

## The complaint

Mr D complains that Capital One (Europe) plc irresponsibly gave him two credit cards that he couldn't afford.

## What happened

Mr D was given two credit cards by Capital One. The first card was taken out in June 2015 with an initial credit limit of £1,000. The limit was increased to £1,250 in March 2016, the account still remains open with an outstanding balance. The second card was taken out in December 2016 with a credit limit of £200. The limit on the second card was never increased, but the card remains open with an outstanding balance.

In 2022, Mr D complained to Capital One to say that it should never have given him the credit cards or the limit increase. It said that if Capital One had done appropriate checks it would have seen the credit was unaffordable to him.

Capital One didn't think it had acted unfairly. It said that it had completed appropriate checks before lending which showed that Mr D could afford the borrowing.

I sent Mr D and Capital One my provisional decision on 25 April 2023. I explained why I thought the complaint should be upheld. I said:

*I've had in mind the rules and guidance for lenders within the Consumer Credit Sourcebook (known as CONC) within the regulator's handbook, when thinking about whether Capital One acted fairly and reasonably.*

*Prior to granting Mr D with credit, Capital One were required to ensure it would be affordable and sustainable. There isn't a set list of checks it needed to complete, instead it needed to ensure the checks it did complete were proportionate for each lending decision. What is considered proportionate will therefore vary with each lending decision. In deciding what is proportionate, Capital One needed to take into consideration things such as (but not limited to): the amount of credit, the cost of credit, the size of any sustainable repayments to ensure the credit could be repaid in a reasonable period of time (this is likely to be higher than the minimum contractual payment) and Mr D's specific circumstances.*

*When Mr D applied for credit card one, he declared he earned an annual income of £40,000. Capital One completed a credit check which showed that Mr D had a mortgage, car finance, three credit cards, some loans and an overdraft. His monthly commitment towards secured borrowing was around £750 per month and around another £750 per month for his unsecured debts. Capital One says it also estimated Mr D's essential household expenditure using statistical data. Taking all of this information together, it said that Mr D appeared to have sufficient disposable income to afford a credit limit of £1,000.*

*The information and evidence Capital One gathered suggested that Mr D was managing his existing credit commitments with no recent history of payment difficulty.*

*It was also entitled to rely on the information Mr D gave on the application form about his circumstances, unless it knew or ought to have known it was untrue. Mr D says he inflated his income figure. However, I've not seen anything to suggest that Capital One ought to have known this. This is because I think Capital One completed proportionate affordability checks and I don't think those checks revealed any affordability concerns. I therefore think it made a fair lending decision.*

*However, I don't think Capital One made a fair lending decision when it increased the credit limit on credit card one or when it opened credit card two. I'll explain why.*

*The increase to the credit limit was around nine months after the credit card was opened. While the increase in monetary terms wasn't large, it still represented a 25% increase on the overall limit, which I consider to be significant. Further, I think at this stage, Capital One had enough information to suggest Mr D was in financial difficulty and unable to sustainably afford more credit.*

*I say this because Capital One's credit checks show that in the previous six months, Mr D had taken out nine payday loans. The volume of such high-cost short-term borrowing ought to have concerned Capital One. I note also that Mr D was paying off some of those payday loans using the credit card from Capital One – this was evident from the credit card statements. The fact Mr D was paying credit with credit, and this information was available to Capital One ought to have caused them to question Mr D's ability to sustainably repay not just more credit, but the existing facility too.*

*Further, it appears that in the nine months since the credit card was opened, Mr D had taken out a further two credit cards elsewhere as well as an additional loan. The amounts he was borrowing were significantly increasing in a short period of time and he was relying on expensive payday loans as well as paying credit with other credit to avoid missing payments. Mr D was clearly not in a position to be able to afford more credit and this ought to have been evident to Capital One from the checks it completed and from what it already knew about its customer.*

*By the time Mr D opened the second credit card, his unsecured debt had increased even further. It's clear his financial position was even worse than it had been when the limit was increased on credit card one. It therefore made an unfair lending decision in granting the limit increase on credit card one and opening credit card two. I've therefore thought about a fair way to put things right.*

*I think it ought to have been clear to Capital One at the time it increased Mr D's limit in March 2016, that he could no longer sustainably afford any limit on the credit card it had, let alone any increases in credit. I therefore think at that stage, not only should Capital One have not increased Mr D's credit limit but also taken steps to support his financial difficulties.*

*In the absence of it having done anything at all, I think it's therefore fair and reasonable that it refunds all interest, fees and charges that have been applied to credit card one from March 2016 onwards. However, as Mr D has spent money using that card, it is fair he pays back what he borrowed.*

*As I don't think credit card two should ever have been opened, I think Capital One should remove all interest, fees and charges on that card from the outset. However, as above, I think it's fair for Mr D to pay back the capital amounts he borrowed.*

Both Mr D and Capital One accepted that outcome and had nothing further to add.

### **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.

As both parties have accepted my provisional decision and provided no further comments or evidence, I've seen no reason to reach a different conclusion. Therefore, for the reasons I gave in my provisional decision above, I think Capital One acted unfairly and unreasonably when it continued to offer credit to Mr D after March 2016.

### **My final decision**

For the reasons given above, I uphold this complaint and direct Capital One (Europe) plc to:

- Re-work credit card one removing all interest, fees, charges and insurances (not already refunded) from March 2016 onwards.
- Re-work credit card two removing all interest, fees, charges and insurances (not already refunded) from account opening.
- If after the re-work Mr D has paid back more than he borrowed, Capital One should refund any overpayments to Mr D, adding 8% simple interest per year on any refunds from the date of each overpayment to the date of settlement. It should also remove any adverse information it may have recorded on his credit file in relation to both credit cards from March 2016 onwards.

Or;

- If after the re-work there is still a capital balance outstanding, Capital One should arrange an affordable repayment plan the outstanding amount. Once Mr D has paid back that balance, Capital One should remove any adverse information it may have recorded on his credit file in relation to both credit cards from March 2016 onwards.

If Capital One considers tax should be deducted from the interest element of my award it should provide Mr D with a certificate showing how much tax it has taken off, so he can reclaim that amount if he is eligible to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 6 June 2023.

Tero Hiltunen  
**Ombudsman**