

## The complaint

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

## What happened

Over the years Mr G has had four accounts with Capital One:

| Account   | Account Number ending | Event date   | Event           | Credit limit | Account status      |
|-----------|-----------------------|--------------|-----------------|--------------|---------------------|
| Account 1 | 3550                  | 9 Dec 2003   | Account opening | £400         | Closed 2005         |
| Account 2 | 5769                  | 29 Oct 2015  | Account opening | £500         | Open                |
|           |                       | 2 Feb 2017   | Limit increase  | £750         |                     |
| Account 3 | 1521                  | 16 June 2017 | Account opening | £500         | Closed – never used |
| Account 4 | 5833                  | 15 Jan 2020  | Account opening | £750         | Open                |

On 2 May 2023, Mr G complained to Capital One saying it had lent to him irresponsibly. He believes it failed to carry out checks to ensure the credit would be affordable for him and it ought to have realised increasing his indebtedness may have been harmful. He says the cards caused him to be “*financially disadvantaged*” and requested the refund of all charges and interest plus statutory interest.

Capital One looked into Mr G’s complaint and didn’t uphold it. It issued a final response saying:

- Account 1 had been defaulted in March 2005 after Mr G applied for bankruptcy. The account was settled once the bankruptcy was discharged. Capital One said it had been complained about too late for us to consider under the complaint handling rules set by the Financial Conduct Authority (FCA).
- Account 2 remains open, with a balance at the time of the final response of just under £250 and payments were up to date. Capital One said it had been complained about too late for us to consider under the complaint handling rules set by the FCA.
- Account 3 was opened but closed shortly afterwards on 20 July 2017. It wasn’t used.
- Account 4 was agreed based on Mr G’s application. He declared an annual income of £30,000 and that he was living with parents with housing costs of £200 a month. A credit check revealed he had around £7,600 of debt elsewhere. Capital One believed it’s decision to agree a £750 credit limit was reasonable based on that information.

Mr G didn’t accept Capital One’s response and referred his complaint to our service. One of our investigators looked into it. She didn’t agree the complaint had been brought too late, so looked into each account. She said:

- there was not enough evidence from either party to the account to make a finding on Account 1 as the lending decision and any activity took place too long ago.
- Capital One had made a fair decision to open Account 2 for Mr G based on the

information he had given, and based on the information it obtained when it assessed the application. She felt the credit limit increase had been carried out fairly too.

- Account 3 had never been used, so Mr G hadn't suffered any loss as a result.
- when he applied for Account 4, our investigator noted that Capital One had been sending Mr G "persistent debt" letters on Account 2 which meant he was paying more in interest and charges than he was paying off his debt. Our investigator felt that in view of that and his other outstanding credit, Capital One shouldn't have agreed Account 4 for Mr G.

Our investigator recommended that Capital One should refund the charges and interest accrued on Account 4, plus statutory interest at 8% and correct Mr G's credit file once the balance of the account was cleared.

Mr G didn't accept our investigator's view and asked that the balance of the accounts be written off and to receive the interest and charges back. As there was no agreement, the complaint was passed to me for a decision.

### **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.

Since the complaint was referred to decision, Capital One said it would have accepted our investigator's recommendation. Through his actions, Mr G has accepted our investigator's view of Accounts 1 and 3, so I don't propose to discuss those further. His remaining concern is the redress our investigator proposed as he would like the debts written off as well as receiving the refund recommended.

In order to try to resolve this complaint, I have been in touch informally with both parties to the complaint. I asked Capital One if it would be prepared to write off the debts on Accounts 2 and 4. It said a refund of the charges and interest proposed would clear both accounts, and it would refund any excess to Mr G along with interest at 8%.

I wrote and spoke to Mr G to explain this proposal, but he was not prepared to accept it. He said he wanted the debts written off *and* to receive a refund of charges and interest. I said I would consider that, but I didn't think it would be fair and reasonable in the circumstances as I think it's right that Mr G should repay the money he borrowed. I said Capital One shouldn't benefit from the money it lent irresponsibly (Account 4). The offer as it stands, achieves that.

After my conversation with Mr G, I did ask Capital One if it would be prepared to write off the account balances and refund the charges and interest. It is not prepared to do so. Therefore, I'm now issuing a decision to formalise my thoughts on the complaint.

I agree with our investigator's view of the complaint. Let me explain:

- We have no evidence on which to reach a finding on Account 1. In any event, I don't think we have the power to look into that account as it was closed, and the relationship ended too long ago for us to consider it.
- I agree that Account 2 was lent reasonably based on the information Capital One was given by Mr G and found out about him through its own checks. His income, living situation, and credit commitments were such that a credit limit of £500 was reasonable. I thought about whether his bankruptcy ought to have prevented Capital One from lending to Mr G. But Capital One is a second chance lender and given the bankruptcy was by then a decade ago, I don't think it was unreasonable. I think the credit limit increase was fair too as his account had been well run to that point.

- Account 3 was never used – there is no detriment to Mr G.
- I agree that Account 4 should not have been agreed given Account 2 was by then in persistent debt and Capital one would have been aware of that. Offering more credit was unlikely to be of help to Mr G when he was already struggling.

I've thought about the redress Mr G is seeking and I don't think it's reasonable in the circumstances. As I've said, I think it's fair and reasonable for a consumer to repay the money they've borrowed unless it can be shown that the money caused them harm in some way. There is no evidence of that in this case.

I've looked at the transaction history for Account 4. I can see that the first transaction was a £650 balance transfer, and Mr G didn't pay interest on it for six months. So is likely he saved interest on another credit agreement as a result. The other spending on the account was normal day to day expenditure and what appears to be a small fortnightly subscription. I've seen nothing in the activity which I think could reasonably be said to have caused harm to Mr G.

Mr G has used the money and had benefit of the balance transfer and the purchases he made. It's fair he should pay the money he borrowed.

### **Putting things right**

I don't think Capital One ought to benefit by charging interest on the money it lent to Mr G for Account 4 as I don't think it should have agreed to lend to him. But I think Mr G should pay back the money he borrowed. To achieve this, Capital One should:

- Rework the account removing all interest, fees, charges, and insurances (not already refunded) that have been applied.

And

- If the rework results in a credit balance, this should be refunded to Mr G 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 Mr G's credit file.

Or

- if after the rework there is still an outstanding balance, Capital One should arrange an affordable repayment plan with Mr G for the remaining amount. Once Mr G has cleared the balance, any adverse information in relation to the account should be removed from his credit file. (For clarity Capital One has told me the refund as calculated above should be sufficient to at least clear the balances on both Account 2 and 4, so I don't expect a repayment plan to be necessary.)

\*HM Revenue & Customs requires Capital One to deduct tax from any award of interest. It must give Mr G a certificate showing how much tax has been taken off if he asks for one. If it intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

### **My final decision**

My final decision is that I uphold this complaint. Capital One (Europe) plc should put matters right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 25 March 2025.

Richard Hale  
**Ombudsman**