

The complaint

Miss P says that Capital One (Europe) plc (“Capital One”) lent to her irresponsibly when she was granted a credit card.

What happened

Miss P applied and was accepted for a credit card from Capital One on 26 November 2017. The credit limit was £200. The credit limit was then increased as follows:

Date	Credit Limit Increase	New Credit Limit
21 February 2021	£500	£700
24 January 2022	£250	£950

In February 2024 Miss P made a complaint to Capital One about its decision to lend to her. In doing so, Miss P said she felt the credit had been granted to her irresponsibly and Capital One agreed to credit limit increases she could not afford.

In March 2024 Capital One responded to the complaint. In short, Capital One said the complaint about the initial lending decision had been made outside of the time limits that apply to our service and, therefore, it would not investigate this part of Miss P’s complaint any further. Capital One went on to say that it was unable to uphold Miss P’s complaint about the subsequent credit limit increases.

Unhappy with Capital One’s response to her complaint, Miss P referred the matter to our service on 27 March 2024.

The complaint was looked at by an investigator who, in April 2024, issued her findings on our service’s jurisdiction in relation to the initial credit limit increase. In short, our investigator found that the complaint had been made within the relevant time limits and, therefore, our service was able to consider the merits of the entire complaint.

In response, Capital One said it consented to our service considering this complaint in its entirety. Therefore, our investigator went on to consider the merits of the complaint.

On 4 June 2024, our investigator issued her findings with regards to the merits of the complaint. In short, she said that Capital One had not acted unfairly when it approved the opening of the account or the first credit limit increase. However, our investigator thought Capital One did not act fairly when it approved the second credit limit increase in January 2022. Therefore, she recommended the complaint be upheld.

On 21 June 2024, Capital One responded to say that it agreed with our investigator’s recommendations.

Miss P disagreed with our investigator. In doing so, she said that the initial credit limit increase was not affordable. And as it wasn’t possible to resolve the complaint informally, it was referred for an ombudsman’s decision. Both sides were given time to add to what had already been said and/or provided.

Neither party had anything further to add and, as the deadline has now passed, the complaint has been passed to me for a decision.

Since Capital One has accepted the investigator's findings about the final limit increase in January 2022, and her proposed compensation for it, I do not need to consider that again. I will endorse the proposed award.

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.

When doing that, I'm required by DISP 3.6.4 R of the Financial Conduct Authority's (the 'FCA') Handbook to take into account the:

“(1) relevant:

- (a) law and regulations;
- (b) regulators' rules, guidance and standards;
- (c) codes of practice; and

(2) ([when] appropriate) what [I consider] to have been good industry practice at the relevant time.”

The Financial Ombudsman Service has set out its general approach to complaints about irresponsible and unaffordable lending on its website. In keeping with this, I think there are a number of overarching questions I need to consider when deciding a fair and reasonable outcome given the circumstances of this complaint:

1. Did Capital One carry out reasonable and proportionate checks to satisfy itself that Miss P was likely to have been able to repay the borrowing in a sustainable way?

i. If Capital One carried out such checks, did it lend to Miss P responsibly using the information it had?

Or

ii. If Capital One didn't carry out such checks, would the requisite checks have demonstrated that Miss P was unlikely to have been able to repay the borrowing in a sustainable way?

2. If relevant, did Miss P lose out as a result of Capital One's decision to lend to her?

Having taken this into account along with everything else I need to consider, I've reached the same outcome as the investigator - that this complaint should be upheld, but only insofar as it relates to Capital One's final credit limit increase in January 2022. I recognise this will be disappointing for Miss P. I hope my explanation helps her to understand why I've come to this conclusion.

Account Opening – November 2017

Did Capital One carry out reasonable and proportionate checks?

Miss P's credit card was opened in November 2017 with a credit limit of £200. A credit card is known, under the relevant rules and regulations, as a revolving credit facility. And this means that Capital One was required to understand whether Miss P could repay around £200 within a reasonable period of time.

