

## **The complaint**

Mr H complains that Capital One (Europe) plc perpetuated unfair relationships with him in relation to three cards it lent him.

## **What happened**

Capital One provided Mr H with a credit card in September 2011 with a limit of £500 – I'll refer to this as card one. The limit on card one was never increased, but it was decreased to £250 in June 2022.

Mr H was provided with another credit card in October 2011 with a limit of £500 – I'll refer to this as card two. The limit on card two was increased to £750 in July 2014. It was decreased to £550 in June 2022.

Finally, Mr H was provided with another credit card in May 2012 with a limit of £500 – I'll refer to this as card three. The limit on card three never changed.

In summary, Mr H says the lending decisions were irresponsible. He says the checks carried out were insufficient and that having to pay towards the accounts left him with little money to live on throughout the month. Mr H also noted that Capital One must agree he isn't able to pay back what he was lent because he was notified his accounts were in persistent debt.

Capital One reviewed Mr H's complaint and didn't uphold it. It also thought his complaint had been brought too late under the rules this service needs to apply. An Ombudsman here ultimately decided the complaint had been raised in time.

An Investigator then reviewed the merits of Mr H's complaint but didn't think there was enough to show Capital One had lent irresponsibly. He also didn't think Capital One had treated Mr H unfairly over the course of the relationships.

Mr H disagreed with our Investigator's opinion. In summary, he thought it set a precedent that credit card providers could increase repayments under the guise of 'persistent debt', yet not offer an interest rate reduction or other support. Capital One responded to the opinion with further information about the checks it carried out at the time of the lending decisions.

Overall, an agreement hasn't been reached. So, the case has been passed to me 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.

As outlined, another Ombudsman here has already decided that this complaint has been raised within the time limits that apply to this service. For the avoidance of doubt, I'm also satisfied that this is a complaint that falls within my jurisdiction to consider, for the same reasons my colleague set out previously. It follows that the rest of this decision will focus on

the merits of the complaint. Having considered all the available information, I've decided not to uphold Mr H's complaint. I'll explain my reasons why.

As our Investigator explained in his opinion, in deciding this complaint I'm required to take account of relevant law, amongst other things. I've interpreted Mr H's complaint as being about the fairness of the relationship between a borrower and a lender – Mr H and Capital One – arising out of a credit agreement. I say this because Mr H is clear that he thinks Capital One's decisions to provide him with credit were irresponsible each time, and the impact of being lent the credit was that he was left with little money to live on throughout the month because of the repayments due. He also says the accounts fell into persistent debt.

Therefore, given that I think Mr H is complaining about Capital One's perpetuation of unfair relationships, relevant law here includes Section 140A, Section 140B and Section 140C of the Consumer Credit Act 1974.

As our Investigator outlined, S.140A of the CCA says that a court may make an order under S.140B if it determines that the relationship between the creditor (Capital One) and the debtor (Mr H) arising out of a credit agreement is unfair to the debtor because of one or more of the following, having regard to all matters it thinks relevant:

- any of the terms of the agreement;
- the way in which the creditor has exercised or enforced any of his rights under the agreement;
- any other thing done or not done by or on behalf of the creditor.

S.140B sets out the sorts of orders a court might make – these are wide powers, including to change the terms of the agreement, reduce the amount owed or require a refund, or to do or not do any particular thing. I've kept this in mind as relevant law in deciding what's fair and reasonable in all of the circumstances.

I'll first consider whether Capital One's decisions to provide Mr H with credit created unfair relationships. To do this, I've kept our general approach to complaints about unaffordable and irresponsible lending in mind, including the relevant key rules, guidance and good industry practice.

When Capital One provided Mr H with the cards in 2011 and 2012, The Office of Fair Trading (OFT) was the regulator for consumer credit. It had also published its Irresponsible Lending Guidance by this point which outlined that prospective lenders needed to carry out a proportionate assessment into a customer's circumstances to reach a reasonable determination on whether they could repay any credit provided.

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 Mr H. In other words, it wasn't enough for Capital One to consider the likelihood of it getting the funds back – it had to consider the impact of any repayments on Mr H.

Capital One says its checks would have included taking information provided on Mr H's application forms, data from the Credit Reference Agencies and also data held internally. It recorded Mr H's annual income as £45,000 in 2011, and then £55,000 in 2012. More recently, Capital One provided information about Mr H's external credit commitments from the time it provided the opening credit limits. It says Mr H had hire purchase debt of £22,763 and unsecured borrowing of around £3,500 when card one and two were provided. It also says Mr H had no recent missed payments or defaults at the time. For card three, it says Mr H had £950 of credit card debt, £22,847 of hire purchase debt and unsecured borrowing of £4,106.

As it stands, there's nothing in the information Capital One gathered which suggests to me that providing the cards, with the relatively modest opening limits, was irresponsible. Even if I did think Capital One needed to ask more questions before lending, the next step would be to ask Mr H for evidence of his circumstances from the time of the lending decisions to see what these checks would have likely shown.

This service asked Mr H for further evidence of his circumstances from the time in the form of bank statements. However, Mr H hasn't been able to get the requested information dating this far back. This is understandable, given the passage of time since the lending decisions took place. However, it means that even if I did think Capital One ought to have carried out further checks before lending, I wouldn't be able to conclude that these checks would have likely revealed the lending was unaffordable.

I've thought about whether the management of card one, and then later card two, ought to have influenced Capital One's decision to provide more cards. Whilst I acknowledge that Mr H was generally making minimum repayments, card two was provided the month after card one was opened, and card three was provided only around seven months after this. Having reviewed the management of the cards, I've not seen anything to persuade me that Capital One shouldn't have provided the subsequent agreements, especially considering the timeframe between the lending decisions. And as outlined, even if I did think Capital One ought to have asked more questions at any stage, I've not seen anything from Mr H to demonstrate what further checks would have likely revealed. Therefore, I don't think Capital One created unfairness in its decisions to provide the opening limits on each card.

