

## **The complaint**

Mr B complains that Capital One (Europe) plc acted unfairly in selling his account to a third-party debt collection agency.

## **What happened**

My provisional decision of 5 February 2025 set out the background to this complaint:

*Mr B opened his credit card account with Capital One in January 2016. Mr C's account was still used for purchases until December 2021. Mr C's account regularly went over its agreed credit limit and payments were regularly made late from 2019.*

*Capital One's contact notes indicate Mr B began to experience difficulties in making repayments around 2020, as a result of the Covid-19 pandemic. Between August and December 2021, Mr B's account was over its agreed credit limit. By 8 October 2021, Capital One's account notes say Mr B's account had been in persistent debt for 27 months and it had agreed to waive overlimit and late fees.*

*Mr B did not make his minimum monthly repayment in December 2021. By January 2022, Mr B was still over his account limit and did not meet his monthly minimum repayments for January 2022 onwards. No payment was made in February 2022. Mr B then made repayments of £100 in March, May, July, September, October, November, December 2022. Late payments were applied until June 2022. Interest continued to be applied to the outstanding balance owed.*

*Capital One issued a default notice on 1 February 2023, which explained Mr B's account would be defaulted if he did not repay the overdue amount of £355.71 by 1 March 2023. The letter said a default would be recorded with the credit reference agencies and it may sell Mr B's debt to "another company known as a debt purchaser for them to recover what you owe." Mr B's account was subsequently defaulted.*

*Mr B continued to make monthly repayments of £100 to Capital One until September 2024, when it sold his account to a debt collection agency. Mr B complained to Capital One, who didn't uphold his complaint. Mr B referred his complaint to our service.*

*One of our Investigators reviewed Mr B's complaint but didn't uphold it, saying the terms and conditions of Mr B's account entitled Capital One to sell on his account to a debt collection agency. Mr B disagreed, so this has come to me for a decision."*

I then set out my provisional decision:

*"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*Our service has an inquisitorial remit. This means I must consider what lies at the heart of Mr B's complaint about Capital One and look at the whole picture. In reviewing how Mr B has been treated by Capital One, I have had to review the conduct of Mr B's account, its default*

*and eventual sale. Having done so, I have concerns about the time it took for this account to default. It appears Capital One was aware of potential financial difficulties from 2020 onwards. By October 2021, Mr B's account had been in persistent debt for many months - persistent debt is a further indicator of potential financial difficulties.*

*Here, Mr B failed to maintain the monthly minimum repayments from December 2021 onwards. In line with the guidance set out by the Information Commissioner's Office, I'd have expected Capital One to apply a default once three to six months of arrears had accrued. Here, a full three months of missed minimum monthly repayments had accrued by 31 March 2022. So, I am minded to require Capital One to amend the date of default on Mr B's credit file to 31 March 2022. The statements provided by Capital One indicate it applied over £400 of interest and charges to Mr B's account from 31 March 2022 onwards, so it should arrange to remove any interest or charges applied to Mr B's account from this date.*

*I am conscious Capital One may say that sometimes a consumer may want to avoid a default being applied to their credit file. But delaying a default means interest and charges may be applied for longer and a default will remain on their credit file for longer. Here, it may be that Mr B entered into a repayment plan of some sort with Capital One to avoid a default but there is little information about this on file and it doesn't appear that Capital One has provided any evidence to show Mr B's circumstances were expected to improve in the foreseeable future. I am not satisfied that Capital One has provided clear evidence to show it was treating Mr B fairly when continuing to apply interest and charges to the outstanding balance owed to it for such a prolonged period. So, his account with hundreds of pounds of interest and charges continuing to accrue until the account was eventually defaulted in March 2023.*

*I think delaying the default has led to Mr B having to potentially make higher monthly repayments than he would have done if his account had been defaulted and passed to a debt collection agency, particularly as hundreds of pounds of interest and charges were applied until the account was defaulted. It's clear he had some conversations with Capital One about repaying what he owed that may have been unnecessary. But on the other hand, Mr B did get some benefit by having his account passed to a debt collection agency later than it would have been otherwise. I think Capital One should pay Mr B £100 compensation for distress or inconvenience caused by its actions.*

*The terms and conditions of Mr B's account set out that Capital One may close an account and demand immediate repayment of the outstanding debt if the account holder regularly misses monthly repayments or exceeds their credit limit. The agreement also sets out that Capital One may transfer any debt Mr B may have to a third party. So, I am not minded to uphold this aspect of Mr B's complaint.*

### ***Putting things right***

*Capital One should amend the date it recorded Mr B's account as in default on his credit file to 31 March 2022. As Capital One sold Mr B's debt to a third party, it should liaise with the new debt owner to remove any interest, or charges applied to the account since 31 March 2022 from the outstanding balance owed.*

*Capital One should pay Mr B £100 compensation for the distress and inconvenience caused."*

Mr B accepted my provisional decision but Capital One did not. In summary, Capital One said it sent out numerous letters and emails advising of the impact missing payments would have and offering support. Mr B did not accept offers to freeze interest or charges, or

engage with its support, and Capital One did not know if his financial difficulties would persist in the short or longer term.. Each time Capital One sent Mr B notice his account would be restricted, he made a payment, which Capital One says shows an intent to avoid the account defaulting. Capital One made the point that if a customer's financial difficulties are short-term, a default would be unhelpful.

### **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 have thought very carefully about Capital One's submissions. And I agree that it appears Mr B did not engage with the support offered, but Capital One accepted Mr B was clearly in financial difficulties and I think it should have become clear these were longer-term difficulties given the history of the account, as outlined in my provisional decision.

I think the absence of engagement from Mr B should not have prevented Capital One from taking steps to default his account. Whilst some customers may want to avoid a default, here Capital One was continuing to add interest and charges whilst contractual minimum repayments were being missed. As I said in my provisional decision, it should have defaulted the account once three to six months of arrears had accrued.

I have reviewed Mr B's statements again and I can confirm a full three months of missed minimum monthly repayments had accrued by 31 March 2022. No payments were made between 2 November 2021 and 6 January 2021, one partial payment of £83.71 was made on January 2022 with no further payment until a partial repayment of £100 was paid on 7 March 2022. Given the history of the account, and the absence of any solid evidence that Mr B's circumstances were likely to improve, I am still of the view Capital One should amend the date of default on Mr B's credit file to 31 March 2022.

The statements provided by Capital One indicate it applied over £400 of interest and charges to Mr B's account from 31 March 2022 onwards, so it should arrange to remove any interest or charges applied to Mr B's account from this date. I remain of the view Capital One should pay Mr B £100 compensation for distress or inconvenience caused by its actions, for the reasons explained in my provisional decision.

### **Putting things right**

Capital One should amend the date it recorded Mr B's account as in default on his credit file to 31 March 2022. As Capital One sold Mr B's debt to a third party, it should liaise with the new debt owner to remove any interest, or charges applied to the account since 31 March 2022 from the outstanding balance owed.

Capital One should pay Mr B £100 compensation for the distress and inconvenience caused.

**My final decision**

For the reasons explained above, I uphold this complaint and require

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 11 March 2025.

Victoria Blackwood  
**Ombudsman**