Prior to agreeing to lend, Miss P was asked to provide details about her circumstances, including her employment, income and residential status.

Capital One also carried out a credit search and it has provided the results it received from the credit reference agency.

It wasn't a particularly large credit limit, and the monthly repayments required to repay the full balance within a reasonable period of time would not have been substantial in relation to Miss P's declared income. Further, this appears to have been Miss P's first credit facility with Capital One. As such, I don't think there was any established pattern in her borrowing needs, at least from Capital One, at that stage.

With all of this in mind, I think Capital One proceeded with a proportionate amount of information.

However, as I've said before, once Capital One had the information it thought it needed, it then had to evaluate it because it still had to reasonably assess whether Miss P could afford to repay the borrowing in a sustainable way over a reasonable period of time.

Did Capital One lend to Miss P responsibly using the information it had?

The credit search Capital One carried did not show Miss P had any County Court Judgements (CCJs), defaults or delinquent accounts at the time of the application. It also showed Capital One that she had four open accounts¹ with a combined credit limit of £2,800, of which £1,970 was being utilised. The account status for all of these was recorded as 'normal' and there was no indication of any recent missed payments or arrears. Therefore, it seems to me these accounts were being well maintained.

When applying for the credit card, Miss P declared her gross annual income was £16,000. Miss P also declared that she was a council tenant, and her employment status was recorded as 'homemaker'². Capital One relied on this information when making its lending decision.

I recognise that, on the face of it, it may be difficult to reconcile Miss P's declared income against the recorded employment status. However, I don't think this warranted further exploration by Capital One at this stage. I say this because the credit limit was not large and, in any event, it does not strike me as implausible that a homemaker could have an annual income of this amount – for example if they undertake part-time work and/or receive benefits.

Taking all of this into account - and keeping in mind it was not a particularly large credit limit – I don't think there wasn't anything obvious in the information gathered which suggests that Miss P couldn't have made the required payments to the credit card.

¹ Only three of these were accounts with credit facilities. The fourth appears to be a communications account.

² I recognise Miss P says she did not declare herself to be a homemaker but, as this was the information Capital One used in its lending decision, I need to take it into consideration within this decision.

In summary, I think Capital One carried out reasonable and proportionate checks prior to agreeing to lend. And I don't think there was anything within the checks Capital One carried out that suggested to it that Miss P would struggle to afford to repay the debt within a reasonable period of time. So, I don't think Capital One acted unfairly when providing the credit card.

First credit limit increase – February 2021

On 21 February 2021 Capital One wrote to Miss P to offer her a credit limit increase of £500, bringing the total credit limit to £700. Miss P accepted this offer via email a few days later.

Did Capital One carry out reasonable and proportionate checks?

Prior to agreeing to increase Miss P's credit limit, Capital One says it used information provided by a credit reference agency to arrive at a gross annual income of £18,000 – which represented an increase on the gross income Miss P declared during the initial application several years earlier. I have not seen the results of the checks Capital One carried out to verify Miss P's income. However, Miss P has kindly provided bank statements covering three months prior to the limit increase. I can see from these statements that the information Capital One obtained about Miss P's annual income from the credit reference agency was broadly accurate, so I don't think the absence of this information has a material impact on the outcome I've reached.

Capital One also says it estimated housing costs using national statistics and it carried out a new credit search. It has provided the results it received from the credit reference agency.

I recognise the credit limit increase was significant in relation to the original limit, but it still wasn't a particularly large credit limit, and the monthly repayments required to repay the full balance within a reasonable period of time would not have been substantial in relation to what Capital One understood about Miss P's income.

With all of this in mind, I think Capital One proceeded with a proportionate amount of information.

However, as I've said before, once Capital One had the information it thought it needed, it then had to evaluate it because it still had to reasonably assess whether Miss P could afford to repay the borrowing in a sustainable way over a reasonable period of time.

