

The complaint

Ms S complains that Capital One (Europe) plc didn't properly inform her of the implications of a period of "breathing space" that was agreed on her account and how it would affect her credit file. She also complains about letters that it's sent to her about her account being suspended.

What happened

Ms S has a credit card account with Capital One that was opened in February 2011. She phoned Capital One in October 2023 because her account was over its credit limit. A period of "breathing space" was agreed on her account but Ms S then received notices of sums in arrears and other letters from Capital One about suspending her account. She complained to Capital One in March 2024. It responded to Ms S in April 2024 and described what had happened but it said that it was unable to uphold her complaint.

Ms S wasn't satisfied with its response so complained to this service. Her complaint was looked at by one of this service's investigators who, having considered everything, didn't think that it should be upheld. Ms S asked the investigator to listen to her calls with Capital One so she obtained and listened to those calls but said that they hadn't changed her thoughts on the outcome of the complaint.

Ms S didn't agree with the investigator's recommendation and asked for her complaint to be considered by an ombudsman. She's phoned and e-mailed this service and says that she had no idea that she'd receive threatening letters from Capital One, it miscommunicated with her, she wasn't fully informed and, if she had been properly informed, she'd have chosen to make reduced payments.

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.

Ms S phoned Capital One in October 2023 because her credit card account was over its limit. I've listened to a recording of that phone call. Ms S asked for interest of £67.56 to be removed from her account and she was put through to a complaints manager and then to a specialist team. Ms S described her health issues and said that she was having to pay people to do things that she'd normally do herself. The specialist team said that it could put in place a period of breathing space or a payment plan. The breathing space option was discussed at length. Capital One said: it freezes the account and stops interest, fees and calls; would affect Ms S's credit score as any payments below the contractual minimum would be recorded as missed payments; regulatory letters would be sent but there would be no demands for payments; and Ms S would be unable to use the card. Capital One also referred to actions that could be taken including restrictions and defaults but said that it would write to her about any of them. Ms S asked for a period of breathing space and Capital One agreed to it.

Capital One sent two letters to Ms S the following day. One included an income and

expenditure form which had been discussed during the call as Ms S didn't want to provide that information during the call. The other said:

"We know you're having difficulty keeping up with payments to your account. We've stopped charging interest and fees and we've stopped calling you. If you can afford to make any payments, this will help to reduce your balance. If your situation has changed, or you're now working with a new independent debt advice organisation, please let us know. You will still receive important messages. This includes if you are at risk of being defaulted or permanently losing the use of your card. If you receive any of these, they will still apply".

The letter also included information about independent organisations that offer free, confidential advice to help people to manage their money. Capital One has provided a statement for Ms S account for the period from February 2011 to April 2024. It shows that: the minimum payment required on her October 2023 statement was £152.05 and she paid £153; the minimum payment required on her November 2023 statement was £79.90 and she made no payment; and the minimum payment required on her December 2023 statement was £159.80 and she again made no payment. Ms S's account was then two months in arrears so Capital One sent her a notice of sums in arrears letter in January 2024. It said:

"This notice, a Notice of Sums in Arrears, is designed to let you know that your account isn't up to date. We issue Notice of Sums in Arrears in line with the Consumer Credit Act 1974 when you have missed or failed to pay in full the last 2 contractual minimum payments on your Capital One account as required by the terms of your credit agreement.

This notice provides you with information and is not a demand for payment: we will send you other communications setting out your payment obligations. This notice shows the 2 minimum payments you have missed, any payments you have made during the period covered by the notice and how they have been applied to your account. You should continue to refer to your monthly statements for full details of the status of your account and the payments that are due.

If you've recently paid the missed payments or have arranged to pay them — thank you. If you are on a payment plan or other arrangement then this notice doesn't change your payment plan or arrangement — please just carry on as agreed with us.

There is help and support available from Capital One or independent third parties should you need it to get your account back on track. If you're struggling you can give us a call to discuss what options you have available".

