

The complaint

Mr G complains that Capital One (Europe) plc has unfairly reported late/missed payments and a default for a credit card account he held with it to the credit reference agencies. He asks for the adverse information to be removed.

What happened

In June 2020 Mr G opened a credit card account with Capital One. The credit card had a limit of £500.

Due to the impact of the Covid-19 pandemic Mr G experienced financial difficulties and lost his employment. He was also for a period of time abroad and unable to travel.

Mr G was provided with a payment holiday by Capital One for this account but when this ended he was still experiencing financial difficulties. Following contact from Mr G, Capital One applied a breathing space to this account in February 2021 for 30 days.

Mr G contacted a third-party debt charity to assist him. He also says that during a phone call with Capital One in or around April 2021, it was agreed that he would make a monthly payment of £5.00 towards the outstanding balance. Mr G says that the agent informed him that as long as he made these payments his credit card account wouldn't be defaulted, and no adverse information would be reported to the credit reference agencies.

Capital One wrote to the third-party debt charity in April 2021 (having Mr G's authority to do so). This letter confirmed that fees and charges would be stopped for this account for a period of 60 days. It also stated that Capital One would continue to write to Mr G with important communications such as if any restrictions were to be applied to the credit card or a default notice was issued.

Mr G made the £5.00pm payments to his account. However, these payments were below the contractual monthly minimum amount due on the balance.

In June 2021 Capital One wrote to Mr G to inform him the credit card had been suspended. In July 2021 it wrote and said the card had now been permanently restricted. And in August 2021, Capital One sent Mr G a sums in arrears notice letter followed by a default notice advising him that the arrears should be cleared by September or the account would be defaulted. In September 2021 Capital One defaulted the account.

In August 2023 Mr G cleared the balance that had been outstanding on the account. But he was unhappy about the adverse information that Capital One had reported on his credit file and made a complaint to it. Mr G said he had been told the account wouldn't be defaulted if he made payments and asked for a copy of that call to be provided.

Capital One sent Mr G its final response letter. It said Mr G had made an earlier complaint to it in July 2021 about adverse information being reported for this account and it had sent him a final response letter later that month by email. Capital One said that during the phone calls with Mr G about his new complaint, it had said it would respond by sending him the

post final response and add in the new points he had raised for this complaint but then hadn't done so.

Capital One also said that due to the amount of time that had passed since Mr G had spoken with its agent (in or around April 2021) regarding the £5.00pm payments, it wasn't now able to locate that call as recordings were only kept for two years.

Capital One said it wasn't able to see what had been explained to Mr G about credit file reporting and missed payments. But as this wasn't Mr G's fault, it would treat that as a system failure on its part. It offered Mr G £75 compensation for these service failures.

In regard to the default, Capital One said it had followed the correct processes and had sent Mr G, over various months, a number of letters about the missed payments and their impact on his credit card account.

In regard to the adverse information recorded on Mr G's credit file, Capital One said that it had an obligation to ensure correct information was reported to the credit reference agencies as to how a consumer managed their account. It said that as Mr G's payments weren't for the minimum contractual monthly amount it had correctly reported missed payments. Capital One said that it considered it had supported Mr G in the best way it could.

Mr G was unhappy at Capital One's response and complained to this service. He said Capital One had informed him if he paid the £5.00pm then his account wouldn't be defaulted, and no missed or late payment markers would be reported. He queried why the call couldn't be located.

Our investigator didn't recommend that Mr G's complaint should be upheld. He acknowledged that a copy of the phone call no longer existed but said the case notes hadn't stated that a default wouldn't be applied. He said Capital One had written to Mr G several times as well as writing to the third-party debt charity setting out that the account was in arrears and could be defaulted if arrears weren't cleared. Our investigator said the credit card agreement also set out that the account could be defaulted if payments were missing or late. He said he didn't think Capital One had acted unfairly in defaulting the account.

Our investigator also said that Capital One was responsible for ensuring accurate information was reported to the credit reference agencies which it had done. He said he wouldn't ask Capital One to remove any adverse information from Mr G's credit file about this account.

