

## **The complaint**

Miss I is complaining that Capital One (Europe) plc shouldn't have reported a default on her credit card.

## **What happened**

Miss I took out a credit card with Capital One in April 2022. In January 2024 she was struggling to make the payments required and called Capital One. Capital One allowed Miss I a breathing space arrangement and she said she could pay at least £10 a month and would pay more when she could.

On 1 August 2024, Capital One wrote to Miss I to tell her they were defaulting her account. She complained a few days later, saying that Capital One's representative had set up the breathing space arrangement without explaining to her that her account could default. She wanted the default to be removed and explained she was in some difficult circumstances and the impact the default would have.

Capital One didn't uphold Miss I's complaint. They said their representative had explained the breathing space arrangement clearly. And they said they'd sent letters warning her that she would default.

Miss I wasn't happy with Capital One's response and brought her complaint to our service. She said if she'd known that the account would be defaulted and missed payments would be reported then she wouldn't have gone ahead with the breathing space arrangement. She was very upset, saying she lives on her own in temporary accommodation and was trying to do the right thing and the default has made it much harder to try to improve her situation.

One of our investigators looked into Miss I's complaint. She said the complaint should be upheld as Capital One didn't explain the breathing space arrangement clearly enough to Miss I. She recommended compensation of £150, but said the default was an accurate representation of how the account has been managed and therefore shouldn't be removed from Miss I's credit file.

Miss I was upset that our investigator hadn't recommended the default be removed. She said it was having a huge impact on her as she's been made homeless and now can't rent privately or access credit. She asked for a decision – and the complaint's 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.

Having done so, and acknowledging it'll be hugely disappointing for Miss I, I've reached the same outcome as our investigator. I'll explain why.

I've listened to the call between Miss I and Capital One's representative in which the breathing space was arranged. The representative said they'd be able to offer support and

then went through some questions to work out the best option for Miss I. At this stage, I'd expect Capital One to complete an income and expenditure assessment (I&E) to work out what was affordable for Miss I. The Capital One representative asked Miss I about her income but she said both her self-employment income and her benefits varied each month and so the representative didn't continue with the I&E. Instead, Miss I said that £20 per month would likely be realistic.

At that point, the representative said they could offer Miss I ongoing breathing space, and explained that would mean Capital One would stop interest, fees, phone calls, and charges. He said they would report any missed payments and said the account would still be rolling towards a restriction or default if Miss I missed six payments. But, crucially, the Capital One representative didn't explain that the payments Miss I was offering to make would count as missed payments.

Capital One's representative did go on to say that there would be plans that would avoid a default, and that this would require Miss I to pay at least £62 per month. Miss I dismissed this and then said that £10 per month would actually be more sensible. She said she intended to go back to normal after a month or so. And she made it clear that she was very keen to avoid a default – saying the last thing she wanted was a marker on her credit file.

Having listened to the call, I can understand why Miss I didn't realise that missed payments would be marked against her account while she was making less than the minimum payment. I do think Capital One should have made this clearer on the initial call.

After that initial call though, I do think Capital One gave Miss I notice that her account was being marked with missed payments, and then that it would default. These were set out in the following letters, all sent to the address Miss I has told us she was at during this period:

- 29 March 2024 – this letter referred to the payments Miss I had missed and asked her to contact Capital One to discuss catching up
- 8 April 2024 – this letter was sent by email and said Miss I would still receive important messages, including if she was at risk of default or losing her card and clarified that these would still apply to her
- 29 April 2024 – this letter said Miss I was at risk of losing her card because of the level of missed payments
- 3 June 2024 – this letter said Miss I was permanently losing her card and was at risk of default in the next two months
- 29 June 2024 – this was a formal notice of default saying that Miss I's account would default unless she paid off her arrears by 7 July 2024 or got in touch with Capital One

In addition to these letters, Capital One sent Miss I three notices of sums in arrears, at the beginning of February, April and June 2024. Again, these notices suggest that Miss I's account was being marked with missed payments because she wasn't making the minimum payments.

Miss I has acknowledged that she might not have read all letters sent to her. She's explained that the address Capital One had was not where she was living and it was a "care of" address. She's told us she was (and is) going through a really difficult time and I'm sorry to hear this. But Capital One did try to contact her, and I can't say they should have expected that she wouldn't read the letters they sent. And I can't say they should have phoned Miss I – when making the breathing space arrangement Capital One explicitly said they wouldn't phone.

So, on balance, although Capital One should have done more to make the nature of the arrangement clear to Miss I on the initial call, I do think they gave Miss I adequate notice of the default.

### **Putting things right**

Miss I wants the default removed from her account – she says she wouldn't have taken the breathing space arrangement if she'd known it would default. But, as I've explained, Capital One gave Miss I plenty of notice that the account would default, and Miss I didn't take any steps to avoid this. I do understand why that was the case, but unfortunately I can't say Capital One should remove the default.

I appreciate it will be of little consolation to Miss I but I agree with our investigator that Capital One should pay Miss I £150 to compensate her for the distress caused by the unclear information they gave her.

### **My final decision**

As I've explained above, I'm upholding this complaint. Capital one (Europe) plc need to pay £150 to Miss I to settle the matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss I to accept or reject my decision before 2 January 2025.

Clare King  
**Ombudsman**