

## **Complaint**

Miss B has complained that Capital One (Europe) Plc (“Capital One”) irresponsibly provided her with credit cards when her credit file was poor.

She says that if her bank statements had been checked it would have been clear why she couldn’t afford to make the payments and she wouldn’t have been provided with the credit cards.

## **Background**

Miss B was initially provided with a credit card (“Card A”), which had a limit of £200, by Capital One in March 2021. Capital One then provided Miss B with a second credit card (“Card B”) in March 2023. This card had a credit limit of £1,500.00.

Capital One didn’t think that it had done anything wrong when providing Miss B with either of her credit cards. Miss B was dissatisfied with Capital One’s response and referred her complaint to our service.

One of our investigators looked at everything provided. She also didn’t think that Capital One had done anything wrong or treated Miss B unfairly. So she didn’t recommend that the complaint should be upheld.

Miss B disagreed with our investigator’s assessment and asked for an ombudsman to review her 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.

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.

Having carefully thought about everything, I’ve decided not to uphold Miss B’s complaint. I’ll explain why in a little more detail.

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 Miss B 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 the consumer’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. But 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 the consumer. These factors include:

- the *lower* a consumer's income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income);
- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);
- the *greater* the frequency of borrowing, and the longer the period of time during which a customer has been indebted (reflecting the risk that prolonged indebtedness may signal that the borrowing had become, or was becoming, unsustainable).

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

I've kept all of this in mind when deciding Miss B's complaint.

#### *Card A*

As previously explained, card A was opened in March 2021 with a credit limit of £200. Both of Miss B's credit cards, under the regulator's rules and guidance, are also known as revolving credit facility. As these were revolving credit facilities, this meant that for card A Capital One was required to understand whether Miss B could repay around £200 within a reasonable period of time. Not whether she could pay the entire amount in one go.

I understand that Capital One carried out a credit check before initially agreeing to provide card A. Capital One's credit check showed that the amount Miss B owed wasn't excessive compared to what she declared for her income. Furthermore, Miss B didn't have any significant adverse information such as defaulted accounts or county court judgments ("CCJ") recorded against her either.

What is important to note is that a credit limit of £200 would have required relatively low monthly payments in order to clear the full amount owed within a reasonable period of time. And the information I've seen about Miss B's circumstances does suggest that Capital One was reasonably entitled to conclude that Miss B had the funds to make the payments required to repay £200 within a reasonable period of time.

As this is the case, I'm satisfied that it wasn't unreasonable for Capital One to have agreed to have provided Miss A with card A in March 2021.

#### *Card B*

As explained in the background section of this decision, Capital One subsequently provided Miss B with card B, which had a credit limit of £1,500.00, in March 2023. Capital One has said that it carried out credit searches on Miss B and considered these results in conjunction with relying on Miss B's conduct and record on card A when deciding if it should accept the application for card B.

Capital One's credit check showed that the amount Miss B owed had increased. But this wasn't by much and Miss B's overall indebtedness still wasn't excessive, particularly as she declared increased personal and household incomes. Furthermore, Miss B still didn't have any significant adverse information such as defaulted accounts or CCJs recorded against her either.

However, while I accept that it could be argued that Miss B was also managing card A reasonably well, I think that there were a couple of warning signs which lead me to think that what Capital One had meant that it needed more information in order for it to be reasonably entitled to conclude that card B was affordable.

Firstly, while its fair to say that, on the face of things, Miss B's repayment record on card A was good, she, as she has pointed out, was making cash withdrawals. And as this is an expensive way to borrow this can sometimes – but not always – be an indicator of underlying financial difficulties. Although I do accept that the rest of the information on the credit check Capital One carried out doesn't suggest Miss B was experiencing financial difficulties.

Secondly, I understand that Miss B had been declined credit limit increases on card A too. I don't know why this was. And more importantly it doesn't automatically follow that a lender has to refuse an application for credit simply because it has previously done so in the past – after all it is the lender that will understand why it previously refused an application and whether the circumstances had changed since then. Nonetheless, I would expect a lender to have taken the fact that it previously declined applications for increased credit into account when considering the later application.

In my view, given all of the factors I've mentioned above, including the fact that card B was being provided with a credit limit of £1,500.00, I would have expected Capital One to have found out more about Miss B's expenditure - particularly her actual regular living expenses - before offering Card B. Capital One has been unable to evidence having done this in this instance. As this is the case, I don't think that the checks it carried out before it provided Card B were reasonable and proportionate.

