DRN-5739894

The complaint

Mr M complains that Capital One (Europe) plc ('Capital One') didn't support him appropriately when he was in financial difficulty and defaulted his credit card account unfairly.

Mr M wants to bring his account up to date and have the default removed.

What happened

Mr M complained to Capital One that they'd failed to support him with his financial difficulties after his mother passed away. He was unhappy his account had been defaulted.

Capital One set out the measures they'd taken to assist Mr M and concluded they'd defaulted his account fairly. They didn't uphold Mr M's complaint, so he referred it to the Financial Ombudsman Service for investigation, citing breach of the Consumer Duty.

Our investigator concluded Capital One had acted fairly and in line with their regulatory obligations by offering assistance to Mr M and communicating what was happening on his account. Our investigator didn't uphold Mr M's complaint.

Mr M provided a detailed response referring to rules and guidance, saying Capital One didn't perform appropriate affordability checks and hadn't acted appropriately towards him as a vulnerable customer. He said he hadn't received the appropriate breathing space support from Capital One. The matter came 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.

I've taken into account any relevant law and regulations, the regulator's rules, guidance and standards, codes of practice and (where appropriate) what is considered to have been good industry practice at the relevant time.

Having done so I have decided not to uphold Mr M's complaint, for broadly the same reasons as our investigator. I'll explain why.

I am currently unable to consider Mr M's newly raised concerns about Capital One's failure to undertake appropriate affordability checks. Mr M would need to complain to Capital One about this first before our service could investigate.

Mr M has cited the Consumer Duty to support his position that Capital One have not treated him fairly in this matter.

The Consumer Duty is a regulatory requirement for firms to put customers at the heart of their considerations, with an overarching principle that they "must act to deliver good outcomes for retail customers.” However it should be noted this doesn’t mean the customer is always able to have the outcome they want.

I’ve considered the Duty together with the more detailed rules and guidance in the Financial Conduct Authority’s Consumer Credit Sourcebook (‘CONC’) to treat customers fairly, with forbearance and due consideration.

I recognise Mr M’s concerned that Capital One didn’t communicate with him about what was happening with his account. He says he didn’t get a warning that his account might default, or a default notice, despite these being sent to his address.

Capital One corresponded with Mr M using email or letter. Where letters have been sent, I can see that Mr M’s correct postal address was used. I acknowledge Mr M says he didn’t receive these letters, but I can’t fairly hold Capital One responsible for correctly addressed letters that may have been lost in the post.

I’ve thought about how Capital One supported Mr M, who was known to them as a vulnerable customer. I think Capital One can demonstrate they’ve considered and offered Mr M appropriate forbearance measures, and communicated clearly about the circumstances in which his account might default.

I say this because Capital One set up a payment plan and confirmed this via email on 29 July 2024. When this was broken, Capital One sent a letter on 24 August 2024 to prompt Mr M to get back on track. I was pleased to see Capital One took the opportunity on both occasions to signpost Mr M to independent sources of money advice.

On 10 September 2024 Mr M contacted Capital One and they agreed to place a hold on his account. They emailed Mr M on 11 September 2024 to say “we’re giving you a break from interest and fees” and set out Mr M couldn’t use his card, credit file reporting would continue, and his account could default.

On 23 September 2024 Capital One sent a letter to Mr M to say his card was suspended and his account could default in the next two months because of the level of arrears. Two notices of sums in arrears were sent.

On 30 September 2024 Capital One reminded Mr M the hold on his account was coming to an end on 10 October 2024 and he needed to contact them.

In his submissions to this service Mr M referred to the guidance for the government’s Debt Respite Scheme (Breathing Space), which he doesn’t think Capital One followed. I don’t think Capital One needed to follow this specific guidance on this occasion as I’ve not seen evidence Mr M entered a period of Breathing Space under this scheme. Mr M couldn’t have arranged this directly himself, and in any event it wouldn’t have completely prevented Capital One from contacting Mr M about his account.

As no arrangement had been made by the end of the 30-day hold, Capital One issued a default notice on 19 October 2024. This required payment of £94.64 by 16 November 2024. As this wasn’t paid, Mr M’s account defaulted on 20 November 2024.

I think it's important to note that although they share the same term, a default notice and a default on a credit file are not the same thing, although they often happen around the same time. The Information Commissioner's Office ('ICO') explains on their website in their information to the public that while there is a requirement under the Consumer Credit Act 1974 to issue a default notice in specific circumstances, there is no data protection obligation on a lender to issue such a notice to individuals prior to marking the account as being in default on their credit file (though I'll add the ICO does typically expect a warning to be given).

The ICO also sets out guiding principles for businesses reporting arrears, arrangements and defaults. This says that by the time an account is at least three months in arrears, and normally by the time an account is six months in arrears, it's generally expected that a default will be registered.

Taking into account the industry expectations here, I can't say that it was unreasonable for Capital One to have registered a default when they did, given Mr M was around five months in arrears and hadn't agreed an alternative arrangement.

I acknowledge Mr M feels this is very unfair position for him now to be in, given the sad circumstances in which his financial difficulty arose. I can only ask Capital One to take action if I'm satisfied they treated Mr M unfairly. Considering everything I've seen, and the rules and regulations I've referred to, I'm not persuaded that's the case. This means I have not found cause to uphold Mr M's complaint.

I recognise this will be a disappointment to Mr M and I don't wish to add to what is already a difficult time for him and his family. If Mr M would like the details of organisations that can provide additional support, I urge him to let us know. Our service would be happy to help with this.

My final decision

For the reasons I've outlined, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 9 September 2025.

Clare Burgess-Cade
Ombudsman