Did Capital One lend to Miss P responsibly using the information it had?

By the time Capital One agreed to increase Miss P's credit limit, she had been using her credit card for over three years. She didn't appear overly reliant on the credit card, hadn't received any late fees and hadn't breached her credit limit in the year prior to the credit limit increase. In addition, Miss P was making more than the required minimum monthly repayments in the two months prior to the limit increase. Therefore, I do not find that her management of the account would have raised concerns.

I have looked at the information Capital One received from the credit reference agency at the time. This showed Miss P did not have any CCJs, defaults or delinquent accounts. It also showed her 'card debt' was £600 and her 'non-mortgage balance' was £500. I'm unclear what the distinction is between these entries, but I've considered this to mean Miss P's total

indebtedness was £1,100³. This means that Miss P's situation – in terms of the level of debt she had – had improved from the initial application. And the amount Miss P would need to set aside to service this debt would have been relatively modest.

I don't think this information would have alerted Capital One to the possibility that Miss P was struggling to manage her finances. And when taking this information into account alongside what Capital One understood to be Miss P's gross annual income, I don't think Capital One ought to have thought that Miss P didn't have the funds to make the relatively low monthly payment that would be required for this new credit limit.

I appreciate that Miss P says that she was struggling with her finances at the time, which included but not limited to being regularly overdrawn on her bank account. As a result, she feels Capital One should not have approved the credit limit increase. In addition, Miss P has shared the challenges she has experienced with her mental health. I would like to thank Miss P for sharing this information, which I imagine wasn't easy to do.

Whilst I accept Miss P's financial situation may have been more impaired than Capital One understood it to be, having concluded the checks Capital One carried out were reasonable and proportionate, I must focus my decision on the information it gathered. Having done so, I don't think there wasn't anything obvious in the information Capital One gathered which suggested that Miss P couldn't have made the required payments to the credit card for the reasons I've explained.

And, whilst I sympathise with Miss P in that she has had struggles with her mental health, I can't see that Capital One was aware of this either prior to the initial lending decision or the subsequent credit limit increase, so I don't think it had cause to consider this as part of its lending decision.

In summary, I think Capital One carried out reasonable and proportionate checks prior to agreeing to increase Miss P's credit limit. And I don't think there was anything obvious within the checks Capital One carried out that suggested to it that Miss P would struggle to afford to repay the debt within a reasonable period of time.

So, I don't think Capital One acted unfairly when increasing her credit limit.

Second credit limit increase – January 2022

As I've said, Capital One accepted the investigator's findings about the final limit, and her proposed compensation for it.

Therefore, I do not need to consider that again. I endorse the proposed award and I require Capital One to settle the complaint in the way I have set out below.

Putting things right

As Capital One should not have increased Miss P's credit limit above £700, I don't think it's fair for it to have applied any interest or charges on any balances which exceeded that limit. Therefore, if it has not already done so, Capital One should:

- Rework the account removing all interest, fees and charges that have been applied to balances above £700 from 24 January 2022 onwards.

³ Our investigator asked Capital One about this. Capital One advised that its process is to use the higher of the two amounts when considering a complaint about unaffordable lending. But this does not explain what the distinction is between them. Therefore, I'll proceed on the basis these figures should be added together.

- If the rework results in a credit balance, this should be refunded to Miss P along with 8% simple interest per year* calculated from the date of each overpayment to the date of settlement. Capital One should also remove all adverse information regarding this account from Miss P's credit file.
- Or, if after the rework there is still an outstanding balance, Capital One should arrange an affordable repayment plan with Miss P for the remaining amount. Once Miss P has cleared the balance, any adverse information in relation to the account recorded after 24 January 2022 should be removed from her credit file.

My final decision

For the reasons explained, I uphold Miss P's complaint about Capital One regarding the final credit limit increase. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 20 September 2024.

Ross Phillips
Ombudsman