

The complaint

Mr K complains that Capital One (Europe) plc failed to treat him fairly when he faced some difficulties making his contractual repayments on a credit card account.

What happened

Mr K holds a credit card account with Capital One. In February 2024 he reported three transactions to Capital One as being fraudulent. After investigation, Capital One told Mr K that it didn't think the transactions were fraudulent so it would be reinstating them onto his account. That decision does not form part of this complaint so I won't be making any findings in relation to it here. Should Mr K be unhappy about Capital One's conclusion that the transactions were not fraudulent he would need to complain, at first, directly to the lender about that decision.

On 11 March Mr K contacted Capital One to say he was facing some problems making his contractual repayments. He said that he was currently unable to work due to ill-health. Capital One added what it called "breathing space." That meant Mr K would not be required to make any repayments for the next two months. But Capital One warned Mr K that would still mean that missed payments would be recorded on his credit file.

Later that month, a payment for £2,140 that Mr K had made to his credit card account in January 2024 was recalled by his bank. Capital One says that it had no option but to comply with the recall request. So that meant that Mr K's credit card account was significantly above the agreed credit limit. Under the breathing space agreement Mr K missed his contractual repayments in March and April. But it seems he later missed his contractual repayments in May and June also. Capital One has issued Mr K with the regulatory Notice of Sums in Arrears ("NOSIA") letters.

Mr K's complaint has been assessed by one of our investigators. She thought that Capital One had treated Mr K's financial difficulties in a positive and sympathetic manner. But she noted that Capital One needed to correctly report the current status of Mr K's account to the credit reference agencies. She thought Capital One had given Mr K sufficient information about that when he set up the payment arrangement. And the investigator said that Capital One was not responsible for the payment being recalled by Mr K's bank – she said he would need to contact that bank for more information. So the investigator didn't think the complaint should be upheld.

Mr K didn't agree with that assessment. So, as the complaint hasn't been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process.

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 deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mr K and by Capital One. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

At the outset I think it is useful to reflect on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

As I have explained earlier, it isn't appropriate in this final decision for me to consider what happened in relation to the transactions that Mr K says were fraudulent. The decision that the transactions weren't fraudulent isn't something that he has previously complained to Capital One about. And that needs to be done before we can consider the matter. So in this decision I will only be looking at how Capital One treated Mr K's financial difficulties, and whether it was reasonable for it to return the payment that Mr K had made in January.

I've looked carefully at how Capital One responded to Mr K when he explained he was facing problems managing his contractual payments. At that time, the regulator would expect Capital One to have taken steps to ensure that Mr K was treated fairly, with forbearance and with due consideration. It provided firms with a number of examples of this sort of behaviour including the consideration of reducing or waiving future interest charges, allowing the payment of arrears to be deferred, or accepting token payments for a reasonable period of time.

But it is my understanding that the regulator's guidance isn't intended to leave debts outstanding for an indefinite period of time. Instead the requirement for lenders to show forbearance and due consideration to consumers who are facing financial difficulties is to allow a reasonable period of breathing space for consumers, facing an unexpected fall in their disposable income, to review their options.

I think that the actions Capital One took – in allowing Mr K to miss his repayments for two months are in line with this guidance. But Capital One has other responsibilities to ensure that it fairly and accurately reports what is happening with accounts to the credit reference agencies. I don't think the fact that Mr K was missing repayments with Capital One's agreement means those missed repayments shouldn't be shown on his credit file. And that was what Capital One told Mr K when it agreed to the breathing space plan. Overall I haven't seen anything that makes me think that Capital One treated Mr K unfairly at that time.

The payment that Mr K made in January 2024 was recalled by his bank two months later. I am not party to any information about why that happened – and it seems nor is Capital One. The decision to recall the payment was taken by Mr K's bank, and Capital One was simply obliged to honour that request. Capital One was not responsible for either the request itself, or the two-month delay before it was made.

Should Mr K remain unhappy about the recall of the payment it is something that he would need to raise with his bank. I understand that he no longer holds that account. But the account being closed should not prevent him from discussing the matter with the bank, or if necessary raising a complaint about what happened.

I appreciate that this decision will be disappointing for Mr K. But I'm satisfied that

Capital One treated him fairly, and in line with its regulatory obligations, when he told the firm he was finding it difficult to make his repayments, and fairly reported his situation to the credit reference agencies. I don't think that Capital One did anything wrong by allowing the recall of the repayment Mr K had made in January 2024.

My final decision

For the reasons given above, I don't uphold the complaint or make any award against Capital One (Europe) plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 24 October 2024.

Paul Reilly
Ombudsman