Mr G disagreed with the view of our investigator. He said the investigator's decision didn't address that there was no recording of the phone call, and he believed evidence was being withheld by Capital One. He said that as he had been abroad, he hadn't received any of the letters sent by Capital One and had paid the £5.00 each month as agreed and then cleared the balance as soon as he had been able. He said the reporting of the default and missed payments was unfair.

As the parties have been unable to reach an agreement then the complaint has been passed to me.

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.

When reaching a decision where evidence is missing or contradictory then I must decide

what I think is the most likely thing to have happened. Here Mr G is very concerned that Capital One hasn't produced a copy of the call between himself and the agent that took place in or around April 2021. Mr G says that during that call the payment rate of £5.00pm was agreed and he was given assurances that as long as he made payments no action would be taken by Capital One in respect of the account. That is, there would be no late or missing payment markers reported to the credit reference agencies and the account wouldn't be defaulted.

While I appreciate Mr G's frustration this call can't be produced, I don't agree that this is because Capital One is hiding anything. It isn't unusual for call recordings to be kept for a limited period by businesses before they are then destroyed. And I don't think that two years is an unreasonable period to retain them. So, I don't think there is anything suspicious in Capital One not now being able to supply this call.

Mr G says that Capital One's payment of £75.00 as compensation is an admission it did something wrong. But I've seen from the final response letter that it treated the missing recording as a system failure because, although it had been destroyed in line with its processes, this wasn't Mr G's fault. I think this was a reasonable stance to take. I've also seen that this compensation was because it hadn't responded to Mr G's complaint in the way it had originally said it would. Capital One's final response letter hadn't used the original final response letter sent in July 2021 and added the points raised in Mr G's new complaint.

I've looked at the notes that have been compiled by Capital One regarding its contact with Mr G. I can see that it provided him with a holiday payment in the summer of 2020 as well as a further breathing space in February 2021. It also didn't apply any charges or fees on the account for 60 days in April 2021 when the third-party debt charity was involved. So, I think Capital One was sympathetic to the position Mr G had found himself in during the pandemic.

Mr G also says that as he was stuck abroad, he didn't get any of the letters and notices sent by Capital One. But looking at the contact notes, although Mr G told Capital One he was abroad, he also said he was planning to return. And I can't see that at any point he told it there would be or were difficulties with his receiving letters/notices. As there appears to have been contact between Mr G and Capital One via the phone on a number of occasions, I can't reasonably say Capital One should have been aware Mr G may not have access to anything sent to his registered address.

I've seen that Capital One sent Mr G a number of letters and notices about the account and the growing arrears. I've seen he was warned about the missing payments could lead to the card being terminated and that the missing payments meant there was a risk of the account being defaulted. I've also seen Capital One wrote to the third-party debt charity in respect of Mr G in April 2021 setting out that although they were involved it would still write to Mr G with important messages including about the risk of a default and of not being able to use the credit card.

Looking at all the letters and notices together with the agreement's terms in regard to missed payments, I think it's more likely than not that Mr G wasn't advised that if he made payments of £5.00pm that his account wouldn't be defaulted, and that no adverse information would be reported. This is because that amount was less than the contractual minimum payment and so would be treated as missed payments each month. And it's clear that if payments are missed and arrears build up, then Capital One is entitled to default the account.

I'm satisfied that Capital One followed the correct processes and that it did support Mr G where it was able when his financial circumstances changed. I can't reasonably say that treating the payments as missing or defaulting the account when it did was acting unfairly.

I appreciate Mr G's concern about the adverse information reported on his credit file, in particular a default, which will have an impact on other credit applications he may wish to make in the future. But Capital One is obliged to report information accurately and fairly to the credit reference agencies as to how a consumer has managed their account. And as set out above, I think Capital One's decision to default the account wasn't unfair. I also think it was entitled to treat the monthly payments as missing due to the amount Mr G was actually paying. I therefore can't reasonably say that the adverse information reported by Capital One should be removed in these circumstances. The information is an accurate reflection of how Mr G managed this account.

So, although I'm sorry to disappoint Mr G, for the reasons set out above, I'm not upholding his complaint and I'm not asking Capital One to remove any information about this account from his credit file.

My final decision

For the reasons set out above, I'm not upholding Mr G's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 18 March 2024.

Jocelyn Griffith
Ombudsman