

Complaint

Miss W has complained that Capital One Europe plc (“Capital One”) irresponsibly provided a credit card as well and subsequent credit limit increases to her. She says that the credit card and limit increases were unaffordable and caused her continued financial difficulty as she struggled to make her payments, which affected her going forward.

Background

In September 2016, Capital One provided Miss W with a credit card, which had a limit of £200. Capital One subsequently offered limit increases to £800 in August 2017 and then £1,550.00 in June 2018.

In May 2024, Miss W complained saying that the credit card and the limit increases Capital One provided were unaffordable and caused her continued financial difficulty as she struggled to make her payments which affected her going forward.

Capital One didn’t uphold Miss W’s complaint as it believed that she had complained about the decision to provide the card and the first credit limit too late. It didn’t think it did anything wrong when increasing Miss W’s credit limit in June 2018. Miss W remained dissatisfied after Capital One’s response and referred her complaint to our service.

One of our investigators reviewed what Miss W and Capital One had told us. He thought that he hadn’t seen enough to be persuaded that Capital One failed to act fairly and reasonably either when initially providing Miss W with her credit card, or the credit limit increases it did. This meant that the investigator didn’t recommend that Miss W’s complaint be upheld.

Miss W disagreed with the investigator’s conclusions and asked for an ombudsman to look at her complaint.

My findings

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

Basis for my consideration of this complaint

There are time limits for referring a complaint to the Financial Ombudsman Service. Capital One has argued that Miss W’s complaint was made too late because she complained more than six years after the decisions to provide the credit card and the credit limit increases; as well as more than three years after she ought reasonably to have been aware of her cause to make this complaint.

Our investigator explained why it was reasonable to interpret the complaint as being one alleging that the relationship between her and Capital One was unfair to her as described in s140A of the Consumer Credit Act 1974 (“CCA”). He also explained why this complaint about an allegedly unfair lending relationship had been made in time.

Having carefully considered everything, I've decided not to uphold Miss W's complaint. Given the reasons for this, I'm satisfied that whether Miss W's complaint about the specific lending decisions was made in time or not has no impact on that outcome.

I'm also in agreement with the investigator that Miss W's complaint should be considered more broadly than just those lending decisions. I consider this to be the case as Miss W has not only complained about the respective decisions to lend but has also alleged that the repayments unfairly caused her continued financial difficulty as she struggled to make her payments which affected her going forward.

I'm therefore satisfied that Miss W's complaint can therefore reasonably be interpreted as a complaint about the fairness of her relationship with Capital One. I acknowledge Capital One still doesn't agree we can look at Miss W's complaint, but given the outcome I have reached, I do not consider it necessary to make any further comment or reach any findings on these matters.

In deciding what is fair and reasonable in all the circumstances of Miss W's case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Miss W's complaint can be reasonably interpreted as being about the fairness of her relationship with Capital One, relevant law in this case includes s140A, s140B and s140C of the CCA.

S140A says that a court may make an order under s140B if it determines that the relationship between the creditor (Capital One) and the debtor (Miss W), 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.

Case law shows that a court assesses whether a relationship is unfair at the date of the hearing, or if the credit relationship ended before then, at the date it ended. That assessment has to be performed having regard to the whole history of the relationship. S140B sets out the types of orders a court can make where a credit relationship is found to be unfair – these are wide powers, including reducing the amount owed or requiring a refund, or to do or not do any particular thing.

Given Miss W's complaint, I therefore need to think about whether Capital One's decision to lend to Miss W and increase her credit limits, or its later actions resulted in the lending relationship between Miss W and Capital One being unfair to Miss W, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Miss W's relationship with Capital One is therefore likely to be unfair if it didn't carry out reasonable enquiries into Miss W's ability to repay in circumstances where doing so would have revealed the credit card or limit increases to be irresponsible or unaffordable. And if this was the case, Capital One didn't then remove the unfairness this created somehow.

Were the decisions to provide the credit card and subsequent credit limit increases unfair?

We've explained how we handle complaints about unaffordable and irresponsible lending on our website. And I've used this approach to help me decide Miss W's complaint.

Bearing in mind Miss W's response to our investigator, I think that it would be helpful for me to set out that we consider what a firm did to check whether any repayments to credit were affordable (asking it to evidence what it did) and then determine whether this was enough for the lender to have made a reasonable decision on whether to lend.

Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify that information – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low, the amount lent was high, or the information the lender had – such as a significantly impaired credit history – suggested the lender needed to know more about a prospective borrower's ability to repay.

That said, I think that it is important for me to explain that our website does not provide a set list of mandated checks that a lender is expected to carry out on every occasion. Indeed, the requirements have not and still do not mandate a list of checks that a lender should use. Any rules, guidance and good industry practice in place over the years has simply set out the types of things that a lender could do when considering whether to lend to a prospective borrower.

It is for a lender to decide which checks it wishes to carry out, although we can form a view on whether we think what was done was fair to the extent it allowed the lender to reasonably understand whether the borrower could make their payments. Furthermore, if we don't think that the lender did enough to establish whether the repayments that a prospective borrower might have to make were affordable, this doesn't on its own mean that a complaint should be upheld.

We would usually only go on to uphold a complaint in circumstances where we were able to recreate what reasonable checks are likely to have shown – typically using information from the consumer – and this clearly shows that the repayments in question were unaffordable.

