

The complaint

Mr L complains that Capital One (Europe) plc irresponsibly lent to him by letting him take out two credit cards.

What happened

In 2014, Mr L took out his first credit card with Capital One. This card had a limit of £200. In 2016, Mr L took out a second credit card with Capital One, this one had a higher limit of £1,000.

In 2021, Mr L complained to Capital One about both cards. He said that he was in a debt spiral when it lent to him and it made his situation worse by allowing him to take out additional credit. Capital One said that the complaint about the 2014 credit card was brought too late. And it said the 2016 credit card was appropriately granted to Mr L.

Mr L brought his complaint to our service. Our investigator didn't uphold it. She said she couldn't consider the credit card taken out in 2014 as she agreed this complaint was brought too late. And she didn't think the 2016 card was irresponsibly lent to Mr L. She felt the checks carried out by Capital One at the time were appropriate and that Mr L's credit file didn't suggest he was struggling with any of his other debt at this time.

Mr L disagreed and asked for an ombudsman's decision. He said he wasn't aware he could make complaints about his debts until 2019. And he said that Capital One shouldn't have put him in "persistent debt", which he'd since learnt about. He also said he had other borrowing that was nearly at its limit. Our investigator explained that the term "persistent debt" was defined by the regulator and that this related to how much a person was paying towards the capital of a debt vs interest, fees and charges, rather than having multiple debts. And she arranged for the case to be passed to me for 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.

Our service isn't able to consider all complaints that are brought to us. And we can't look into what's fair or reasonable on a complaint if we aren't able to consider its merits. I've separated the complaints about the two credit cards Mr L took out, as I don't consider our service is able to look at his complaint points about both of them.

2014 credit card – jurisdiction consideration

If a business doesn't consent, I can't consider a complaint which isn't made within six years of the event complained of, or if later, within three years of the complainant being aware, or ought reasonably to have been aware, of cause for complaint. Dispute Resolution rule 2.8.2R can be found in the regulator's handbook of rules guidance.

Mr L took out this credit card in December 2014 and as he's saying he shouldn't have been allowed to take it out, this is the event he's complaining about. This means he had until December 2020 to complain to be in time for the six-year rule. As he didn't complain until 2021, he's out of time under this part of the rules.

I've considered when Mr L reasonably ought to have been aware of cause for complaint. I can see he first experienced some financial difficulties in 2017. So I think this should've indicated to him that he had a reason to complain about being accepted for this card. Mr L says he shouldn't have been allowed to take out the card as he was already in debt, so when he then couldn't make his contractual payments I think this ought to have made him aware of this complaint. This would give him to 2019 to complain, as this is less time than the six-year rule, the three-year rule doesn't apply. This meant Mr L needed to complain by 2020 to be in time, so he is out of time under the rules I must apply.

I am, however, allowed to investigate late complaints if the failure to comply with the time limits was due to exceptional circumstances. These are situations such as severe ill health, which mean the complainant is unable to bring the complaint within the allowed time.

Mr L has said he wasn't aware he could complain about financial companies until late 2019 when he was contacted about a Payday lending complaint. But Mr L's complaint is that he shouldn't have been accepted for the card due to increasing debt. And he fell behind on payments and was contacted by Capital One collections team in 2017. A complaint (under the rules) is merely an expression of dissatisfaction, so I think he had the opportunity to enquire about his options at that time. And he didn't make this complaint until 2021, despite learning about the possibility of complaints in late 2019. So I'm not persuaded exceptional circumstances apply in this case.

2016 credit card

I'm satisfied I can look into the credit card Mr L took out in 2016. I've looked at the searches Capital One completed of Mr L's credit file as well as the information it held about him when it accepted his application for this card.

Capital One has shown that it looked at Mr L's credit file with two different credit reference agencies – as not all lenders report to all agencies. And it then used this information to work out what percentage of debt Mr L held in relation to his income – which he provided a figure for on his application. It's explained that based on this it was satisfied it could lend to him, as his debt to income ratio was in an acceptable range. I can see that the calculation completed was correct and that this did mean Mr L met Capital One's criteria for this card.

Mr L has explained he had other borrowing at this time. However Capital One has provided us with copies of Mr L's credit files from the time he applied and the information it held. Completing a credit file search is a common and well recognised step in the lending decision for many credit applications. I can't hold Capital One responsible for other credit that for some reason wasn't showing on Mr L's file. And this wasn't the only step Capital One took.

It's explained it also looked at how Mr L was managing his other debts to check he was able to maintain repayments on further borrowing. And I'm in agreement with it that his credit files suggest he was managing his current debts. While I acknowledge some were close to their limit, he also had other borrowing available to him that wasn't used at all. And having an existing level of debt doesn't automatically make additional borrowing irresponsible or unaffordable for someone.

Mr L has highlighted that he had a history of payday lending when he took out this debt. While this could be a cause for concern, Capital One has also explained it considered these

in its lending decision. And that borrowing on a credit card rather than payday lending can be a positive and more affordable route for some customers. So it wouldn't simply refuse Mr L due to previously using these companies. I accept that it wouldn't be fair to simply refuse to lend to a customer with a history of payday lending. And I can see Capital One has considered a number of factors in its lending decision.

Looking at the checks Capital One has completed, I'm satisfied that they were proportionate to the amount it was agreeing to lend to Mr L. And he passed each of these checks and so that's why he was granted the credit card. Capital One hasn't increased Mr L's limit at any time so it wasn't required to carry out further checks at later points.

I understand Mr L has explained Capital One has put him in "persistent debt". But as our investigator explained to him, the defined term for this doesn't relate to a new lender allowing someone who has existing debts to borrow more. I'm satisfied that based on the information Capital One held, Mr L met its borrowing criteria at the time his application was approved – and that this test was proportionate. And also, that by applying for additional borrowing, Mr L himself was aware he was increasing his debts, but he chose to do this at the time.

My final decision

For the reasons set out above we can't consider Mr L's complaint about the 2014 credit card. And I don't uphold his complaint about the 2016 credit card.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 22 July 2021.

Amy Osborne
Ombudsman