As I think that Capital One ought to have done more, I've gone on to decide what I think Capital One is more likely than not to have seen had it done that here. As previously explained, given the circumstances here, I would have expected Capital One to have had a reasonable understanding about Miss B's regular living expenses as well as her income and existing credit commitments.

I've considered the information Miss B has provided on her circumstances at the time and I don't think that Capital One attempting to find out further information about Miss B's living costs would have made a difference here. I say this because I've not seen anything that shows me that when Miss B's committed regular living expenses, other non-discretionary expenditure and her existing credit commitments were deducted from what she received each month, she did not have the funds to make sustainable repayments to balances that could have been owed as a result of having her two Capital One cards.

I say this in the knowledge that Miss B's actual circumstances at the time were worse than what the information about her living costs shows. I know that Miss B has had some discussion with the investigator over her actual expenditure and the fact that she was gambling significant sums of money. And it's possible – but by no means certain – that if Capital One had seen what I have now seen, it may have made a different decision on whether to provide card B.

However, Capital One wasn't aware of this additional spending. And the truth is, given the circumstances here as well as what I think that Capital One needed to find out, I don't think that reasonable and proportionate checks would have extended into obtaining bank statements – especially as bank statements weren't the only way that Capital One could find out about Miss B's living expenses in the first place.

In my view, delving into the detail of Miss B's statements in the way that Miss B argues that Capital One should have done, isn't commensurate with a proportionate check for a credit card with a limit of £1,500.00 (or £1,700.00 bearing in mind Capital One needed to keep in mind Miss B would still have card A which she could owe £200 on).

Crucially, I'm satisfied that Capital One taking further steps to find out more about Miss B's living expenses won't have led it to determine that the possible repayments on card B were unaffordable for Miss B. So I don't think that Capital One acted unfairly when it offered Miss B card B in March 2023.

I know that Miss B has queried how it is possible for us not to uphold this complaint when another investigator has already upheld a separate complaint about a different lender, which provided her with a loan mere months before Capital One provided her with Card B.

I can understand why Miss B might find it strange that she's received different outcomes on complaints which she perceives to be materially the same. But we consider complaints on an individual basis and looking at the individual circumstances. As I've previously explained, what will constitute a proportionate check will very much depend on the particular circumstances of the individual application. And a proportionate check, even for the same customer, could look different for different applications.

I'm also not bound by the outcomes reached by investigators, or for that matter other ombudsmen. Ultimately, I'm required to consider the facts of a case and reach my own conclusion. That said and with a view to providing some clarity and reassurance to Miss B, it might help for me to explain that there is a key difference between the facts of this complaint and her other one.

In Miss B's other case, the investigator concluded that the lender did know about Miss B's other spending as it was in possession of information showing this. I understand that this was because it was Miss B's current account provider. So the investigator thought that it ought to have taken into account, what Miss B's transactions showed, when deciding whether to provide her with a loan.

Whereas in this case, Capital One wasn't in possession of the same level of information and for the reasons, I've explained above I don't think it is reasonable and proportionate to expect Capital One to have obtained this level of information here either. So it wasn't aware of Miss B's additional spending and it isn't fair and reasonable to expect it to take into account facts that it wasn't aware of and couldn't reasonably be expected to be aware of either.

Therefore, while I'm required to consider each case on its individual facts and not simply rubber-stamp what might have happened on previous cases, nonetheless, I don't consider that the outcome I've reached on this case is inconsistent, or incompatible, with the outcome that Miss B received on her other case.

Finally in reaching my conclusions, I've also considered whether the lending relationship between Capital One and Miss B might have been unfair to Miss B under section 140A of the Consumer Credit Act 1974 ("CCA").

However, for the reasons I've explained, I've not been persuaded that Capital One irresponsibly lent to Miss B or otherwise treated her unfairly in relation to this matter. And I haven't seen anything to suggest that section 140A CCA or anything else would, given the facts of this complaint, lead to a different outcome here. So I'm not upholding this complaint.

I appreciate this will be very disappointing for Miss B. But I hope she'll understand the reasons for my decision and that she'll at least feel his concerns have been listened to.

**My final decision**

For the reasons I've explained, I'm not upholding Miss B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 13 August 2024.

Jeshen Narayanan  
**Ombudsman**