The credit limit for card two was increased from £500 to £750 in June 2014. By this point, regulation of consumer credit was covered by the Financial Conduct Authority (FCA), with rules and guidance set out in the Consumer Credit Sourcebook ("CONC"). In summary, this outlined that lenders needed to complete checks that were 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 and the amount and cost of credit they were seeking.

As I understand it, Capital One carried out a credit check at this point which revealed one historic public record, £5,600 of card debt and a non-mortgage balance of £37,400 as well as a mortgage balance. It's certainly arguable that given the passage of time since the card was opened, Capital One may have wanted to carry out further checks to ensure that an increase was appropriate at this stage. And, as our Investigator said, Mr H was generally utilising the maximum credit available to him whilst making the minimum payments – in this instance, for a longer period of time compared with when card two and three were opened.

However, even if I did think this ought to have prompted Capital One to carry out further checks, I don't have information from Mr H about his circumstances at the time of the increase to demonstrate what these would have likely revealed. And, I'm not persuaded that the management of the cards alone, without carrying out any further checks into Mr H's circumstances, is enough to show the lending was demonstrably unaffordable. I say this because there weren't regular examples of Mr H struggling with the cards – such as going over his credit limit or missing payments regularly and consistently. Therefore, overall, I've not seen enough to persuade me that Capital One created unfairness by increasing the limit on card two either.

Whilst I've decided that there isn't enough to demonstrate that the lending decisions were unfair, it's important for me to consider the impact of those lending decisions on the overall relationships between Capital One and Mr H, and whether there was any unfairness created over the course of these. Indeed, Mr H says the payments towards the cards left him with

little money to live on throughout the month. He also says Capital One told him his accounts were in persistent debt.

Capital One was required to monitor Mr H's repayment record for signs of financial difficulties. Having reviewed the available information, there were examples of late payments and the limit being exceeded. However, I've not seen anything to suggest that there was a regularity and consistency to these issues, to the extent that I'd have expected Capital One to step in. I also can't see that Mr H contacted Capital One to say he was struggling with repayments.

The rules about persistent debt were then introduced by the FCA in 2018. They set out that persistent debt is when someone has paid more in interest, fees and charges than they've repaid of the principal balance on their card over a period of 18 months. These rules require credit card providers, like Capital One, to write to affected customers at this point. If they remain in persistent debt, then they must write again after 27 months and then 36 months if appropriate action hasn't been taken.

In its correspondence with affected customers, a credit card provider must, in summary, highlight the status of the account, explain the implications of matters continuing in the same way and outline how increasing payments can reduce the cost of the borrowing. It also should encourage customers to get in touch to discuss their financial circumstances.

In addition to the above at the 36-month milestone Capital One is required to, in summary, contact affected customers and set out options for increasing their repayments. It must ask which repayment option the customer chooses, or whether they're unable to afford the options set out. If a customer can afford one of the options but won't make the payments, the card should be suspended. And, if a customer can't afford the options, or if a customer starts making payments and then fails to maintain these, they should be treated with forbearance. It must also let customers know that no response will lead to the card being suspended.

It's important to note that Capital One wasn't required to ask Mr H to increase his payments before these rules were implemented. And, whilst Mr H was generally making minimum repayments on his cards before the persistent debt rules came into force, this was still ultimately within the terms and conditions of his agreements.

It's not in dispute that by 2018 Mr H's accounts did fall within the definition of persistent debt. The contact notes show Capital One sent Mr H a persistent debt letter in September 2018. It then sent Mr H a second letter in June 2019, as required by the rules. The notes show it then contacted Mr H some months later reiterating the position and explaining how he could avoid the suspension of his cards in March 2020.

The notes show there was further contact in March 2020, and that Mr H was unhappy with the repayment options presented to him. As I understand it, Mr H didn't increase payments towards the balances for two out of three cards. Given that no plans were put in place, Capital One suspended these cards in late 2020. The notes suggest a plan was put in place for his other card until June 2022. Mr H then made large payments towards two of his cards in June 2022 and Capital One recorded that these accounts were no longer in persistent debt.

Overall, I think Capital One did what it was required to under the persistent debt rules. I've considered Mr H's point that he thinks a precedent has been set, in that firms can increase repayments under the guise of 'persistent debt' yet offer no interest rate reduction or other help. However, I think it's important to explain that the purpose of the persistent debt rules is to encourage affected customers to make payments larger than the minimum so they could pay what they owe more quickly, and also pay less in interest.

As I've explained above, the rules also require firms to ask customers to say whether they're unable to afford the repayment options set out, and firms should exercise forbearance should a customer be unable to pay. Here, whilst Mr H decided not to increase his repayments for two of the cards, according to the notes, he didn't say this was because he couldn't afford to. He also didn't indicate he was experiencing financial difficulties, despite being given the opportunity to do so. Additionally, the contact notes suggest Mr H was able to set up a plan on one of the cards. Therefore, with all this in mind, I don't think Capital One could have reasonably concluded he was experiencing financial difficulties and required further support. Therefore, whilst I'm sorry to hear of the difficulties Mr H was facing here, I don't agree that Capital One did anything wrong when considering its requirements under the rules.

In conclusion, given all the circumstances of this complaint, I don't think Capital One acted unfairly or unreasonably here, and I don't think the credit relationships between Mr H and Capital One would be viewed as unfair under S.140A Consumer Credit Act 1974. It follows that I don't uphold this complaint.

### **My final decision**

My final decision is that I don't uphold this complaint for the reasons outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 20 February 2025.

Hana Yousef  
**Ombudsman**