

The complaint

Mr D complains that Capital One (Europe) plc defaulted his credit card account.

What happened

In June 2019, Mr D took out a credit card account ending 8558 with Capital One. Mr D made regular monthly payments to his credit card until September 2020.

On 28 September 2020, Mr D wrote to Capital One. Mr D said his partner had been made redundant during the Covid pandemic. Mr D enclosed a form setting out his income and expenditure, which showed he had a £98 per month available for non-priority debts – he had seven creditors and could afford to repay £5 per month to this account.

On 9 October 2020, Capital One sent Mr D two letters. The first letter said it had set up a repayment plan of £5 per month for six months from 7 November 2020. The letter went on to say the plan will result in the account defaulting because Mr D could not afford to pay his contractual monthly payments.

The second letter had a default notice enclosed. The notice said Mr D had broken the terms of his agreement by entering into a long term payment plan. If Mr D wanted to cancel his plan, he should let Capital One know by 6 November 2020 and it would cancel the default notice. And if Mr D cancelled the plan, he would need to make the minimum payments required under the agreement, including any overdue amounts.

On 29 October 2020, Capital One emailed Mr D to say it was giving him a three month repayment holiday. The letter said any default notice it had sent Mr D still applies. Mr D's account went on to default in November 2020. And on 29 January, 28 April and 29 July 2021, Capital One emailed Mr D to let him know his account had been defaulted and his account could be sold to a debt collection agency.

Mr D says he didn't receive Capital One's default notice and only discovered his credit card had been defaulted sometime later. Mr D complained to Capital One in 2024, who issued its final response to the complaint on 29 July 2024. Capital One said it agreed a repayment plan but the payments would not have been enough to prevent his account from defaulting. As Capital One didn't hear back from Mr D, it defaulted his account. Capital One said it was unable to remove the default because it needs to accurately report defaults to credit reference agencies.

Unhappy with this response, Mr D referred his complaint to our service. Mr D says Capital One could have called or emailed him as the postal service was very hit and miss during the Covid pandemic. Mr D says his credit file will remain damaged for over two years, despite the debt being settled.

One of our Investigators reviewed Mr D's complaint but didn't uphold it. Our Investigator explained that the guidance set out by the Information Commissioner's Office (ICO) says that Capital One should default a customer's account when a customer is struggling to make repayments and their financial situation is unlikely to improve. Whilst Mr D told us he didn't

receive the default notice, Capital One sent the letter to the correct address and it can't be held responsible if it didn't arrive. Our Investigator noted Capital One told Mr D about the default in its emails sent in 2021.

Mr D didn't accept our Investigator's opinion. Mr D said other companies he dealt with during the pandemic didn't issue a default notice. Mr D said it was inappropriate to send important information by post during the pandemic – if Mr D had known his account would default, he would have got help from his parents to avoid it. Mr D said Capital One had not followed the regulator's guidance to contact him to discuss alternative arrangements or a payment holiday. Mr D reiterated Capital One should have contacted him by phone or email before issuing a default notice. Mr D says he had two accounts with Capital One and the other account wasn't defaulted. Finally, Mr D referred to another case that was considered separately by our Service, which he thought showed Capital One did not communicate with customers properly before defaulting an account.

Our Investigator explained that each case is reviewed on its own evidence and we would not comment on another case. Our Investigator explained she had thought about what would have happened if Mr D had received the default notice, but that there was no evidence he would have been able to pay off the debt – the evidence from the time showed Mr D could afford only £5 per month. Mr D remained unhappy, saying other creditors, including Capital One, accepted his repayment offers that were below the contractual monthly repayments, without the same consequences. So, this has come to me for a decision.

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.

I should clarify for Mr D that the Financial Ombudsman Service does not regulate or punish the businesses we cover. Only the regulator, the Financial Conduct Authority, has the power to fine a business or tell it to change the way it operates. So I cannot, for example, tell Capital One it should communicate default notices to its customers by post and email. My role here is to decide whether Capital One made an error here and, if it did, whether it needs to do anything to put things right.

