

The complaint

Mr T complains that Capital One (Europe) plc have irresponsibly lent to him.

What happened

Mr T was approved for two Capital One credit cards which I will refer to as A and B. I have detailed the initial credit limits and the credit increases for A below.

Card A – approved November 2012, with an initial £1,000 credit limit:

January 2014	£1,000 to £1,250
November 2014	£1,250 to £2,000

Card B – approved December 2016, with an initial £500 credit limit:

Mr T complained that Capital One had irresponsibly lent to him. He says he sent them complaint letters in 2018 and 2019, but they didn't respond to him, so he brought his complaint to our service.

Capital One then issued a final response letter and they did not uphold Mr T's complaint. They said that the complaint about card A was brought to them too late as the complaint was not made within six years of the account opening or by the last credit increase to £2,000 in November 2014. They said Mr T also hadn't provided any explanation or evidence, which suggests that his complaint has been made within three years of him becoming aware that he had cause to complain about the lending decisions taken.

Capital One has said that for Card B, they looked at several pieces of information, such as his annual pre-tax income disclosed on the application of £20,800, minus assumed taxes to get to a net income figure, other debt servicing commitments that were evidenced on his credit file at the time. These included £6,376 of outstanding credit card debt and £1,249 in other unsecured borrowing (including any outstanding overdrafts). Capital One used estimates of housing costs and other expenditure based on Office for National Statistics on how much people typically spend on these items each month and based on this information, approved him with a credit limit of £500, which didn't increase.

Our investigator did not uphold Mr T's complaint. She said when Mr T contacted our service, he provided evidence of letters that he'd sent to Capital One. The first letter was dated 14 October 2018. Capital One said they didn't receive the letters, but she was satisfied from the evidence he provided, that his complaint was referred to them within six years. She said Capital One consented to our service looking into irresponsible lending for both cards.

Our investigator said that the decision to approve Mr T for Card A was reasonable. She said for both credit limit increases that there was no evidence to suggest he was struggling financially when his credit limit was increased. She said based on Mr T's reported income and level of debt, the repayments should've been sustainable. So she was satisfied that Capital One's decision to increase his credit limit was reasonable and both limit increases were modest. She said for Card B, Capital One checked his credit file before approving his

application. She said all of his accounts were being managed well and there was no evidence of arrears, outstanding County Court Judgements (CCJ's) or previously defaulted debt. Our investigator said that although Mr T's level of debt had increased, his salary had also increased. Mr T asked for an Ombudsman to review his complaint.

As my findings differed in some respects from our investigator's, I issued a provisional decision to give both parties the opportunity to consider things further. This is set out below:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Before agreeing to approve or increase the credit available to Mr T, Capital One needed to make proportionate checks to determine whether the credit was affordable and sustainable for him. There's no prescribed list of checks a lender should make. But the kind of things I expect lenders to consider include - but are not limited to: the type and amount of credit, the borrower's income and credit history, the amount and frequency of repayments, as well as the consumer's personal circumstances. I've listed below what checks Capital One have done and whether I'm persuaded these checks were proportionate.

Acceptance for Card A - initial credit limit:

I've looked at what checks Capital One said they did when initially approving Mr T's application for Card A. I'll address the credit limit increases later on. Capital One said they looked at information provided by credit reference agencies and information that Mr T had provided before approving his application.

I'm persuaded that the account opening checks were proportionate. I say this as the information showed that Mr T had declared a total income of £14,400 and was self-employed. And although I appreciate that his income may fluctuate with him being self-employed, I would expect the declared income to be a true reflection of what Mr T would realistically expect to earn. Based on the income declared, it would not seem unusual for someone in Mr T's industry to be earning the income he declared. And it did not appear at the time the searches were carried out, that Mr T had any unsecured credit elsewhere.

It does not appear that Mr T had any adverse credit at the time he was approved for Card A and the credit limit was less than 10% of what he declared as his income. I wouldn't expect Mr T to include his expenses in this as this would be unlikely to be taxable. So I'm satisfied that the checks Capital One carried out here, prior to approving the initial £1,000 credit limit were proportionate and that Capital One made a fair lending decision to approve Mr T's application for Card A.

January 2014 credit limit increase for Card A - £1,000 to £1,250

I've looked at the information that Capital One had available to them when they increased Mr T's credit limit. The increase here was an extra £250. This increase was 14 months after Card A was approved, so Capital One had a fair amount of information to see how he had been managing his account. I can see that Mr T had incurred an overlimit charge, within four months of Card A being opened. This may suggest that Mr T may not be managing his finances effectively here. So I've looked at the data Capital One had around the time to get a broader sense of how Mr T was managing his finances prior to his credit limit being increased.

