

The complaint

Mr U complains that Capital One (Europe) plc was irresponsible when it offered him a credit card account.

What happened

Capital One opened a credit card account for Mr U on 1 June 2016 with a credit limit of £200.

Mr U withdrew £200 in cash when the account was opened and made no further transactions. The minimum payment remained above the interest charged until September 2022. Mr U met the minimum payments and by July 2022 had repaid just over £400.

On 12 August 2022 Capital One confirmed to Mr U it had applied 60 days breathing space to the account following a letter from a debt advice organisation on his behalf. The account balance shown on the September statement was £58.68. Mr U didn't resume his payments and Capital One defaulted his account in early 2023 with an outstanding balance of £87.53. I understand the account is now closed.

Mr U complained to Capital One in July 2023 that it should not have opened the account for him because he was struggling with his finances at the time. Mr U said he had missed payments on his other debts and Capital One would have seen this had it carried out proper checks before lending to him. He said he struggled to meet the minimum payments and that Capital One treated him unfairly when he asked for help.

Capital One didn't uphold Mr U's complaint and he referred it to us. Our investigator assessed the complaint but didn't recommend that it be upheld. They found that Capital One wasn't irresponsible to have opened the account for Mr U nor did it treat him unfairly later on.

Mr U didn't agree with this recommendation and asked for his complaint to come to an ombudsman to decide.

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.

I've also had regard to the regulator's rules and guidance on responsible lending (set out in its consumer credit handbook – CONC) which lenders, such as Capital One, need to abide by. Capital One will be aware of these, and our approach to this type of lending is set out on our website, so I won't refer to the regulations in detail here but will summarise them.

Before entering into a credit agreement, Capital One needed to check that Mr U could afford to meet his repayments sustainably. In other words, Mr U should be able to repay the credit out of his income or savings, within a reasonable period of time, without having to borrow further and without experiencing financial difficulty or other adverse consequences.

After entering into the agreement, Capital One needed to monitor Mr U's repayment record and other relevant information and take appropriate action where there were signs of actual or possible financial difficulties. Examples of such action included considering suspending, reducing, waiving or cancelling any further interest, fees or charges when a customer provides evidence of financial difficulties.

The overarching requirement was that Capital One needed to pay due regard to Mr U's interests and treat him fairly.

With all of this in mind, my considerations are did Capital One complete reasonable and proportionate checks when it opened the account for Mr U to satisfy itself that he would be able to repay the credit offered within a reasonable period of time? If it didn't do this, what would reasonable and proportionate checks have shown? Did Capital One make a fair lending decision? Did Capital One treat Mr U fairly after the account had been opened?

When Mr U applied for his credit card, he said he was self-employed with an income of £15,000. Capital One noted that Mr U had no current debts showing on his credit file other than a communications account. He'd missed or been late with a payment on this account about a year earlier. The credit file information showed two defaulted accounts, both of which had been closed at least four years prior to this application.

I don't think that the information Capital One gathered showed that there was an obvious risk to Mr U that he would be unable to meet his repayments for the level of credit offered without difficulty out of his stated income. I also don't think there was anything in the information Capital One had gathered about Mr U's circumstances that should have led it to automatically decline his application or prompted it to complete further checks before entering into the agreement. Mr U didn't have a significantly high level of other borrowing. While there were defaulted accounts showing on his credit file, these were from at least four years prior to his application and there was no recent adverse information, bar one missed payment, to suggest that he was having ongoing financial difficulties.

Mr U told us that he had other debts when he applied to Capital One for credit and he shared with us that he was dealing with very difficult personal circumstances at the time. Let me say at this point that I am very sorry to hear how difficult everything was for Mr U and I hope that things are easier for him now. I haven't seen anything in the information I have to suggest that Capital One should have been aware of what he was going through at the time. And, as mentioned, Capital One did consider the information on his credit file which showed little debt.

Mr U said in response to our investigator's view of his complaint that Capital One was obligated under CONC Section 5 to take reasonable steps to determine the amount of a customer's income. Mr U also said that credit reference checks do not show utility bills, rent etc and cannot alone be used to make a reasonable decision on credit worthiness.

I'll need to highlight to Mr U that the regulations in place at the time were not prescriptive about what information Capital One needed to gather. The scope of its assessment depended on a number of factors, including the amount and cost of the credit for example. CONC 5.2.4G set out a list of potential information sources which included information from the customer, evidence of income or expenditure, a credit score or credit report. Capital One relied on information from Mr U and a credit report, which the regulations allowed for.

The regulations did state (CONC 5.3.1G) that *if* a lender took income into account it wasn't *generally* sufficient for it to rely solely for its assessment of the customer's income on a statement of those matters made by the customer (my emphasis). In this case where the

amount of credit was such that the level of payment required to repay it within a reasonable period of time was relatively low compared to what Mr U had given as his income, and where there was no recent evidence of financial difficulty, the assessment Capital One carried out could be considered reasonable.

Furthermore, if Capital One had asked for proof of Mr U's income it might have referenced benefit letters, work invoices or bank statements. Mr U has supplied some of this information to us which shows that the deposits into his bank account for April and May 2016 approximate to the income figure he gave Capital One. I don't think further checks would have led Capital One to decline to lend to Mr U and so I can't say that the account would not have been opened but for an error on the part of the lender.

Altogether, in the context of this case, I've concluded that Capital One wasn't irresponsible to open the account for Mr B and didn't treat him unfairly in doing so.

Mr U's debt advisor sent a letter to Capital One in July 2022 to say that he had approached it for help with his finances and it needed some time to gather information. Capital One responded with a letter in August 2022 to say that it had applied 60 days breathing space to the account, in other words it wouldn't apply interest or charges for that period. The debt advisor sent a second letter to Capital One in September to say it was no longer assisting Mr U with his finances.

The 60 days breathing space ended and Capital One sent a letter to Mr U in November 2022 reminding him about his outstanding balance and asking him to get in touch. It sent him another letter in December to say that his account had been suspended and could soon be reported as defaulted. In January 2023, Capital One wrote to Mr U to say that his account had now been permanently suspended and would default if he didn't get in touch. The customer records show it also attempted to contact him by telephone and sent him other written notices of his arrears. Capital One reported the account as defaulted in March 2023. There isn't anything to show that Mr U got in touch with Capital One directly until he raised a complaint in July 2023.

I've concluded that Capital One didn't treat Mr U unfairly or without due regard to his interests after the account was opened. It paused the account charges to allow time for the debt advisor to gather the necessary information and it made many attempts to get in touch with Mr U to come to an arrangement about the outstanding balance. While it's true Mr U made the minimum payment for many years there weren't any other indications that he was having trouble with his finances – he didn't use the account except to withdraw up to his credit limit once so there wasn't a pattern of borrowing that might have highlighted any money problems.

My final decision

For the reasons I've explained above I am not upholding Mr U's complaint about Capital One (Europe) plc and it doesn't need to take any action in this matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr U to accept or reject my decision before 27 May 2024.

Michelle Boundy
Ombudsman