



The complaint

Mr L complains that Capital One (Europe) plc ("Capital One") lent to him irresponsibly and didn't carry out sufficient checks when they opened his credit card account and increased his credit limit.

What happened

Mr L was accepted for a credit card by Capital One in January 2016 with a credit limit of £1,000. Capital One then increased the credit limit to £1,250 in October. Mr L experienced financial difficulties and missed payments on his account. Mr L complained to Capital One as they reported the missed payments to the Credit Reference Agencies ("CRAs"). Mr L also felt Capital One lent irresponsibly and didn't carry out proper checks. Mr L also said the late markers appearing on his credit file were affecting his ability to get a mortgage.

Capital One responded and explained the late markers added between 2017 to 2019 were done so correctly so they're unable to remove them. Capital One said they had written to Mr L regarding the status of his account and how they could support him, but he didn't call them to discuss his available options. Capital One said the current balance on Mr L's account is £1,230.48 and he can call their collections team to discuss what options are available to support him.

Capital One also said, Mr L's application for the credit card said he was earning £80,000 per year. And, when opening Mr L's account, they checked his credit file and while it showed he'd defaulted on three debts before, they weren't recent to his application. They said Mr L's two active agreements were both in good order with no late markers recorded in the 12 months leading up to his application. They said, based on their creditworthiness and affordability assessments, they opened a credit card account for Mr L.

Capital One said between the opening of the account to when they offered a credit limit increase in October, all Mr L's statement balances were settled in full and paid on time. They said this demonstrated his ability to repay his agreement and the efforts being made to enhance his credit profile.

Our investigator looked into things for Mr L. He thought Capital One had made a fair lending decision in relation to the account opening and the credit limit increase. Mr L disagreed so the matter has come 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.

Having done so, I've decided not to uphold the complaint. I understand Mr L will be disappointed by this but I'll explain why I have made this decision.

We've set out our general approach to complaints about short-term lending - including all of the relevant rules, guidance and good industry practice - on our website.

Capital One needed to take reasonable steps to ensure that they didn't lend irresponsibly. In practice this means that they should've carried out proportionate checks to make sure that Mr L could repay the credit in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and the consumer's income and expenditure.

The first point I've addressed is whether I think Capital One carried out reasonable and proportionate checks. Section 5 of the Consumer Credit (CONC) sourcebook, in place at the time, outline that the assessment that Capital One needed to complete should've been dependent on, and proportionate to, a number of factors – including the amount and cost of the credit and the consumer's borrowing history. CONC also provides guidance on the sources of information Capital One may have wanted to consider as part of making a proportionate assessment. It then gives examples of factors a firm must consider and refers to whether the information the firm has is sufficient and whether to obtain additional information from the customer and any other sources of information to use.

The account opening

Capital One is free to decide how to set their lending criteria but they should complete proportionate checks to ensure borrowing is sustainable. In this case, I can see that Capital One, when opening the account, considered information provided by Mr L on his application form and information from CRAs which includes Mr L's external debt and how he was managing his account with other lenders. On the application form, Mr L has stated his gross annual income as £80,000. So, the credit limit of £1,000 represents 1.25% of Mr L's gross annual salary. The information from the CRAs show Mr L had six other accounts of which three were defaulted. With regard to the defaulted accounts, one was a credit card account, one was a payday loan and one was a communications contract. The credit card account had a balance of £3,982 when it defaulted but had been reduced down to £2,814 at the time of the application. And, the payday loan had a balance of £1,062 when it was defaulted, and this had been reduced down to £862 at the time of the application. While both these defaults were registered a few years before Mr L's application – and were both decreasing - I think there is an issue here which should've led Capital One to carry out further checks.

Firstly, the balances hadn't been paid off for several years, and while they were decreasing, it was at a very slow pace with no payment being made for some time. And, the balance for the other defaulted account, the communications contract, was £133 but I can't see this had reduced since the default date. In these circumstances, and taking into account what the information showed, I think this should've prompted Capital One to find out more about Mr L's financial position. Capital One had information about Mr L's income, but I can't see they carried out any checks on his monthly expenses. I think that would've been reasonable and proportionate here given that Capital One were aware Mr L had defaults for several years which hadn't yet been paid off. I think that should've led Capital One to look into what Mr L's expenditure was to determine whether Mr L would be able to afford, at the very least, the minimum monthly payment.

So, I can't say the checks carried out by Capital One were reasonable and proportionate. Given that I don't think reasonable and proportionate checks were completed in this case, the next point I've considered is, if reasonable and proportionate checks had been completed, would they more likely than not have shown that Mr L was more likely than not unable to sustainably repay what he was being lent.

To help decide this, I've looked at Mr L's expenses. I can see our investigator asked Mr L to complete an income and expenditure form for the period leading up to the account opening.

