

The complaint

Ms G complains that Capital One (Europe) Plc (Capital One) kept increasing her credit limit making it unaffordable for her. She feels it didn't carry out proper checks before increasing the credit limit.

What happened

In July 2021, Ms G applied for a credit card with Capital One. It granted her with a credit limit of £1,500.

In January 2022, the credit limit was increased to £2,250. In October 2022, Capital One increased the limit again to £3,000.

In July 2023, Ms G raised a complaint about irresponsible and unaffordable lending. In summary, she said Capital One had raised her credit limit and she couldn't afford it. Shortly after, in September 2023, the card was suspended due to no payment having been received for three months.

Capital One responded to Ms G's complaint. It said it considers a number of factors when deciding to offer credit to their customers, including affordability checks, how the account has been managed so far, and its customer's income and expenditure information. And based on this, it felt the increases were affordable for Ms G.

Ms G didn't agree, so she brought the complaint to our service to consider. An Investigator looked into Ms G's complaint. They said they felt the checks Capital One carried out were reasonable and proportionate based on the amount being lent, and the checks didn't flag anything that would show the credit as being unaffordable for Ms G for account opening or the first limit increase. They did find checks weren't proportionate for the second limit increase, but found that had Capital One done further checks at the time, they more likely than not would have still lent, and the lending was affordable for Ms G.

Capital One didn't respond to the Investigator's view, but Ms G did, disagreeing with the findings. She said she didn't declare a £50,000 income and would like the complaint looked at again. Because an agreement couldn't be reached, Ms G's complaint was passed to me to decide. I intended to reach different findings to our Investigator, so I issued a provisional decision which said the following:

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

We've explained how we handle complaints about irresponsible and unaffordable lending on our website. And I've thought about this approach to help me decide Ms G's complaint."

The rules and regulations in place at the time Capital One provided Ms G with the credit limit increases, required it to carry out a reasonable and proportionate assessment of whether she could afford to repay what she owed in a sustainable manner. This is

sometimes referred to as an 'affordability assessment' or 'affordability check'.

The checks had to be 'borrower' focused. This means Capital One had to think about whether repaying the credit sustainably would cause difficulties or adverse consequences for Ms G. In other words, it wasn't enough for Capital One to consider the likelihood of it getting the funds back or whether Ms G's circumstances met its lending criteria — it had to consider if Ms G could sustainably repay the lending it was providing to her.

Checks also had to be 'proportionate' to the specific circumstances of the lending. In general, what constitutes a proportionate affordability check will be dependent on a number of factors including — but not limited to — the particular circumstances of the consumer (e.g. their financial history, current situation and outlook, any indications of vulnerability or financial difficulty) and the amount/type/cost of credit they were seeking. I've kept all of this in mind when thinking about whether Capital One did what it needed to before lending to Ms G.

At the point of application, Ms G was required to provide information about her personal circumstances. This included annual income, monthly mortgage/rental repayments, past addresses and number of dependents. Ms G told Capital One she was earning £50,000 per year, with two dependents and a monthly mortgage/rental payment of £550.

Capital One went on to do a credit search which showed other outstanding debt of £5,740 which included four loans, a catalogue shopping account and an overdraft. While Ms G was using close to the limits on the catalogue shopping and overdraft facilities, her monthly repayment amount across all facilities was low in comparison to the income she'd declared, and the accounts were being well managed with no missed payments.

I appreciate Ms G has said she didn't record the income of £50,000 and she doesn't know where that came from. But there's nothing to suggest that Capital One pre-filled the application form, which included other personal information about Ms G. And, based on the supporting credit check there was no reason for them to question the salary entered. At the point of increases Capital One, using the credit reference agencies, attempted to verify the declared income. This came back between £40,000 and £43,000. So although it's less than what was declared, it's a healthy income to afford the credit being provided.

