

The complaint

Mr E complains that Capital One (Europe) plc acted irresponsibly when they offered him a credit card as he had only just finished repaying a debt to them.

What happened

Mr E first took out a credit card with Capital One in 2013. In 2016 Mr E got into difficulties paying back what he had borrowed and a repayment plan was set up. Mr E didn't make the agreed repayments and the account was defaulted in December 2016. Capital One continued to chase Mr E to settle the debt and between December 2016 and January 2021 sporadic payments were made to the outstanding balance. In June 2020 Mr E offered a partial settlement of £235 of the £470 which was rejected by Capital One. Mr E made a few more small payments to reduce the balance. In January 2021 Mr E offered to pay £205 which was half of the outstanding balance of £410 which was accepted by Capital One and the account was closed.

In May 2021 Mr E says he was invited to apply for a credit card with Capital One. His application was approved and his account was opened with a credit limit of £750. Mr E got into difficulties very soon after the account was opened and says that Capital One should never have offered him another card when he had only just finished paying off his debt to them. He says he wasn't working and in receipt of benefits and basic checks would have revealed this.

Capital One said that it reviewed a number of things when assessing Mr E's application. Although it was aware of the default, this had happened in 2016 and there was nothing in Mr E's credit file that suggested he was struggling with his existing credit. It took at face value Mr E's declared income. It considered that Mr E's difficulties had passed and it wasn't wrong to lend to him.

Our investigator didn't think the complaint should be upheld. They thought that Capital One's checks didn't show that Mr E was in difficulty, that his previous debt had been paid and that the default happened in 2016 which was a long time before he applied for the new card.

Mr E didn't agree and replied to say in summary that it wasn't right that Capital One could offer him a new card so soon after he had repaid the old debt. He asked for the complaint to be passed to an ombudsman to decide.

I asked for some further information about the partial settlement in 2021. Mr E stated that Capital One agreed to half of the outstanding balance and he paid this out of his benefits.

On 9 September 2022 I made a provisional decision setting out why I was minded to uphold Mr E's complaint.

Mr E and Capital One responded to confirm that they accepted my 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.

My provisional decision stated as follows,

“Our approach to considering complaints about unaffordable and irresponsible lending is set out on our website. I've had this approach in mind when considering what's fair and reasonable in the circumstances of this complaint.

Capital One have provided the details that Mr E set out on in his application. He stated he was self-employed earning £30,000 a year and living with parents. Although Mr E had previously told Capital One in October 2020 he was in receipt of benefit.

Looking at the information on Mr E's credit file I currently agree with the business and the investigator that there was nothing to suggest that Mr E was having difficulty managing his existing credit commitments. There were no missed repayments or other difficulties and no suggestion that Mr E was heavily reliant on credit.

However, Capital One did know that Mr E had not been able to repay the debt to them for a period of years. Capital One arranged a number of repayment plans with Mr E to repay the previous debt and he was not able to consistently repay even a small amount towards the debt. Between December 2016 and January 2021 Mr E had reduced the debt by only £150 despite a number of arrangements to pay. Although he offered lump sum payments on two occasions, these were not for the full amount of the debt.

In January 2021 Mr E offered to repay half of the outstanding debt in a lump sum. I can't see that Capital One asked Mr E for any detail about this repayment or how he could afford it given his previous difficulties. I can't see that it asked why he wasn't able to afford the full amount.

I currently think that approving Mr E for a credit card with a limit of £750 only four months later without further checks about his income and outgoings was irresponsible. At this point Capital One were aware that Mr E had been struggling to repay a much smaller debt to them for over five years. I don't currently think enough time had passed for Capital One to consider that Mr E's difficulties were over given the reduced settlement accepted in January 2021 following another failed repayment plan.

Capital One was not a new lender and had a relationship with Mr E which continued beyond the default in 2016. I think it would have been reasonable and proportionate for the information about his ability to repay that debt to have been considered.

I currently think that Capital One failed to properly consider Mr E's income and outgoings given the information it held and further checks would have revealed that Mr E was not currently working and in receipt of benefits. In these circumstances I don't think Capital One would have agreed to lend.”

In the circumstances as both parties have agreed with my decision I see no reason to depart from my original conclusions as set out above.

Putting things right

As I don't currently think Capital One ought to have opened the account, I don't think it's fair for it to be able to charge any interest or charges under the credit agreement. But I do think

Mr E should pay back the amounts he has borrowed. I don't think it is fair for the balance to be written off as Mr E would like as he has had the benefit of the money.

Therefore, Capital One should:

- Rework the account removing all interest, fees, charges and insurances (which have not already been refunded) that have been applied.
- If the rework results in a credit balance, this should be refunded to Mr E along with 8% simple interest per year* calculated from the date of each overpayment to the date of settlement. Capital One should also remove all adverse information regarding this account from Mr E's credit file.
- Or, if after the rework there is still an outstanding balance, Capital One should arrange an affordable repayment plan with Mr E for the remaining amount. Once Mr E has cleared the balance, any adverse information in relation to the account should be removed from their credit file.

*HM Revenue & Customs requires Capital One to deduct tax from any award of interest. It must give Mr E a certificate showing how much tax has been taken off if he asks for one. If it intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

My final decision

My final decision is that I uphold this complaint and Capital One (Europe) plc should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 10 November 2022.

Emma Boothroyd
Ombudsman