This shows Mr L's income as £3,926.73 and his expenditure as £5,363.99. Mr L says the expenditure amount was the total outgoings for that month and includes his gambling expenses. I've thought carefully about this, but I believe, had Capital One asked about Mr L's monthly expenditure, on the balance of probabilities, it's more likely than not that Mr L wouldn't have disclosed his gambling expenses – which he says were around £2,000 a month. This information would've likely increased the risk of Mr L's application being declined – and it's clear Mr L was looking for credit at the time. So, looking at the financial information provided by Mr L it appears his monthly expenditure was around £3,177. Therefore, after deducting his expenses from his income, Mr L would've been left with a disposable income of around £750 per month.

Under Mr L's credit card agreement with Capital One, his monthly payments are made up of 1% of the outstanding balance on his account, interest, and all default sums incurred that month. So, looking at Mr L utilising his credit limit of £1,000, this would mean his monthly payment would be around £40. Taking into account Mr L's disposable income, I can't say Capital One's decision to lend was unfair. I think the information they should've considered would reasonably have led them to make a decision that Mr L could make repayments without undue difficulty, while being able to meet other commitments and without having to borrow further.

Credit limit increase

In relation to the credit limit increase, this was increased by £250, which is a 25% increase from the previous limit and was applied nine months after the account opening. Information provided by Capital One shows they took into account Mr L's income, information from the CRAs and how Mr L was performing against his Capital One account. I think the checks carried out by Capital One are reasonable and proportionate as they take into account a number of factors. And, the checks carried out are the type I would reasonably expect because they would help Capital One to not only build a picture of Mr L's financial situation, but also to assist in determining whether he could repay the credit in a sustainable way.

The next point I've considered is whether Capital One made a fair lending decision bearing in mind the information gathered and what they knew about Mr L's circumstances. Mr L's income was still showing as £80,000. So, the credit limit increase to £1,250 represents 1.5% of Mr L's gross annual salary. While it's a 25% increase from the previous credit limit, it's a small increase against Mr L's salary. I've also looked at how Mr L was performing against his Capital One credit card account as this is information Capital One had to hand and something they say their checks took into account. Mr L's credit card statements show that, from the period between the opening of the account to the month prior to the credit limit increase being applied, Mr L paid all his statement balances in full and on time. And, I can't see Mr L incurred any over limit charges. I think this demonstrates Mr L was managing his account well.

The information received from the CRAs shows that Mr L still had external defaults of £4,000, so this would suggest there hadn't been much movement on repayment of the defaulted accounts since the account opening.

But, at the point the credit limit is increased, Capital One have the benefit of seeing nine months of Mr L's performance against the Capital One account. And, on occasions, I can see Mr L has made significant payments towards his balance – the average across the nine months being £945. Taking this all into account, I haven't seen any information here which I believe should've led Capital One to identify that Mr L wouldn't be able to make repayments without undue difficulty and wouldn't be able to meet other commitments without having to borrow further. So, I think their decision to increase Mr L's credit limit was fair.

Mr L says Capital One didn't ask to see copies of his bank statements – and he feels this was necessary to enable them to get a complete picture of his financial circumstances. But nothing I've seen suggests Capital One needed to make any checks beyond those they carried out – and those I think they should've carried out. The checks carried out by a lender need to be reasonable and proportionate. And, what constitutes reasonable and proportionate in one case might not necessarily satisfy the test in another case. So, in some cases, if there is evidence to suggest a lender should've had wider concerns, then we might say they needed to carry out further checks and perhaps have looked at a customer's bank statements. In this case, I haven't seen any information which I think should've led Capital One to look at Mr L's bank statements or even request any further information beyond the checks they carried out and the information about Mr L's expenditure. I think this was reasonable and proportionate to show Mr L would be able to repay any credit in a sustainable manner.

Mr L says there were a lot of gambling transactions so Capital One lent to him irresponsibly. Mr L's bank statements do show payments being made to a gambling company in the months leading up to the account opening. I have considered this point, but I can't see any information which shows that Mr L made Capital One aware of any gambling problems. And, given that I've said I don't think it would've been proportionate for Capital One to ask for Mr L's bank statements, they would've been unaware of this.

I am sorry to disappoint Mr L as I understand he's concerned the adverse information on his credit file relating to his Capital One account might impact his ability to get a mortgage in the future. But, I can only ask Capital One to take steps to remove any adverse information if I think their decision to lend was unfair. In summary, I don't uphold Mr L's complaint in this matter as I feel Capital One made a fair decision to lend in respect of the account opening and the credit limit increase.

My final decision

For the reasons I have given, it is my final decision that the complaint is not upheld.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 22 March 2022.

Paviter Dhaddy
Ombudsman