The complaint

Mr B complains Capital One (Europe) plc (Capital One) irresponsibly lent to him.

What happened

In November 2017 Mr B applied for a credit card (*2278) with Capital One which was approved with a £200 credit limit. He said in November 2021 Capital One increased his credit limit to £700. Capital One also approved a second credit card (*5608) he applied for in April 2019 with a credit limit of £400. Mr B said Capital One didn't sufficiently check whether he could afford the credit limit increase for *2278. Neither did they sufficiently check his ability to sustain the repayments when they approved his application for the second credit card *5608 before they lent to him. If they had they would have seen his reliance on payday loans and his financial difficulties. He complained to Capital One.

Capital One said they checked Mr B's affordability through his application, credit reference agencies (CRA) and statistical data. And from this evidence they deemed the lending was affordable.

Mr B wasn't happy with Capital One's response and referred his complaint to us.

Our investigator did not uphold Mr B's complaint. He said Capital One's checks were proportionate and did not show any signs the credit would be unaffordable for him.

Mr B didn't agree he said there was evidence on his credit report that Capital One hadn't considered. And they hadn't sufficiently checked his income and expenditure before they agreed to lend to him. He asked for his complaint to be referred 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.

Having done so I'm not upholding this complaint. I appreciate this will be a disappointment to Mr B so I'll explain why.

I've considered the relevant rules, guidance and good industry practice when someone complains about irresponsible and/or unaffordable lending. There are two overarching questions I need to consider in order to decide what's fair and reasonable in all of the circumstances of the complaint. These are:

1. Did Capital One complete reasonable and proportionate checks to satisfy themselves that Mr B would be able to repay the credit in a sustainable way?

a. if so, did Capital One make a fair lending decision?

b. if not, would reasonable and proportionate checks have shown that Mr B could sustainably repay the borrowing?

2. Did Capital One act unfairly or unreasonably in some other way?

Regulations in place at the time Capital One lent to Mr B required them to carry out a reasonable assessment of whether he could afford to repay the loan in a sustainable manner.

The affordability checks should be “borrower-focused”, meaning Capital One need to think about whether repaying the credit sustainably would cause difficulties or adverse consequences for Mr B. In other words, it wasn’t enough for Capital One to think only about the likelihood that they would get their money back without considering the impact of repayment on Mr B himself.

Capital One is free to decide how to set their lending criteria but they should complete proportionate checks to ensure borrowing is sustainable. There’s no set list for what reasonable and proportionate checks are. What constitutes a proportionate affordability check will generally depend on several factors such as the specific circumstances of the borrower, their financial history, current situation and whether there are any indications of vulnerability or financial difficulty. Consideration should also be given to the amount, type and cost of credit being applied for.

Section 5.2A of the Financial Conduct Authority’s (FCA) Consumer Credit Sourcebook (CONC) provides examples of the factors that need to be considered and the circumstances, under which, they should be applied.

*Credit Card ending *2278*

Mr B hasn’t complained about the initial lending for this card, so I’ll only consider the credit limit increase to £700 in November 2021.

I can see from the terms and conditions of the credit card Mr B agreed that:

“*The credit limit will be determined by us from time to time under this agreement and notice of it will be given by us to you.”*

Before the finance was provided, Capital One said they checked whether the increased lending was affordable for Mr B. They explained that they carried out affordability checks. So, I’ve considered the checks Capital One did.

CONC 5.2a.15(2) says

“The firm must take reasonable steps to determine the amount, or make a reasonable estimate, of the customer’s current income.”

Capital One said Mr B had given details about his job and salary when making his application. On his application in November 2017, I can see he said his annual income was £21,000. Capital One said they checked his income using a CRA and this showed his gross income in November 2021 to be £23,100.

CONC 5.2A.16(3) says:

“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 (for example, in the form of information supplied by a credit reference agency or documentation of a third party supplied by the third party or by the customer).”

So I'm satisfied Capital took reasonable steps to estimate Mr B's income and they'd checked this through an independent source.

CONC 5.2A.17(2) says:

"The firm *must take reasonable steps to determine the amount, or make a reasonable estimate, of the* customer's *current non-discretionary expenditure."*

I can see Capital One carried out a credit check to understand Mr B's existing credit commitments and credit history. They have shared the results of these checks. This showed Mr B had a mortgage of £78,000 credit card and other debt of £8,100 and housing costs of £417. There wasn't any data for payday loans and no evidence that Mr B was in arrears with any of his credit commitments.

