DRN-4433219

Financial Ombudsman Service

The complaint

Mrs R says Capital One (Europe) plc irresponsibly lent to her.

What happened

Mrs R applied for a credit card online on 25 September 2022. She was approved and given a £1,500 limit. Mrs R says Capital One did not carry out the right checks.

Capital One says it carried out an affordability assessment that showed Mrs R had enough income to afford the credit.

Our investigator did not uphold Mrs R's complaint finding Capital One had not lent irresponsibly. Mrs R disagreed and asked for an ombudsman's review.

I reached a different conclusion to the investigator and issued a provisional decision. An extract follows and forms part of this final decision. I asked the parties to respond with any comments or new information by 1 November 2023.

Extract from my provisional decision

Capital One needed to take reasonable steps to make sure that it didn't lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Mrs R could afford to repay what she was being lent in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and Mrs R's income and expenditure.

Certain factors might point to the fact that Capital One should fairly and reasonably have done more to establish that any lending was sustainable for Mrs R. These factors might include Mrs R's income, how much the repayments were, the frequency of the borrowing and how long Mrs R had been indebted.

This means I need to decide if Capital One carried out proportionate checks; if so did it make a fair lending decision; and if not, what would proportionate checks have shown. Also, did Capital One act unfairly towards Mrs R in any other way.

I can see Capital One asked for certain information from Mrs R before lending. It asked about her income, employment, residential status and housing costs. It estimated her living costs using national statistics. It carried out credit checks to understand her credit history and current commitments. From these checks combined Capital One concluded Mrs R could afford a credit card with a limit of £1,500.

I am not persuaded these checks were proportionate given the initial results. One of Capital One's credit checks showed Mrs R had defaulted on five accounts between July 2018 and March 2019. I accept these were somewhat historic, but all accounts still had outstanding balances, totalling £5,438. I think this information ought to have prompted Capital One to carry out a fuller financial review to get the assurances it needed that Mrs R's financial difficulties had been resolved.

To understand what better checks would most likely have shown I have looked at Mrs R's bank statements from the months prior to her application. I am not saying Capital One had to do exactly this, but it is a reliable way for me to know what a fuller financial review would have likely shown.

Had Capital One carried out better checks I don't think it would have lent to Mrs R. I say this as the statements show multiple daily gambling transactions totalling in excess of Mrs R's monthly income. In such circumstances of financial instability I do not think it was responsible of Capital One to extend credit to Mrs R. I cannot see Capital One would have known, as it was obliged to, that its lending would not cause financial harm for Mrs R. It follows I currently think Capital One was wrong to lend to Mrs R. I have not seen any evidence Capital One acted unfairly towards Mrs R in some other way.

I then set out what Capital One would need to do to put things right. Both parties responded to my provisional decision. Mrs R agreed with it. Capital One disagreed, saying it lends to people with defaults on their file. And its checks showed Mrs R would have £1,523 disposable income after accounting for housing and living costs and existing credit commitments - so the credit line it offered was affordable for her. It disagrees it needed to carry out further checks in the circumstances.

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.

We've set out our general approach to complaints about unaffordable and irresponsible lending - including the key relevant rules, guidance and good industry practice - on our website and I've taken that into account when considered Mrs R's complaint.

I have considered Capital One's comments carefully but they do not change my decision. I will explain why.

The lender's initial checks showed Mrs R had previously defaulted on five accounts and these all had balances that remained unsettled. But my finding was not, and is not, that the historical defaults should have been a definite reason not to lend. I acknowledge that in some circumstances a lender can fairly and responsibly lend to an applicant who has previously defaulted on other credit.

My finding was – and remains - that given the number of defaults, Capital One needed to carry out further checks to get the assurances it needed that Mrs R's finances had stabilised and that she could now sustainably afford to take on this credit.

Capital One argues its checks showed Mrs R had ample disposable income – but its assessment was not based on her actual income and outgoings. It relied on national averages for expenses and Mrs R's own declaration of her income. Whilst this may be proportionate in some cases, given what Capital One knew about Mrs R's credit history, I do not find this approach to be proportionate here. Indeed the regulatory guidance in CONC 5.2A.16 (3) states *'For the purpose of considering the customer's income under CONC 5.2A.15R, it is not generally sufficient to rely solely on a statement of current income made by the customer without independent evidence.'*.

And, for the reasons I set out in the provisional decision that are in the extract above, proportionate checks would most likely have shown the credit was not sustainably affordable for Mrs R.

In summary, I find Capital One was wrong to lend to Mrs R.

Putting things right

Capital One should:

1. Refund all the interest and charges Mrs R has paid on her credit card account.
2. If the borrowing is still in place, Capital One should reduce the outstanding capital balance by the amount calculated at step 1.
3. If, after step 2, there remains an outstanding capital balance, Capital One should ensure that it isn't subject to any historic or future interest and/or charges. If the balance has already been written-off Capital One must not attempt to collect it. But if step 2 leads to a positive balance, the amount in question should be given back to Mrs R and 8% simple interest* should be added to the surplus.
4. Once Mrs R has cleared any outstanding capital balance, any adverse information recorded in relation to the account should be removed from her credit file.

*HM Revenue & Customs may require Capital One to take off tax from this interest. If it does, Capital One must give Mrs R a certificate showing how much tax it's taken off if she 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

I am upholding Mrs R's complaint. Capital One (Europe) plc must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 1 December 2023.

Rebecca Connelley
Ombudsman