

The complaint

Ms J complains that lending made to her by Capital One (Europe) plc was irresponsible.

What happened

Ms J said that she took out two cards with Capital One which had high credit limits. She said that when Capital One agreed to lend her this money, late 2015 and early 2016, she had loans which weren't paid off, and bad credit. So she thought this was irresponsible lending.

Ms J merged these two accounts in late 2018. She entered into a long-term payment plan in early 2019, and her accounts with Capital One were then defaulted, in mid-2019.

Capital One looked back at the basis of its two lending decisions. It said that for each of Ms J's applications, she declared an income of £24,000 and said she was living with family.

For Ms J's first card, account ending 2361, Capital One showed us an application dated 26 November 2015. Capital One said it had checked Ms J's credit file and that showed all of her active agreements were generally in good order. One account showed payments being missed in the 12 months prior to her application but this was for a low outstanding balance.

There were two previous defaults showing on her credit file, but these weren't recent to her application and the balances had reduced since the defaults were issued.

So Capital One said there were no indications from her application or the credit information it reviewed, that opening a credit card account would be unaffordable for Ms J. It opened an account on 25 November 2015 with a credit limit of £1,500.

For Ms J's second card, account ending 3584, Capital One showed us an application dated 3 February 2016. Capital One said it had again checked Ms J's credit file, and all of her active agreements were generally in good order. Three accounts showed payments being missed in the 12 months before her application but the outstanding balances were for low amounts. The balances had reduced a little on the two defaults. And her existing active account with Capital One was in good order with no missed payments at the time.

So Capital One said there were no indications from her application or the credit information it reviewed, that opening this second credit card account would be unaffordable for Ms J either. It opened a second account on 10 February 2016 with a credit limit of £1,000.

Capital One said it had looked again at the lending decisions it made in November 2015 and February 2016, and it didn't think it had made a mistake.

Ms J said that wasn't right, it was clear that she was in debt with payday lending at the time.

Our investigator didn't think this complaint should be upheld. She said when Ms J applied for the first card, the most recent default on her credit file was over a year ago, and there was nothing else to suggest Capital One shouldn't lend to Ms J. So our investigator didn't think it made a mistake by lending to Ms J. And then when Ms J made her second application, the

position was broadly the same, except that Ms J had been making her payments on the first card account too. So again, our investigator didn't think Capital One made a mistake.

Our investigator understood Ms J's circumstances changed after this, but she didn't think the lending decisions Capital One made in late 2015 and early 2016 were irresponsible.

Ms J didn't agree. She said she was only making minimum payments towards the first card, so it would take her longer to pay back two cards at the same time. Ms J wanted her complaint to be considered by an ombudsman, so it was passed to me for a final decision.

My provisional decision

I issued a provisional decision on this complaint and explained why I did propose to uphold it. This is what I said then:

Capital One made two lending decisions in this case, one in late 2015 and another in early 2016. So I have to look at each of those in turn.

I can see that when Ms J took out her first card, she had existing debts, and two defaults showing on her credit file. She had also quite recently been making use of payday loans, and had missed one payment on what appears to be a mail order account. But I also note that she told Capital One she was earning £24,000 per year, and her circumstances would suggest she otherwise had limited outgoings.

I know that Ms J has had difficulties with her payments since this decision was made. But I don't think that Capital One should've foreseen this when it made its first decision on lending to her. I don't think that the decision Capital One made in late 2015 was clearly irresponsible lending.

But then Capital One was asked again to lend money to Ms J, relatively quickly after this first card account was opened.

Capital One has pointed to the repayment history it held for Ms J's first card, and that she had no further defaults when she made this second application. But I can see that when this second application was made, she had missed payments with three lenders. Worryingly, it looks as if the first lender, who she'd missed a payment with when she applied for the first card, may not have been paid since then, as three payments were then missed for one mail order lender. And two other lenders also hadn't received payments in the last month.

So at the time of the second credit card application, Ms J's credit file showed very recent difficulties that Ms J was having meeting her monthly commitments.

In addition, it does seem to me that Ms J was, by this time, clearly in a cycle of short-term or payday lending. And she was making use of this short-term lending although she had only recently had access to £1,500 of additional credit through the first card account that Capital One opened for her.

I think that, taken together, these were clear signs that Ms J wasn't managing her finances at this time. So I think that the second card account that Capital One opened for Ms J was not responsible lending.

I think this is also then demonstrated by the fact that Ms J was over the limit on her first card by the end of February, although she also began to use the second card during that month.

Because I think that this second card wasn't responsible lending, I think it's appropriate to ask Capital One to refund any interest or fees charged on this lending.

I understand that Ms J is still paying back the debt she ran up on these two cards. So I think Capital One should reduce Ms J's debt now, by refunding any interest or fees charged on this second card account while it was open.

Ms J later asked Capital One to consolidate this second account into her first Capital One account, so this second account was closed in September 2018. But the underlying credit from this lending was still available to Ms J, it had just moved to her first account. So I think that from the date that Ms J's accounts were consolidated, Capital One should reduce Ms J's debt by refunding any interest or fees charged on lending over the original limit of the first card, £1,500.

Ms J has told our service that she was already in trouble with her lending at the time when she applied for these cards, and this has made things worse. So I also think that Capital One should pay Ms J £100 in compensation, for the distress which its irresponsible lending has caused her.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Both parties replied, to accept my 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.

I haven't changed my mind. I'll now make the award I originally proposed.

My final decision

My final decision is that Capital One (Europe) plc must refund onto Ms J's existing debt, any interest or fees charged on card account 3584 while it was open. And from the date when this account was consolidated into account 2361, to refund onto Ms J's existing debt any interest or fees charged on lending over the original limit of the first card, £1,500.

If the total refunded exceeds Ms J's remaining debt, the excess should be paid to Ms J. And Capital One (Europe) plc should pay Ms J £100 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms J to accept or reject my decision before 25 August 2021.

Esther Absalom-Gough

Ombudsman