

The complaint

Mr W complains that Capital One (Europe) plc (Capital) irresponsibly issued a credit card to him, for which he couldn't afford the payments. In particular he says it failed to take into account his gambling problems which it was aware of. He also complains that Capital failed to freeze or refund interest on his first credit card after he informed B of his financial problems.

What happened

Mr W was provided with a credit card by Capital in November 2019, with a £500 credit limit (Card 1). In September 2020 he successfully applied for a second credit card (Card 2). This had a £200 limit on it and was active until January 2021, and has since not been used.

In October 2020 Mr W emailed Capital to advise it that he was in financial difficulties because of a gambling problem. He was receiving therapy and assistance from a charity that helps with addiction. Capital agreed to block the card from being able to make cash transactions and not to increase the credit limit.

In October 2021 Mr W applied for, and was provided with, a third credit card (Card 3). This card had a credit limit of £1,250, which again hasn't been increased. He complained to Capital in July 2022. He believed that the card shouldn't have been issued to him. He was still having problems with gambling and he said Capital didn't ask for any details of this. He pointed out that there had been lots of cash withdrawals on his original card. During this time he also had multiple other credit cards and a default for a credit card registered against his name with a bank. He has supplied copies of his bank statements for the three months prior to this application.

Capital said that it was only after reviewing the information provided by him and third party Credit Reference Agencies that it decided what level of credit would be affordable for Card 3. Mr W declared that he was employed with a salary of £48,500. Other debt commitments were recorded on the credit file at the time. These included hire purchase agreements, outstanding credit card debt and other borrowing, and housing costs declared on his application. An estimate of other non-discretionary expenditure was made based on Office for National Statistics (ONS) data. Based on those checks and data it decided the card payments would be affordable.

On referral to the Financial Ombudsman, our Investigator said that, with the information it had concerning Mr W's gambling problems and the block on cash payments put on the first credit card, Capital should have carried out further checks. However she reviewed Mr W's bank statements for the period prior to Card 3 being issued but couldn't see a reason why Capital needed to compensate him for its decision to give him Card 3, or refund any interest and charges it applied on Card 1.

Mr W disagreed and said that Capital hadn't taken account of his full financial circumstances – in particular that he said he had more loan accounts and credit cards than Capital would have known about, that it should have been alerted by the large amount of cash withdrawals on Card 1 and he had very little disposable income (less than £75 each month).

The matter has been passed to me for further consideration.

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.

Our approach to considering complaints about unaffordable and irresponsible lending is set out on our website. I've taken that approach into account in considering Mr W's complaint.

So, 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.

Considering the relevant rules, guidance, and good industry practice, I think the questions I need to consider in deciding what's fair and reasonable in the circumstances of this complaint are:

- Did Capital complete reasonable and proportionate checks to satisfy itself that Mr W would be able to repay the credit advanced in a sustainable way?
- If not, would those checks have shown that Mr W would have been able to do so?
- Bearing in mind the circumstances at the time of each application, was there a point where Capital ought reasonably to have realised it was increasing Mr W's indebtedness in a way that was unsustainable or otherwise harmful and so shouldn't have provided further credit?

credit card 1

Mr W was issued with this card in November 2019, with a credit limit of £500 (which wasn't increased). In December 2019, then again in the months from June 2020 until the end of September 2020, Mr W made a number of withdrawals of cash, up to £250 at a time. But the account was well managed, with the monthly payment being made on time each month. I also note that up until April 2020 when gambling on credit cards was stopped, no gambling transactions were made.

In October 2020, Mr W emailed Capital to say he was in financial difficulties largely due to a gambling problem. There's no written response but Mr W has told us that a telephone conversation took place at this time whereby Capital agreed to put a block on any cash transactions and not to increase the credit limit.

It appears that Mr W spoke to an agent on 20 October 2021, when it was recorded that he:

"said he wanted to remove the cash block on the card. Agent asked if [Mr W] is no longer struggling with gambling. [He] said his situation has improved. [He] also wanted to consolidate his cards."