Capital One's decisions to provide Miss W with a credit card which had a credit limit of £200 in September 2016 and then increase her credit limit to £800 in August 2017

Capital One says it initially agreed to Miss W's application after it obtained information on her income and carried out a credit search. And the information obtained indicated that Miss W would be able to make the low monthly repayments due for this credit card. Due to Miss W's account being relatively well managed and the information present on the credit checks it carried out, Miss W was then subsequently offered her credit limit increases.

On the other hand, Miss W says that the credit card and the subsequent limit increases were unaffordable and caused ongoing hardship as she was unable to pay for essentials and had to borrow from elsewhere as a result of the payments she had to make to Capital One.

I've considered what the parties have said.

What's important to note is that Miss W was provided with a revolving credit facility rather than a loan. This means that to start with Capital One was required to understand whether Miss W could repay £200 and then £800 within a reasonable period of time. It's fair to say that the required monthly payments in order to clear the full amount that could be owed, as a result of credit limits of £200 and £800, within a reasonable period of time are relatively low.

I've seen records of the information Capital One obtained from Miss W about her income and what was on the credit search carried out. The credit search showed that Miss W didn't

have any significant adverse information - such as defaulted accounts or county court judgments recorded against her at either of these times.

The credit search also showed that Miss W had a low amount of active credit at these respective stages. And these commitments were also being relatively well maintained. Capital One also says that Miss W declared she had an annual income of £6,000.00 a year.

Capital One argues that the information that Miss W declared on her income combined with the credit file information meant that it was reasonable to conclude that Miss W could afford this credit card. Having reviewed the information obtained and bearing in mind the low monthly repayments required to clear balances of £200 and £800 within a reasonable period of time, I'm in agreement with this conclusion.

As this is the case, I'm satisfied that it wasn't unfair for Capital One to offer Miss W a credit card with a limit of £200 in September 2016, or increase her credit limit to £800 in August 2017 and therefore there was no unfairness created at these stages.

Did Capital One carry out reasonable and proportionate checks before deciding to offer the final credit limit increase to Miss W?

As I've explained in the background section of this decision, Capital One went on to increase Miss W's credit limit on one further occasion. It increased Miss W's credit limit to £1,550.00 in June 2018.

Capital One's credit check indicates that it wasn't aware of Miss W having any defaulted accounts or CCJs recorded against her at the time of this limit increase either. Its credit check also showed that Miss W owed around £700 at this time. I know that Miss W has queried the result of Capital One's credit check and has referred to having other credit at this stage. However, it may help for me to explain that this credit check showed the balances that Miss W actually owed at this stage. It didn't show that the maximum Miss W could end up owing if she used all of the credit available to her.

This is important because I know that Miss W had other credit facilities at this stage. For example, she had a credit card with another lender which had a much larger credit limit, which she was provided with in February 2018. While this is the case, Miss W didn't immediately use all of the credit available to her on that card and it can take up to 90 days for credit reference agency records to update. This is why Capital One won't have seen that Miss W was as indebted as she may have been, or could end up being, at the time.

I'm also mindful that the regulatory rules permitted Capital One to place weight on its previous dealing with Miss W and therefore her repayment record on the existing credit advanced as part of its checks. I think that this is important because, in February 2018, Miss W made a payment of £827 against a required minimum payment of around £40. Miss W then made payments of £50 in March 2018 and April 2018 when her minimum payment was less than half this amount. Finally, Miss W made a payment of £700 when she only needed to pay around £20 in May 2018.

These large payments meant that Miss W had completely cleared her balance on a couple of occasions prior to the second limit increase and was making payments in excess of what was needed to clear what could be owed on a balance of £1,550.00 within a reasonable period of time, in the lead up to this limit increase being granted.

In these circumstances, Miss W's repayment record does suggest that Capital One was reasonably entitled to believe that Miss W could afford the second limit increase. Given this is the case and the fact that what Capital One saw suggested that what she owed elsewhere

wasn't increasing, I'm not persuaded that it was unfair or unreasonable for Capital One to have offered the second limit increase, to £1,550.00 in June 2018.

Furthermore, this isn't a case where I can reasonably say that the limit increases and Miss W's account usage ought reasonably to have shown Capital One that Miss W's indebtedness, on her credit card, was rapidly increasing in an uncontrollable way, or that the pattern of lending here ought reasonably to have led Capital One to conclude that the facility had become demonstrably unsustainable for Miss W either.

So overall and having carefully considered everything and while I appreciate that this will disappoint Miss W, I've not been persuaded that proportionate checks would have shown Capital One that it shouldn't have provided Miss W with her second limit increase. Furthermore, I don't think that Miss W's pattern of borrowing meant that Capital One offered the credit limit increase in circumstances where it ought reasonably to have realised that they may have been unsustainable or otherwise harmful for her either. As this is the case, I've not been persuaded that Capital One's decision to offer the second credit limit increase was unfair, or that it resulted in unfairness going forward either.

Overall, and based on the available evidence I don't find that Miss W's relationship with Capital One was unfair. I've not been persuaded that Capital One created unfairness in its relationship with Miss W by irresponsibly lending to her whether when initially agreeing to provide her with a credit card, or in respect of the limit increases. I don't find Capital One treated Miss W unfairly in any other way either based on what I've seen.

So overall and having considered everything, while I can understand Miss W's sentiments and sympathise with the very difficult time that she has been through, I'm nonetheless not upholding this complaint. I appreciate this will be very disappointing for Miss W. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

My final decision

For the reasons I've explained, I'm not upholding Miss W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 3 June 2025.

Jeshen Narayanan
Ombudsman