

The complaint

Miss T complains that Capital One (Europe) plc lent irresponsibly when it approved her credit card application and later increased the credit limit.

What happened

The background to this complaint and my initial conclusions were set out in my provisional decision. I said:

Miss T applied for a credit card with Capital One in December 2008 and it was approved with a credit limit of £200. Miss T maintained the credit card for several years. In May 2014 Capital One increased the credit limit to £700. Capital One says the credit limit increase was approved in line with its lending criteria.

Miss T missed some payments in 2015, 2016 and 2017 when she contacted Capital One and advised she was experiencing financial difficulties. Arrears continued to accrue and the account was closed at default in January 2018.

In 2020 Miss T complained to Capital One that it had lent irresponsibly and it sent her a final response. Capital One didn't uphold Miss T's complaint and didn't agree it had lent irresponsibly.

An investigator at this service looked at Miss T's complaint. They said the time limits noted in our rules meant we couldn't consider Miss T's complaint about the original credit card application. Miss T accepted but asked the investigator to look at the credit limit increase from £200 to £700 in May 2014. The investigator didn't think Capital One had lent irresponsibly when it approved the credit limit increase to £700 and didn't uphold Miss T's complaint. Miss T asked to appeal, so her 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.

As our investigator has already said, we can't look at the original credit card application in 2008 due to the time limits noted in our rules. In this decision, I'm going to focus on the credit limit increase in May 2014 which falls within our remit.

Our approach to considering complaints about unaffordable and irresponsible lending is set out on our website. I've taken our approach into account when reviewing Miss T's complaint. In summary, before providing credit, lenders need to complete reasonable and proportionate affordability checks. There isn't a set list of checks a lender is required to carry out, but it needs to ensure the checks are proportionate when considering things like: the type and amount of credit being provided, the size of the regular repayments, the total cost of the credit and the consumer's circumstances.

As a lending relationship continues over time and the level of credit increases, lenders may need to obtain further information from a borrower to check whether they're lending responsibly and that the repayments are sustainable for the customer.

Capital One's explained it looked at Miss T's credit file and account history for her credit card when considering whether to proceed with a credit limit increase in May 2014. And Capital One says the credit limit increase was approved in line with its lending criteria. I've looked at the information available to see whether Capital One carried out reasonable and proportionate checks. Having done so, I think there were clear signs Miss T may not have been able to sustainably repay further borrowing prior to the credit limit increase in May 2014. I'll explain why.

I've looked at Miss T's credit card activity in the year before the credit limit was increased. I think it's reasonable to note that in the 12 months before the credit limit increase Miss T incurred five late payment or overlimit fees due to the activity on her credit card. In addition, I can see that the majority of transactions on Miss T's credit card statements in the 12 months before the credit limit increase were either to a gambling company or were cash advances. And I can see the payments made to the gambling company incurred cash handling fees. In my view, using a credit card for gambling purposes to the level seen on Miss T's credit card statements should've caused Capital One to carefully consider whether offering further borrowing was reasonable and sustainable for her. I think the information available to Capital One should've caused it to consider completing more comprehensive checks before deciding whether to extend Miss T's credit limit further.

We recently asked Miss T to send us a copy of her bank statements for the three month period before May 2014 but she's advised that, due to the passage of time, they're not available from her bank. Miss T has forwarded a copy of her credit file, although I accept it doesn't now show what was recorded in May 2014. As there is only a limited amount of information available, I've considered whether the credit card activity shown on Miss T's Capital One account should've been sufficient to show further borrowing was unsustainable.

As I've noted above, in the year before Miss T's credit limit increase she incurred several fees for either being over the agreed credit limit or making a late payment. In addition, I think the way Miss T was using her credit card shows she was struggling to maintain her finances at the time. The majority of transactions were for gambling purposes, incurring cash advance fees. That, in itself, ought to have shown Miss T's ability to repay further borrowing was likely to be very limited.

I also think it's fair to note in Miss T's case that the level of over limit and late payment fees she incurred following the credit limit increase in May 2014 increased substantially. I note that in the year after Capital One increased the credit limit Miss T incurred fees on eight occasions. From that point, arrears began to accrue and Miss T's account was ultimately closed at default in January 2018. Whilst this information wasn't available to Capital One at the time of the credit limit increase in May 2014, it does go some way to verifying Miss T's complaint that the credit limit increase was unaffordable.

Whilst I accept there is a limited amount of information on file for Miss T's complaint, I've considered everything that's available. Having done so, I haven't been persuaded that Capital One completed reasonable or proportionate checks before increasing the credit limit in May 2014. And, on balance I'm satisfied that if Capital One had carried out more comprehensive checks it wouldn't have increased the credit limit in May 2014. Based on the information I've seen so far, I intend to uphold Miss T's complaint.

I invited both parties to respond with any additional comments they wanted me to consider. Miss T responded and confirmed she had nothing further to add before I issued my final decision. Capital One confirmed it was willing to accept 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.

As both parties have accepted the provisional decision, I see no reason to change the conclusions I previously reached. I still think Miss T's complaint should be upheld for the same reasons.

My final decision

My decision is that I uphold Miss T's complaint and direct Capital One (Europe) plc to settle as follows:

- Rework the credit card to remove all interest, fees and charges applied to balances over £200 from May 2014 onwards; and
- If the effect of these reworkings results in a credit balance on the account, this should be refunded to Miss T along with 8% simple interest* on the overpayments from the date they were made to the date of settlement. In this case, Capital One should remove any adverse information recorded on Miss T's credit file after the May 2014 credit limit increase was applied; or
- If an outstanding balance remains on the account once the adjustments have been made, Capital One should ensure that Miss T is only liable for this adjusted balance and arrange an affordable repayment plan. Once Miss T has cleared the outstanding balance, any adverse information recorded from May 2014 onwards should be removed from her credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 22 June 2023.

Marco Manente
Ombudsman