DRN-4882219

The complaint

Mr M has complained that Capital One (Europe) plc ("Capital One"), irresponsibly granted him a credit card account, and later increased the credit limit on the card, which he couldn't afford to repay.

What happened

Mr M told us he took out a credit card with Capital One in August 2021. The initial limit was £200. This was increased to £800 on 18 January 2023, and £1,800 on 25 September 2023.

In summary, Mr M said he was in financial difficulties when he took out the card, and that he was unemployed from December 2021 and therefore his situation worsened. He also told us that he has a number of health problems. Mr M complained to Capital One, saying that it had failed to adequately check that he was in a financial position to be able to repay the borrowing, and that, had it completed suitable checks, it would have been clear to Capital One that it should not have approved the application or the credit increases.

Capital One replied to Mr M, saying that it had carried out appropriate checks, and therefore it was not upholding his complaint. Mr M then brought his complaint to this service.

Our investigator looked into Mr M's complaint but didn't think it should be upheld. Mr M didn't agree and asked for it to be reviewed by an ombudsman.

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.

Our approach to considering complaints about unaffordable and irresponsible lending is set out on our website, and I've taken this into account here.

I've decided not to uphold Mr M's complaint. I'll explain why.

In summary, before providing credit, lenders need to complete reasonable and proportionate affordability checks. There isn't a set list of checks required of a lender, but it needs to ensure the checks are proportionate when considering things such as the type and amount of credit being provided, the size of the regular repayments, the total cost of the credit and the consumer's circumstances. So I've considered whether Capital One completed reasonable and proportionate checks to satisfy itself that Mr M would be able to make the repayments on the credit card account in a sustainable way.

Capital One sent in copies of the credit agreement, the transactions on the account, and notes of its contact with Mr M, along with details of the checks it carried out when granting the credit card and increasing the limit. Mr M has made a number of submissions about the regulatory rules that businesses are required to follow, and I've read and considered all of these.

Capital One said that, when deciding whether to lend, it takes into account information from the application and from credit reference agencies and estimates of outgoings based on Office for National Statistics (ONS) data. It also uses its own information about existing accounts.

Looking first at when the card was granted, Capital One said that it used the gross income stated on Mr M's application, which was £35,000, and calculated what that would be after tax. It also took account of credit commitments shown on Mr M's credit file, which showed no outstanding balances on any active accounts. There were defaults registered on Mr M's credit file (but these were dated over three years earlier), as well as a County Court Judgement (CCJ) from 2018. Mr M had stated monthly housing costs of £600, and Capital One had estimated other essential expenditure, including food, clothing, and utilities, from ONS data.

From the credit reference information Capital One provided, I can see that the balances outstanding on the defaulted accounts were the same as at the point of default and totalled just over £1,350.

The initial credit limit was low - £200 – and the required monthly payments on a balance of that amount would likely be less than £10. For lending of that amount, I think it was reasonable for Capital One to rely on the credit reference data, along with the information from Mr M's credit card application and the estimated expenditure based on ONS data. So I think its checks were reasonable and proportionate.

I accept that there were defaults and a CCJ registered on Mr M's credit record. But these were from around three years earlier, and a history of financial problems does not *automatically* mean that a consumer should not be granted credit – this will depend, for example, on the type of credit and amount involved, and the consumer's circumstances. Some lenders choose to accept applications from consumers who have had previous financial difficulties.

In August 2021, Mr M had no other credit commitments, and, based on his stated income and housing costs, and likely other expenses, I can't see anything that would've led Capital One to conclude that the monthly payments on the card would have been unsustainable for Mr M. So I don't think it acted unfairly in granting the card.

From what's on the statements, I can see that Mr M didn't start using the credit card until October 2022. Capital One then increased the credit limit to £800 in January 2023.

Capital One said that, in assessing the increase, it took account of a pre-tax income of £23,634 (taken from credit reference agency data and based on current account turnover), housing costs of £600 as before, and an estimate of other essential living expenses based on ONS data. The credit reference agency information also showed that Mr M had no other *active* borrowing at the time (although the defaults and CCJ remained on Mr M's credit record).

Capital One also said that it took account of how Mr M had managed the account, although of course this data would be limited as Mr M had only recently started using the card. But Mr M's payments had been larger than the minimum required and had been received on time.

It's clear, from what Capital One sent in, that it was aware Mr M's income had decreased. And it was aware of the defaults and CCJ. But set against this, the credit card was listed as Mr M's only active borrowing, so Mr M hadn't sought any other credit since he took out the Capital One card, and he wasn't fully utilising the existing limit. Also, the new credit limit was low relative to Mr M's income, even at the reduced amount. So I think it was reasonable and proportionate for Capital One to rely on the information it had – I can't see anything that ought reasonably to have prompted it to make further enquiries.

And again, based on the information Capital One had, I can't see anything that would've led it to conclude that the monthly payments on the card would have been unsustainable for Mr M. So I don't think it acted unfairly in increasing the limit.

