

The complaint

Mr M complains that Capital One (Europe) plc defaulted his credit card account while the account was in Debt Respite Scheme (DRS).

What happened

Mr M says he was made redundant from his job, which caused him financial difficulties. And as a result, he went into 'breathing space' allowed under the DRS in December 2023.

Despite being in breathing space, Mr M says that Capital One sent him a default notice in September 2024, which is against the regulations set out in the DRS.

Mr M says that Capital One didn't contact him to tell him that his breathing space had ended. It also failed to work with him to manage the situation and instead issued a default notice without warning or explanation. Because of this, he says he wasn't able to take proactive steps to prevent the default.

Mr M says Capital One's actions has had a significant and negative impact on his financial wellbeing and his mental health. He has also explained that Capital One has caused a severe deterioration in his credit score, which has made it much harder for him to secure affordable credit.

Capital One responded to Mr M's complaint, but it didn't uphold it. It said it hadn't broken the law when defaulting Mr M's account. It had explained to him during a call how breathing space works. And it had fairly defaulted the account. Even while it didn't think it had done anything wrong, it made a goodwill gesture payment to Mr M of £25.

An Investigator considered the information provided by both parties but decided not to uphold Mr M's complaint. The Investigator felt that Capital One had kept Mr M updated about the status of his account and it had sent him many letters and emails. Overall, the Investigator felt that Capital One had acted fairly and reasonably when defaulting the account.

Mr M didn't agree with the Investigators view, and I have summarised his main points below:

- Capital One defaulted his account while he was in government mandated breathing space, which goes against the DRS rules.
- Capital One didn't tell him that the breathing space had ended.
- Capital One sent important letters to an old address. Mr M acknowledges that he hadn't updated his address, but Capital One did have his email address and his phone number to contact him. It should have made more of an attempt to contact him.
- He was still trying to make payments of £20 when he could while in breathing space. The efforts of him to still make attempts to repay the debt have been ignored.
- The view only refers to whether Capital One were allowed to default the account, as

opposed to whether it should have in his circumstances.

Because an agreement couldn't be reached, the complaint has been passed to me to decide on the matter.

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 considered all of the evidence available to me, I've decided not to uphold Mr M's complaint.

Mr M has referred to the DRS throughout his complaint. But based on the information I've seen, Mr M's request for breathing space didn't fall under this specific scheme, because there is a requirement under the scheme rules that a request for breathing space is made via a debt advice provider or a local authority. The evidence I've been provided shows that breathing space was agreed with Mr M during a phone he had with Capital One direct. Because it wasn't formally requested by a debt advice provider or a local authority, Mr M's breathing space request, while agreed by Capital One on what appears to be a more informal basis, didn't fall into the criteria for the DRS. So the guidance for firms under the DRS don't apply here.

But even if Mr M's account entered into a DRS, I still wouldn't come to a different outcome. The rules state that breathing space would be for up to 60 days. Mr M's account was defaulted months after the breathing space would have ended under the scheme. So even if I were to find that the scheme applied, it would have ended by the time Mr M's account defaulted.

Capital One has explained that breathing space was applied to Mr M's account on an ongoing basis, meaning it had no end date. It said this would've been set up if there was no other affordable arrangement, or where a customer couldn't make payments. It explained that it would be down to the customer to get back in touch and request this to be removed if/when their circumstances change. This was explained in the confirmation email sent to Mr M.

I have looked at a copy of the communication Capital One sent Mr M about the breathing space. In summary, this letter explained:

- Interest and charges would stop being applied to the account
- Statements will refer to minimum payments. Mr M was required to pay what he could afford.
- Capital One would still send him important messages – this included if Mr M was at risk of defaulting or losing permanent use of the card. It explained that if Mr M received communication like this, that it applied.
- Breathing space wouldn't be reported to the credit reference agencies, but late payments would still be reported.
- To contact Capital One if the situation changes, so it can make sure it is still providing the right support.

Based on this letter, I think it ought to have been clear to Mr M, that his account could still default while he was in breathing space. So I'm not persuaded that Capital One did anything wrong in defaulting the account while it was in breathing space.

I have thought about what happened in terms of the payments made to the account from December 2023. In total, Mr M made three payments of £20 each, prior to it defaulting. The account was in arrears at the point it defaulted. The Information Commissioner's Office (ICO) says that when a consumer is at least three months behind with their payments then a default may be registered. It also says it would *expect* a default to be registered by the time the consumer is six months behind with their payments. That's just what happened here.

Mr M was in a sustained period of arrears – beginning in December 2023 – with three repayments of £20 being made in March, May and August 2024, but this wasn't enough to clear the arrears, and it wasn't enough to remedy the breach in the default notice. Because of this Mr M's credit card account was closed and a default reported to the credit reference agencies.

On the face of it then, Capital One complied with the guidance set out by the ICO. While I can understand this whole scenario was brought about by a change in Mr M's personal circumstances, which in turn affected him financially, that doesn't mean Capital One was wrong to proceed to default given the persistent state of arrears on the account.

I can see that Mr M says that while Capital One *could* have defaulted him, there has been no consideration as to whether it *should* have. As I've said, clearly what's happened here has come about as a result of a change in circumstances for Mr M. I can see that he has made attempts to try and repay the debt when he could. But Capital One is also required to report accurate information to the credit reference agencies to reflect how a person has managed their account. I'm satisfied that Capital One reporting missed payments and a default is an accurate reflection of how Mr M has managed the account, and so I don't find the reporting to be unfair or inaccurate.

I understand that Mr M didn't receive some of the important letters Capital One sent him about the account – that's because he hadn't updated his address and so the letters were sent to an old address. It is Mr M's responsibility to ensure that his address is up to date. Capital One is required to send some letters via post, for example default notices. So I can't fairly find it has done anything wrong here. I'm also satisfied that it sent Mr M sufficient information about the status of the account, for example, notice of sums in arrears and default notices. While I appreciate Mr M didn't receive these letters, I don't think this was because of something Capital One had done wrong.

In addition to what I've said here, I've also thought about what might have happened if Mr M had received the letters. As a starting point, he ought to have been aware that the account was in a sustained period of arrears, because he had only been making small sporadic payments to the account. And given what Mr M has said about his financial situation at the time, it seems that he was paying what he could afford, which wasn't enough to prevent the account from defaulting. So even if letters had been sent to the correct address, I don't think this would likely have prevented the account defaulting, because he simply couldn't afford to bring the account up to date.

I've also taken on board what Mr M has said about the other ways Capital One could have contacted him. Capital One has said that because of the breathing space, it wouldn't attempt to contact him by phone. I think this is reasonable in the circumstances and I can see that it told him this in the email it sent him about breathing space. Some information was sent to Mr M via email. I accept the default notice and other important information was sent by letter,

but as I've explained, there was no requirement for Capital One to have sent this in an email, and the letters weren't received because Mr M hadn't updated his address. I can't fairly find that Capital One has done anything wrong here.

Overall then, I don't think Capital One has done anything wrong in defaulting Mr M's account. And so I won't be asking it to remove the reporting from his credit file.

My final decision

For the reasons set out above, I don't uphold Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 14 August 2025.

Sophie Wilkinson
Ombudsman