

The complaint

Mr D is complaining about how Capital One (Europe) plc treated him in respect of his credit card when he was in financial difficulty.

What happened

Mr D had a credit card with Capital One. He says that in October 2017 he spoke with Capital One and told them he was in financial difficulty, due to a gambling problem. He said he asked them to freeze payments as he would be borrowing money to make the repayments. But they didn't do so, leading to increased financial difficulty and eventually a default on his credit file at the end of 2018, as well as impacting Mr D's mental health.

Mr D complained to Capital One. In response, Capital One said that up until May 2018, Mr D generally paid more than his minimum payments and made them in time. They said after that date, they'd made several arrangements with Mr D to try to get his account back on track but Mr D had broken each of these. They said that's why they needed to default Mr D's account in December 2018.

Mr D wasn't happy so he brought his complaint to our service. Our investigator didn't uphold the complaint – he said he couldn't see that Mr D had told Capital One about his gambling problem or mental health difficulties. And he felt that Capital One had done enough to try to help Mr D with his financial difficulties.

Mr D disagreed. He said our investigator had based his opinion solely on Capital One's notes and hadn't taken into account what he'd said. He asked for an ombudsman to look at his complaint – so it came to me.

I issued a provisional decision on 17 May 2021. I said I was inclined to partially uphold Mr D's complaint. In that provisional decision I said:

"This complaint is largely about what was said on a number of calls between Capital One and Mr D. Unfortunately, Capital One only keep their call recordings for two years – so they're no longer available and we've not been able to listen to them. So I've had to decide what's most likely to have happened based on a combination of Mr D's testimony and the system notes provided by Capital One. These system notes give very brief summaries of most of the phone calls – but not much detail. Whilst I appreciate Mr D has disputed the content of some of these system notes, I find many of them quite persuasive. They provide quite a bit of detail and were written at the time, whereas Mr D's testimony is his recollections from three years ago.

I can see Mr D had a conversation with Capital One in October 2017. The notes don't say anything about what was said during this call – but Capital One followed it up with an email about financial difficulties. So I think it's likely Mr D did tell Capital One about his financial difficulties and possibly his gambling issues, at that time.

Whilst I haven't seen the email that was sent to Mr D, the system notes suggest that this asked Mr D to get in touch again if he needed help. But there were no follow up calls or

emails after this initial conversation and email. There was no evidence of Mr D gambling using his credit card. And Mr D continued to make payments against his credit card that were generally more than the required minimum payments. Given that Mr D didn't contact Capital One again for seven months, I think it was reasonable for Capital One to assume that Mr D was managing his finances and didn't need more help at that time.

Mr D stopped making repayments on his credit card in May 2018. He called Capital One and it seems that he initially told them that his financial problems were short term. The system notes record that Mr D said he'd had a delay in his income and that he'd pay an agreed amount on 4 June 2018, around a week after the minimum payment was due.

Similarly, on subsequent calls in early June and early July, Mr D appears to have told Capital One that he was having issues with his wages but that he'd be able to make future payments. The notes from 6 July 2018 specifically say that he didn't need a payment plan. As I mentioned previously, I find these system notes quite persuasive. I think it's likely that Mr D was still trying to maintain his credit card in line with the terms at this stage.

However, in early August 2018, Mr D spoke to Capital One again. This time the notes record that he was in financial difficulties. The notes say he specifically asked for interest to be stopped and offered to pay £22 per month for 6 months. Following this call, Capital One sent a pack to Mr D and asked him to complete the income and expenditure assessment to determine what would be affordable for him.

Mr D says he completed the income and expenditure assessment over the phone. Although I can't see this on the system notes it seems likely that he thought he'd had these sorts of conversations in early August and again in late September. So it's possible Mr D didn't do things exactly the way Capital One anticipated but it's clear that he had conversations about what he could afford and about not wanting interest to be charged any more. And it appears that Capital One blocked the card on 7 September 2018 which aligns with this.

By 6 August 2018, Mr D hadn't paid anything for three months. And he'd had several conversations with Capital One about why this was. The conversation he had on 6 August was at least the second time he told Capital One he was in financial difficulties. He suggested a repayment plan and asked for interest to be stopped. Capital One have a responsibility to treat customers in financial difficulties with forbearance and consideration. Although not mandatory, this would usually include suspending interest and charges. So I'm inclined to say Capital One should have stopped adding any interest or charges to Mr D's account after this date.

Capital One continued to have conversations with Mr D approximately once a month. Each time, payment plans were discussed and Mr D said he would pay certain amounts. But he didn't make any payments.

By November 2018, Mr D hadn't made any payments for six months. So Capital One issued a default notice, warning him that the account would default and be reported on his credit file. Mr D made no further payments and the default was registered on 31 December 2018. Mr D has complained that he shouldn't have been defaulted while he was on a repayment plan. And if a customer is meeting the terms of a repayment plan and it's more than just a token amount, I'd normally agree. However, in this case, Mr D hadn't made any payments at all, breaking the terms of each plan that was agreed. So although I appreciate Mr D will be disappointed, I'm not inclined to ask Capital One to remove the default from his credit file – it seems a fair reflection of the situation.

Putting things right

As I've explained above, I'm inclined to say Capital One should have stopped adding interest and charges to Mr D's account on 6 August 2018. I'm minded to say they should rework his account as if these charges hadn't been added. I'm aware the account has been sold on to a third party. So Capital One will need to arrange with that third party for Mr D's outstanding balance to be recalculated."

Capital One accepted my decision but Mr D didn't. Mr D remains very unhappy about the default. In his response to my decision he said he couldn't have made any payments at all, not even token payments. He said he'd told Capital One this at the time and continued to dispute the content of the Capital One system notes.

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 can understand why Mr D's so upset about the default. It's clear he was in a very difficult position during 2018. And I appreciate he doesn't agree with Capital One's notes of the phone conversations he had with them. However, I can't say it was unfair for Capital One to default Mr D's account. Regardless of what was said on the calls, Mr D didn't make any payments at all for over six months despite Capital One's efforts to set up affordable payment plans for him. Because of this, I'm satisfied it was fair for Capital One to decide to pass the debt to a collection agency and default the account – they'd done what they could to try to help Mr D.

As Capital One have accepted my decision about the refund of interest and charges and Mr D hasn't commented on this aspect, my final decision is unchanged from my provisional decision.

My final decision

As I've explained above, I'm partially upholding Mr D's complaint. Capital One (Europe) plc should rework Mr D's account removing any interest and fees charged since 5 August 2018.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 1 July 2021.

Clare King
Ombudsman