

The complaint

Mr B says Capital One (Europe) plc unfairly defaulted his credit card account.

What happened

Capital One registered a default on Mr B's account on 31 January 2022 as no payments had been made since 6 June 2021.

Mr B says he asked for 'breathing space' on his account in September 2021, Capital One agreed but he says he was not told when it would end, nor that his account was still at risk of being defaulted. Mr B says Capital One did not do enough to make him aware of the situation before registering the default. It knows he does not live primarily in the UK yet it sent the notices to a UK address, and not even the right one.

Mr B wants the default removing and compensation for the distress and inconvenience caused. He says it is causing him substantial issues, impacting his ability to get credit elsewhere.

Capital One says it cannot remove the default as it must report how he managed his account accurately to the credit reference agencies. It applied 'breathing space', stopping all interest and charges to assist Mr B, after he told it he was struggling to make his repayments. The call recording from this date is not available so it is not known if Mr B was told his account could still default, but it sent an email on 13 September 2021 that confirmed this. It sent a default notice to Mr B on 4 December 2021 and confirmation the account had defaulted on 30 December 2021. It said it has used the address Mr B provided at the time of application and that he had not wanted it to be updated when he spoke to Capital One on 14 February 2022.

Our investigator did not uphold Mr B's complaint. He found Capital One had fairly defaulted the account. He said Capital One had sent the required notices in advance and followed the industry guidelines for defaulting accounts. He said Mr B had not requested for mail not to be sent to his UK address. And the address was the one Capital One had used over the years without any issues, it was confirmed as 'technically' correct by Mr B in February 2022 and he had declined to update it.

Unhappy with this assessment Mr B asked for an ombudsman's review. He said the investigation showed bias. All of his communication with Capital One since 2013 has been via phone or secure messaging. The 'breathing space' email was worded in a very subjective way and no default notice was sent by email. He asks why he did not receive the default notice in January 2022 – as if he had, why would he not have made a payment to avoid the long-term detrimental impact of a default? He says there is no proof of delivery. And the fact he did not update his address in February is not relevant as that was after this event. Overall, it is not reasonable to conclude he should have been expected to receive his default notice by post.

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.

Where the evidence is incomplete (as some of it is here) I have reached my decision based on the balance of probabilities. In other words, based on what I think is most likely given the available evidence and the wider circumstances.

I am not upholding Mr B's complaint. I will explain why, but first want to address his point that we are siding with Capital One and showing bias. We are an independent and impartial organisation and we do not act on behalf of banks or consumers - it is not in our interest to find in favour of one party over the other.

I have not found evidence of errors on the part of Capital One in this case. Given the number of missed payments it was reasonable for it to start the default process when it did. It had responded fairly when Mr B was struggling, putting a hold on interest and charges. And I find it was fair to send the regulatory notices by post to the address it held for Mr B. I accept that they may not have reached Mr B but as the bank has evidenced they were sent, I cannot fairly hold it liable for the non-receipt. It issued the default notice to Mr B by post as it does for all such regulatory notices.

I disagree with Mr B's point that it was not reasonable to use the post. He had not made a request that mail was no longer used and had opted in to post when he opened the account. I disagree that knowing Mr B lived overseas was a reason not to use the post – Capital One had used mail successfully during the life of the account for things like issuing replacement cards. Mr B argues it is not relevant that he did not want to update the address in February 2022. But I think it is as that in effect confirms he was still happy his correspondence could be sent to that same address that the default notice was sent to.

Unfortunately the call recording from the discussion about breathing space is not available for me to listen to so I cannot know what Mr B was told. But I think the follow up email is clear that his account could still default. It said *'We'll still send you important messages, including if you are at risk of being defaulted or permanently using the use of your card. If you receive any of these, they still apply.'*

So, on balance, I am satisfied Capital One met its regulatory obligations and took reasonable steps to notified Mr B of its intent to default his account. And the default was an accurate reflection of how he had managed the account.

Overall I have found no failings on the part of Capital One. It follows I am not instructing it to remove the default and I am not awarding any compensation to Mr B.

My final decision

I am not upholding Mr B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 13 February 2023.

Rebecca Connelley
Ombudsman