Mr B has provided his own credit report that was created in February 2024. I can see at the time of the credit limit increase Mr B had three credit cards, a mortgage, current accounts, a loan and a communications supplier. All of the accounts were showing as being up to date and managed well.

I can see that a couple of the credit cards did later default and the balance of one was passed for debt collection, but Mr B's credit report wasn't updated until September 2022. And the other didn't default until November 2022. The loan account shows it defaulted in December 2022, So this information wouldn't have been seen by Capital One before they agreed to the increased lending in November 2021. And at the time the lending was approved all of these accounts showed they were up to date with repayments and being managed well.

I can see Mr B had some short-term lending, one for 12 payments of £20 that started in May 2021 and was settled in July 2021. So this wasn't an active account at the time of the credit limit increase. The others weren't taken out until after November 2021. So based on this I'm satisfied that the credit report information provided by Capital One was reflective of what they saw at the time they agreed to further lending.

Capital One also say they considered Mr B's living costs based on national statistics which CONC 5.2A.19 allows them to do.

So, I'm satisfied Capital One made a reasonable estimate of Mr B's non-discretionary spending.

Capital One also had their own internal data showing how Mr B had managed his credit card account. They said Mr B maintained his repayments usually paying the minimum amount required but at times more than the minimum payments. I can see from Capital One's records that in the six months prior to the increased credit limit, the total amount Mr B had been required to pay was £33.65, but in total he'd paid £253.80 across the six months. I haven't seen any evidence of financial vulnerability such as missed payments or over the limit charges.

Based on the results of these combined checks Capital One concluded the credit would be affordable for Mr B.

Given the amount of credit Capital One offered to him – and the cost of a monthly repayment (that would allow Mr B to repay the full limit in a reasonable period of time) relative to his income - I think these checks were proportionate.

*Card ending *5608*

In April 2019 Mr B applied for another credit card *5608 and Capital One approved this with a credit limit of £400.

From Mr B's application Capital One said he'd declared a gross annual income of £22,000. They said other debt commitments recorded on his credit file at the time, included £960 of outstanding credit card debt and £3525 in hire purchase agreements. There weren't any active payday loans. And they estimated his housing costs to be £432, as provided by the CRA. They estimated his other non-discretionary expenditure which included food, clothing, and utilities based on statistical data of typically spending. Based on the results of these checks Capital One concluded the credit would be affordable for Mr B.

I've looked at the credit report Capital One saw. While this did show signs of pay day loans all of these had been settled several years before the credit card application. The last being December 2014. And several defaults the last being July 2015 (all of which would have fallen off Mr B's credit report at the time of the credit limit increase for his card *2278 as the information is only recorded for six years).

So I'm satisfied Capital One's checks were proportionate with the lending applied for. Given the amount of credit Capital One offered to him – and the cost of a monthly repayment (that would allow Mr B to repay the full limit in a reasonable period of time) relative to his income.

While I think proportionate checks were carried out that doesn't necessarily mean that the lending was affordable. I have looked at the information received through the checks to see what this shows.

Having reviewed the checks Capital One did and the information they found as outlined above I think it was reasonable for Capital One to rely on the data they received through its checks.

Mr B had a verified income, he was managing his credit commitments well at the time of each lending. And at the time of the credit limit increase he was repaying more than he was required to do. While I can see signs of financial vulnerability from the credit report when Mr B applied for his second credit card in April 2019 his financial difficulties appeared to have been several years prior to the lending. So, I don't think Capital One made unfair lending decisions in April 2019 or November 2021.

I've also considered whether Capital One acted unfairly or unreasonably in some other way given what Mr B has complained about, including whether their relationship with him might have been viewed as unfair by a court under s.140A Consumer Credit Act 1974. But for the reasons I've already given, I don't think Capital lent irresponsibly to Mr B or otherwise treated him unfairly. I haven't seen anything to suggest that Section 140A or anything else would, given the facts of this complaint, lead to a different outcome here.

I know my decision will be disappointing for Mr B, but I hope my explanation goes some way to reassuring him about how I reached the decision I have. I think the checks carried out by Capital One before the lending were reasonable and these showed the credit limits would be affordable for Mr B.

I would remind Capital One of their responsibilities under CONC 7.3. 4 that:

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

My final decision

I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr B to accept or reject my decision before 27 August 2024.

Anne Scarr
Ombudsman