

## **The complaint**

Mr T complains that Capital One (Europe) plc defaulted his account without contacting him by email or telephone before doing so.

## **What happened**

Mr T had a credit card account with Capital One. He says he experienced personal and financial difficulties. In November 2017, he spoke to Capital One about the circumstances which had given rise to these difficulties and it agreed to put a hold on his account for six months. He says he didn't receive any confirmation about this from Capital One.

Mr T says he moved home in October 2017 and didn't receive any further correspondence from Capital One. He says it had details of his email address and his telephone number and he would've expected it to contact him using these methods. He says he's now found out that Capital One defaulted his account in September 2018 and recorded the default with credit reference agencies. He thinks this is unfair given that he didn't receive any notices that this was happening. He also says he wasn't given the opportunity to put a payment arrangement in place. He complained to Capital One.

Capital One investigated his complaint. It said there was no evidence Mr T had informed it about his change of address. It said he hadn't changed his address when he corresponded with it by email on 19 November 2017. In that email he'd confirmed that the address held by Capital One hadn't changed. It said it didn't permit its customers to change address online and Mr T wasn't registered to use its mobile App.

Capital One said it had sent all of the required letters and notices, including a default notice, to the last address on its records. Mr T hadn't responded. So, it said it hadn't done anything wrong. Mr T didn't agree. He referred his complaint to our service.

Our investigator looked into his complaint. He said he'd have expected Mr T to contact Capital One, after he'd sent the evidence to support his application for a breathing space, if he didn't get any response. He also said it was Mr T's responsibility to inform Capital One about any change of address. He hadn't done that. Our investigator thought Mr T would've been aware he still owed Capital One money but there was no evidence he'd tried to contact it or pay anything further after February 2018. So, he didn't uphold the complaint.

Mr T didn't agree. He said Capital One owed him a duty of care to contact him using his preferred method of contact – email or telephone.

Because Mr T didn't agree the complaint was passed to me to decide. I issued a provisional decision in which I said:

### ***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.*

*Mr T says he informed Capital One of a change of address, during a telephone call, on 10 October 2017. I can see that he sent an email to Capital One dated 19 November 2017 where he stated the first line of his address - which was the address already held on Capital One's systems.*

*Mr T says he changed his address again at the start of 2018. I can see that at that time he did inform Capital One about a change to his email address. He didn't inform it about any change to his postal address.*

*There was an obligation on Mr T to keep Capital One informed about his change of address. That's what he agreed to when he accepted the terms and conditions for his account. And the terms and conditions also make clear that although email or SMS can be used to send some messages, enforcement notices, default notices and termination notices will not be sent by email or SMS. So, when Capital One sent Mr T a default notice in August 2018, to his last known address, it says it was acting in line with its terms and conditions.*

*I've thought about what Capital One has said here. And, I agree that it has acted in line with its terms and conditions. But I'd also expect it to act positively and sympathetically in circumstances where, as in this case, Mr T had told it about personal and medical issues he'd been dealing with. And he'd provided it with medical evidence to support what he'd said.*

*So, I've looked at what happened after he'd given it this evidence. I can see that it agreed to put his account on hold. It did that in November 2017 and it sent Mr T a letter to confirm this. At that time Capital One did hold the correct address for Mr T. So, although he says he didn't get this letter, I'm satisfied it was sent to him at the address he was living at, at that time.*

*The letter, dated 28 November 2017, set out what Capital One would do to support Mr T for the next six months. It agreed not to apply any interest or charges. It also said no payments would be required during this time - although Mr T could make payments if he wanted to. It also said that the account was on an arrangement with the Specialist Support team.*

*I think this letter was sympathetic and positive. Mr T did make some payments after this date. He made a payment of £20 in January 2018 and a payment of £10 in February 2018. He made no further payments and didn't contact Capital One again until July 2020. He says he believed that his account was still on hold and he'd have expected Capital One to contact him by email. I'll comment further below about Mr T's failure to contact Capital One after February 2018.*

*First, I've thought about Capital One's actions after November 2017 when the account was managed by its Specialist Support team.*

*I've noted from Capital One's systems there is a record on 5 June 2018 which states "Return mail status". Capital One says this means that either post had been returned or it had been informed that post was being delivered to an incorrect address. But, in any event, I think this would've put it on notice that Mr T wasn't receiving its letters.*

*Shortly after this, on 12 June 2018 the Return Mail status marker was unblocked. It appears that this may have been removed by the team dealing with trying to recover the outstanding debt. Subsequently, letters - including the default notice - were sent*

to the address on Capital One's records. As I've said this was in line with what the terms and conditions stated.