The data appears to show that Mr T contacted Capital One on 11 February 2013 and he was unhappy that they allowed him to go over his credit limit. Capital One agreed to refund the fee as a gesture of goodwill. Mr T did not exceed his credit limit again prior to the increase of

his credit limit to £1,250. So it does appear that this was a genuine error here. The data shows there were no late payments.

I've considered that Mr T used most of the initial credit limit in a short period of time. He did benefit from an introductory 0% interest offer on purchases on this card, so I'm not persuaded it would be unusual for someone to take advantage of this offer and use what credit limit was available to them. Using an available credit limit on its own in quick fashion is not a sole indicator that someone is in financial difficulty, or the lending is unaffordable. But it can be an indicator that someone is hungry for credit. So I've had a look what other data Capital One looked at prior to increasing his credit limit.

Capital One's data also shows that his unsecured borrowings had increased to £300 between the acceptance from Card A and the increase to £1,250. But the data from the credit reference agencies (CRA's) showed that he had no defaulted accounts, no CCJ's, no payday loans and no accounts in arrears. So I'm satisfied that the checks Capital One carried out here, prior to increasing Mr T's credit limit to £1,250 were proportionate and that Capital One made a fair lending decision to increase his credit limit here.

November 2014 credit limit increase for A - £1,250 to £2,000

I've looked at the information that Capital One had available to them when they increased Mr T's credit limit. The new credit limit was three times the increase which they approved 10 months earlier (£750 increase compared to £250 increase in January 2014). So I've looked at the data Capital One had around the time to get a broader sense of how Mr T was managing his finances prior to his credit limit being increased.

I can see that Mr T had incurred an overlimit charge in the same statement period of his increase in January 2014, but it appears that this was again a genuine error as Mr T was using the credit which was made available to him and he didn't incur another overlimit charge prior to his credit limit being increased to £2,000.

I've considered again that Mr T had used most of the previous credit limit increase. But the increase was £250 and Mr T made two purchases through a third party provider for £109.29 and £130 in late January 2014. I'm not persuaded that these two payments meant Mr T was in financial difficulty. These don't appear to be any payments for essential bills or to pay any credit providers. As I've previously mentioned, utilising an available credit limit isn't a sole factor in determining whether someone is suffering financial difficulties, so I've looked to see what other data Capital One had available to them.

Capital One's data also shows that Mr T made no late payments on Card A from the account opening, so he did not appear to be in financial difficulties, even if he did utilise most of the credit when it was available to him. Capital One's data also shows that his unsecured borrowings had increased to £800 between the last credit limit increase to the credit limit increase to £2,000. So if he used all of the new credit limit and his £800 external debt, this would be less than a fifth of what income he declared when Card A was first opened. And although Mr T had previously used his available credit limit, this is not a guarantee he would do so again. So I've had a look at the data from the CRA's around this time.

The data from the CRA's again showed that he had no defaulted accounts, no CCJ's, no payday loans and no accounts in arrears. So I'm satisfied that the checks Capital One carried out here, prior to increasing Mr T's credit limit to £2,000 were proportionate and that Capital One made a fair lending decision to increase his credit limit here.

Acceptance for Card B - initial credit limit:

I've looked at what checks Capital One said they did when initially approving Mr T's application for Card B. Again, Capital One said they looked at information provided by CRA's and information that Mr T had provided before approving his application.

Mr T said that his income was now £20,800 which was £6,400 more than it was four years earlier when he applied for Card A. So it would appear on the surface that he may have more disposable income than he previously had.

But the checks showed that Mr T's unsecured borrowings had increased by a substantial amount. In the 25 months from when his credit limit on Card A increased to £2,000 to when Mr T was approved for Card B, his external third party unsecured borrowings had risen from £800 to £5,684. So this should raise concerns that Mr T had taken on a substantial amount of extra debt. The increase of his external debt was over 700% in only 25 months.

Although Mr T had no late payments or overlimit fees for Card A during this time, there were strong indicators of him suffering financial difficulty and I'll explain why. Capital One's data showed that although Mr T had only opened one new account in the previous 25 months, his usage of his existing accounts meant that he either was granted further credit limit increases during the 25 month period (like he did with Card A) or he utilised substantially more of his credit limit, which would show he was more reliant on the credit. Or possibly using debt to pay debt. Either way, it shows that Mr T was much hungrier for credit than he was when he was approved for the last credit limit increase on Card A.