The final increase in the credit limit took place in September 2023, when it rose from £800 to £1,800. Capital One said it took account of the same information as before in granting this increase – that is, a pre-tax income of £23,634, taken from credit reference agency data, housing costs of £600, and an estimate of other essential living expenses based on ONS data. The credit reference agency information again showed that Mr M had no other active credit commitments at the time. Capital One further said that, in the preceding 12 months, payments had always been received on time and were always significantly greater than the minimum amounts requested. The full balance had been repaid on two occasions.

Capital One's data showed that Mr M's income had not changed further. And as I've explained earlier, it was aware of the defaults and CCJ. But the credit card was still listed as Mr M's only active borrowing, so again Mr M hadn't sought any other credit. The amount involved was still low relative to Mr M's income, even at the reduced amount. So again I think it was reasonable and proportionate for Capital One to rely on the information it had – as before I can't see anything that ought reasonably to have prompted it to make further enquiries.

And again, based on the information Capital One had, I can't see anything that would've led it to conclude that the monthly payments on the card would have been unsustainable for Mr M. So I don't think it acted unfairly in increasing the limit.

Mr M disagreed with our investigator's assessment, and he raised a number of points including some in relation to the regulatory rules and guidance that Capital One is required to follow. I have considered these carefully, and summarised them below.

At the heart of Mr M's complaint is his view that Capital One should have made further enquiries about his circumstances and not simply relied on the information it had drawn from credit reference agency records and its own records. He thinks the defaults and the CCJ on his record should have indicated at the outset to Capital One that his finances were precarious. He was also unhappy about the use of ONS data to estimate essential expenditure.

Mr M further thinks his spending patterns on the card should have alerted Capital One to his financial difficulties, saying that, while a substantial sum was paid off each month, the money was swiftly spent again on household necessities.

Mr M also said that the credit limits Capital One granted were large sums to him, and the situation has caused him significant distress. He also feels that he was targeted with unsolicited high pressure unsuitable credit limit increases via pop up notifications on his mobile phone.

The specific rules about affordability are to be found in the Consumer Credit Sourcebook (CONC) in the Financial Conduct Authority Handbook. They are at CONC 5.2A - Creditworthiness assessment (the rules and guidance are lengthy, so I have not set them out in full here).

With regard to Mr M's adverse credit history, I noted above that a history of financial problems does not *automatically* mean that a consumer should not be granted credit. In Mr

M's case, the defaults and CCJ were some three years earlier, and there was no other active borrowing on his credit record. So I don't think it was unreasonable for Capital One to decide that these were not a barrier to it granting new credit, albeit with a low initial limit of £200.

I have also explained above that I think it was reasonable and proportionate for Capital One to rely on the checks it carried out before granting the card and the subsequent credit increases. CONC 5.2A.21G states:

"(1) The firm may have regard, where appropriate, to the purpose for which the customer intends to use the credit.

(2) When considering, having regard to the factors in CONC 5.2A.20R, what steps the firm needs to undertake to make the creditworthiness assessment a reasonable one, the firm should consider whether the factors point towards a more or less rigorous assessment. Certain factors may point towards a more rigorous assessment and others towards a less rigorous one in which case the firm should weigh up the factors before deciding what type of creditworthiness assessment is required."

I know that Mr M feels very strongly about this. But given the amount of Mr M's income that Capital One was able to verify through credit reference agency information, and the small amount of credit relative to that income (although I appreciate that it was not a small amount to Mr M), I can see no obvious signs that would've suggested to Capital One that he was over committed or struggling financially, and therefore that it should make more detailed enquiries about his circumstances, either when it granted the card or increased the limit.

With regard to the use of ONS data, the FCA rules require businesses to take reasonable steps to determine the amount, or make a reasonable estimate, of a customer's current non-discretionary expenditure. But they allow for the use of statistical data unless the business knows or has reasonable cause to suspect that the customer's non-discretionary expenditure is significantly higher than that described in the data or that the data are unlikely to be reasonably representative of the customer's situation.

In Mr M's case, I don't have evidence to suggest that Capital One knew or had reasonable cause to suspect that his essential living expenses might be higher or that the ONS data might be unrepresentative. I've also thought about Mr M's spending pattern, but in the absence of any other signs of potential concern, for example a significant increase in other credit commitments, I don't think this, in itself, indicated financial difficulties.

Looking at Capital One's marketing, I appreciate that Mr M felt this was aggressive. I don't have a copy of any screenshots to see how this would've appeared to Mr M, but the evidence provided by Capital One suggests that Mr M could've turned down the suggested increase. So I can't fairly say that Capital One did anything wrong here.

So taking everything into account. I can't fairly say that it's most likely that Capital One had reason to think that the credit was unaffordable for Mr M when he took out the card, or when the credit limit was increased, or that Capital One acted unfairly in granting the credit – there simply isn't enough evidence for me to reach that conclusion. Therefore, while I have a great deal of sympathy for Mr M in his current situation, I cannot fairly uphold this complaint.

I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, for the reasons I've already given, I don't think Capital One lent irresponsibly to Mr M or otherwise treated him unfairly in relation to this matter. I haven't seen anything to suggest that Section 140A would, given the facts of this complaint, lead to a different outcome here.

My final decision

For the reasons I’ve explained, I’ve decided not to uphold Mr M’s complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr M to accept or reject my decision before 18 December 2024.

Jan Ferrari
Ombudsman