

The complaint

Mr H complains that Capital One (Europe) plc (who I'll call Capital One) were unreasonable to default his account without warning, especially as they'd just approved breathing space for him.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead, I'll focus on giving my reasons for my decision.

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 know it will disappoint Mr H, but I agree with the investigator's opinion. I'll explain why.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

The Information Commissioner's Office (ICO) says when a consumer is at least three months behind with their payments then a default may be registered. In March 2023 Capital One sent Mr H a default notice that explained he had arrears of £200.75 on his account. His account had been in arrears for three months and I think Capital One were, therefore, acting in line with the ICO guidance. The default notice explained that the arrears needed to be paid by 20 April 2023 or the account would be defaulted and the whole outstanding balance would fall due.

Mr H didn't clear the arrears and I don't, therefore, think Capital One were unreasonable when they defaulted his agreement on 24 April 2023.

Mr H says that as a "breathing space" had been applied to his account on 24 April 2023 Capital One were unfair to default it. When a consumer is provided with "breathing space" the guidance for creditors provided by the Insolvency Service explains that the business should, amongst other things, stop the debtor having to pay interest, fees, penalties, or charges on the debt, and stop trying to recover it. That's what Capital One did but in their letter to Mr H, on 24 April 2023, they explained, and I don't disagree, that they could still send him important messages and that if he received a message about being defaulted it would still apply. So, I don't think they were wrong to default the account when they did.

Mr H says he didn't receive the March 2023 letter (which seems to refer to the default notice) and he says he received notification that his account had been defaulted on 2 May 2023

when it was dated 25 April 2023. He doesn't understand why the business sent him a breathing space letter the day before they defaulted the account. I don't think the application of a breathing space means the business were wrong to default the account. It seems likely that the breathing space would, therefore, apply to the outstanding debt that had now become due. I've checked Capital One's system notes and can see that they sent the default notice in March 2023 to the address they had registered for Mr H – the one we have for him. On balance, I'm persuaded that Capital One did what was required of them to communicate the potential for the debt to be defaulted.

Ultimately, while I have sympathy with the situation Mr H has found himself in, I don't think it would be fair to suggest Capital One have done anything wrong. I'm not asking them to take any action.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 6 February 2024.

Phillip McMahon
Ombudsman