Here, Mr D is unhappy Capital One recorded his account as in default when other creditors, including Capital One, accepted his reduced payments without defaulting those accounts. But I cannot comment on how creditors handled Mr D's other accounts – I can only review this credit card account and decide whether I think Capital One made an error here.

The terms and conditions of Mr D's account set out that he needs to maintain his contractual monthly payments. Here, Mr D was unable to maintain these payments. So, he was in breach of his agreement.

Capital One sent Mr D two letters on 9 October 2020, including the default notice. I think Capital One met its obligations here by agreeing a repayment plan with Mr D. As Mr D was unable to meet his contractual payments for the foreseeable future, Capital One was entitled to default his account. The guidance set out by the ICO sets out that Capital One should register a default once three to six months of arrears have accrued. It appears Capital One have defaulted Mr D's account before three months of arrears had accrued, so it may have applied a default sooner than I would have expected it to. But if I were to ask Capital One to amend the date of default to between three and six months after his last payment, the default would stay on Mr D's credit file for longer. As this wouldn't be in Mr D's interests, I've not asked Capital One to amend the date it recorded Mr D's account as in default.

I know Mr D says Capital One should have sent the default notice by email as well, given the pandemic. But Capital One wasn't obliged to send the default notice by post *and* email, so I cannot conclude it made an error here. Capital One sent Mr D two letters, and whilst I think it's unlikely both failed to arrive with Mr D, Capital One are not responsible if the letters, which were correctly addressed, did not arrive.

Mr D has also said that instead of defaulting his account, Capital One should have contacted him to discuss alternative arrangements. Mr D has referred to the regulator's guidance that set out what Capital One should do if it agreed to defer his payments. It is important to clarify that the guidance Mr D referred to did not oblige Capital One to suspend interest on Mr D's account or oblige it to accept reduced repayments without defaulting his account. The guidance Mr D has referred to sets out when it would be appropriate to offer customers a payment deferral. The guidance says an appropriate circumstance would be when there is a temporary reduction in household income. The guidance goes on to say Capital One should not agree a payment deferral if it's not in the customer's best interest. The guidance said a full payment deferral was unlikely to be appropriate where the customer would be unable to repay the deferred amounts within a reasonable time period.

Here, Mr D's partner was out of work and his income and expenditure form showed he could only repay £5 per month. Whilst Mr D expected this to be temporary, as his partner was looking for work, there was nothing to suggest Mr D's financial situation was likely to change in the foreseeable future. I also think a deferral of Mr D's payments would have been inappropriate. During a payment deferral, the minimum payments and interest due on the account would become payable at the end of the period. The minimum monthly repayment for October 2020 would have been £10.31, which is more than the £5 a month Mr D said he could afford for the foreseeable future. The minimum repayment due by 6 November 2020 would have been £18.29 if Capital One had not accepted Mr D's repayment proposal of £5 per month on 9 October 2020. Again, this is more than the £5 per month Mr D said he could afford, so I don't think the evidence suggests he could have afforded to repay these payments within a reasonable period once a deferral came to an end.

Mr D told our service that if he'd been made aware his account would default, he would have paid off his balance or borrowed money from his parents. As I've said above, Capital One met its obligations to inform Mr D of the default. And Capital One could only consider the information Mr D gave them at the time – he didn't disclose he could borrow money from family. And there is no guarantee Capital One would have accepted a different repayment arrangement if it had known that Mr D would have to rely on money given or lent by family. Instead, Mr D told Capital One he could afford a maximum of £5 per month. So, I don't think the evidence available at the time indicates there would have been a different outcome here – Mr D could not afford the contractual repayments and Capital One would have been entitled to record his account as in default once three to six months of repayments had been missed.

I know Mr D says the default is damaging his credit file, but Capital One is obliged to ensure its record on Mr D's credit file is an accurate reflection of the state of his account. This remains the case even if other creditors, including Capital One, took a different approach with Mr D's other accounts. Whilst I realise my decision is likely to disappoint Mr D, there are no grounds for me to require Capital One to remove the default from this account.

My final decision

I realise my decision will disappoint Mr D but, for the reasons explained above, I don't uphold this complaint.

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

reject my decision before 27 December 2024.

Victoria Blackwood
Ombudsman