In January 2022, Capital One increased Ms G's credit limit to £2,250. In the months prior to the increase, Ms G had been making over the minimum repayment, and around September 2021, she'd cleared the balance in full. The full credit limit wasn't being utilised and the account was well managed. Ms G's external debt had increased slightly to around £6,150, but there's nothing to suggest Ms G would be unable to afford the limit increase. So again, I'm minded to say Capital One's checks were proportionate for this increase and they didn't do anything wrong when providing Ms G with this limit.

However, when I get to the second limit increase in October 2022, while I still feel the checks carried out were proportionate in the circumstances of this complaint, it doesn't automatically mean that the decision to lend was fair. Capital One carried out a credit check to see what external debt Ms G had at the time. Considering the circumstances of this complaint, including the type of credit and amount of credit, I think a credit search was reasonable and proportionate. This search showed an increase in her external debt to £13,150.

As I said before, checking being proportionate doesn't automatically mean Capital One were okay to lend. I don't think Capital One were fair when increasing the limit to £3,000. I say this because in June 2022, Ms G went over the agreed credit limit and in August and September 2022, her direct debit to repay the credit card had bounced. I think this should have been enough, in line with The Consumer Credit Sourcebook (CONC) guidance on identifying

financial difficulties, to put Capital One on notice that Ms G was struggling financially whilst managing the existing limit, and it would be unlikely that she'd be able to sustainably repay an increased credit limit. So I don't think it should have provided her with the increase to £3,000.

Fair compensation — what Capital One should do to put things right

In most cases where credit has been provided where it shouldn't have been, it would be fair and reasonable for the lender to refund any interest and charges paid by the borrower, plus interest. And, the borrower would usually be expected to repay any remaining amount of the money they had been lent. So, I'd expect Ms G to pay back the money she was lent, but not the interest.

With this in mind, Capital One should put things right for Ms G by doing the following:

- *Reworking Ms G's credit card balance so that any interest, fees and charges applied to it from the date of the second increase in October 2022 are removed.*

AND

- *If an outstanding balance remains on the account once these adjustments have been made Capital One should contact Ms G to arrange a suitable repayment plan for this. Any adverse information recorded should remain until any outstanding balance is cleared.*

OR

- *If the effect of removing all interest, fees and charges results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Ms G along with 8% simple interest[†] on the overpayments from the date they were made (if they were) until the date of settlement. If no outstanding balance remains after all adjustments have been made, then Capital One should remove any adverse information, it is responsible for recording, from Ms G's credit file.*

[†]HM Revenue & Customs requires Capital One to take off tax from this interest. Capital One must give Ms G a certificate showing how much tax it's taken off if Ms G asks for one.

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.

Ms G responded to the provisional decision and although she didn't indicate whether or not she accepted what was said, she's since asked for an update on when the final decision will be issued. So I've assumed she has nothing further to add.

Capital One responded. It asked for clarity around how the Investigator initially said the increase was affordable for Ms G based on her current account statements, but my provisional decision said the increase shouldn't have been provided because of the late payments on the credit card statements. It also pointed out that Ms G wasn't charged for the late payments, and she quickly paid the required amount after the direct debit bounced.

I went back to Capital One informally to reiterate that I found the way Ms G managed her card should've been enough for them not to increase her limit. I told it I didn't require the current account statements because the internal information available to them from the management of the credit card itself was enough to show Ms G was displaying some indicators of financial difficulty. I told it I didn't think that the fact Ms G wasn't charged was relevant in the circumstances – the fact is that she didn't have enough money in her account on two occasions in months recent to the limit increase to afford the smaller amount being lent.

Given that both parties haven't provided any new information to this service, I see no reason to depart from the findings I reached in my provisional decision.

It follows that I'm upholding Ms G's complaint – Capital One shouldn't have provided Ms G with the second increase in October 2022. I say this because from the way Ms G had been managing the account with Capital One, it should've known not to lend more credit to her.

Putting things right

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My final decision

My final decision is that I uphold this complaint for the reasons I've explained, and direct Capital One (Europe) Plc to settle this complaint as I've outlined in the section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms G to accept or reject my decision before 10 September 2024.

Meg Raymond
Ombudsman