

The complaint

Mr T complains about marks added to his credit file by Capital One (Europe) plc (CapOne).

What happened

Mr T has a credit card from CapOne. In 2023, he had a limit of £200. The minimum monthly payments were around £7.70.

Mr T had a number of illnesses and was then off work for several months. The account fell into arrears and payments were missed in the second half of 2023.

He called CapOne on 14 September 2023 and the firm applied a 'breathing space'. This meant no payments needed to be made, and interest and charges were set to zero.

CapOne wrote to Mr T on 15 September 2023 – this was a letter about the breathing space.

CapOne wrote to Mr T on 14 December 2023 and 17 February 2024 – two further letters about the breathing space.

On 24 October 2023, CapOne sent to Mr T a Notice of Sums in Arrears (NOSIA). This said the arrears were £31.90.

On 17 November 2023, he made a payment of £7.56.

On 23 December 2023, CapOne sent to Mr T a Notice of Sums in Arrears (NOSIA). This said the arrears were £14.23.

On 19 January 2024, CapOne sent a Notice of Default to Mr T. This said the overdue amount of £69.91 had to be paid by 16 February 2024.

On 21 February 2024, CapOne wrote to Mr T to say the account had defaulted.

Mr T complained. He said he had tried to set up a payment plan but each time, the call handler continued with the breathing space. He was told he didn't need to pay anything rather than entering a payment plan. As a result his account has been defaulted and his credit file is affected – he says he feels duped.

He says he was in the middle of a bereavement, illnesses, and a mental health crisis. Because of all of this, he said CapOne should remove the marks from his credit file.

CapOne didn't uphold Mr T's complaint and said:

- The firm agreed to a breathing space but this meant missed payments were reported to Mr T's credit file.
- Even in a breathing space, an account falls behind with payments.
- On the call on 14 September 2023, Mr T was advised about this.

- Mr T's account was restricted and on the call on 17 November 2023, Mr T was advised that a payment of £7.56 would delay the 'restriction' for one month.
- On the call on 16 January 2024, Mr T was correctly advised the account would remain on a breathing space arrangement. On the call, Mr T was advised a default notice was to be sent.
- A default notice was sent to Mr T on 19 January 2024 and as the payment of £69.91 hadn't been paid by 16 February 2024, the account was defaulted on 20 February 2024.
- CapOne said Mr T could send a Notice of Correction to the credit reference agencies (CRAs) if he wished to explain his circumstances.
- Because one call (in November 2023) couldn't be listened to, CapOne paid compensation of £50.

Mr T brought his complaint to us. Our investigator didn't uphold it. He said a payment plan couldn't be set up as Mr T's outgoings were more than his income – so he couldn't afford a plan.

He said a default was always likely to take place given Mr T's situation. He was satisfied that CapOne explained the breathing space sufficiently to Mr T – as the firm said a default could be a possibility.

Mr T didn't agree. He asked that an ombudsman look at his complaint. He said he was suffering from poor mental and physical health and from the bereavement of a close family member. Because of this, CapOne should remove the marks from his credit file.

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.

Businesses have an obligation to treat customers in financial difficulty sympathetically and the Financial Conduct Authority (FCA) says that businesses like CapOne should treat customers in difficulties with forbearance and due consideration. For example, a business might suspend or waive interest, accept lower payments or defer them, and allow customers more time to repay their debt.

I looked at Mr T's complaint with this in mind – as he was out of work due to illness.

CapOne put in place a 'breathing space' whereby no payments were needed, and no interest or charges were applied to the account – so in that respect, CapOne did the right thing. The crux of Mr T's complaint is that he wasn't aware that this could lead to a default and/or marks on this credit file, and that he tried to get onto a payment plan, but instead was kept on the breathing space arrangement.

The three letters Mr T was sent about the breathing space said: *“Based on what we know about your situation, we're 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....We won't report your breathing space to credit reference agencies, but this won't change how we report things like late payments”*.

I listened to the call on 14 September 2023— when the breathing space was set up. Mr T said he couldn't work through illness. His income was £601 per month (universal credit) and his outgoings (rent and utilities) were over £1,000. The call handler said a payment plan wasn't possible as Mr T didn't have any spare money to make the payments – so he agreed a breathing space. He explained that missed payments would be reported to the CRAs. He also said that if payments were missed, then the card might be 'restricted' (i.e. not able to be used) and the account would 'roll towards default'.

Mr T said he understood that.

So, based on the evidence I've seen, I'm satisfied that the breathing space was explained to Mr T - on the call and in letters.

I considered whether a payment plan could've been set up – typically this would've meant Mr T agreeing to pay a reduced amount each month – which would be less than the contractual minimum amount needed. It's reasonable that firms check a payment plan is affordable. And as Mr T didn't have any spare income, this wasn't an option for CapOne.

And in any case, even if CapOne had set up a payment plan (and if Mr T had kept to it) - this would still have meant that the minimum payments weren't being made and arrears would be built up, eventually leading to a default. So – I don't think a payment plan would have avoided the late payment marks and a default on Mr T's credit file.

On the call on 16 January 2024, CapOne's call handler said the breathing space was still in place. Mr T said he could pay £30 per month at the end of the call – but I can see he didn't do that.

On the call on 16 February 2024, the call handler explained that Mr T had by then missed six months' payments and that a default was about to happen. A payment plan of £14 per month was discussed – but it could not be put in place as the default letter had been issued by that time.

I thought about whether the missing call in November 2023 would likely change anything, but give what I've heard on five other calls, and the letters Mr T was sent - I'm persuaded this is unlikely to be the case.

So, in summary, I'm satisfied that:

- CapOne could only offer Mr T a breathing space option, and not a payment plan – due to his circumstances.
- Through the calls and letters, it was made clear that this would affect his credit file and might eventually lead to a default.
- Even if payment plan (for reduced payments) had been agreed, this would likely have led to a default anyway.

I then considered the marks on Mr T's credit file.

The guidance for dealing with defaults is laid down by the Information Commissioner's Office (ICO). This says when a consumer is at least three months behind with their payments then a default may be registered. And it would expect a default to be registered by the time the consumer is six months behind with their payments. It is the business' responsibility to put an entry on the credit file. This cannot be taken off unless it is an error.

And here – as I've explained, I don't consider CapOne made an error and therefore I am not asking the firm to remove the missed payment marks or default from Mr T's credit file.

I considered what Mr T told us about his mental and physical health. I can see that he told CapOne he was out of work due to his physical illnesses – this was advised to the firm in the calls I've listened to. But – that doesn't mean that accurate information about Mr T's account shouldn't be advised to the CRAs.

And similarly, I don't think Mr T's mental health struggles should mean his credit file shouldn't be marked with such information – and in this case, I haven't seen any evidence that he advised CapOne about this condition, and we can't reasonably expect a firm to act upon something if they're not made aware of it. But even if they were, I still think it would have led to a breathing space arrangement - and therefore marks on Mr T's credit file.

I'm sorry to hear about Mr T's situation and the difficult time he's been through. But having reviewed all the evidence, I am not asking CapOne to do anything here.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 27 January 2025.

Martin Lord
Ombudsman