

The complaint

Mrs W is complaining about Capital One (Europe) plc because it reported to the credit reference agencies (CRAs) that she'd been missing payments on her account when she thought she'd set up a payment plan.

What happened

Mrs W has a credit card account with Capital One. At the start of this year, she contacted it to say she was in financial difficulty. Her outstanding balance at the time was around £2,800 and there were some arrears on the account from previous months.

During the call on 5 January, Capital One's agent went through Mrs W's income and expenditure and she confirmed could afford to make payments of £70 per month at most. This wasn't enough to set up a formal payment plan. But Capital One did apply '*breathing space*', meaning it stopped applying interest and fees. Breathing space isn't reported to the CRAs, but late payments were reported because Mrs W was making payments below the minimum amount and no formal payment plan had been set up.

I understand Mrs W agreed a formal payment plan with a higher payment in June. Since then, Capital One has stopped reporting late payments to the CRAs, instead reporting that the account is subject to a payment arrangement.

Our investigator didn't recommend the complaint be upheld. She felt Capital One had offered appropriate forbearance and noted that Capital One is required to report accurately to the CRAs.

Mrs W didn't accept the investigator's assessment. She says she was paying what she could afford and shouldn't be penalised for that. She also said breathing space had been applied to her account previously and this hadn't been reported to the CRAs.

The complaint has now been referred to me for review.

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 overall conclusions as the investigator and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and what I consider was good industry practice at the time.

When Capital One agreed to apply breathing space, this simply meant it stopped applying interest and charges. As confirmed during the call on 5 January and the follow-up letter dated 6 January, breathing space wasn't reported to the CRAs. But it's important to understand that breathing space is not a formal payment plan.

During the call, following a review of her income and expenditure, it was established that Mrs W could afford to pay a maximum of £70 per month. To be able to set up a formal payment plan, she would have needed to pay an amount that was sufficient to cover the minimum payment (3% of the outstanding balance) plus an additional amount that would reduce the arrears over a reasonable period of time. So the amount Mrs W could afford to pay was some way short of the amount needed to establish a payment plan.

Because no payment plan had been set up and Mrs W was paying less than the minimum amount, Capital One was correct to report late payments to the CRAs rather than reporting that the account was in a payment arrangement. As our investigator pointed out, it has a responsibility to report accurately.

After listening to a recording of the call, Capital One's agent was clear that breathing space wouldn't be reported to the CRAs but late payments would. The agent was less clear that the £70 Mrs W had agreed to pay didn't constitute a formal payment plan but this was clarified in the follow-up letter, which said:

Based on what we know about your situation, we were not able to set up a formal payment plan, but any payments you can afford to make will help to reduce the amount you owe.

The letter also confirmed that late payments would be reported to the CRAs.

I appreciate the mechanics of the different forbearance options aren't straightforward and it's unfortunate if Mrs W believed she'd set up a formal payment plan and this is what would be reported to the CRAs. But ultimately it was established the amount she could pay wasn't enough to establish a payment plan, so I don't think her position would have been any different if Capital One had explained things differently.

Because of the payments she made from January and the fact no interest was being applied under breathing space, Mrs W was able to reduce the balance (and therefore the minimum payment) to an amount where a payment plan became possible. Albeit she also had to find an additional amount above the £70 she could afford in January. Since this payment plan was agreed, Capital One says it's been reporting to the CRAs that the account is in a payment arrangement, instead of reporting late payments, and I'm satisfied that's the correct approach.

Mrs W has referred to an earlier occasion where breathing space was applied to her account without affecting her credit file. As I've said above and Capital One confirmed in January, breathing space itself isn't reported to the CRAs. But late payments and payment arrangements are reported. On this occasion, late payments were correctly reported because Miss W wasn't making the minimum payment or reducing her arrears. I can only assume this wasn't the case when breathing space was applied previously. But either way, what happened before doesn't change my view that Capital One has handled the most recent situation appropriately.

It's for these reasons that I'm not upholding Mrs W's complaint. I realise this outcome will be disappointing for her, but I'm satisfied it's fair and reasonable in the circumstances.

My final decision

For the reasons I've explained, I'm not upholding this complaint.

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

reject my decision before 19 September 2024.

James Biles
Ombudsman