

The complaint

Mrs H complains about irresponsible lending from Capital One (Europe) plc when they made continuous increases to her credit card limit.

What happened

Mrs H has a Capital One credit card, and her complaint is about the following increases that were applied to her card since she opened it in 2015 with just a £200 credit limit:

- A. £250 in January 2016
- B. £500 in February 2017
- C. £1000 in October 2017
- D. £1000 in August 2022

Mrs H says increase D was made *'despite her being unemployed and only ever making minimum payments'* and she is *'fearful for the future of providing for the family as I have gone over my limit due to the interest added'*. Mrs H explains:

- She is *'now in part time employment earning approximately £450 a month, yet Capital One need a minimum payment of £165'*
- She is in a stressful financial *'vicious circle'* as her budgeting doesn't make a difference and *'the interest that gets added on after making my payment is what consistently puts me too close to my limit, last month it tipped me over'*.

Mrs H complained to Capital One, but they didn't uphold her complaint. So, she brought her complaint to our service looking for a refund of the interest she'd paid on the credit increases.

Our investigator explained that he could only consider increase C and D because of jurisdiction rules. But he didn't think these Capital One's lending decisions were unfair.

As Mrs H remains dissatisfied, her complaint has been referred to me to look at.

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 issued two provisional decisions.

The following is an extract from my first provisional decision issued on 2 May 2024:

What I've provisionally 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, my provisional decision is different to that proposed by our investigator and I'm partially upholding this complaint. I'll explain why and I will focus on what I think are the important points to reach a final decision. But I've carefully considered all the points Mrs H has made, even if I don't specifically address them all.

Firstly, for the DISP 2.8.2 reasons fully explained by our investigator, I'm unable to consider increase A and B due to the dates being 2016 and early 2017.

I did however look closely at increase C and D which occurred in October 2017 and August 2022.

Whilst I appreciate Capital One:

- Only applied these two £1,000 limits after Mrs H accepted them*
- Use financial data to check affordability*

Based on the current file information, I think Capital One should've been more diligent when approving these increases. And they should've made further enquiries about Mrs H's employment, income and expenditure.

I say this because Capital One say 'Before we offer any credit limit extensions to any of our customers, we do affordability assessments to make sure we have considered the customer's individual circumstances and their ability to repay the amount borrowed within a reasonable period'.

However, in September 2018, having increased Mrs H's card credit limit by £1,000 12 months earlier, Capital One stated:

- 'We've noticed that over the last 18 months, a bigger portion of what you paid back on your credit card went towards interest, fees and charges than to paying off what you borrowed'.*

Capital One refer to this as persistent debt and this appears to indicate they had concerns and considered she had financial difficulties when they made the October 2017 lending decision. Also, this is consistent with the concerns articulated by Mrs H.

Also, Capital One say 'Before we offer any credit limit extensions to any of our customers, we do affordability assessments to make sure we have considered the customer's individual circumstances and their ability to repay the amount borrowed within a reasonable period'.

Although data checks might normally be reasonable and proportionate for lending decisions, as Capital One had identified a concern – Mrs H being in persistent debt – to make a fair lending decision, I would've expected them to have made enquiries with Mrs H to understand her 'individual circumstances'.

As Mrs H was previously struggling, before applying the October 2017 £1,000 increase, I think they should've communicated with her to understand what had changed, such as a higher income or lower expenditure. However, I can't see evidence of an assessment on file or that they discussed, probed or obtained information on Mrs H's income and expenditure including universal credit, rent and

childcare.

The same applies to increase D. Although Capital One didn't at this time have concerns about persistent debt, considering the historic concerns, Mrs H's request to align her universal credits, the significant percentage increase of increases C and D and their above statement about 'affordability assessments' and 'individual circumstance', I would've again expected to see evidence of such an assessment and affordability enquiries or information.

I'm persuaded by Mrs H's information and testimony that had Capital One made such enquiries they would've discovered that she was unemployed and in financial difficulty and her financial situation was causing her to go over her limit and agree to the higher limit offered.

Based on the above and current information on file, I don't think Capital One's lending decisions C and D were fair and my provisional decision is to partially uphold this complaint.

So, unless further information changes my mind, I'll be requiring Capital One to:

- *Rework Mrs H's account removing all interest and charges that have been applied to balances above £700*.*
- *If, after the rework, the outstanding balance still exceeds £700*, Capital One (Europe) plc should arrange an affordable repayment plan with Mrs H for the remaining amount.*
 - *Once Mrs H has cleared the outstanding balance, any adverse information recorded after October 2017 in relation to the account should be removed from her credit file.*
- *Or, if after the rework results there is a credit balance, this should be refunded to Mrs H along with 8% simple interest per year**.*
 - *And Capital One (Europe) plc should also remove any adverse information recorded from October 2017 regarding this account from Mrs H's credit file.*

** There may have been a further increase and the credit limit prior to October 2017 may have been £950 rather than £700 – please confirm if this is the case*

***HM Revenue & Customs requires Capital One (Europe) plc to take off tax from this interest.*

The following is an extract from my second provisional decision issued on 27 May 2024:

What I've provisionally 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 would like to thank both parties for responding before the deadline.

