

## **complaint**

Mr M complains that Capital One (Europe) plc told him that interest would not be applied to his credit card account when he told them that he was in financial difficulties and then applied it anyway. He wants:

- £300 he has wrongly paid as a result of this to be returned,
- the default on his account to be removed from his credit reference file, and
- payment of compensation for the stress he has suffered as a result of Capital One's actions.

## **background**

Mr M got a credit card with Capital One in July 2014. He says he called Capital One to tell them he had come into financial difficulties around October 2015 and was told that they would freeze any further interest on his debt until he settled the amount due.

He approached this Service in August 2017 because he had been contacted by a debt collection company about the credit card debt. Mr M said in his complaint form for our Service that he was initially being asked for £300 and that this had gone up to £700. When recently asked about the debt by our investigator, he said that the amount had now increased to over £3000.

Mr M wants £300 that he has paid to Capital One returned because his debt should have been cleared and the money he paid must have gone towards paying off interest which the bank had told him would not be charged. He also wants the default on his credit card account to be taken off his credit file. Mr M says compensation is due because of the stress he has suffered as a result of Capital One's errors.

Capital One have reviewed the only phone call they could find when Mr M had missed payments on his credit card and the balance was above the agreed credit limit. This was on 16 October 2015 and Capital One say their staff did not agree to stop applying interest on Mr M's account in that call.

Capital One say that in October 2015 they received a request from Mr M's bank to cancel the direct debit payments on his credit card account. In November they emailed Mr M about a possible payment plan. But in the absence of any response to their calls, letters and emails – and with no further payments having been made – Mr M's account was defaulted in February 2016 with a balance of £354.75. This was correctly reported to credit reference agencies. Capital One did not charge any further interest from this point and the debt has been passed on to a debt recovery organisation that has also not charged any further interest.

Our investigator thought that on balance he could not conclude that the bank had told Mr M that the interest charges on his account would be frozen. He thought the bank charges had been applied correctly and that Capital One had not done anything wrong in reporting the default on the account to credit reference agencies. He was also satisfied that Capital One had acted positively and sympathetically to Mr M's financial difficulties. So he didn't think Capital One needed to do anything.

Mr M does not agree and so this case has been passed to me for review.

## **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 appreciate that Mr M feels very strongly about this matter. And I am sorry to hear that he has been experiencing both financial difficulties and health issues. But I have to consider whether the evidence shows that Capital One have done anything wrong and I don't think that it does. So I'm not going to uphold this complaint. I know Mr M will be disappointed but I shall explain why.

Mr M raises a number of matters and I shall focus on the main points of his complaint.

### *agreement to freeze interest on Mr M's credit card account*

Mr M says that Capital One agreed to stop applying interest to his account in a phone call in October 2015. So I need to consider all the available evidence on this point. I have to make my decision based on the evidence and when this appears to be conflicting I have to decide what is most likely to have happened on the balance of probabilities.

Capital One say they could only locate one phone recording after Mr M had missed payments on his account. I have listened to that call which is from 16 October 2015 and can confirm there is no discussion about interest on Mr M's account.

I have reviewed Capital One's record of contact with Mr M and cannot see any notes about another occasion when he called and the freezing of interest on his account was agreed.

Mr M says it's unfair to conclude that Capital One did not agree to stop applying interest to his account just because they cannot locate the relevant phone call recording. While I have no reason to consider Capital One's phone records to be inaccurate, I have carefully considered what further evidence is available on this point.

I have not seen any written documentation that shows that Capital One agreed to stop applying interest to Mr M's account. Capital One say this is not something that would be agreed over the phone, it would have to be part of a payment plan. I've not seen evidence of such a plan having been arranged in this case.

Certainly I would have expected there to be something in writing because an agreement to stop interest would go against the written terms and conditions of the credit card account which say that interest will be charged. It would be important for both Mr M and Capital One to be clear about the period of time for which interest would be stopped, how the debt was to be paid, and what would happen if it was not. So the fact that there is no written evidence makes it difficult to conclude that any such agreement was reached.

I have seen Mr M's credit card statements addressed to his home address, and these all show interest continuing to be applied until his account was eventually defaulted in February 2016. Mr M did not raise this with Capital One during this period which is not consistent with his claim that the bank had agreed to stop charging interest.

So on balance I am unable to fairly say on the evidence that Capital One agreed to stop applying interest on Mr M's credit card account at the time that he says. Any interest applied was in keeping with the terms and conditions of his account.

However, I should also mention that Capital One's statements to Mr M show that no further interest was charged *after* his account was defaulted in February 2016 with a debt of £354.75. This is the amount that was passed on to the debt recovery organisation. They have also confirmed that no further interest has since been applied to the debt. Mr M has mentioned various amounts in relation to this complaint – first a £300 debt that increased to £700 and more recently £3000 – but the evidence does not show how these relate to this credit card account.

*defaulting Mr M's account and reporting this to credit reference agencies*

The evidence shows that a debt of £354.75 was outstanding on Mr M's account and that he did not pay it when asked. So I can't say that Capital One were wrong to default his account. And banks are obliged to report accurate information about how an account has been managed to credit reference agencies. So I can't ask Capital One to remove the default from Mr M's credit file because it fairly reflects how Mr M managed his account.

*financial difficulties*

I have also considered whether Capital One acted positively and sympathetically towards Mr M when they became aware of his financial difficulties.

His statements show that his account went over its credit limit of £200 in August-September 2015. Payments by direct debit to Mr M's credit card account were stopped in October. Capital One's records show that in November they sent an email to the address they had on file for Mr M about how to arrange a payment plan. I appreciate that Mr M says that he did not receive that email but I've no reason to doubt the evidence that it was sent.

Capital One also sent account statements and letters to Mr M's home address. In the absence of any response from Mr M, I can't say that Capital One acted unreasonably when they defaulted his account in February 2016. They did not charge further interest from that point and only asked for a reduced minimum payment of £5 a month which I consider to be reasonable and fair. I've not seen any evidence to show that further payments were made by Mr M and Capital One properly passed Mr M's debt on to a debt recovery organisation under the terms and conditions of his account. So I can't say on the evidence that Capital One have done anything wrong.

*conclusion*

I know that Mr M will be disappointed but I'm not going to ask Capital One to do anything. However, I do appreciate that Mr M has said he is experiencing financial difficulties, so it's important I remind the debt recovery organisation through Capital One that Mr M's situation should be dealt with positively and sympathetically. That's not to say he shouldn't pay the debt – simply that a mutually acceptable and sustainable method for paying it should be agreed.

**my final decision**

For the reasons I have given, I do not 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 26 February 2018.

Sonia Kalsi  
**ombudsman**