

The complaint

Miss G complains that Capital One (Europe) plc was irresponsible when it offered her two credit card accounts.

What happened

Capital One opened a credit card account for Miss G in May 2016 and another one a year later in September 2017. The first had a limit of £200, the second a limit of £500 and neither limit was ever increased.

Miss G complained to Capital One in March 2023 that the account payments were unaffordable for her as she was on a low income. She said that she usually made the minimum payments and had been in a cycle of clearing the account and then borrowing again for several years.

Capital One didn't uphold Miss G complaint. It said that it used a variety of information to check that the credit would be affordable for her including information she'd provided and information from the credit reference agencies and it made appropriate lending decisions. Miss G referred her complaint to us. Our investigator assessed the complaint but didn't recommend that it be upheld. They found that Capital One wasn't irresponsible to have opened either account for Miss G.

Miss G didn't agree with this recommendation and asked for her complaint to come to an ombudsman to decide and it came to me. I concluded that Miss G's complaint should be upheld because although Capital One wasn't irresponsible to have opened the accounts for Miss G, it didn't treat her fairly later on. I sent out a provisional decision in December 2023 explaining my reasons and sharing the information I'd relied on. Both parties responded with comments. Capital One didn't agree with my provisional conclusions and provided new information for me to consider.

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.

Having reviewed everything again, including what both parties have said in response to my provisional decision and the new information provided by Capital One, I remain of the view that Miss G's complaint should succeed and that my proposals for putting things right for her are fair. I'll explain my reasons again in this final decision and refer to both parties' responses where appropriate.

As before, when making my decision I've had regard to the regulator's rules and guidance on responsible lending (set out in its consumer credit handbook – CONC) which lenders, such as Capital One, need to abide by. Capital One will be aware of these, and our approach to this type of lending is set out on our website, so I won't refer to the regulations in detail here but will summarise them.

Before entering into a credit agreement, Capital One needed to check that Miss G could afford to meet her repayments sustainably. In other words out of her usual means, within a reasonable period of time, without having to borrow further and without experiencing financial difficulty or other adverse consequences. The checks needed to be proportionate to the nature of the credit (the amount borrowed, for example) and to Miss G's circumstances.

After entering into the agreement, Capital One needed to monitor Miss G's repayment record and other relevant information and take appropriate action where there were signs of actual or possible financial difficulties. Examples of such action could include considering suspending, reducing, waiving or cancelling any further interest, fees or charges.

In addition, in March 2018 the regulator introduced specific rules about what action lenders had to take in relation to customers who were deemed to be in persistent debt. A borrower would be considered to be in persistent debt if they had paid more in interest, fees and charges than they had paid towards the capital owed in the previous 18 months. In this case the lender needed to write to them to explain that they needed to think about paying more towards their account. If this didn't happen and another 18 months passed, then the lender needed to take steps to help the borrower pay more towards the capital, for example suspending the account and transferring the balance to a fixed sum unsecured loan or waiving all interest, fees and charges if the increased payments were unaffordable.

The overarching requirement was that Capital One needed to pay due regard to Miss G's interests and treat her fairly.

With all of this in mind, my considerations are did Capital One complete reasonable and proportionate checks when it opened each account for Miss G to satisfy itself that she would be able to repay the credit offered within a reasonable period of time? If it didn't do this, what would reasonable and proportionate checks have shown and, ultimately, did Capital One make fair lending decisions? Did Capital One treat Miss G fairly after the accounts had been opened?

May 2016 agreement

When Miss G applied for her first credit card, Capital One checked her credit file and noted that she had a loan with a balance of just over £400 and repayments of £30. It also noted that she'd defaulted on a loan three years prior to her application which had an outstanding balance of £255. Capital One didn't provide us with a record of Miss G's income. I've checked the bank statements Miss G provided from around that time and can see that she had an income of about £940 a month from state benefits and I've assumed that this is the amount Capital One would have relied on.

I don't think there was an obvious risk to Miss G that she would not be able to meet her repayments for this level of credit without difficulty out of her usual income. Miss G didn't have a significantly high level of other borrowing and while there was a defaulted account showing on her credit file, this was from three years prior to her application and there was no recent adverse information to suggest that she was having ongoing financial difficulties.