Mrs H said she had nothing further to add.

Capital One disagreed with my provisional decision and made further submissions. These included information on Persistent Debt Regulation and the following points:

- *They didn't believe Mrs H was in potential financial difficulty or persistent debt in October 2017. This is because:*
 - *Her 'payment behaviour did not suggest she was at risk of entering persistent debt (although she had been paying the minimum over the last few statements, in the 9 months prior to the CLI offer, Mrs H had paid COEP £697.61, over 3 times her required minimum payments of £217.61), nor was there any other reason to believe she was in potential financial difficulty at this time (she passed all creditworthiness checks and had not incurred any overlimit or late fees'.*
 - *She 'first went into Persistent Debt over an 18-month window as defined by FCA. This was as a result of paying only her minimum from March 2017 onwards'.*
- *Also, 'In the past 6 years, Mrs H was not offered a CLI at any point when she was in persistent debt, nor was she offered one at any point where she was at risk of Persistent Debt (paying more in interest and charges than repaying her debt over 12 months)'.*
- *'COEP believes the checks carried out were proportionate including income verification through Current Account Turnover data; further verification of Mrs H's Financial Circumstances would not have been reasonable given her exemplary account management with COEP and no negative markers visible at CRAs'.*
- *'COEP also considers information provided by the customer on application as well as data held internally, including regarding any customer vulnerabilities they're aware of which might impact a customer's ability to make payments'.*
- *'While COEP does not request bank statements, it uses data from the Office for National Statistics (ONS) for estimates on a customer's non-discretionary spending'.*
- *Mrs H had demonstrated an ability to effectively manage her credit facility, with no late payments or overlimit instances in an 8 year period from the account opening in 2015 through all 4 Credit Limit Increases to the point an Unaffordable Lending Complaint was made in March 2023.*
- *Having reviewed the checks carried out prior to new lending to Mrs H in 2017 and 2022, COEP continues to believe that it was appropriate to expect Mrs H to have had enough remaining income available to afford repayments for the level of credit offered within a reasonable time period, and that this would not have a significant negative effect on Mrs H overall financial situation.*
- *Considerations when they made the 2017 and 2022 credit limit increase*
- *Regarding the 2022 increase they said:*
 - *'COEP estimated a Gross Annual Income of £29,995 for Mrs H, which was verified through Experian's Current Account Turnover (CATO) data, indicating the estimated income was representative of the amount of money deposited in her current account'.*

- o 'Her combined monthly housing and non-discretionary spending was estimated to be £1,084 and the required repayment to paydown in a reasonable period at the new £2,950 Credit Limit was estimated to be £176. Mrs H's external debt servicing commitments were estimated to be costing her £50 a month'.
- 'Taking into consideration these costs and affordability assessment, Mrs H should have been left with £600-£700 remaining income, which was sufficient to afford the Credit Limit Increase'.
- 'You've stated in your decision that you are "persuaded by Mrs H's information and testimony that had Capital One made such enquiries they would've discovered that she was unemployed". As stated above, this doesn't match up with the verification we carried out when assessing the customer's affordability'.

So, I considered the above information and reviewed everything again.

As a result, I've amended the 'what happened' section. This is because:

- I can see the total lending was £2,950 rather than £2,750.
- Another ombudsman said all the increases were within jurisdiction and I looked closer at increase A and B.
 - But considering all the available information on increase A and B that Capital One considered, including Mrs H's income and expenditure, I agree with the investigator that these lower amount lending decisions were fair and reasonable.

I then reviewed increase C and D.

Increase C - £1,000 credit limit increase in October 2017

Although there was a period where Mrs H was only paying the minimum balance, when considering the file together with the above information in Capital One's latest submission, I no longer think that there was a reason for Capital One to believe she was in potential financial difficulty when deciding this credit limit increase. Also, even if Capital One had requested further information to assess Mrs H's income or expenditure, such as bank statements, I'm not persuaded that this would've identified a lending risk.

Increase D - £1,000 credit limit increase in October 2022

I don't think it's unreasonable for Capital One to use automation, including CATO information. Although I can see Capital One did make an income and expenditure assessment, I found their calculations to be inaccurate, with Mrs H's private bank statements supporting her testimony that she wasn't working, receiving monthly benefits which were significantly lower than the £29,995 income Capital One believed she was receiving.

