

## **The complaint**

Mr G complains that Capital One (Europe) plc trading as Capital One was irresponsible when it offered him two credit card accounts.

## **What happened**

Capital One opened a credit card account for Mr G in December 2015 and another one a year later in December 2016. The first had a limit of £200, the second a limit of £500 and neither limit has been increased since opening. I understand that both accounts are now closed.

Mr G complained to Capital One in late 2022 that it didn't look into his circumstances in enough detail before offering him an account and the credit was unaffordable for him. Mr G said he was unemployed and receiving benefits at the time and had difficulty repaying previous debt, as his credit record would have shown. Agreeing more credit left him stuck in persistent debt, making payments which were difficult for him and caused him stress and inconvenience. Mr G said that Capital One shouldn't have agreed a second account for him, given how he'd managed the first one.

Capital One didn't uphold Mr G's complaint. It said that it used a variety of information to check that the credit would be affordable for him including information he'd provided and information from the credit reference agencies. Its checks showed that the credit would be appropriate and affordable for him.

Mr G referred his 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 Mr G.

Mr G didn't agree with this recommendation and asked for the complaint to come to an ombudsman to decide and it came to me. I issued a provisional decision on 7 November 2023 explaining why I planned to uphold Mr G's complaint in part. Both parties have accepted my provisional 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.

Having reviewed everything again and, as both parties have accepted my provisional conclusions, I see no need to change my view of the complaint. For completeness, I'll set out my reasons for upholding Mr G's complaint in part again in this final decision.

As before, 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 Mr G could afford to repay the credit out of his 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, for example the amount offered, and to Mr G's particular circumstances. The overarching requirement was that Capital One needed to pay due regard to Mr G's interests and treat him fairly. CONC gave an example of contravening this as 'targeting customers with regulated credit agreements which are unsuitable for them by virtue of their indebtedness, poor credit history, age, health, disability or any other reason.'

With this in mind, my considerations are did Capital One complete reasonable and proportionate checks when it opened each account for Mr G to satisfy itself that he 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?

Capital One said it relied on information provided by Mr G about his circumstances and information from the credit reference agencies (CRAs) about his debt when carrying out its checks. It used national datasets to estimate his living costs and concluded that the credit offered would be affordable for him.

When Mr G applied for his first credit card he told Capital One he was an administrator with a salary of £20,000 (approximately £1,460 net a month) and was living with his parents. I don't have any information about Capital One's estimate of Mr G's expenses, other than it concluding that he had enough disposable income to afford the credit.

The credit file information showed that Mr G had defaulted on three accounts in 2014 with balances of around £6,200. The last of these had defaulted in November, more than 12 months prior to the application and there wasn't any evidence that Mr G was making payments to them. Mr G held two current accounts and one communications account. This latter account was reported with a default balance of over £800 by one CRA and as having been four payments in arrears during 2015 by another CRA.

Capital One agreed a limit of £200 for Mr G. Had there been no adverse information on his credit file, I'd likely say that the checks Capital One carried out here were proportionate to the lending and the circumstances. However, although the amount of credit it agreed was low relative to Mr G's declared income, I think the information Capital One saw on his credit file ought to have prompted it to look into things further before agreeing to lend to him. It appeared that Mr G had sizeable debts and had recently missed payments on another account, all of which raised the possibility that he might not be able to afford to repay more credit. The regulations at the time stated that it wasn't generally sufficient to rely solely on a customer's statement of current income in a creditworthiness assessment and given the above, I think it would have been proportionate here for Capital One to have verified what Mr G said about his income at least.

Mr G's provided us with his bank statements from the time. To be clear I'm not suggesting this is the information Capital One ought to have considered but it's what I have and I think it's reasonable to rely on it to check what Mr G's means were. I can see from these that he wasn't receiving a regular salary but state and council benefits. He was also in receipt of a student loan which was paid termly. Altogether, his income on a monthly basis amounted to more than he'd declared. So I think Capital One would have been reassured about Mr G's ability to meet his repayments for the credit and wouldn't have declined to lend to him had it asked for verification of his income.

