DRN-2901209

Financial Ombudsman Service

**The complaint**

Mr T thinks Capital One (Europe) plc acted irresponsibly by approving two credit cards he couldn't afford and by increasing the credit limit on one of them.

**What happened**

Capital One approved the first of Mr T's credit cards in October 2016 (account one) and set an initial credit limit of £200. When assessing his application, Capital One noted that Mr T earned £21,500 a year; was a council tenant and (according to his credit file) had various active credit agreements, which it felt were in relatively good order.

In April 2017, Capital One offered Mr T an '*optional credit limit extension'* of £250 as it didn't think there were any signs of financial distress or recent arrears on his account (he'd been paying amounts equal to or sometimes slightly more than the minimum payment since about February 2017). The credit limit extension was subject to Mr T having 30 days' notice to say whether he wanted it and Capital One pointed out that Mr T could have refused such an increase. By June 2017, Mr T's outstanding balance on this account was within about £5 of his £450 credit limit.

In March 2018, Capital One approved a second credit card (account two), again with a credit limit of £200. By that point, Mr T's income had increased to over £24,000 a year and he was still a council tenant. Capital One again used Mr T's credit file to help assess this application, noting that he still had a number of other active credit agreements, which it felt were in generally good order. By October 2018, Mr T's account balance was almost at its £200 limit.

Around November 2018 Mr T settled the balances on both accounts in full (he's since indicated he used another form of credit to do so). However, by May 2019, Mr T had again started to use both credit cards. Soon after, Mr T's account balance on account one was close to its £450 limit. And, by June 2019, account two's balance was within about £10 of its £200 limit.

Mr T later complained to Capital One. He didn't think its affordability checks were enough and said it shouldn't have approved his credit card applications.

Capital One responded in August 2020. In relation to both accounts, it said Mr T's active credit agreements were in good order and had been for some time. Whilst it noted some late payment markers in previous periods, it thought there were more positive markers than not. Capital One was satisfied that the lending was affordable on both accounts – particularly as Mr T regularly made the minimum payments and on time. It noted that in some months Mr T paid more than the minimum amount and later settled the account balances. It was also satisfied the fees and interest were charged in line with the account terms, so it said it wouldn't be giving Mr T a refund.

Mr T asked Capital One to review the position. He said had it carried out the appropriate checks it would have realised that he had a poor credit score and a '*maxed out'* credit card with another company for a number of years. He also said he'd only been making minimum payments towards his credit card balances and was in debt with payday loan companies and other credit accounts. So, he thought it would have been obvious to Capital One that further borrowing (and a second credit card) would cause him hardship. Capital One didn't agree.

Mr T complained to us and made similar comments to those he'd made to Capital One. He also said that he'd taken out a loan to clear his credit card balances, but he'd again had to use his credit cards. Mr T said that he felt '*stuck*' making the minimum payments and it was a struggle for him, especially as he had outstanding credit from other providers. Our investigator looked into things and was satisfied Capital One completed the relevant checks in relation to Mr T's applications. So, he didn't uphold the complaint. Mr T didn't accept the investigator's assessment and asked for an Ombudsman to review his complaint. It was passed to me to consider.

**My provisional decision**

I sent Mr T and Capital One my provisional decision on 5 May 2021. I've included the relevant extracts below.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

> *"I'm sorry to hear about the financial challenges Mr T's had to deal with. And I can see why he might now think Capital One had a part to play in that – particularly as he doesn't think it should have approved his credit card applications in the first place.*
>
> *The Financial Conduct Authority (FCA) says that financial businesses must lend responsibly, by carrying out reasonable and proportionate checks to satisfy itself that the borrower can afford to repay any amounts borrowed. The FCA doesn't specify exactly what those checks should include (as they'll vary depending on the individual circumstances), but it does make clear that they should be appropriate and proportionate, taking account of any information the lender is already aware of.*
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> *Practically speaking, I think this meant Capital One needed to be satisfied that Mr T could repay any credit card debt without it causing him any other difficulties. And this is where Mr T feels that Capital One's checks didn't go far enough. But Capital One doesn't agree that it did anything wrong. It said it took account of Mr T's other financial commitments and his payment history before approving his applications and credit limit increase.*
>
> *I've thought about this carefully, and I'm not currently persuaded that Capital One's checks went far enough in Mr T's particular circumstances. I'll explain why.*
>
> *A key factor in Capital One's decisions to approve Mr T's credit cards appears to have been how well he'd maintained the other credit accounts listed on his credit file. And in its response to Mr T, whilst noting there was some evidence of late payments, it said it was mostly satisfied that he'd made payments on time.*
>
> *I accept that considering how well (or not) a borrower has maintained other credit accounts will be something for a lender to consider. Not least because it will want to gauge the likelihood of debts being settled. In Mr T's case, there is evidence of some late payments and at least one credit agreement being subject to a payment plan. I also agree that, there's other evidence to show he'd made payments as expected. But I don't think that's the only relevant question. As I indicated earlier, a lender also needs*

*to think about (amongst other things) the likelihood of additional borrowing causing other financial difficulties. And if necessary it might need to ask for more information in order to answer that question and make an informed lending decision.*