I can't see that Capital One enquired about Mrs H's employment status. I think they should've. Also, Mrs H says she made a request to align her universal credits. So, I still think Capital One should've made enquiries to understand her employment status and individual circumstances. And, if Capital One enquired, discussed, probed

or obtained information on Mrs H's income, expenditure and disposable income, I think they would've discovered an income disparity and made a different lending decision.

Summary

So, having considered the above, I'm no longer upholding increase C. However, I'm still upholding increase D.

Therefore, my second provisional decision is still to partially uphold this complaint. Unless further information changes my mind, I'll be requiring Capital One to:

- *Rework Mrs H's account removing all interest and charges that have been applied to balances above £1,950.*
- *If, after the rework, the outstanding balance still exceeds £1,950, Capital One (Europe) plc should arrange an affordable repayment plan with Mrs H for the remaining amount.*
 - *Once Mrs H has cleared the outstanding balance, any adverse information recorded after August 2022 in relation to the account should be removed from her credit file.*
- *Or, if after the rework results there is a credit balance, this should be refunded to Mrs H along with 8% simple interest per year*.*
- *And Capital One (Europe) plc should also remove any adverse information recorded from August 2022 regarding this account from Mrs H's credit file.*

**HM Revenue & Customs requires Capital One (Europe) plc to take off tax from this interest.*

I would like to thank both parties for responding to my above second provisional decision.

Capital One agreed with it and said they had nothing further to add.

Mrs H didn't agree, made further submissions and questioned some of Capital One's responses.

So, I looked closely at Mrs H's comments and considered everything again.

Regarding Mrs H's query about the income and disposal income figures which were relevant to the £1,000 credit limit increase in October 2022, I can confirm that, for the above-mentioned reasons, I didn't accept these as accurate figures. And Capital One have since confirmed they shouldn't have made this lending decision.

Regarding the October 2017 limit increase and Capital One's comment that *'in the 9 months prior to the CLI offer, Mrs H had paid COEP £697.61, over 3 times her required minimum payments of £217.61'*, Mrs H considered this to be misleading. Mrs H thought they may have made this comment because she made a £1450 lump payment, following support from a family member, and she said she was overwhelmed, soon put the balance back on and Capital One should've been aware of a risk.

Although I understand Mrs H's point here, I don't think it was unreasonable of Capital One to have assessed total payments made when evaluating affordability and risk. From reviewing

the information on file again, including Capital One's information on persistent debt (mentioned in my second provisional decision), I'm not persuaded that a lump payment followed by a return to a previous balance should've alerted Capital One to Mrs H financial difficulty and resulted in them not offering or making the October 2017 credit limit increase.

So, having considered everything again including the latest submissions, my final decision remains the same as my second provisional decision.

I think Capital One's lending decisions A, B and C were fair and reasonable. But, for the reasons mentioned in my second provisional decision, I don't think they should've made lending decision D (a credit limit increase of £1,000 in August 2022). So, I'm partially upholding this compliant.

Putting things right

To put things right I require Capital One to:

- Rework Mrs H's account removing all interest and charges that have been applied to balances above £1,950.
- If, after the rework, the outstanding balance still exceeds £1,950, Capital One (Europe) plc should arrange an affordable repayment plan with Mrs H for the remaining amount.
 - Once Mrs H has cleared the outstanding balance, any adverse information recorded after August 2022 in relation to the account should be removed from her credit file.
- Or, if after the rework results there is a credit balance, this should be refunded to Mrs H along with 8% simple interest per year*.
- And Capital One (Europe) plc should also remove any adverse information recorded from August 2022 regarding this account from Mrs H's credit file.

*HM Revenue & Customs requires Capital One (Europe) plc to take off tax from this interest.

My final decision

For the reasons mentioned above, my final decision is that I'm partially upholding this complaint against Capital One (Europe) plc and I require them to:

- Rework Mrs H's account removing all interest and charges that have been applied to balances above £1,950.
- If, after the rework, the outstanding balance still exceeds £1,950, Capital One (Europe) plc should arrange an affordable repayment plan with Mrs H for the remaining amount.
 - Once Mrs H has cleared the outstanding balance, any adverse information recorded after August 2022 in relation to the account should be removed from her credit file.
- Or, if after the rework results there is a credit balance, this should be refunded to Mrs H along with 8% simple interest per year*.
- And Capital One (Europe) plc should also remove any adverse information recorded from August 2022 regarding this account from Mrs H's credit file.

*HM Revenue & Customs requires Capital One (Europe) plc to take off tax from this interest.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 14 July 2024.

Paul Douglas
Ombudsman