says they're going round in circles and he has nothing further to say. No payment plan is agreed – either for £20 per month or £91 per month. Again, the advisor dealt with the call well and presented Mr A with all the options available to him. They showed Mr A empathy throughout the call, so I can't say they've treated him unfairly.

I note Mr A has said Capital One have been dishonest as they told him they'd stop all interest and charges but have continued to apply them to his account. I've reviewed the statements for his account, and I can see that no interest or charges have been applied since July 2023. So, there's nothing to suggest they've been dishonest about applying interest and charges.

I appreciate that Mr A did make a payment for £91 in late December 2023, after the call regarding the £91 per month payment plan to prevent the default however this wasn't agreed to during the call. Had Mr A agreed to the payment plan on the call of £91 for three months, this would've prevented the default, however Mr A said it wasn't affordable for him and didn't want to take any action off the back of the call in December.

Also, under the rules set by the Financial Conduct Authority (FCA) Capital One are required to show forbearance and support their customer's when they're facing financial difficulty. Mr A's income and expenditure showed he had a negative disposable income of -£75 per month. So, I think it would be unfair of Capital One to commit Mr A to £91 per month when it was clear he didn't have access to that amount of money. As a result, I don't think Capital One treated Mr A unfairly here.

I've thought about whether Capital One were fair to default, given that this is the crux of Mr A's complaint. The Information Commissioner's Office (ICO) sets out the timeline it expects a firm to apply a default. It says if a customer is at least three months behind with their payments it can consider a default, and by the time a customer is six months behind with repayments, it would expect a default to be registered. Capital One registered a default six months after he fell behind with his payments. And during that time Mr A was in touch to suggest things may change, he was looking for work, so I think defaulting earlier could have been premature.

Capital One have an obligation to accurately report information to the credit reference agencies (CRAs). And I sympathise with what Mr A has told us about his circumstances. I appreciate why he's concerned about adverse information being recorded. However, by December it was clear that despite the temporary measures Capital One had put in place to support Mr A, his situation hadn't improved and was unlikely to improve significantly to clear the arrears by the six-month mark in January.

Capital One are required to lend responsibly. And I don't think it would have been fair, reasonable or proportionate for Capital One to have continued ignoring Mr A's obvious and apparent difficulty repaying what he owed, when the income and expenditure assessment showed he couldn't make his payments, or the fact that the credit he'd been advanced had become demonstrably unsustainable for him, indefinitely.

So, by this stage, I would have expected Capital One to have taken corrective action in the way that it did. After all, while withdrawing credit facilities and recording a default or other adverse information might be viewed negatively by other lenders, it offers the borrower certain protections in relation to the debts incurred.

Bearing in mind all of this, I'm satisfied it was fair and reasonable for Capital One to begin the process of taking corrective action in relation to Mr A's account when it did and issue default notices, offering Mr A the opportunity to bring his accounts up-to-date before it would take any action. Because Mr A couldn't take steps to comply with the demands for payment, I'm satisfied that Capital One was appropriate to default Mr A's account. I'm also satisfied that Capital One have treated Mr A fairly, in a way we would expect, when taking him through all the options and I've seen no evidence they've been dishonest to him.

### **My final decision**

For the reasons I've explained, I'm not upholding Mr A's complaint against Capital One (Europe) plc as I don't believe they've acted unfairly when defaulting his account.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 3 October 2024.

Meg Raymond  
**Ombudsman**