Altogether, I don't think there was anything in the information Capital One had about Miss G's circumstances that should have led it to either decline her application or to complete further checks before entering into the agreement. I've concluded that Capital One wasn't irresponsible to open this account for Miss G.

September 2017 agreement

Capital One recorded Miss G's annual income as £15,384 when she applied for a second

credit card in September 2017. As before, it checked her credit file and noted that her defaulted account from 2013 was showing as settled and that she had no other debt. Capital One said it estimated Miss G's housing and living costs based on national datasets and reviewed how she was managing her first account. I can see from the account statements that Miss G had used her first credit card and repaid the credit and her account had been showing a zero balance since February 2017.

As before, I don't think there was anything in the information Capital One had that should have prompted it to decline Miss G's application for a second account or to look into her finances in more depth before lending to her. I've concluded that Capital One wasn't irresponsible when it agreed to open a second account for Miss G.

What happened after the accounts were opened?

Miss G told us that her debt on these two accounts has impacted on her mental health and caused her severe anxiety and led to her constantly worrying about money. She said that she'd been making the minimum payment for years because it was all she could afford and that Capital One had let this situation go on and never offered her any help.

Account opened in 2017

The contact records for Miss G's 2017 account show that Capital One got in touch with her in June 2019 about how she was managing the account. I'd said in my provisional decision that I hadn't seen a copy of the letter but the contact notes referred to it as a 'persistent debt notification' which proposed a higher minimum payment amount to begin the following month. The account statements show that Miss G's minimum monthly payment from then on was more than twice the interest charged, so it seems to me that this account didn't meet the persistent debt criteria going forwards.

Capital One has since provided a copy of the letter it sent to Miss G in June 2019 which was as I'd expected. It told Miss G about the increased payment amount and said she could opt out before it came into effect if it didn't work for her. Capital One also confirmed that the account exited persistent debt after that and that Miss G's 2016 account never met the persistent debt criteria.

The contact records state that in April 2021 Capital One sent an email to Miss G about support to manage her finances. The notes say to refer Miss G if she indicated possible financial difficulty. I'd said in my provisional decision that I hadn't seen a copy of this email and so I didn't know what support was offered to Miss G or how she was asked to respond.

Capital One has since provided a copy of the email that would have been sent to Miss G. It said "We know how important it is to get the right support when you really need it. If you have money worries or just want to feel more in control of your money you'll find help on our website." The letter isn't specific to Miss G and I'm not sure how she would have indicated possible financial difficulty by accessing Capital One's website.

The next contact note on the account is from March 2023 and refers to breathing space. Capital One said in its final response to Miss G that it paused her payments and stopped charging interest to her accounts for a period of 60 days when she raised a complaint with it in March 2023.

While Miss G's minimum payment on this account enabled her to pay more off the capital than she was paying in interest from July 2019, she continued to only make the minimum payment from then. She made the minimum payment on this account from October 2018 to December 2022, around 50 months. After this she began making a fixed payment of

£30. Miss G also paid about seven overlimit fees altogether over the years. (Capital One has since explained that these seven fees included the overlimit fees charged to Miss G's other credit card account.)

The account statements detail Miss G's spending. These show that Miss G didn't use the card from July to December 2019, in the period just after the minimum payment was increased. From January 2020 Miss G's spending on the card generally paid for household, food and energy costs and she was over her limit in 34 of the 40 months from then until April 2023.

I'd said in my provisional decision that while Capital One sent a communication to Miss G about support to manage her finances in early 2021, the available information didn't show that it took any further action. Aside from the persistent debt rules, Capital One still had an obligation to monitor Miss G's account and take appropriate action if there were signs of possible or actual financial difficulty.

Given Miss G was making the minimum payments for so long and spending what she repaid on basic living costs, I think Capital One should have realised that she was in financial difficulty and couldn't afford to make the minimum payments without using the credit again. As per CONC 6.7.3AR, I think it should have stepped in at some point. I think that point was reached in July 2020, when Miss G had been meeting the higher minimum payment on her account for a year, her account had been over the limit in that time and she'd been using it to pay for basic living costs for at least six months. I think Capital One should have realised that Miss G was having financial difficulties by that point and it wasn't fair to her or taking account of her interests by continuing to charge interest on the account when she was evidently not managing to make inroads into her debt.