*And I think that's particularly relevant in Mr T's case. At the point at which Capital One was assessing the application for account one, the only financial information Mr T appears to have given was that he earned £21,500 a year and was a council tenant. He didn't give Capital One any other supporting information and it doesn't appear to have asked for it. In some cases that might be perfectly acceptable. But, Mr T's credit file shows that he'd clearly been reliant on various forms of credit for many years. And the information that Capital One had suggested that the total outstanding balance of Mr T's credit agreements was considerable and spanned a range of home credit agreements; unsecured loans; another credit card (which, as I said, appears to have been subject to a payment plan) and an overdraft of about £2,000. And the same information suggested in fixed payments alone (not including any payments Mr T paid towards his overdraft and another credit card) he was committed to paying in the region of about £450 to £600 a month if he kept on top of these payments. That's before taking account of Mr T's everyday expenditure and other expenses that wouldn't show up on a credit file.*

*Whilst the evidence does suggest that at least one of the home credit agreements and an unsecured loan were due to be paid off fairly soon after account one was approved, I don't think it was enough for Capital One to base its decision on Mr T's credit file and annual income. To get a true sense of whether Mr T could afford to take on additional credit, Capital One should have asked him about his other outgoings as well. As it didn't do that, it follows that I don't think it completed appropriate and proportionate checks in Mr T's particular case.*

*But that doesn't in itself mean that additional borrowing wasn't affordable for Mr T. Mr T's given me some helpful information including payslips and bank statements relevant to the application periods. He's also outlined his typical everyday expenditure. And whilst I'm not suggesting Capital One should have completed a full financial review, I do think having more information of the kind I've referred to, would have given it a better indication of whether Mr T could afford to take on additional credit.*

*I can see that around October 2016 Mr T typically earned about £1,500 a month (net). And it looks like he had everyday expenses for things such as rent; utilities; car insurance; food; mobile phone; childcare costs and payments towards the interest and charges on his overdraft (amongst other things) amounting to at least £800 a month. So, that's roughly £800 of additional expenditure a month on top of around £450 - £600 towards fixed credit payments. And, that's without Mr T incurring any unexpected expense.*

*Looking at Mr T's bank statement for October 2016, I can see that his account was overdrawn by over £300 not long before Capital One approved account one. And once his salary had been paid in and some of his outgoings paid out (also taking account of payments that appear to have been paid in from another account) around ten days later, Mr T had an account balance of 38 pence.*

*Based on all of the evidence I've seen, I'm not persuaded that additional borrowing was affordable to Mr T. And I think Capital One probably would have reached the same conclusion had it asked for more information. And as I don't think the initial credit was affordable, it follows that I don't think the subsequent increase in Mr T's credit limit was affordable either – not least because I haven't seen any evidence* *which tells me Mr T's financial position had significantly improved by April 2017.*

*By March 2018 (when Capital One was considering account two) Mr T was earning over £24,000 a year and he told Capital One he was still a council tenant. Again, there's no suggestion of Capital One asking for further information about Mr T's other outgoings. It again looked at Mr T's credit file and said it was satisfied it showed his active credit agreements were in good order. At this point, Capital One also had the benefit of knowing how Mr T had managed account one. And the fact that he'd regularly made payments of the minimum amount (or sometimes slightly more) also seems to have been a factor in Capital One deciding to approve a second credit card.*

*I'm not currently persuaded Capital One's checks were appropriate and proportionate at this point either. Whilst I accept that Mr T's annual earnings had increased, there's no evidence to suggest his overall financial situation had otherwise improved. In fact, arguably, it had got worse.*

*Mr T's credit file still showed a large number of active credit agreements of varying types. And some of those agreements appear to have been taken out between Capital One approving account one and considering the application on account two. That in itself could be indicative of a worsening financial position. And the evidence suggests the combined total balance across Mr T's active credit agreements had increased even further. In fixed payments alone (so things such as a hire purchase agreement and unsecured loans) Mr T was committed to making monthly payments of about £600. That's not including payments towards Mr T's credit cards (one of which was his other Capital One credit card which was close to its increased credit limit) and a fairly large overdraft on another account. And these were all financial commitments that Mr T had to meet on top of his everyday expenditure.*

*Based on this information, I think Capital One should have completed a more detailed affordability assessment. Capital One's position is that as Mr T regularly made payments around the minimum amount (and sometimes slightly more) it was satisfied Mr T could afford the second credit card. I disagree.*

*As I said earlier, a lender also needs to consider whether the borrower can afford to repay the amount borrowed within a reasonable timeframe. So, I think the expectation of lenders when assessing affordability extends beyond just whether the borrower has met minimum payment requirements or not. I say that because maintaining minimum payments for a prolonged period of time can often worsen a customer's financial position. That's because by the time interest and/or charges are added, the customer often finds that their payments are doing little to reduce the overall debt. And I think that's the position Mr T found himself in, which might explain why he described being 'stuck' making the minimum payments, even though it was a struggle for him. And it's clear that Mr T's financial predicament was such that, even when he'd paid off his credit card balances (using another form of credit to do so) he again started to use them and quite quickly built up balances close to their credit limits.*

