

The complaint

Mr B complains that Capital One (Europe) plc unfairly defaulted his credit card and recorded this on his credit file. He says he wasn't notified of it, and it should be removed from his credit file.

What happened

Mr B was unable to make the minimum monthly payments on his credit card. So, Capital One agreed a breathing space which consisted of monthly payments of £50 with no interest or fees.

Mr B says that after receiving monthly emails reminding him that he was in a breathing space period, he was shocked to receive notification on his banking APP that his account had defaulted.

Mr B feels he hasn't been treated fairly by Capital One. This is because, despite him not informing Capital One he was no longer at the address he registered with them, they didn't use other communication methods, such as email or phone, to warn him of their default actions. Yet, they were sending him emails about the breathing space. Also, he feels the breathing space emails he received, before and after the default action, gave conflicting information telling him '*Everything is ok*'.

Mr B brought his complaint to our service, but our investigator didn't think Capital One had done anything wrong.

As Mr B remains dissatisfied, his complaint has been referred to me to look at.

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'm not upholding his complaint and I'll explain why. I'll focus on what I think are the important points to reach a final decision. But I've carefully considered all the points Mr B has made, even though I don't specifically address them all.

It's clear that Mr B didn't inform Capital One that he changed address shortly after opening his credit card account and, had he done so, he would've received their default action letters and possibly avoided the default.

Mr B relies on email and appears not to have received Capital One's Credit Card Agreement (CCA) document. However, file information shows that he has seen and agreed this document.

With regard to communications:

- The CCA says:
 - Capital One will send electronic communications '*where we can*' and '*where*

- *permitted*.
 - *'If we send communications to an address, we will send these to the most recent address we hold'*.
 - If you change address *'tell us right away'*.
 - Default notices are *'served'*.
- The first breathing space email says:
 - *'We won't call you, but we are always here if you need to speak to us'*. And this was also mentioned over the phone when it was agreed.

Mr B entered into a contract with Capital One and the Consumer Credit Act is applicable. Default letters are formal regulatory letters that are required to be sent by post and *'served'*.

So, I can't see that Capital One did anything wrong by not calling Mr B, but instead communicating to him about their formal default action in writing to the address they believed he lived at.

Also, the CCA says:

- *'You need to pay us at least the minimum monthly payment'*.

And when Mr B explained his financial predicament and a longer *'on-going breathing space'* was clearly required, the Capital One representative warned him there was a risk that on-going non-payment of the contractually required minimum balance could lead to a default.

I recognise that, without receiving the default action letters, Mr B's interpretation of the standard breathing space emails was that *'everything is ok'* but, considering the following points, I think he should've been aware there was a risk that continuous non-payment of the minimum balance would lead to default action:

- In the call Mr B had when he set up the *'on-going breathing space'*:
 - He required a breathing space for *'3 months or so'* whilst he awaited a bonus payment.
 - The Capital One representative indicated 3 to 4 missed payments would likely result in the card being permanently restricted and 5 to 6 missed payments would likely result in the account defaulting. Also, she said, *'Your account will eventually default because it is lower than the minimum payment'*.
- Payments for less than the minimum payment exceeded the above indication
- The breathing space emails included the following messages:
 - *'Your statement will still refer to paying minimum payments. Please continue to pay what is affordable to you'*.
 - *'It's important that you contact us if your situation changes'*.
 - *'We'll still send you important messages, including if you are at risk of being defaulted or permanently losing the use of your card'*.

I understand and appreciate Mr B's argument that Capital One should've adapted the breathing space email or sent emails, either specific or referenced, about their default action. It's clear that Capital One have a separate process for breathing space and default action.

But considering the:

- CCA.
- Importance of customers keeping their address details up to date.
- Above verbal communication that took place.
- Formal nature of default action.

I don't think it was unreasonable or unfair for Capital One to consider that their default letters, which I have seen evidence of being sent, were received by Mr B.

Whilst I appreciate Mr B will be disappointed, having considered the above and all the information on file, I'm not upholding his complaint against Capital One (Europe) plc.

My final decision

My final decision is that I'm not upholding this complaint against Capital One (Europe) plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 22 May 2024.

Paul Douglas
Ombudsman