

## **The complaint**

Mr B complains that Capital One (Europe) plc ("Capital One") lent to him irresponsibly.

Mr B is being represented in this complaint by Miss M. For simplicity I've referred to the representative's actions as being those of Mr B.

## **What happened**

Mr B had three credit card accounts with Capital One. Account ending \*6522 was opened in June 2010 with a credit limit of £200. Account ending \*4456 was opened in July 2015 with a limit of £1,000. This was then paid off and closed in June 2016. Account ending \*6473 was opened in December 2016 with a limit of £1,500. Mr B then experienced financial difficulties and felt that Capital One should've identified he was reliant on payday loans and other borrowing when they processed his application for credit. So he complained that Capital One had lent to him irresponsibly.

Capital One responded and said account ending \*6522 was out of time on the basis it had been raised more than six years after the account opening. In relation to accounts ending \*4456 and \*6473, Capital One said the credit limit on both accounts had never been increased. And, when opening the accounts, they considered information from Mr B's application and his credit file but there were no indicators that opening the credit card account would be unaffordable. So, they didn't uphold the complaint.

Mr B referred his complaint to our service and I can see our investigator shared his view in relation to account ending \*6522 being in time. I can see Capital One then consented to our service looking into this.

Our investigator looked into things for Mr B. He thought Capital One hadn't lent irresponsibly in relation to account ending \*6522 and \*6473. In relation to account ending \*4456, he thought the decision to lend was irresponsible and recommended Capital One refund all interest and charges and pay compensation of £100 to Mr B. Capital One agreed but Mr B 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 to uphold the complaint. And, I think the investigator's recommendation here is a fair way to resolve matters.

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 B 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.

#### *Account ending \*6522*

When this account was opened, the relevant guidance came from the Office of Fair Trading's 'Irresponsible Lending Guidance'. There was no set list of checks a lender needed to complete. But the checks should've been proportionate to the circumstances of each loan – which might include considerations about the amount borrowed and the prospective borrower's borrowing history.

Given the passage of time, Capital One no longer hold information showing the checks they carried out. I can see the credit card agreement for this account was signed by Mr B in June 2010, so I don't think it's unreasonable for Capital One to no longer have this information. Looking at Capital One's response to Mr B's complaint, they say they relied on information on Mr B's application and credit file when deciding whether to lend on the other two accounts. Capital One don't have Mr B's application, so, when looking at this part of the complaint, I've considered what Mr B's credit file will have shown.

I think it's important firstly to consider the credit being offered here was £200. So, I don't think Capital One needed to carry out the same level of detailed searches they would ordinarily be expected to carry out for a higher credit limit. Mr B's credit file doesn't show any adverse information in the period leading up to this account opening. And, I can't see Mr B has provided any information which suggests the borrowing was unaffordable for him at the time the account was opened. So, based on the information I do have, I think it's more likely than not Capital One's decision to lend wasn't irresponsible.

#### *Account ending \*4456*

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.

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, when opening the account, Capital One say they used data from Mr B's application form and information from the Credit Reference Agencies ("CRAs"). This shows Capital One took into account Mr B's salary and also how he was performing against other accounts. Capital One say Mr B's credit file shows two defaulted accounts. And, even though they weren't recent to his application, one of those defaulted balances had been settled while the other was being reduced. Capital One say all Mr B's active accounts were in good order and no late markers had been applied in the 12 months leading up to this account being opened.

Given what this information shows, I don't think the checks carried out by Capital One are reasonable and proportionate in the circumstances. The information provided by the CRAs shows Mr B has five open accounts, two of these being credit card accounts – one of those being account ending \*6522. Both of these accounts are very close to their respective credit

limit, one is at 99% and the other is at 93%. The latter is account ending \*6522 and Capital One would've seen the credit limit for this account has remained at £200 for the last five years but it hasn't yet been settled and Mr B had only ever made his required monthly minimum payment on the account. While this could well be seen as an attempt by a customer to demonstrate good monthly account management to improve their credit rating, I think, when taking into account the high utilisation of Mr B's credit on his two credit card accounts at the time, Capital One should've carried out further checks. And, I think Capital One should've asked to see Mr B's bank statements to get a picture of his income and expenditure and to see how he was managing his account.

Given that I don't think reasonable and proportionate checks were completed when offering credit for this account, 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 B was more likely than not unable to sustainably repay what he was being lent.

To help decide this, I've looked at Mr B's bank statements for a three-month period leading up to the opening of this credit card account. This shows Mr B is consistently overdrawn through this period and, even when his income is deposited in his account, this still doesn't bring his account into credit. And, generally, his monthly expenditure outweighs his income. For example, his April 2015 statement shows his total deposits the month before was £1,177.43 and his total debits were £1,402.70. It's also important to note that Mr B's planned overdraft limit is £1,630 and there are a number of occasions through this period when Mr B is close to this limit.

Taking this all into account, I think the combination of Mr B's high utilisation of existing credit, only making minimum payments on account ending \*6522 and his bank statements show he wouldn't be able to repay any borrowing in a sustainable manner. So, I feel if Capital One had carried out reasonable and proportionate checks it would've showed Mr B being in a difficult financial position and not being able to repay the extra credit in a sustainable manner and without any undue difficulty.

#### *Account ending \*6473*

When this account was opened, Capital One say they again considered information on Mr B's application form and data from the CRAs. The information supplied by the CRA's at that point shows one active credit card account, this being account ending \*6522. And, the utilisation from this has come down from 93% (when account ending \*4456 was opened) to 85%. The information from Mr B's application shows his salary has increased from the point account ending \*4456 was opened – something which is supported by Mr B's bank statements. And, Capital One have also pointed out that account ending \*4456 was settled in a year without any late or missed payments. The information from the CRAs also doesn't show any new defaults or late payment markers from when account ending \*4456 was opened.

Taking this information into account, I think the checks carried out by Capital One were reasonable and proportionate, so I don't think they needed to carry out any further checks beyond those they did. And, given what the information shows, I think they made a fair lending decision.

#### *Gambling problem*

Mr B says he was using the credit on these accounts for gambling transactions. Mr B's statements do show some payments relating to gambling transactions although I can't see

any information which shows that Mr B made Capital One aware of any gambling problems. And, I haven't seen any evidence which shows the gambling transactions were showing frequently on his bank statements and therefore would've been picked up by Capital One if they had requested Mr B's bank statements when opening account ending \*4456. I also haven't seen any evidence which shows that Capital One did check Mr B's credit card statements so they would've been unaware what the credit cards were being used for.

### **Putting things right**

I've taken the view that Capital One lent irresponsibly to Mr B when they opened account ending \*4456. I therefore consider this is irresponsible lending and Capital One should put this right. So, they should refund all interest, fees and charges accrued or incurred on account ending \*4456 from the date it was opened to the date the account was closed. This would put Mr B back in the position he would have been in had the account not been opened. Capital One should also add 8% simple interest to the refund amount. Capital One should also pay Mr B £100 compensation for the trouble and upset caused by having to borrow money to clear this debt.

Capital One should provide Mr B with a certificate showing any taxation deducted.

### **My final decision**

My final decision is that I uphold the complaint. Capital One (Europe) plc must take the steps in accordance with what I've said under "Putting things right" above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 16 January 2022.

Paviter Dhaddy  
**Ombudsman**