

The complaint

Mr F complains that Capital One (Europe) plc (CapOne) marked his credit file with late payment markers.

What happened

Mr F had a credit card from CapOne. His income was affected by the pandemic and he asked CapOne for a payment holiday (PH) under the FCA's support scheme. CapOne agreed this and it ran from 16 July 2020 for three months. The PH ended on 15 October 2020. Mr F asked for a further PH on 13 November 2020. On 14 November 2020 CapOne notified Mr F that the PH had been agreed. On 16 November 2020, CapOne emailed Mr F to say the PH couldn't be agreed. Then, on 23 November 2020, CapOne advised Mr F the PH was agreed; but then on 30 November told him again that it wasn't.

On 19 December 2020, CapOne put Mr F onto a 'breathing space' arrangement – whereby no payments were required, and zero interest was charged. But – missed payments were advised to the credit reference agencies. There was no end date set. Mr F stopped making payments and missed payment markers were advised to Mr F's credit file each month between November 2020 and April 2021. On 14 April 2021, a Notice of Default was sent – which said the arrears of £617.37 had to be paid by 11 May 2021. Mr F paid off the account balance of £2,646.27 on 2 May 2021. So – a default wasn't registered.

Mr F complained. He said he should've been given a second payment holiday (PH) in November 2020 when he asked for it. He said CapOne had twice agreed to the PHs in emails to him, and then reneged on their decisions. He didn't accept CapOne's reasons for the decline – which were that more than 26 days had elapsed since the end of the first PH. He didn't want a 'breathing space' arrangement, and nor did CapOne tell him about the effects of it on his credit file. If he had been made aware of that, he wouldn't have accepted it, and would've found money from his family to make the payments. He told us that he acted irrationally and stopped making payments to his account in protest – and accepted that was the wrong thing to do. He said his credit file was now affected and he couldn't get a mortgage – which he needed to buy a house.

CapOne said that Mr F had a PH from July 2020 to October 2020. After this came to an end, Mr F asked for an extension to the PH on 13 November 2020. They said it was agreed, but then, three days later, said it wasn't. They said that due to the timeframe between his PH ending and his request to extend it, he was no longer eligible for an extension. His request for a further PH came after the due date on his account – and so he missed the November 2020 payment. The same thing happened on 23 November 2020 – when, after Mr F contacted CapOne again, they told him the PH was agreed and then said they couldn't set it up. They apologised for the miscommunications and paid compensation of £50. CapOne applied a breathing space arrangement in December 2020, but this meant that missed payments were advised to his credit file. They said the markers were an accurate record of what had happened and should remain in place.

Mr F brought his complaint to us. Our investigator said CapOne acted reasonably. She said that CapOne had advised Mr F that the PH hadn't been agreed. After they'd told him

the PHs was agreed, they had advised him that it wasn't. Mr F had then missed payments and this was reflected on his credit file.

Mr F asked that an ombudsman look at his complaint.

I then reached a provisional decision where I said:

I don't agree with our investigator and I will explain why. During our investigation, CapOne agreed to remove the first missed payment marker (November 2020), but I think they should do more than that.

I can see that Mr F had a payment holiday (PH) for the three months from July 2020 to 15 October 2020.

In April 2020, The Financial Conduct Authority (FCA) announced guidance to lenders in response to the effects on customers of the COVID-19 pandemic. All lenders, including CapOne, had to put in place 'payment holidays' on many credit agreements, including credit cards – to help customers who were affected. Customers could ask for a total of two payment holidays each of three months – whereby payments could be suspended. Missed payments would not be reported to credit reference agencies, although interest would still be debited to the accounts. This support was provided by firms up to the end of October 2020.

The intention was to provide short term support – usually in cases where customers would be returning to work within a short period of time. And so – where a customer's situation was that they were in longer term difficulty, then payment holidays under this scheme weren't normally agreed; for example, where the customer was already in arrears before the pandemic.

In November 2020, The FCA announced that the support scheme would be extended again with effect from 25 November 2020.

When Mr F came to the end of his PH, CapOne wrote to him on 25 September 2020 to say it was about to end. The letter said *"Your payment holiday will end on 15 October 2020. This means that your terms and conditions will go back to what they were before the payment holiday. You'll need to make at least your minimum monthly payment and we'll apply interest and fees as normal. You'll see this on your next statement. Your first payment following the end of the payment holiday will be due on 12 November 2020."* And so, I accept that Mr F was told that he needed to start payments again on 12 November 2020 – and he had called CapOne for another PH on 13 November 2020 – one day later. But on the other hand, I can see on his October 2020 statement and on his November 2020 statement – that the 'minimum payments' required was shown as £0. So - it's very possible that Mr F was guided by that and wasn't aware of the need to make a payment. That would be understandable.

