

The complaint

Mr P has complained he took out a credit card with Capital One which he couldn't afford, and it subsequently defaulted. Since that, Capital One have lent him a further two credit cards. He feels this has trapped him in a cycle of debt which he couldn't afford.

What happened

I issued a provisional decision on this case, because I intended to come to a different outcome to our Investigator. I wanted to give both parties the chance to respond with anything else they wanted me to consider before I came to my final decision on the matter.

I have copied my provisional decision below, which also forms part of this final decision.

"Mr P applied for the first account in April 2009, and a credit limit of £500 was given. Mr P declared on the application he was working as a Sales Manager with a salary of £23,500. The checks Capital One did showed Mr P had outstanding debt elsewhere of £1633. But they also showed he had four defaults from 2006 totalling £55,465.

In September 2011 Mr P defaulted on the account – a letter was sent to Mr P to inform him he owed £649.43, which was repayable on demand and Capital One might sell the account to a debt collections agency.

In May 2019, Mr P applied for another card with Capital One. On this application he declared he was still in the same job but had a salary of £30,000.

Capital One said in their final response letter that the checks they did for this account didn't show anything concerning. They said most of the other lending he had was in good order and there were no visible defaults. And so, they decided to grant him a low limit of £200 which Mr P has maintained and often exceeded the minimum repayments.

The final card was applied for in December 2019. This time Mr P said his salary was £37,900, again in the same role.

Again, for this application, Capital One said nothing was concerning on the checks they did. So, they decided to give him a limit of £500.

Capital One say they're comfortable the checks they carried out were appropriate, as were their decisions to lend to him. They reminded Mr P to make payments to both open accounts in the final response letter.

Our investigator looked into this for Mr P. They found that Capital One carried out reasonable and proportionate checks as the limits given were low. They said all the other credit accounts were in good order and the previous default with Capital One was eight years ago, so the Investigator didn't think that Capital One had done anything wrong when it agreed to lend to him.

Mr P didn't agree. He felt the investigator saying all other accounts were in good order

proves that Capital One ignored information available to them. The original default should have been an indicator of his financial standing and Mr P and his representative felt the investigator misinterpreted the CONC rules referred to in the view.

Because Mr P didn't agree, the complaint has been passed to me to make a decision.

What I've provisionally 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.

We've explained how we approach irresponsible and unaffordable lending complaints on our website, but I will go over this below so all parties are clear on what I've considered.

Capital One needed to make sure it didn't lend irresponsibly. In practice, what this means is they needed to do reasonable and proportionate checks when lending to ensure that the credit was affordable and sustainable for Mr P.

Card issued in 2009 (Card 1)

This first application predates the regulation of consumer credit transferring to the Financial Conduct Authority and the rules it set out in CONC, which the representative has referred to. The card was provided during the period where consumer credit was overseen by the Office of Fair Trading. The standards in place at the time required Capital One to assess whether Mr P would be able to repay what it was lending him.

So, the first question I need to consider is whether Capital One did fairly and reasonably assess whether Mr P would be able to repay £500 within a reasonable period of time. They were expected to do this by considering information from credit reference agencies and at least one of Mr P's income and financial commitments, how he handled his finances in the past, or internal credit scoring techniques.

Capital One were giving Mr P a modest credit limit of £500. And it looks like Mr P provided information about his income and the credit search provided an indication of his financial commitments. I'm satisfied that this was enough based on the standards and expectations at the time.

The next question for me to consider, now that I'm satisfied with the checks is, did Capital One make a fair lending decision bearing in mind the information it gathered and what the lender knew about Mr P's circumstances?

I can see the credit search showed four defaults totalling £55,465 three years prior (2006), as well as current outstanding debts. I think there were questions about Mr P's financial circumstances and whether he could take on an additional commitment.

However, due to the passage of time, the issue I face is considering what Capital One is more likely than not to have found out if had had asked more questions. The way I would generally assess this is to retrospectively review Mr P's current account statements. I've asked Mr P for these, but he's unable to provide them.

So, while I'm satisfied Capital One ought to have asked further questions, the lack of statements together with the low credit limit provided means there's not enough evidence to clearly demonstrate that this card was unaffordable.

This means for Card 1 I'm not recommending Capital One do anything further.

Card issued in May 2019 (Card 2)

For the next two cards, I'll be considering the same questions as I have above. On 1 April 2014, the Financial Conduct Authority (FCA) took over the regulation of Consumer Credit in the UK. This is when The CONC Sourcebook was introduced. So, the regulations I'll be relying on for Card 2 and 3 are different to those than on Card 1.

Similar to Card 1, due to the low limit of £200 being granted to Mr P, I'd say that a credit search here would be reasonable and proportionate.

However, I don't think Capital One made a fair lending decision with the information they already had available to them. This includes both the information received on the credit search and the information they held internally about Mr P and his previous account.

Our investigator said that Capital One didn't need to rely on the default on his previous card because CONC says it doesn't need to go back further than six years. However, this isn't accurate. CONC 5.2.4 (G) says: 'A firm should consider these types and sources of information to use in its creditworthiness assessment and assessment required by CONC 5.2.2R (1), which may, depending on circumstances, include some or all of the following: (a) its records of previous dealings...'

