

## **The complaint**

Mr M is unhappy with the service he received from Capital One (Europe) plc surrounding financial assistance he received from Capital One when he was unable to make the monthly payments due on the account, including that Capital One ultimately defaulted his account for non-payment.

## **What happened**

Mr M had a credit account with Capital One that was well maintained. In August 2019, Mr M contacted Capital One and explained that he'd been diagnosed with cancer and was unable to work. Capital One agreed to place Mr M's account on a special arrangement for six months where Mr M wouldn't be obliged to make any payments towards the account during that period but where any due monthly payments that Mr M didn't make would be recorded as arrears and reported as missed payments to the credit reference agencies.

Mr M didn't make any payments towards his Capital One account during the six month period, and at the end of the period he contacted Capital One and explained that he was now unable to work as a result of the impact of the Covid-19 pandemic and needed further financial assistance. In response, Capital One agreed to implement a three-month payment holiday on Mr M's account under terms prescribed by the Financial Conduct Authority (FCA), which included that arrears wouldn't be reported to the credit reference agencies for the months that the payment holiday was in place.

When the three month payment holiday ended, Capital One defaulted Mr M's account as they hadn't had any update from him about his circumstances and because the account was considered as being six months in arrears as a result of the payments not being made for the six months that Mr M was in the previous arrangement that began in August 2019. Mr M wasn't happy about this, so he raised a complaint. Capital One looked at Mr M's complaint, but they didn't feel that they'd defaulted Mr M's account unfairly, and so they didn't uphold his complaint.

Mr M wasn't satisfied with Capital One's response, so he referred his complaint to this service. One of our adjudicators looked at this complaint. They felt that when the three-month FCA prescribed payment holiday had ended, that Capital One should have granted Mr M a further three-month payment holiday on the same terms, as per the FCA's continuing guidance at that time. As such, they recommended that this complaint be upheld in Mr M's favour and that Capital One should grant Mr M a backdated second payment holiday and should remove the default from his credit file. Our adjudicator also recommended that Capital One should make a payment of £150 to Mr M to compensate him for the trouble and upset he'd incurred.

Capital One didn't agree with the recommendation put forwards by our adjudicator, so the matter was escalated to an ombudsman 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.

I issued a provisional decision on this complaint on 22 February 2022 as follows:

*In April 2020, the FCA published temporary guidance regarding the provision of three-month payment holidays to eligible consumers who were experiencing difficulty meeting the payments due on their credit accounts because of financial difficulties brought about by the impact of Covid-19. The FCA guidance included that, for these three-month payment holidays only, the reporting of these payment holidays to the credit reference agencies would be suspended, so that an eligible consumer who benefited for such a payment holiday didn't have their credit file impacted by doing so.*

*Not all consumers were eligible to receive these three-month payment plans, and the FCA explained that the purpose of the guidance was to protect consumers who had been able to meet the repayments on their credit accounts without incident until that time, but who were at risk of incurring adverse reporting for missed or late payments on their credit files solely as a result of the impact of Covid-19.*

*In this instance, it seems that Mr M didn't meet the eligibility criteria such that he should have been granted one of these three-month payment holidays by Capital One. And I say this because at the time he was granted the three-month payment holiday, Capital One already considered Mr M's account to be six months in arrears as a result of Mr M not making any payments towards his account during the previous six-month arrangement following his being diagnosed with cancer.*

*However, in its temporary guidance published in April 2020, the FCA also explained that consumers who didn't meet the eligibility criteria for the three-month payment holidays – such as those like Mr M, who were already in arrears on their account, and who had therefore already incurred adverse reporting on their credit files – should still be offered financial assistance by credit providers if they requested it and if it was appropriate, but that this assistance should be tailored to the individual circumstances of those consumers and shouldn't benefit from the suspension of credit file reporting that the FCA prescribed three month payment holidays benefited from.*

*This means that when Mr M approached Capital One in April 2020, rather than granting Mr M the three-month payment holiday that he didn't meet the eligibility criteria for, Capital One should have considered what alternative forms of financial assistance, if any, might be beneficial to Mr M at that time, with the understanding that any continuing financial assistance would be reported as such to the credit reference agencies.*