And on all of Mr T's external accounts, they could see that Mr T was close to his credit limit. He had just opened a current account in March 2016 and the data shows he was £1,249 into a £1,250 overdraft limit. So Capital One would be aware that within the nine months prior to Card B being approved, that Mr T applied for credit, was approved, and was virtually at his maximum overdraft limit already. Based on Mr T's earnings, it would be extremely unlikely for Mr T to be able to have enough disposable income to be able to leave his arranged overdraft. And there's a strong possibility he was using debt (his overdraft) to make his repayments – which were typically only the minimum monthly repayments to Capital One.

Mr T had access to £8,200 revolving debt when Card B was approved. This would be close to half of his net earnings. Although Mr T had not defaulted on any of his accounts previously or had any CCJ's, at this point, the signs were that the new significant increase in borrowings between the last increase on Card A and the approval of Card B shows that this lending was unlikely to be affordable or sustainable.

I'm not persuaded that a fair lending decision was made for Card B. To summarise, while his earnings had increased and he had no adverse data at this point, his external debt had increased by more than 700% in just over two years (by nearly £5,000 which was more than a quarter of his net earnings), his appetite for credit was apparent by him utilising virtually all of the credit that was made available to him, including him only just being approved for an overdraft earlier in the year that Card B was accepted and he maximised this also, all within a short period of time. The rate at which Mr T was accumulating debt in the previous 25 month period, (compared to when Card A was approved, even with the credit limit increases) was not sustainable. And I'm persuaded that Capital One should have been aware of this and not made the lending decision that they did for Card B. So it follows, I intend to ask Capital One to put things right for Mr T."

I invited both parties to let me have any further submissions before I reached a final decision. Capital One accepted the provisional decision, but they wanted to add that they don't agree that a high utilisation of credit shows a lack of affordability and wouldn't

rule a customer out from being provided with a card and that their calculations showed that even with the increase in additional debt, Mr T's income was sufficient to support the card they were providing.

Mr T did not accept the provisional decision regarding Card A. He made a number of points. In summary, he said that the interest free period was an initial three month period designed to allow him to make purchases that could be paid off before the offer ended, but his March 2013 statement showed that he was charged interest immediately after the interest free period ended due to him not paying any of the credit balance before his offer expired. He said while it may be reasonable to expect a customer to make use of a balance during an interest free period, it would not be reasonable to assume that leaving the balance outstanding on a continuous basis was a sign of well-managed finances.

Mr T said that in almost every month, the minimum payment was made, and then shortly thereafter, the balance which was left was used again. He said he repeatedly used the card to pay an electricity company and the only additional payments made were to cover new purchases in the region of £5, which was a clear indicator that he was not managing his finances well.

Mr T said the argument that Capital One now had an account history that showed payments being made on time, and therefore an increase was suitable is incorrect, as the additional purchases made with the balance show that the increase was not suitable, especially when considering that the balance was never reduced, which is a primary indicator according to the Financial Conduct Authority (FCA) guidelines and should not be overlooked. He said when the second limit increase was considered, Capital One could also see an increase in other borrowing facilities as well as his continued re-use of his balance on his Capital One card.

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've considered what Mr T has said about the FCA guidelines. Mr T should be aware that before April 2014 (which would cover off the approval for Card A and the first limit increase for Card A), the relevant body for issuing the guidance for irresponsible lending was The Office of Fair Trading (OFT). His second increase in November 2014 would be covered under the FCA guidelines. I have consulted the relevant guidance when reaching my decision.

Mr T has commented on the interest free period and that it would not be reasonable to assume that leaving the balance outstanding on a continuous basis was a sign of well-managed finances. When Capital One approved the credit card they would not know how Mr T would intend to use the card, they could only look at what his credit file showed how he managed his finances and the information that he had provided to them. I'm not persuaded that leaving a balance outstanding on a continuous basis is a sign that someone is in financial difficulties either. A consumer may choose to purchase items using their card to avoid them paying the cost up front.

Capital One were aware that Mr T was self-employed. So there may be times where he needed flexibility and the credit card would offer him flexibility. Although Mr T regularly paid an electricity company, I'm not persuaded that this is a sign he was in financial difficulties, He would be entitled to use any amount of the credit limit in a way that is in line with the credit agreement.