But – it's what happened next which is the crux of Mr F's complaint. Mr F emailed CapOne on 13 November 2020 and asked, *"can you put me back on a payment holiday"*. CapOne replied on 14 November 2020 *"Thank you for getting in touch to request a payment holiday. This has been arranged and we'll send a letter...to confirm the details. Your payment holiday gives you a 3-month break from payments. During this time, your minimum payment will show as £0 on your account."* I think that was clear – CapOne agreed the PH.

But then – CapOne wrote to Mr F on 16 November 2020 and said they'd changed their mind. They said *"We can't set up a payment holiday for you because you're either already on, or have been on, a payment holiday. Or you're on another arrangement that can't be changed."*

Mr F contacted CapOne again to find out what was going on and they emailed *"...there was already a payment holiday on your account which was exited on 15/10/2020. We can only extend the payment holiday within 26 days after the previous holiday has ended....we are unable to apply the extension..."*.

Mr F challenged CapOne again and on 23 November 2020 – CapOne again offered a PH and sent an email identical to the one sent on 14 November 2020 – confirming the PH was agreed. And then on 27 November 2020, CapOne wrote again as they had on 16 November 2020 to say they wouldn't give him a PH.

There are some aspects here which I want to comment on. Firstly, it's clear that CapOne agreed to a PH, twice - even though they then changed their decision. But it seems to me that Mr F was entitled to think his request for a PH had been agreed; or at the very least, there was confusion. And – when Mr F asked for clarification, CapOne said it was to do with a 26-day time lag since the last PH – or that he already had a PH, or that he couldn't have a second one. I don't think any of those reasons are reasonable. I've not seen anything in the FCA's guidance which says that a time lag is a factor in agreeing (or not agreeing) to a PH. And – Mr F didn't already have a PH. And – the FCA guidance says that customers could have a total of two PHs (for six months) – and so that wasn't a reason for the decline either.

We asked CapOne for clarification about the 26-day time lag and the reasons for decline – and unfortunately they couldn't give any more clarity. The intention of the FCA's support scheme was that if a customer's income was affected by Covid-19, then they should have been given a PH – which seems to be the case here. Mr F didn't appear to be in long term financial difficulty, or in arrears before the first PH – which would've been reasons for not agreeing to a PH. And – CapOne haven't come forward with that argument.

And so – I think it's reasonable that CapOne remove the missed payment markers for the months of November 2020, December 2020 and January 2021 – as if Mr F had been given the PH as he had thought he had, and which CapOne should've given in the context of the FCA's guidance.

I then looked at the 'breathing space' that CapOne put in place. Mr F says he wasn't aware of the missed payment on his credit file. CapOne's letter dated 19 December 2020 said: *"We won't report your breathing space to credit reference agencies, but this won't change how we report things like late payments"*. Ideally, the letter might have been more specific about missed payments but on balance, I think CapOne did say to Mr F that his credit file would be affected.

Mr F has said that he decided to stop payments to his CapOne account in protest of what happened. And he said that to CapOne also. I don't think our service can take a position of asking a firm to remove markers from someone's credit file in those circumstances. And therefore – I don't think it would be fair and reasonable of me to ask CapOne to remove the missed payment markers after January 2021 – as they were of Mr F's own making.

I can appreciate the extent of Mr F's frustration and anxiety at what happened – he says he hasn't been able to get a mortgage as a result of the markers, and I can see he made many challenges and requests to CapOne, but I couldn't see that at any stage they engaged with Mr F to explain their decision – they only said that the decision was what it

was. And so, for the distress and inconvenience caused – they should pay compensation of £200.

I accept that this provisional decision will only remove three of the missed payment markers from Mr F's credit file – whereas there are six. I can't predict how prospective lenders will view what remains on his credit record, but this provisional decision does propose that half of the markers are removed. And I think that on balance, that is the most reasonable outcome in the circumstances of his complaint.

Responses to the provisional decision:

CapOne accepted the provisional decision, but Mr F didn't. He said:

- He understood our position regarding the last three missed payments – but his action was taken in sheer desperation about the service he got from CapOne.
- He said he should get more compensation – for the stress the situation caused. The impact on his credit rating has affected all aspects of his life, such as getting a mortgage and on his job.

I now need 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 have considered the further points Mr F has made.

But I think that the main impact on him has been caused by the markers on his credit file – and it was his action that caused half of those. And as I've explained, I don't think it's fair for me to ask CapOne to remove all the markers.

On the matter of compensation – for the same reason, it's not fair to try to compensate Mr F for the affect on his credit file – as he contributed to the markers. We award compensation for stress and inconvenience – in this case, the poor communications from CapOne, and because Mr F needed to contact CapOne a number of times to try to sort things out. And in the context of his complaint, the amount of £200 is the right amount that our service would normally award for what happened.

And so, while I accept Mr F will be disappointed, I'm not going to vary from the provisional decision.

(continued)

My final decision

I uphold this complaint. Capital One (Europe) plc must:

- Remove the missed payment markers from Mr F's credit file for November 2020, December 2020, and January 2021.
- Pay compensation of £200 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or

reject my decision before 16 September 2022.

Martin Lord
Ombudsman