There is no reference to those previous dealings being limited by time constraints. And based on the information provided in their business file, it's clear that Capital One still held extensive information regarding the management of the first account. This includes statements that show Mr P using the card for cash withdrawals and gambling transactions, as well as going over the limit, stopping repayments and ultimately defaulting on the account in 2011. This debt remained outstanding and was never repaid to Capital One – so it's unclear why Capital One thought that Mr P might be able to take on more credit, when he still hadn't settled the amount outstanding from the previous card he had.

In addition to this, the credit check Capital One conducted showed late payments on other active accounts, outstanding balances on utility bills, other credit cards being used up to the credit limit and multiple payday loans in the months leading up to this credit card being given.

So, based on the above, I think Capital One irresponsibly lent to Mr P when giving him Card 2.

Card issued in December 2019 (Card 3)

Capital One gave Card 3 to Mr P seven months after giving him Card 2, this time with a credit limit of £500.

Again, due to the relatively small credit limit given, using a credit search, in certain circumstances, could be a reasonable and proportionate check. However, I'm finding again that Capital One didn't use the information available to them to make a fair lending decision. I've already discussed the information available to Capital One regarding Card 1, so I won't go over that again. Although the facts remain and Capital One should have used this information available to them, particularly as they're now agreeing to lend Mr P more than the original amount they'd granted him that was never repaid over eight years, and in addition to the lending on Card 2.

But by this stage Capital One also had the data from Card 2 and how that was being managed. Again, much like Card 1, a vast majority of the transactions were for gambling

and/or cash withdrawals.

I've gone on to look at the credit check Capital One completed on Mr P in December 2019. His overall indebtedness had increased since May 2019 by over £1,000. In between May and December Mr P had taken out more payday lending. Many of Mr P's accounts also had late payment markers registered.

So it follows that I also think Capital One irresponsibly lent to Mr P in December 2019. Overall and having thought about everything, I'm intending to issue a final decision which finds that Capital One didn't act unfairly when providing Card 1. But they did act unfairly in providing Cards 2 and 3."

Capital One responded to say that it accepted the findings in the provisional decision and didn't have anything further to add.

Mr P responded with his bank statements from 2009 when the lending decision on Card 1 took place. After considering the statements carefully, I sent the below reply to Mr P.

"Having looked at these carefully, I'm not currently minded to uphold the sale of Card 1. I explained in my provisional decision that Capital One needed to fairly and reasonably assess whether Mr P would be able to repay the £500 limit it gave him in a reasonable period of time.

I'm satisfied Capital One probably should've asked Mr P more about his circumstances at the time based on the information they received from the credit search.

From looking at Mr P's statements, I can see he had a regular income, as well as other large payments into the account. He wasn't making use of an overdraft on the account and seemed, on the face of it, to have enough funds to support his day to day living.

So even if Capital One had done more to check Mr P's financial situation before agreeing to lend to him, I think it likely Capital One would have been satisfied Mr P could repay a credit limit of £500 in a sustainable way. And based on what I've seen so far, I'm minded to agree that this was a fair lending decision.

I appreciate that Mr P did have some defaulted accounts when he took out this card, but that had happened a number of years prior to the sale of this card. Given the relatively low limit on Card 1, combined with what I have seen of Mr P's financial situation at the time (based on the statements I've seen), I don't think it was unfair of Capital One to lend to Mr P on this occasion."

Mr P responded to say that given the time that's passed since the sale of this card, he's unable to provide anymore evidence to support his view that Card 1 was unaffordable. So he said that he accepted the provisional 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.

Given that both parties accept that Card 2 and Card 3 were lent irresponsibly, and Mr P has no further evidence to support his position on Card 1. I see no reason to depart from the outcome in my provisional decision.

For the reasons set out in my provisional findings, and subsequent email to Mr P, it is my decision that Capital One acted unfairly in providing Mr P with Card 2 and Card 3. However, I don't think the lending decision on Card 1 was unfair.

Because I'm upholding part of this complaint, I have set out below what Capital One needs to do to put things right for Mr P.

Putting things right

Having thought about everything above, Capital One needs to put things right for Mr P by doing the following:

- Rework Mr P's current credit card balances so that all interest, fees and charges applied to Cards 2 and 3 are removed;
- if an outstanding balance (or balances) remains once these adjustments have been made Capital One should contact Mr P to arrange a suitable repayment plan for this.
- If no outstanding balance remains, any adverse information, regarding the account in question, should be removed from the credit file.

AND

- If the adjustments result in Mr P having paid Capital One too much, any extra should be treated as overpayments and returned to Mr P.

AND

- pay interest of 8% simple a year on any overpayments from the date they were made (if they were) to the date of settlement †.
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† HM Revenue & Customs requires Capital One to take off tax from this interest. Capital One must give Mr P a certificate showing how much tax it's taken off if he asks for one.

My final decision

For the reasons set out above, I uphold Mr P's complaint in part. I order Capital One to put things right for Mr P by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 8 August 2022.

Sophie Wilkinson
Ombudsman