

complaint

Mr R complains that Capital One (Europe) plc did not close his account when it should have done thereby letting him run up further debt as a result.

background

In July 2017 Mr R contacted Capital One. He said he told it he had been using his account to spend on gambling to which he was addicted. He arranged it so the balance was paid off and it agreed to close the account within two days. But it didn't. Rather it kept the account open. Mr R then used the account to gamble some more, and he spent £1,400.

Mr R felt he was only able to do this because of Capital One's mistake. He wanted it to reduce the account balance to nil. He also asked for £500 for distress and inconvenience.

Capital One agreed that it should have closed the account. However, it offered nothing further in terms of redress.

Dissatisfied with this Mr R came to our service. We contacted Capital One and it agreed to write off the default sum, cash advance fees and interest applied to Mr R's account since 26 July 2017 – which at this point this amounted to £734.71. It said this represented all fees and charges and interest it has applied to the account in relation to the £1,400. It agreed to apply this sum to Mr R's account to reduce the remaining balance.

Our investigator looked into Mr R's complaint. In summary, our investigator thought the offer from Capital One was fair and reasonable and endorsed it.

Mr R rejected the offer from Capital One. In short, he didn't agree it went far enough. In particular he didn't think Capital One had treated him fairly given that he was a vulnerable consumer. He pointed out Capital One had only come forward with an offer after he came to us. He also raised new complaint points about information registered by it on his credit file. These points had not been raised with Capital One before in this complaint. We told Mr R on this basis we had no power to look at his new complaint points.

Mr R asked that an ombudsman review his complaint.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I have finished my review of Mr R's complaint. I think the offer from Capital One is fair and reasonable. I am not going to ask it to do more. Please let me explain why this is.

Both parties agree that Mr R asked Capital One to close his account in July 2017. It said it would do this and it didn't. Further both parties appear to agree that Mr R told Capital One in July 2017 that he had a gambling addiction. They all also agree that Capital One ought to have closed the account when it said it would.

The only question for me to look at then is has Capital One done enough to make up for its mistake. That's what I'll look at here. But before I do I want to mention one additional point, Mr R says he is not complaining about whether Capital One acted irresponsibly in lending to

him. That, he says, is a separate complaint. That being so I have not looked at whether the decision to lend to Mr R was irresponsible.

I'm very aware that I've summarised this complaint in far less detail than the parties, and in my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.

Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is a fair and reasonable outcome.

I recognise that Mr R was a vulnerable consumer, and I think Capital One ought to have taken note of this. When a consumer asks to close their account I would expect a financial business to follow that instruction without unnecessary delay. All the more so here, where it seems Mr R was very worried about his situation and feeling vulnerable.

That said, I think Capital One's offer is fair and reasonable. Mr R had the "benefit" of the money he spent. On that basis I don't think in the individual circumstances of this complaint it would be fair and reasonable to tell Capital One to write off that debt. But I do think it should have to do something to recognise it did not close the account when it said it was going to do so. In particular I agree it should refund the default sum, cash advance fees and interest applied to Mr R's account since 26 July 2017, as it has already agreed to. As far as I am aware this reflects all the fees, charges and interest that Capital One has applied to the account in relation to the further £1,400 Mr R spent.

Mr R thinks Capital One should have made this offer when he complained, and not only after our service became involved. But Capital One looked at his complaint at the time, and decided it had no obligation to make an offer. It is entitled to make commercial decisions like this. But it is also entitled to change its mind, when it thinks it made a mistake, as is the case here. Mr R has not lost out financially because of this, I think. As Capital One has agreed to refund the default sum, cash advance fees and interest applied. This is what I would have asked it to do if it had not already agreed to do this.

I've thought about whether Mr R ought to get an award for distress and inconvenience as he asks for. But I'm afraid I'm not persuaded Mr R did experience distress and inconvenience because Capital One failed to close his account. What happened was he rang them at the time, found the account was still open and used it. I can see he subsequently regretted his actions But I don't think I can fairly and reasonably make an award for distress and inconvenience in these circumstances.

I see no reason why Capital One ought not to apply the refund to Mr R's account to reduce the balance. It will help his financial situation, and given what I know about his addiction, I think this is the most protective course of action.

Mr R has raised new matters about the information Capital One has and will register with the credit reference agencies about his conduct of his account. This appears to be a new matter and has not been considered by Capital One in its final response to Mr R or investigated within this complaint. It follows that I am unable to look at this matter in this final decision.

my final decision

My final decision is that Capital One (Europe) plc should refund all interest, charges and fees it has applied in relation to the £1,400 Mr R spent after his account should have been closed, and use this refund to reduce the balance of the account.

Capital One must pay the compensation within 28 days of the date on which we tell it Mr R accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 25 April 2020.

Joyce Gordon
ombudsman