Although Mr T may have generally made the minimum repayments, this does not suggest on its own that further borrowing would be unaffordable, or unsustainable. It was only two years from the initial acceptance of Card A to the last credit limit increase on Card A, as opposed to Card B being approved over four years after Card A. I'm persuaded that the checks that Capital One carried out prior to the credit limit increasing on Card A were proportionate and at the time repayments would have been sustainable. The first increase was for £250. As I said in my provisional decision "*Capital One's data also shows that his unsecured borrowings had increased to £300 between the acceptance from Card A and the increase to £1,250. But the data from the credit reference agencies (CRA's) showed that he had no defaulted accounts, no CCJ's, no payday loans and no accounts in arrears.*"

Mr T was not withdrawing cash from his credit card and there appears to be no evidence he was using his available credit limit to pay off unsecured borrowings elsewhere. As I said in my provisional decision "*I've considered again that Mr T had used most of the previous credit limit increase. But the increase was £250 and Mr T made two purchases through a third party provider for £109.29 and £130 in late January 2014. I'm not persuaded that these two payments meant Mr T was in financial difficulty. These don't appear to be any payments for essential bills or to pay any credit providers. As I've previously mentioned, utilising an available credit limit isn't a sole factor in determining whether someone is suffering financial difficulties.*" If Mr T was having financial difficulties, then I would have expected this to be reflected in the checks Capital One carried out.

I say this because in the 14 months between Card A being approved and the first credit limit increase, his external borrowings had only increased by £300. So as I'm persuaded that the initial Card A credit limit was affordable, an increase of his external borrowings of £300 over this time period would not substantially affect the affordability (unlike for Card B when this rose from £800 to £5,684 – over a 700% increase). There were no adverse credit markers on his credit file and he generally managed his account well – making repayments on time, generally not exceeding his credit limit. When Card A and the credit limit increases were approved, his credit file didn't show any overdraft, so again, it would appear that Mr T could afford the repayments from his own income and there is no evidence that he used debt to repay debt.

As I said in my provisional decision regarding the increase to £2,000 which was approved in November 2014, "*Capital One's data also shows that Mr T made no late payments on Card A from the account opening, so he did not appear to be in financial difficulties, even if he did utilise most of the credit when it was available to him. Capital One's data also shows that his unsecured borrowings had increased to £800 between the last credit limit increase to the credit limit increase to £2,000. So if he used all of the new credit limit and his £800 external debt, this would be less than a fifth of what income he declared when Card A was first opened. And although Mr T had previously used his available credit limit, this is not a guarantee he would do so again. So I've had a look at the data from the CRA's around this time. The data from the CRA's again showed that he had no defaulted accounts, no CCJ's, no payday loans and no accounts in arrears. So I'm satisfied that the checks Capital One carried out here, prior to increasing Mr T's credit limit to £2,000 were proportionate and that Capital One made a fair lending decision to increase his credit limit here.*"

Based on the information that Mr T has provided to us, it appears to show that Mr T's financial difficulty took hold around April 2015. This is where his external debt started to increase substantially. I'm satisfied that Capital One performed proportionate checks when approving Card A and the credit limit increases which at the time of these checks showed that Mr T had the affordability to make his repayments in a sustainable manner. Even though he often paid the minimum repayment and then utilised the credit again. I've also documented the reasons which show that Mr T did not appear to be suffering financial difficulty at the time Card A was approved or the credit limit increases on Card A only.

In summary, Mr T's response hasn't changed my view and my final decision and reasoning remains the same as in my provisional decision. I know Mr T will be disappointed, but I hope he understands my reasons.

Putting things right

In my provisional decision I said I intend to uphold this complaint in part. I said I intend to ask Capital One (Europe) plc to do the following on Card B only:

Capital One should arrange to transfer any debt back to themselves if it has been passed to a debt recovery agent;

Rework the account removing all interest and charges that have been applied;

If the rework results in a credit balance, this should be refunded to Mr T 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 T's credit file;

Or, if after the rework there is still an outstanding balance, Capital One should arrange an affordable repayment plan with Mr T for the remaining amount. Once Mr T has cleared the balance, any adverse information in relation to the account should be removed from his credit file.

I'm still satisfied this is a fair outcome for the reasons given previously.

**If Capital One considers that it's required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mr T how much they've taken off. They should also give Mr T a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.*

My final decision

I uphold this complaint in part. Capital One (Europe) plc should settle the complaint in line with the instructions in the "putting things right" section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 26 May 2023.

Gregory Sloanes
Ombudsman