It appears that it was agreed that the cash block would be removed. It wasn't and Mr W had cause to complain about that as a result of which he agreed to accept a £50 payment for

distress and inconvenience. Having said that I can't see that he made any further cash withdrawals on this card. The account continued to be well maintained.

Under the Consumer Credit (CONC) Rules contained in the Financial Conduct Authority (FCA) Handbook, CONC 7.3.6 says:

"A firm must treat customers in default or in arrears difficulties with forbearance and due consideration."

Whilst freezing and or repayment of interest are certainly remedies Capital could have provided, it was mindful of his problems which appeared to be linked to cash withdrawals and stopped those. When he contacted it a year later he told it his situation had improved and it agreed to remove the block. I also understand that Mr W has taken steps himself to block gambling transactions through online services that enabled him to do this. I think Capital's actions were reasonable in respect of this card.

credit card 2

No complaint was made concerning this card.

credit card 3

Mr W applied for this card in October 2021. I believe he took out this card to take advantage of a balance transfer preferential interest rate and he did immediately transfer £1,000 to the card. At the time, Capital carried out a credit check, which showed:

- Four active credit cards and outstanding balances on four accounts of £3,522 (including Card 1).
- A hire purchase agreement taken out in June 2021 with a monthly payment of £606.
- A loan with a fixed monthly repayment of £24.
- Non-revolving unsecured credit balances totalling £24,514.
- A default balance of £4,216 on an account which defaulted in 2017.

Mr W declared an income of £48,500, which looks right against the income appearing on his bank statements. Capital assessed his outgoings by applying ONS data, usually 35% of the net income. Allowing for 5% payments the credit cards each month and the active loan payments shown on the credit check, the payments for the card looked to be affordable. Mr W took out another loan shortly before applying for the card, but as that was in September 2021, it didn't appear on Capital's check. And I can't attribute any blame to Capital for that as often credit reference agency records can take several weeks to update.

Mr W also points out that in respect of the default balance he was only paying £30 a month which meant the debt would have taken him 16 years to pay back, and Capital should have taken account of this. I note though that this was a historic debt and that at the time of the application Mr W had no more defaults on his record. I don't think that was a bar to providing credit on a credit card. He had taken out loans for much higher amounts and was keeping up with the payments.

However I do think that in issuing the card Capital should have contacted Mr W because of

the actions it had taken regarding his gambling and associated financial problems. Capital has advised us that if a customer has a vulnerability recorded and applies for a further card, it will be referred to an agent check manually, and the customer will be given an opportunity to cancel the card. I can't see that this was done in this case.

I refer to my comments above – did Capital complete reasonable and proportionate checks? In light of the information it already had about Mr W I don't think it did. I think additional checks should have involved a review of his existing account, a check on Mr W's income and expenditure and a follow up with Mr W about his gambling problems.

From Mr W's use of Credit Card 1, bearing in mind that no cash withdrawals were made after September 2020 Mr W did appear to have been managing the account well. I appreciate that any obvious gambling transactions would have been blocked but equally there were no payments which might have been construed as gambling, such as payments through an online payments service.

For Mr W's income and expenditure Capital could have checked Mr W's bank statements. Having looked at those myself, I can't see any gambling transactions. The account includes all the normal payments to utilities, rent, council tax etc, and his loan and credit card payments. And the account was kept in credit for those three months

As I've said Mr W wasn't contacted directly about this application, but he spoke to Capital about his other card the day after this card was issued, as I've noted above. It's likely that if it had followed its procedures and contacted Mr W manually he would have told it his situation had improved. And as he wanted to use the card for a balance transfer he would have been unlikely to say he couldn't afford the card. So if it was willing to unblock cash transactions on the other card, it's likely that if those additional checks had been done Capital would still have approved the card and assessed that the repayments on the card were affordable.

I think that in the circumstances of this case, Capital acted reasonably in respect of Mr W's problems for Card 1 and made a reasonable lending decision in respect of Card 3.

My final decision

I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 4 August 2023.

Ray Lawley
Ombudsman