

## **The complaint**

Mr I complains that Capital One (Europe) plc unfairly recorded missed payments on his credit file.

## **What happened**

In September 2024, Mr I reached out to Capital One because of a change in his circumstances. Unfortunately, Mr I was no longer able to meet his repayments on his credit card at their current level; so, he asked Capital One for some assistance.

During a call with a Capital One agent, Mr I was offered two options. A formal repayment plan, repaying £90 per month, or the opportunity to take some “breathing space” at £40 per month. Mr I chose the latter.

In summary, “breathing space” is a short-term and informal payment arrangement. Mr I has explained that – having taken this opportunity – he was unhappy to discover Capital One had reported missed payments on his credit file. In his view, he was in an arrangement agreed directly with Capital One – so, it shouldn’t have recorded adverse information on his credit file.

Mr I complained; in response, Capital One said it didn’t uphold Mr I’s complaint. In short, it said that it hadn’t been able to agree a more formal repayment plan with Mr I; so, the informal breathing space measure had been applied instead. This meant that even though Mr I was paying something towards his account, it wasn’t enough to satisfy his minimum contractual repayment. As such, Capital One said it had no choice but to record payments as missed – given the minimum amount Mr I owed it hadn’t been paid.

Mr I remained unhappy, and he approached this Service for an independent review. He said that Capital One hadn’t been clear about the consequences of “breathing space” and, if he’d known of the impact, he would’ve explored alternative options. Mr I also told us that other lenders – who he’d approached for assistance around the same time – had reported his debts as being in an arrangement to pay. So, he thought Capital One should’ve done the same.

An Investigator here reviewed what had happened; while he could understand Mr I’s perspective, he didn’t think the complaint should be upheld. In summary, the Investigator said:

- Capital One, when explaining its “breathing space” option, could’ve been clearer about what such an agreement would mean for Mr I’s credit file.

- That said, even if Capital One had been clearer, the end result would likely be the same. That's because Mr I had said he was working to a strict budget at the time. The amount agreed with Capital One, under the option of "breathing space", was affordable; the other option, for a formal repayment plan, at a higher repayment each month, was unaffordable.
- Capital One had a duty to report accurate information to Credit Reference Agencies ("CRAs") and, because Mr I's contractual minimum repayment hadn't been made, it hadn't acted unreasonably in recording that.
- In the circumstances, while unfortunate that Capital One wasn't as clear as it could've been, it wouldn't be reasonable to find that it did something wrong in terms of what had been reported to CRAs.

Mr I disagreed. He maintained that Capital One had acted unfairly and he asked for an Ombudsman's decision. So, as no agreement has been reached, Mr I's complaint has been passed to me to decide.

### **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, while I know this will disappoint Mr I, my view is that Capital One hasn't done something wrong in reporting missed payments to CRAs. I'll explain why but, in doing so, I've focussed on the crux of the matter; I haven't commented on everything Mr I has set out to us, even though I have considered it. I don't mean any discourtesy in that approach, it's simply to align with our purpose as an informal service.

I think what's happened here largely comes down to a misunderstanding of how "breathing space" operates. In short, it isn't a formal arrangement; it won't be reported to CRAs, and Mr I's minimum contractual repayment is still formally due each month – even if he is making smaller, token repayments towards his debt.

I've seen that Capital One did explain this in an email to Mr I. That said, I do agree with our Investigator in that Capital One's explanation of "breathing space", and how it works, could've been a little clearer – particularly when it spoke to Mr I on the phone. Ideally, Mr I would've understood completely how his credit file could be impacted; but it's fairly clear that he didn't entirely grasp the mechanism, or potential impact, of his "breathing space" arrangement.

I don't, though, think that the lack of understanding here means Capital One did something fundamentally wrong, or that it shouldn't report late payments to Mr I's credit file. Primarily that's because Mr I's contractual minimum repayments were always due, but he wasn't paying them; Capital One has an obligation to record such information with CRAs as a true reflection of the account status. To some degree, Capital One did explain that – and the potential impact of not meeting required repayments – when it spoke to Mr I on the phone, and in its follow-up email.

That aside, however, even if Capital One's explanation of "breathing space" had been clearer, I'm not persuaded that Mr I would have done anything differently at the time. Mr I was upfront during Capital One's assessment of his circumstances that £40 was what he could afford; so, it was always the case that he couldn't pay enough to set up a more formal plan.

For the avoidance of doubt, it's reasonable that firms check a formal repayment plan is affordable – and given Mr I said himself how he didn't have the required means, such a plan

wasn't an option in the circumstances. I have noted how Mr I has since said he would've tried to renegotiate plans with other creditors to make higher repayments, but I haven't seen persuasive evidence to suggest that was a genuine possibility. So, with all of that in mind, I'm not persuaded it's likely Mr I would've done anything differently – or had access to another viable option here – even if Capital One had explained things another way.

I must keep in mind too that Capital One did email Mr I, setting out that this arrangement wouldn't be reported to CRAs – but the reporting of things like missed repayments wouldn't change. Mr I was always in possession of that information. Even if he wasn't entirely sure of how it worked after receiving that email, he could've contacted Capital One again to discuss his "breathing space". From the information I have, it doesn't appear that he did so.

In saying all of this, I surely don't mean to condemn Mr I's approach to the change in his financial circumstances. He took appropriate action to address things by pro-actively contacting Capital One; that's certainly a well-placed attitude. It is unfortunate that he was under the impression "breathing space" meant Capital One had formally agreed to accept a lower repayment each month, and I do empathise with his situation. Ultimately, though, for the reasons I've explained, it wouldn't be fair or reasonable of me to require Capital One take any action. Finally, I'll add that I can't comment on how other lenders have reported things to CRAs; my review here is focussed solely on the actions of Capital One.

It follows that I don't uphold the complaint Mr I has brought to us here.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 1 May 2025.

Simon Louth  
**Ombudsman**