

The complaint

Mr M is unhappy Capital One (Europe) plc defaulted his account and then sold it to a debt collection company.

What happened

Mr M took out a credit card with Capital One in November 2006. In March 2017 Mr M's account was passed to its collection department after he fell behind on his payments. In March 2018 Mr M agreed to pay £194 every month for four months.

In June 2018 Mr M's account was defaulted. Capital One said this was because he had failed to make payments within the agreed plan. Mr M was unhappy with the default being applied so he made a complaint. Capital One reviewed the complaint and sent a final response letter – dated 20 June 2018 – saying the default had been applied fairly.

Mr M contacted Capital One after the final response letter. He felt it had told him the default had been added incorrectly. Capital One sent another letter to him – dated 4 July 2018 – telling him it had already investigated the complaint and he should escalate the matter to this service.

On 10 July 2018 Mr M set up a payment plan with Capital One for £100. In May 2019 Capital One then decided to sell his account to a debt collection company. Mr M was unhappy so he made a complaint. Capital One spoke to Mr M on the phone. It told him it made a business decision to sell the account and the debt collection company should keep the payment plan of £100 per month with him. Capital One reviewed his complaint and sent a final response letter – dated 25 June 2019 – not upholding it. It said it could sell Mr M's account as its within the terms and conditions of the agreement. So it wasn't willing to buy his debt back.

On 23 December 2019 Mr M brought his complaint to this service. He added that he should be paid compensation as Capital One had breached his data by selling the debt to another company.

Our investigator reviewed the complaint. He said this service couldn't consider whether the default had been applied fairly as Mr M hadn't brought his complaint to us in time or mentioned any exceptional circumstances explaining why the complaint was referred to us late. And Capital One hadn't given this service its consent to look into the matter. He added that Capital One hadn't done anything wrong when it sold the debt because the terms and conditions allowed it to do so. So Mr M wasn't entitled to any compensation.

Mr M didn't agree. He said the terms and conditions don't allow Capital One to sell his debt to a third party. And they weren't valid because the second page didn't have a barcode like the first page. So he didn't think Capital One could rely on these.

So this complaint has now been passed to me for a final decision.

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 done so, I've reached the same conclusion as our investigator. And for largely the same reasons. I know Mr M feels strongly about this complaint and this will come as a disappointment to him, so I'll explain why.

Why I can't look into the complaint about the default

Our rules say that, without business consent, I can't consider a complaint which is referred to this service more than six months after the date the business sends its final response letter to the customer. This rule is called "Dispute Resolution rule 2.8.2R (1)". It can be found in the regulator's handbook of rules and guidance (available on the Financial Conduct Authority's (FCA) website). Capital One sent its final response in relation to the default on 20 June 2018. The letter said if Mr M wasn't happy with the response, he had up to six months to bring his complaint to our service. So he had to bring the complaint to us by 20 December 2018. But we didn't hear from Mr M until 23 December 2019. So the complaint was referred to us too late.

Mr M hasn't specified why he didn't bring the complaint to this service in time. I can help with complaints referred outside of the usual time limits where I'm satisfied that this was due to exceptional circumstances. But because Mr M hasn't said any apply here, I can't consider these. So I believe he could have brought the complaint to us within the six month timeframe.

My decision on whether this service can consider the default

My decision is that I don't have the power to consider Mr M's complaint about his default because it's been brought to us outside the time limits set out in our rules. And I'm not persuaded that failure to complain within the time limits was due to exceptional circumstances.

Capital One selling Mr M's debt to a third party

I've carefully considered the terms and conditions of the account. Having done so, I'm satisfied Capital One does have the right to sell his account. These state Capital One can transfer their rights, benefits and obligations under the agreement without telling Mr M. I believe this means Capital One can sell the account to a debt collection company if it wants to.

Mr M says he doesn't believe the terms and conditions are valid. But I don't agree. Mr M has signed the agreement and I don't believe that the second page of the agreement not having a barcode invalidates it.

Mr M believes Capital One has breached his data under the General Data Protection Regulation (GDPR) by selling this account. But this would need to be reviewed by the Information Commissioner's Office (ICO). The ICO is the authority which deals with members of the public's data and whether someone has suffered a breach. It's not this service's role to decide if Capital One has breached Mr M's data.

This service can consider whether it's fair and reasonable to tell Capital One to pay compensation to recognise the impact of the debt being sold. I note that the first page of the terms and conditions do mention Capital One's right to release information to a third party who takes over its rights and obligations. And if Capital One no longer wants to hold the debt then this is its business decision to make.

Capital One has provided letters it sent to Mr M - dated 31 January 2018 and 4 June 2018 - to this service. These made Mr M aware of the possibility of the account being sold to a debt collection agency. The letters were addressed correctly to Mr M and I'm satisfied they were sent.

I've also considered that selling the account hasn't financially disadvantaged Mr M. Capital One told him his payment plan of £100 per month was still valid with the debt collection company. It would now be up to Mr M and the debt collection company to review any future payment arrangements.

As a result, I don't think Capital One has treated Mr M unfairly here. So I'm not going to ask it to do anything more.

My final decision

For the reasons given above, I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 31 March 2020.

Mark Dobson
Ombudsman