*It also must be noted that credit providers such as Capital One have an obligation to ensure that customers like Mr M don't continue to fall further and further into arrears. And in consideration of that point, it can be the case that the most appropriate course of action for a credit provider to take when a customer remains in financial difficulty following a period of financial assistance, and where that customer's account has already fallen into a position of being in significant arrears, is to default the account, which stops further interest or charges accruing and prevents the account holder falling further into debt.*

*In his correspondence with this service, Mr M has confirmed that his financial position*

*remained strained up to and including November 2020, which is 15 months from August 2019, which was when Mr M first explained to Capital One that he was struggling to meet the payments required on his account.*

*Importantly, Capital One wouldn't be expected to have allowed Mr M's account to fall fifteen months into arrears, and they wouldn't be considered as acting responsibly if they had done so. As such, it appears to me that it was always the case, given the unfortunate sequence of circumstances that Mr M faced here, that his Capital One account was at some point going to be a position where the ongoing arrears present on the account meant that the defaulting of the account by Capital One was the responsible and reasonable thing to do.*

*Taking all of these points into consideration, I feel that when Mr M contacted Capital One in April 2020 and explained that he was struggling to meet the repayments that had become due on his account following the end of his previous six month period of financial assistance, Capital One should have made an assessment at that time of Mr M's likely capacity to make payments towards his account moving forwards and acted according to the results of that assessment, rather than apply a three-month payment holiday to Mr M's account that he wasn't eligible to receive.*

*And it's difficult not to conclude that the assessment that Capital One should have made of Mr M's capacity to make payments towards his account in the near future was that Mr M most likely wouldn't be able to make such payments, from which it follows that I feel that Capital One should, in all reasonableness, have begun the process to default Mr M's account at that time.*

*All of which means that my provisional decision here will be that I am upholding this complaint against Capital One, albeit not in the manner which Mr M was wanting.*

*My provisional instructions to Capital One are that they must amend Mr M's credit file reporting so that the default is backdated to the point where Mr M's initial six-month period of financial assistance ended in early March 2020.*

*I realise that this won't be what Mr M was wanting here, but as I hope I've been able to explain, given the difficult circumstances that Mr M faced and his inability to make payments towards his account because of these difficult circumstances, I feel that it was always going to be the case that his account was going to default for non-payment at some point. And by moving the date of default back to when it should have reasonably been first applied in early March 2020, this reduces the time that the default will impact Mr M's credit file moving forwards.*

*I also feel that by approving Mr M for a three-month payment holiday for which he wasn't eligible Capital One have caused Mr M an ongoing detriment in the form of distress and uncertainty that Mr M shouldn't have had to endure. And while I appreciate that Capital One may have acted in good faith and believed they had Mr M's best interests in mind by offering the three-month payment holiday, I do feel that Mr M should be compensated because of this. And for this reason my provisional instructions to Capital One also include that they should make a compensation payment of £300 to Mr M because of this, with the stipulation that this compensation payment can't be applied by Capital One to Mr M's outstanding Capital One account balance unless Mr M gives his permission for Capital One to do so.*

*In my provisional decision letter, I gave both Mr M and Capital One the opportunity to provide any comments or new information they might wish me to consider before I moved to*

a final decision. Capital One confirmed they had no further points to raise, while Mr M didn't respond.

As such, I see no reason not to issue a final decision upholding this complaint on the same basis as outlined in my provisional decision, and I can confirm that my final decision is that I do uphold this complaint on that basis accordingly.

### **Putting things right**

Capital One must amend Mr M's credit file reporting so that the default is backdated to the point where Mr M's initial six-month period of financial assistance ended in early March 2020.

Capital One must also make a payment of £300 to Mr M to compensate him for the trouble and upset this matter has caused. This payment may not be applied by Capital One to reduce the outstanding balance on Mr M's defaulted Capital One account unless Mr M gives his permission to Capital One for it to do so.

### **My final decision**

My final decision is that I uphold this complaint against Capital One (Europe) plc on the basis outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 20 April 2022.

Paul Cooper  
**Ombudsman**