Mr G said he feels that Capital One took advantage of him because it should have seen that

he wouldn't be able to make his repayments without difficulty given how he'd managed previous credit, and this has caused him stress. I don't doubt what Mr G has told us about his experience and I'm sorry to hear how difficult things have been for him. I have borne in mind that Capital One was not only required to consider sufficient information to be able to make a reasonable creditworthiness assessment but also to pay due regard to Mr G's interests and treat him fairly. I appreciate that this will be disappointing for Mr G but in this case I can't say Capital One treated him unfairly because the amount of credit it offered would have seemed repayable within a reasonable period of time and without difficulty, even within the context of his outstanding debts.

Capital One opened a second credit card account for Mr G about a year later in December 2016. This had a limit of £500. As before, it relied on what Mr G said about his income, checked his credit file and estimated his monthly expenses. This time Mr G said he was a teacher, was living with his parents and gave his income as £24,000. Capital One noted that Mr G had a county court judgement awarded against him in December 2015 and had no active debt other than his first Capital One credit card balance of £198.

Capital One said it also considered how Mr G had managed his first account. It said that all payments had been received on time, that these were all more than the minimum amounts requested and the full balance had been paid on six separate occasions. However, Mr G said that he struggled to manage this account. While he sometimes paid the balance off in full he then spent it again on necessities or withdrew it and deposited it into his bank account.

I've reviewed Mr G's statements for his first account up to December 2016. It is true that Mr G paid above the minimum each month and cleared his balance on many occasions. It's also true that when the account was opened he immediately spent up to the limit, went over the limit twice, used the credit for food and transport purchases, withdrew cash several times and had a direct debit payment returned. Mr G incurred fees for the returned payment, cash withdrawals and being over the limit albeit most of which were returned on his request. At the least, I think it's fair to say that Mr G's ability to manage his account in this first year was mixed and I don't think Capital One could be reassured that he was repaying the credit without difficulty. I think his account management combined with his county court judgement ought to have raised serious concerns for Capital One about Mr G's ability to manage further credit without it having an adverse impact on his financial situation.

As before, I've reviewed Mr G's bank statements from the time and I think it's likely that Capital One would have learnt that he was paying rent and that his income consisted of universal credit payments and student loans paid termly, had it investigated his means. I don't think Capital One would have declined to lend to Mr G solely on the basis that he couldn't afford to meet his repayments. However, it should have seen that further credit was likely to be unsuitable for Mr G given how he was using his existing credit card and that it had been confirmed through a court order that he wasn't dealing with his defaulted debts. On this occasion, I don't think Capital One treated Mr G fairly or with due regard to his interests by offering him more credit.

Mr G spent up to his limit on this second account within a month and incurred several overlimit fees in the first year. Mr G fully utilised the available credit most months, was over his credit limit for around a third of the time the account was open and withdrew almost £1,000 in cash. As with his other account Mr G was charged fees for returned payment, cash withdrawals and being over the limit, in addition to paying interest for over six years to have access to £500. Altogether, I've concluded that Capital One was irresponsible to have agreed this second account for Mr G.

## **Putting things right**

As per our usual approach I think it's fair that Mr G repays the capital as he's had the use of this but he shouldn't pay any interest, fees or charges associated with his account opened in 2016. Therefore, Capital One should:

- Rework the account removing all interest and charges that have been applied (and were not removed at the time);
- If the rework results in a credit balance, this should be refunded to Mr 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 regarding this account from Mr G's credit file.
- Or, if after the rework, there is still an outstanding balance, Capital One should arrange an affordable repayment plan with Mr G for the remaining amount. Once Mr G has cleared the balance, any adverse information in relation to the account should be removed from his credit file.

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

## **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 3 January 2024.

Michelle Boundy  
**Ombudsman**