

The complaint

Ms Q complains Capital One (Europe) plc unfairly registered defaults on her credit file.

What happened

Ms Q holds two credit cards with Capital One which were approved in 2016 and 2017. During the COVID-19 pandemic Capital One agreed to a number of payment holidays on Ms Q's accounts. In August 2021 Ms Q asked Capital One for some further assistance due to her financial situation. Ms Q says Capital One agreed to give her some breathing space following this request; but then defaulted her accounts in February 2022.

Ms Q complained to Capital One in August 2022 when she became aware of the defaults. She said she was told she didn't need to make payments to her accounts while she was in the period of breathing space; and that her credit file wouldn't be adversely affect. She said the defaults were unfairly applied and they should be removed from her credit file.

Capital One issued two final responses in August 2022. Its latest response said there hadn't been an error in defaulting the accounts; or registering the defaults with credit reference agencies. But it said it could have provided information during a phone call in December 2021 about the default process; and it acknowledged its initial complaint handling and final response hadn't covered all of Ms Q's concerns about both credit card accounts. It paid Ms Q £50 compensation for these failings.

Ms Q didn't accept Capital One's findings and referred her complaint to our service.

Our investigator reviewed the details and didn't uphold the complaint. He said, based on the evidence he had, he considered Capital One had reasonably made Ms Q aware that her accounts would be defaulted if she didn't maintain her repayments. So, he didn't agree that Capital One had made an error.

Ms Q didn't agree. In summary, she maintained her position that she had been told she didn't need to make payments while she was in a period of breathing space; and that her credit file wouldn't be adversely impacted. She also said Capital One has admitted to making mistakes which is why it upheld her complaint in part.

Ms Q asked for an ombudsman's review, so the complaint has been passed to me to decide.

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.

Having done so I've reached the same conclusion as our investigator, for broadly the same reasons. I appreciate this will be disappointing to Ms Q.

Ms Q has said she told Capital One in August 2021 that she was in financial difficulties, and it agreed to give her a period of breathing space. She says she was led to believe she didn't

need to maintain monthly payments during this time and that her credit file wouldn't be adversely affected.

While I don't doubt Ms Q's recollections of the events, Capital One has provided our service with documentary evidence from the time. This includes a copy of the phone call from August 2021 and the correspondence it sent in the lead up to the default being registered.

During the call Capital One told Ms Q that it could agree to give her a period of breathing space as she'd said she wasn't working and would struggle to maintain her repayments. The representative explained that the breathing space would stop interest and fees being added to the accounts; and stop collection phone calls and correspondence. They went on to say that the breathing space wouldn't be reported to credit reference agencies; but any missed payments would be reported. The representative said if Ms Q made no payments consecutively across the months, then the account could be restricted or defaulted; but Ms Q would be given notice of this before it happened.

I've seen the emails sent to Ms Q in August 2021 following the phone call. They confirm that while Ms Q was being given a period of breathing space and interest, fees and collections activities would be suppressed; minimum payments would still be due, and Ms Q should pay what is affordable to her. The emails also confirmed that important messages would still be sent, including the risk of the accounts being defaulted; and that if these were received during the period of breathing space they do still apply. And, while the period of breathing space wouldn't be reported to credit reference agencies, the email confirms other activities, like late payments, would still be reported.

Capital One then sent Notice of Sums in Arrears letters in September and November 2021, and January 2022 explaining that Ms Q had missed payments and her accounts were now in arrears. These letters requested Ms Q contact it and look to bring her accounts back in line.

Finally, in January 2022, Capital One sent Notice of Default letters, giving Ms Q 28 days' notice of its intention to default the accounts, providing her with time to discuss the matter with it and look to bring the accounts back in line.

Ms Q has said she didn't receive the letters Capital One has provided this service; and she's referenced possible postal issues due to the COVID-19 pandemic. Again, while I don't doubt Ms Q's testimony here, my role is to consider if Capital One reasonably made Ms Q aware of the arrears and that non-payment during the period of breathing space would lead to the accounts being defaulted.

The letters are all correctly addressed to Ms Q at the address she currently resides at. Capital One has provided no information to suggest the letters were returned undeliverable. Ms Q has said she had some issues with her post but hasn't provided any evidence of this. And I'm aware she received the Notice of Sums in Arrears letters sent in November 2021 as she contacted Capital One in December 2021 after receiving them.

So, I'm satisfied, on balance, that the letters were sent and Capital One took reasonable steps in line with its regulatory obligations to make Ms Q aware of the arrears on her accounts; and that it intended to default them within 28 days of the Notice of Default letters sent in January 2022, unless she brought the accounts up to date.

I note that Capital One has already made a payment of £50 to Ms Q to reflect failings it has identified within its complaint handling process, and information it could have provided during a phone call in December 2021. Having reviewed Capital One's amount of compensation, I consider the £50 already paid to Ms Q to be fair and reasonable in compensating her for the distress and inconvenience of its failings.

I say this because I think Capital One's initial handling and response to Ms Q's complaint was missing details which didn't address her concerns in full; and it didn't follow up on a promise of a call back. But, it did go on to issue a further final response within a relatively short period of time, minimising any potential impact on Ms Q.

While I agree Capital One could have made Ms Q aware during a phone call in December 2021 that the accounts could be defaulted if she failed to make payments, I have to acknowledge that it had already provided Ms Q with this information on multiple occasions; during the phone call in August 2021, the follow up emails in August 2021, and the Notice of Sums in Arrears letters sent in September and November 2021. So, I consider Ms Q was already reasonably on notice of this potential action if she failed to make payments to the accounts. And Capital One went on to issue further Notice of Sums in Arrears letters in January 2022 as well as the Notice of Default letters in January 2022, providing further confirmation of the process.

Taking all the above into account, I don't consider Capital One made an error in defaulting the accounts or registering the defaults with credit reference agencies; and I consider its payment of £50 fairly reflects the failings in its complaint handling. It therefore follows I'm not recommending Capital One needs to take any further action in resolution of this complaint.

My final decision

Capital One (Europe) plc has already made an offer and paid £50 to settle this complaint and I think this offer is fair in all the circumstances. As such, Capital one (Europe) plc doesn't need to do anything further in resolution of Ms Q's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms Q to accept or reject my decision before 17 February 2023.

Richard Turner
Ombudsman