*Looking at the additional information Mr T gave me - including his bank statement for March 2018 - I can see that he had a range of payments going out to different financial companies, one of which – a payment of £50 to a debt recovery company – doesn't appear to be reflected on his credit file. And there's evidence of other increases to his outgoings such as his car finance payments. Once Mr T had met his various financial commitments, his current account in March 2018 was overdrawn by more than £300.*

*The evidence I've seen paints a picture of a customer who was struggling financially* *and who was trying to juggle many different financial commitments. And I think Capital One would have reached this conclusion had it carried out more thorough checks. So, based on the evidence I've seen, I don't think Mr T could afford the second credit card either.*

*Overall, I don't think Capital One acted fairly and reasonably when it approved Mr T's credit cards and credit limit increase. When thinking about what Capital One needs to do to put things right, I need to keep in mind that Mr T has benefitted from the funds, so it wouldn't be fair of me to say that Capital one should now write off the balance of his accounts.*

*However, had Capital One not approved his credit cards and the credit limit increase on account one Mr T wouldn't have incurred the interest and charges. So, I'm intending to say that Capital One (Europe) plc should refund all of the interest and charges added across both accounts. In addition, if either of these accounts resulted in adverse information being shown on Mr T's credit file, I'm likely to say that Capital One should take steps to remove it".*

**Responses to my provisional decision**

Mr T said he had nothing further to add.

Capital One asked me to take additional points into consideration. Those points included:

That as part of its creditworthiness checks it reviews data from a number of sources, which includes things such as the customer's:

- existing debt repayment commitments;
- overall debt;
- income;
- the level of debt relative to the customer's income;
- the estimated level of discretionary and non-discretionary expenditure for customers in that income band, based on ONS (Office of National Statistics) data. It believed its assessments were proportionate and in line with the FCA's expectations.
- Based on the information available at the time of the lending decisions, and the information Mr T's since given to this service, Capital One felt it would have been affordable for Mr T to repay the initial debt of £200 within about one year if he paid around £19 a month (and the same in terms of the initial debt on account two) and the total debt of £650 (across both accounts) in a year if he'd repaid about £60 a month, or two years if he'd repaid about £36 a month. So, it felt Mr T could meet this debt through his remaining disposable income.

**My findings**

I've again considered all of the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've carefully considered Capital One's response. I appreciate the additional context it's given me in terms of the checks it carried out when assessing if Mr T could afford to take on additional debt. And I've again taken account of the FCA's expectations of businesses like Capital One when making lending decisions. But, on balance, I'm not persuaded to change what I said in my provisional decision. I'll explain why.

Capital One is right to say that the FCA allows financial businesses to use available data (for instance the kind held by the Office of National Statistics) when assessing, amongst other things, the likely additional expenditure for a customer in a particular income bracket. And I can appreciate why that's a much more proportionate way of assessing credit applications.

But, the FCA's guidance also says that financial businesses should consider whether the information it holds is enough – and whether and to what extent it should ask the customer for more information.

I'm still not persuaded that Capital One had enough information from Mr T to fairly assess affordability. And whilst I fully accept that the amount of credit approved, in isolation, wasn't a significant amount, it needed to be considered in the context of his wider financial circumstances and ongoing commitments. And as I indicated, given the amount of his monthly fixed credit payments (let alone his other debts such as another credit card and an overdraft of £2,000) I think there was enough of a question about affordability to prompt Capital One to ask for more information. And that was particularly important so that Capital One could be satisfied taking on more debt wouldn't impact Mr T's other financial commitments and everyday expenses. As it didn't ask for more information, it follows that I don't think Capital One's checks went far enough in this particular case.

Capital One maintains that Mr T could afford to repay his debt within a reasonable timeframe - between one and two years depending on the size of his monthly payments – out of his remaining disposable income. I'm not persuaded by that argument. I accept that considering over what period a debt can realistically be repaid is a factor a financial business should take into account when assessing affordability. But, without further information, I'm not persuaded it's a reasonable assessment of affordability in Mr T's particular case. As I said in my provisional decision, Mr T usually paid the minimum monthly amount and sometimes slightly more. And by the time he'd done that and tried to juggle his other financial commitments, the evidence shows he had a nominal amount left in his account (38 pence in one month) or was overdrawn. I don't agree that shows he could afford his Capital One repayments. And I think it would have been even less likely he could afford them if, as Capital One suggested, he'd paid back around £60 a month (which was generally more than the combined total of the minimum payments he was making) in order to repay his total debt in about a year.

For the reasons I've outlined, I remain of the view that Capital One didn't act fairly and reasonably when it approved Mr T's credit cards and credit limit increase. It should now put things right as I've set out below.

## My final decision

I uphold this complaint.

Capital One (Europe) plc should now refund all of the interest and charges added across both accounts. In addition, if either of these accounts resulted in adverse information being shown on Mr T's credit file, it should remove it.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr T to accept or reject my decision before 28 July 2021.

Amanda Scott
**Ombudsman**