

## **The complaint**

Ms G has complained that Capital One (Europe) plc irresponsibly lent to her.

## **What happened**

Ms G opened a credit card account with Capital One in April 2019. Her credit limit was initially £200. In June 2021 her credit limit was increased to £450.

Ms G, through her representative, says that Capital One shouldn't have allowed her to open an account and it shouldn't have increased her credit limit once it had. Ms G says she was struggling to meet her repayments and had a lot of credit elsewhere, too. She says if Capital One had done adequate checks on her situation it would have seen that she wouldn't be able to repay her balance in a reasonable length of time.

Capital One says it didn't lend irresponsibly to Ms G and that it did all the necessary checks before it lent to Ms G – and when it increased her credit limit.

Our adjudicator thought that Ms G's complaint should be partially upheld. They thought that the credit given to Ms G was acceptable, but that by November 2019 Capital One should have realised that Ms G was finding it difficult to manage her repayments. And they thought that Capital One shouldn't have increased her credit limit to £450 in June 2021 because reasonable and proportionate checks would have shown that Ms G's finances were overextended and that she couldn't afford to sustainably meet the repayments on more credit.

Our adjudicator said that Capital One should have shown forbearance to Ms G in November 2019 because she had been over her limit for many months before then. They thought that Capital One should not have continued the account on the same terms and that it wasn't fair of Capital One to charge interest or fees after this point.

Capital One disagreed. It said it had done sufficient checks and there were no indications of any financial strain.

Capital One thought that we should only be looking at the original and later lending decision. It argued that any redress due should only be from the point at which it increased Ms G's credit limit to £450. And it provided evidence that it had tried to contact Ms G to offer support on how to manage her finances in August 2019. Capital One also stated that Ms G had not be charged any overlimit or late fees through the lifetime of her account. As Capital One disagreed with the adjudicator's view, the complaint has been passed to me to make a 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.

We've set out our general approach to complaints about unaffordable and irresponsible lending - including the key relevant rules, guidance and good industry practice - on our website and I've taken that into account when I have considered Ms G's complaint.

Capital One needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Ms G could afford to repay what she was being lent in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and Ms G's income and expenditure. With this in mind, in the early stages of a lending relationship, I think less thorough checks might be reasonable and proportionate.

Certain factors might point to the fact that Capital One should fairly and reasonably have done more to establish that any lending was sustainable for Ms G. These factors include things like understanding Ms G's income, the total amount Ms G borrowed, and the length of time Ms G had been indebted.

There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable.

When Ms G opened her account Capital One conducted a number of checks, including a credit check. Capital One told us there were no signs of financial difficulties based on the checks it did. Having reviewed the checks, I don't think there is anything to suggest that it would have been unreasonable for Capital One to have approved the account. Capital One asked about Ms G's income and it checked how much unsecured debt she had. While Ms G had debts which required payments of around £600 per month, which was considerable given her gross income of £25,000 per year, she was managing these repayments well and she wasn't in arrears and hadn't defaulted on any of them.

I think this suggests that the original limit of £200 was manageable for Ms G. There were no signs of financial distress and the limit was very low. So I don't think Capital One did anything wrong with its original lending decision.

However, Ms G went on to regularly exceed her credit limit. Over the following 27 months she exceeded that limit in 16 of those months. When she wasn't exceeding the limit, she was utilising a very high proportion of her credit limit. So, I think when Capital One came to offer Ms G an increase in her credit limit in June 2021 it should have taken account of the way she had managed her account up to that point as well as the information it had at the point the account was opened in relation to her other outstanding debt. While Capital One said that it did creditworthiness and affordability checks it hasn't provided a breakdown of these, so I don't know exactly what it saw. But I think if Capital One had also taken into account the number of times she had exceeded her credit limit with her credit card account that Capital One would have realised that she was unlikely to be able to manage her repayments in a sustainable way. So, I don't think Capital One should have increased Ms G's credit limit in June 2021.

But I also think that Capital One should have acted sooner to prevent Ms G getting into further financial difficulty. I agree with the adjudicator that by November 2019 Ms G was showing clear signs of such difficulty. She had exceeded her credit limit for six consecutive months.

Capital One says that I shouldn't consider management of Ms G's account. Instead, it says I can only look at the original account opening and any credit limit increases. I disagree. The

Consumer Credit sourcebook (CONC), which is part of the guidance issued by the Financial Conduct Authority to businesses providing consumer credit states:

*“A firm must monitor a...credit card customer’s repayment record and any other relevant information held by the firm and take appropriate action where there are signs of actual or possible financial difficulties.”*

So I am satisfied that Capital One still had a duty to monitor Ms G’s ongoing financial situation and act accordingly if she was showing evidence of financial difficulty.

Capital One says that it contacted Ms G in August 2019 by email about managing her finances; it says it did not receive a response. Meanwhile, although Ms G was making payments to her account (which were more than the minimum required) she continued to spend on the card to a point that exceeded her credit limit each month. Ms G has also provided her credit file which shows she had been in arrears with another lender from January 2019 to August 2019. I think if Capital One had conducted proportionate checks each month as it indicated that it had, it would have realised Ms G was in some difficulty. So, I think Capital One should have stepped in by November 2019 and not continued to offer lending on the same terms.

### **Putting things right**

As I don’t think Capital One should have continued to offer the card account on the same terms after 9 November 2019, and so shouldn’t have increased the credit limit to £450 either, I don’t think it’s fair for it to charge any interest or charges after 9 November 2019

However, Ms G has had the benefit of all the money she spent on the account so I think she should pay this back. Therefore, Capital One should:

- Rework the account removing all interest and charges that have been applied to balances after 9 November 2019.
- If the rework results in a credit balance, this should be refunded to Ms G along with 8% simple interest per year\* calculated from the date of each overpayment to the date of settlement. Capital One should also remove all adverse information recorded after 9 November 2019 regarding this account from Ms G’s credit file.
- Or, if after the rework the outstanding balance still exceeds £200, Capital One should arrange an affordable repayment plan with Ms G for the remaining amount. Once Ms G has cleared the outstanding balance, any adverse information recorded after 9 November 2019 in relation to the account should be removed from her credit file.

I note that Capital One says that it didn’t charge any overlimit or late fees, however, I have included fees and charges in this redress to avoid any doubt.

\*HM Revenue & Customs requires Capital One to deduct tax from any award of interest. It must give Ms G a certificate showing how much tax has been taken off if she asks for one. If it intends to apply the refund to reduce an outstanding balance, it must do so after deducting tax.

**My final decision**

I uphold Ms G's complaint in part and direct Capital One (Europe) PLC to put things right in the way I've set out above. Under the rules of the Financial Ombudsman Service, I'm required to ask Ms G to accept or reject my decision before 5 July 2022.

Sally Allbeury  
**Ombudsman**