*But, having thought about what happened here, I don't think Capital One acted fairly and reasonably when it unblocked the return mail status marker without first trying to contact Mr T. It knew about his personal and medical issues. And, it had an up to date email address for him. It was also the end of the six-month period that'd been referred to in its letter dated November 2017. So, in these circumstances, I would've expected it to make reasonable efforts to contact him and try to speak to him, at the end of that six-month period, to check his circumstances.*

*We expect a business to treat a customer experiencing financial difficulties positively and sympathetically. I think, in this case, that would've meant Capital One should've reached out and tried to speak to Mr T to find out about whether his circumstances had changed. It would've known he wasn't receiving letters because of the return mail marker on its systems. So, in these circumstances, I think it's fair and reasonable to have expected it to try to contact him by other means before taking further action. It did have his email address. It could've emailed him to talk to him and to ask him for his current postal address. It didn't do that.*

*As a result, Mr T didn't receive important letters about his account – including the default notice which was issued in August 2018.*

*I've mentioned above that Mr T didn't contact Capital One in the period after February 2018. So, he would've known there was still an outstanding debt. And, he could've made contact with Capital One to enquire about what the current status of the account was. But, on balance, that doesn't change my view of what Capital One should've done here.*

*I think if Mr T had been contacted by email he would've had the opportunity to update Capital One about his circumstances. And, it would've been able to ask him for his address. If it had done that then he would've received the letters and the default notice. Those letters would've brought the seriousness of the situation to his attention and urged him to contact Capital One.*

*So, having considered everything here, on balance, I'm not persuaded Capital One has acted fairly and reasonably in this case.*

### **What should be done to put things rights**

*Capital One has registered a default with credit reference agencies. As I've said above, I'm not satisfied that Capital One did enough to try to contact Mr T to find out about his circumstances or to find out his current address, before it issued the default notice and recorded the default with credit reference agencies. So, I think the default should be removed.*

*That doesn't mean that Mr T's indebtedness to Capital One should be written off or that the arrears on the account shouldn't have been recorded with credit reference agencies since November 2017. Capital One had told Mr T in its letter dated 28 November 2017 that it would continue to report arrears to credit reference agencies.*

*It is the case that Mr T is still required to repay his outstanding balance. I'd expect Capital One to contact him about this and engage with him in a positive and sympathetic manner, taking into account his current circumstances.*

*Mr T has experienced distress and inconvenience as a result of what happened here. So, I think Capital One should pay him £100 by way of compensation for this.*

### ***My provisional decision***

*For the reasons given above, my provisional decision is that I intend to uphold this complaint about Capital One (Europe) plc. In order to resolve this complaint, I think Capital One (Europe) plc should:*

- *Remove the default it recorded about Mr T's account;*
- *Pay Mr T £100 by way of compensation for distress and inconvenience he experienced as a result of what happened; and*
- *Engage with Mr T in a positive and sympathetic manner about the repayment of the outstanding balance on his account.*

Mr T responded to my provisional decision. He said he accepted my findings and the proposed resolution of the complaint. He said he was willing to engage with Capital One. But he said he was being "hassled" by Capital One to make further payments.

Capital One also responded to my provisional decision. It said it had reviewed the case and wanted to clarify the position regarding the returned mail status. It said the returned mail status hadn't been removed in June 2018. It explained that when the account was removed from hardship (after the six-month period set out in its letter of 28 November 2017 had ended) it hadn't been able to send a letter to Mr T. But it says it didn't remove the returned mail status from the account until July 2020 when Mr T contacted it with his new address.

Capital One said it had been corresponding with Mr T and it sent copies of recent emails it'd sent to him. The emails stated that it was important that Mr T should make whatever payments he could afford to reduce the balance and encouraged him to get in touch if he needed support.

So, I now have to make 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.

I've thought about the clarification which Capital One has provided. But, it doesn't change my view that, at the end of the six-month breathing space, Capital One should've tried to contact Mr T. If it wasn't able to send him a letter, I think it would've been fair and reasonable for it to try to contact him by alternative means. It had his email address.

It also doesn't change the position that Capital One knew, or ought to have known, that Mr T wouldn't receive the default notice sent to him after the returned mail status marker was put on his records. Although it's clarified that the return mail status wasn't removed until July 2020, it did send the default notice to the last address on its records. The default notice was issued in August 2018 and contained important information.

As I said in my provisional decision, given the information Capital One had been told about Mr T's personal circumstances, I would've expected it to consider contacting him by alternative means, before sending this important notice, to talk to him about his circumstances and try to get an up to date postal address for him.

When Capital One reviewed Mr T's case at the end of the six-month period referred to in its letter of November 2017, it would've known that because of the returned mail status, he wouldn't receive the default notice sent to the address on its records. So, I remain of the view that Capital One didn't do enough here to try to contact Mr T before it defaulted his account.

I've noted the recent email correspondence sent by Capital One to Mr T. As I said in my provisional decision, Mr T is still required to repay the outstanding balance. I'd expect Capital one to treat him positively and sympathetically. So, he will need to engage with Capital One.

Having considered the responses to my provisional decision, I have not changed my view about how this complaint should be resolved.

### **My final decision**

For the reasons given above I uphold this complaint about Capital One (Europe) plc. I now require it to take the following action:

- Remove the default it recorded about Mr T's account;
- Pay Mr T £100 by way of compensation for distress and inconvenience he experienced as a result of what happened; and
- Engage with Mr T in a positive and sympathetic manner about the repayment of the outstanding balance on his account.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 21 May 2021.

Irene Martin  
**Ombudsman**