In response to my provisional decision, Capital One said that there were several occasions where it offered support to Miss G. It first started making outbound calls to Miss G when she went over the limit on her 2017 account in August 2018. I can see from the contact record that these continued several times a month until June 2019, when Capital One notified Miss G that it was increasing her monthly minimum payment amount. I understand that Capital One didn't get in touch with Miss G about her account again until March 2023, aside from the letter sent in April 2021.

Capital One said the purpose of these calls was to speak with Miss G to better understand her financial circumstances to see whether there was evidence of financial difficulty and whether any forbearance measures may have been appropriate pursuant to CONC 7.3.5G. It said that unfortunately none of these contact attempts were answered and as a result, it was unable to put Miss G on any kind of plan until it heard from her to discuss her situation in full. This was because it wouldn't put her into any type of payment plan or arrangement, which would restrict her access to credit and be recorded on her credit file, without first speaking with her to understand her financial circumstances.

In some cases this would be an appropriate response, however I can't say that it was in this case for the reasons I've explained above. I think if Capital One was able to increase Miss G's minimum payments without hearing from her about her situation in full (albeit offering her an opt-out) then it could also have taken other appropriate action.

Account opened in 2016

I said in my provisional decision that I hadn't seen any contact records or transaction statements for Miss G's first account taken out in 2016 and so I didn't know if Capital One considered that Miss G was in persistent debt on this account. I said "The high level account summary doesn't show that Miss G's minimum payment increased at any point. The

summary does shows that Miss G made the minimum payment on her 2016 account from October 2018 to January 2022, around 40 months. After this she paid a fixed amount of £20 a month. I don't know how Miss G used this account but given what Capital One could see from Miss G's 2017 account, I think it should have stopped charging interest on this account also in July 2020."

Capital One has since provided the contact records and statements for Miss G's 2016 account and I've reviewed these. The statements confirm that Miss G made the minimum payments, occasionally paying more to bring her balance under the limit along with overlimit fees. Miss G went over her account limit in September 2018 and remained over it in most months until July 2019. The contact notes show that Capital One made calls to Miss G several times a month from September 2018 until Miss G made a manual payment (of less than £2) to bring her account under the limit. Miss G mostly used the account for food and discount home store purchases, and the account remained close to its limit.

This new information hasn't changed my provisional conclusion that, as with Miss G's 2017 account, Capital One didn't treat Miss G fairly or with due regard to her interests by continuing to charge interest on this account when she was clearly not managing to make inroads into her debt.

Putting things right

I've concluded that Capital One should have stopped charging interest, fees and charges from July 2020 to Miss G's accounts.

Miss G said in response to my provisional decision that her financial difficulties caused her stress and anxiety over the years, and led to her taking on more debt which seriously impacted her mental health. I am very sorry to hear about the difficulties Miss G has experienced and I have considered whether Capital One should provide any additional compensation to her in recognition of the emotional impact of its actions. While I think Capital One should have taken appropriate action as I've set out, I don't think it would be fair or reasonable for me to find that it was wholly responsible for Miss G's financial difficulties and so I don't consider that any additional compensation would be appropriate in this case.

In summary, in order to put this right for Miss G Capital One should now:

- Rework each account removing all interest, fees, charges or premiums that have been applied from July 2020;
- If the rework results in a credit balance on either account, this should be refunded to Miss G along with 8% simple interest per year* calculated from the date of each overpayment to the date of settlement. In this case, Capital One should also remove all adverse information regarding the relevant account from Miss G's credit file; or
- If after the rework, there is still an outstanding balance on either account, Capital One should arrange an affordable repayment plan with Miss G for the remaining amount or amend an existing plan. Once Miss G has cleared the balance, any adverse information in relation to the relevant account should be removed from her credit file.

*HM Revenue & Customs requires Capital One to deduct tax from any award of interest. It must give Miss G a certificate showing how much tax has been taken off if she asks for one.

My final decision

For the reasons I've explained above, I am upholding Miss G's complaint about Capital One (Europe) plc in part and it needs to take the above steps to put things right for her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 4 April 2024.

Michelle Boundy
Ombudsman