

Complaint

Mr J has complained about a credit card Capital One (Europe) plc (“Capital One”) provided to him. He says that a look into his financial and credit history or a look his bank account in any detail would have seen that he wasn’t issued with this card.

Background

Capital One provided Mr J with a credit card in November 2017. The card had a credit limit of £1,250.00 and Mr J wasn’t provided with any credit limit increases.

One of our investigators reviewed what Mr J and Capital One had told us. And he thought Capital One hadn’t done anything wrong or treated Mr J unfairly in relation to providing the credit card. So he didn’t recommend that Mr J’s complaint be upheld.

Mr J disagreed and asked for an ombudsman to look at the complaint.

My findings

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

Having carefully considered everything, I’ve decided not to uphold Mr J’s complaint. I’ll explain why in a little more detail.

We’ve explained how we handle complaints about unaffordable and irresponsible lending on our website. And I’ve used this approach to help me decide Mr J’s complaint.

Capital One needed to make sure it didn’t lend irresponsibly. In practice, what this means is Capital One needed to carry out proportionate checks to be able to understand whether Mr J could afford to repay any credit it provided.

Our website sets out what we typically think about when deciding whether a lender’s checks were proportionate. Generally, we think it’s reasonable for a lender’s checks to be less thorough – in terms of how much information it gathers and what it does to verify it – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower’s income was low or the amount lent was high. And the longer the lending relationship goes on, the greater the risk of it becoming unsustainable and the borrower experiencing financial difficulty. So we’d expect a lender to be able to show that it didn’t continue to lend to a customer irresponsibly.

Capital One says it agreed to Mr J’s application after it obtained information on his income and carried out a credit search. And the information obtained indicated that Mr J would be able to make the low monthly repayment due on this credit card. On the other hand Mr J says a review of his credit history or a look at his bank account would have shown that he shouldn’t have been lent to under any circumstances.

I've considered what the parties have said. What's important to note is that Mr J was provided with a revolving credit facility rather than a loan. And this means that Capital One was required to understand whether a credit limit of £1,250.00 could be repaid within a reasonable period of time, rather than in one go. A credit limit of £1,250.00 required more realistic monthly payments in order to clear the full amount owed within a reasonable period of time.

I've seen records of the information Capital One obtained from Mr J about his income and what was on the credit search carried out. The credit search did show that Mr J had had previous difficulties with credit. However, the majority of these weren't recent. The credit search also showed that Mr J had some active credit at this stage. But this was relatively well maintained and there was no significant adverse information - such as county court judgments recorded against Mr J – in relation to these accounts.

Capital One says that Mr J declared a salary of £28,000.00 a year and this combined with the credit file information meant that it was reasonable to conclude that Mr J could afford this credit card. However, Mr J was being provided with a credit limit of £1,250.00. And given the presence of the defaults on Mr J's credit file, I would have expected Capital One to have found out more about Mr J's actual regular living expenses before providing a credit card with a limit of £1,250.00.

As Capital One has been unable to evidence having done this in this instance, it says that it used average data, I don't think that the checks it carried out before it provided this credit card were reasonable and proportionate.

Ordinarily, where a firm failed to carry out reasonable and proportionate checks before providing credit, I'd usually go on to recreate reasonable and proportionate checks in order to get an indication of what such checks would more likely than not have shown. So, in this case, I'd use information provided now in order to work out Mr J's actual living costs, and substitute this for the average living costs Capital One used in its affordability assessment.

However, I've not seen anything to indicate that Capital One would have concluded that Mr J's actual living costs – rather than the estimated ones used in its affordability assessment – meant the payments to this credit card were unaffordable. I accept that Mr J says that his actual circumstances at the time were worse than what the information Capital One obtained showed. Indeed Mr J's argument has been that looking at his bank account would have led to Capital One seeing that he shouldn't have been lent to.

But as obtaining bank statements wasn't the only way for Capital One to have found out about Mr J's living expenses – it could have asked for copies of bills etc – I don't think it could reasonably be expected to review Mr J's bank statements in the way that Mr J says it should have. As I can't see that requesting further information about Mr J's actual living costs, would have shown Capital One that it shouldn't have lent to Mr J, I'm not persuaded that it doing more here would, in any event, have made a difference to its lending decision.

In reaching my conclusion, I've considered Mr J's query about how it is possible for us not to uphold this complaint when he's already had a separate complaint upheld by a different lender. I can understand why Mr J might find it strange that he's received different outcomes on complaints which he perceives to be materially the same.

But it's important for me to explain that we consider complaints on an individual basis and looking at the individual circumstances. And it doesn't automatically follow that just because a lender upholds one complaint for a consumer, all of their complaints should be upheld. Indeed, if that argument were to be followed to its logical conclusion it would see a customer placed in a position where they were never provided with any credit at all, rather than the

position they would be in had they not been provided with credit which a lender ought reasonably to have seen was unaffordable for them.

Furthermore, as I've already explained, what constitutes a proportionate check very much depends on the particular circumstances of the individual application. A proportionate check, even for the same customer, could look different for different applications. That said, with a view to providing some clarity and reassurance to Mr J, it might help for me to explain that there are some key differences between this complaint and Mr J's other one.

Having looked at Mr J's other case, it's clear that he was advanced more than one credit card. So the lender made more than one lending decision – not all of them which it considered to be unfair. These differing facts impacted on what the lender in Mr J's other case did do, what would have been proportionate for it to do and what it would have found out about Mr J at the relevant times.

In this case, I've already explained what proportionate checks are likely to have required, what they are likely to have shown and most importantly why this is unlikely to have shown Capital One this credit card shouldn't have been provided to Mr J. As this is the case, I don't consider that my answer here is necessarily incompatible or inconsistent with the outcome Mr J has received on another case, notwithstanding the differing outcomes.

Overall and having considered everything, while I can understand Mr J's sentiments and I'm sorry to hear about his situation, I don't think that Capital One treated Mr J unfairly or unreasonably. It carried out proportionate checks and reasonably relied on the information provided which suggested that the credit card was affordable.

Consequently I'm not upholding Mr J's complaint. I appreciate this will be very disappointing for Mr J. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

My final decision

For the reasons I've explained, I'm not upholding Mr J's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 16 February 2024.

Jeshen Narayanan
Ombudsman