Capital One also sent a letter to Ms S the day after it sent the notice of sums in arrears which contained the same information as had been sent to Ms S in October 2023. The account information also shows that the minimum payment required on Ms S's January 2024 statement was £238.82 and she made no payment (but a cashback reward of £29.30 was credited to her account) and that no payment was made in February 2024. Ms S's account was then four months in arrears so Capital One sent her a letter in March 2024 which said:

"We're writing to let you know that your card is suspended, and there's a chance you could permanently lose the use of your card. Because of your missed payments, we think there's a risk you won't be able to pay back what you owe us. We want to help you find a way to catch up. If we can't set a new payment plan up or you can't make a payment before 02 April 2024, then you risk permanently losing the use of your card. If you've already been in touch and you're catching up with missed payments, then this notice won't affect that. However, depending on the plan you're on, you

could still lose your card”; and:

Get in touch ... and we can look at what options are available to you. For example, going on a payment plan. This spreads your missed payment amount over a longer time, making things more affordable. Catch up in full with a £238.82 payment before 02 April 2024. If you can pay this, it will clear your missed payment amount and bring your account up to date. Remember, you'll have to keep making at least your minimum payment each month. To stay on track, you also need to make the minimum payment from your last statement (which will be due soon). Before you choose to do this, you should think about what's affordable to you. Instead of making a one-off payment, you might be better off setting up a payment plan. Pay £79.90 before 02 April 2024 to delay things until next month”.

Ms S clearly found that letter threatening and inconsistent with what she understood had been agreed in October 2023 so she phoned Capital One and was put through to its complaints team. I've listened to a recording of that call. Capital One then provided a detailed response to Ms S's complaint in which it apologised that she was unhappy with the wording of its letters and said that they're never meant to come across as threatening or intimidating but it has a duty of care to make her aware of any implications that can happen if payments are missed. I don't consider that it was unfair or unreasonable for Capital One to have sent the letter to Ms S in March 2024 or that it acted incorrectly in doing so.

The account information shows that Ms S made no payment in March 2024 so Capital One sent her a letter in April 2024 which contained the same information as had been sent to her in March 2024. I understand that the period of breathing space continues to be applied to Ms S's account and that she's been making payments to her account each month but for less than the minimum amount due. If Ms S would prefer to be on a payment plan, I suggest that she contacts Capital One to discuss the options that are available to her.

Capital One was required to respond to the financial difficulties that Ms S was experiencing in October 2023 promptly and sympathetically. In agreeing a period of breathing space, I consider that it was responding to her financial difficulties promptly and sympathetically. I also consider that it gave her correct information about the breathing space during the October 2023 phone call and in the letter that it sent to her the following day.

Capital One is required to report true and accurate information about Ms S's payment history to the credit reference agencies. It correctly told her that the period of breathing space would affect her credit score as any payments below the contractual minimum would be recorded as missed payments. When Ms S had missed two monthly payments, it sent her a notice of sums in arrears, as it was required to do, and it had said that regulatory letters would be sent but there would be no demands for payments. When Ms S had missed four payments it suspended her card and gave her information about the options that were available to her. It had said in October 2023 that it would write to her about any actions that were to be taken including restrictions and defaults. Ms S's use of her credit card had been stopped in October 2023 and I consider that the options that it gave to her in its March and April 2024 letters were fair and reasonable.

It's clear that Ms S feels very strongly that she hasn't been treated fairly by Capital One and she's phoned and e-mailed this service in response to the investigator's recommendation. As requested by Ms S, I've listened to a recording of that phone call but I'm not persuaded that there's enough evidence to show that Capital One has acted incorrectly in its dealings with Ms S about her account. I appreciate that this will be disappointing for Ms S, but I find that it wouldn't be fair or reasonable in these circumstances for me to require Capital One to take any action in response to her complaint.

My final decision

My decision is that I don't uphold Ms S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 30 October 2024.

Jarrold Hastings
Ombudsman