

## The complaint

Miss M complains that Capital One (Europe) plc trading as Capital One lent to her irresponsibly.

## What happened

Miss M applied for and received two accounts with Capital One:

	Date	Event	New credit Limit
<b>Account 1</b>	15 Nov 2010	Account opening	£300
<b>Account 2</b>	5 Jan 2018	Account opening	£200
	23 April 2018	Limit increase	£950

Miss M fell into financial difficulty and, using the services of a third-party representative, she entered into a payment plan with Capital One. This led to Capital One issuing a default notice for each account on 8 May 2020.

On 12 January 2024, Miss M complained to Capital One. She said it *“should never have allowed her to open an account with such a large credit limit”*. When she applied for each account, she had recently missed payments to other creditors, had defaulted accounts and been taking payday loans. She said at the time of the credit limit increase, she had a very poor credit score *“and was dealing with large gambling debts”*. Miss M asked for a refund of interest and charges paid on the accounts, as well as for adverse information recorded to be removed from her credit file.

Capital One considered Miss M’s complaint. It said her concerns about the opening of the accounts had been referred too late under the complaint handling rules set by the Financial Conduct Authority (FCA), so it didn’t look into those. But Capital One did look into her complaint about the credit limit increase. It said it had offered her the increase by email, but, before doing so, it had carried out an affordability assessment and felt the increase would be affordable for her. It didn’t uphold her complaint.

Miss M was unhappy with Capital One’s response, so she referred it to our service and one of our investigators looked into it. Our investigator didn’t agree with Capital One that the complaint had been raised too late as she said it was reasonable to interpret it as being about an unfair credit relationship. That being so, our investigator looked into the whole of the complaint, but she didn’t uphold it. She felt Capital One had conducted reasonable and proportionate checks before agreeing to lend to Miss M and it had reached a fair decision to do so. She didn’t think the credit relationship between the two parties had been unfair.

Miss M didn’t agree with our investigators’ view of the complaint. As there was no agreement, the complaint has been 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.

There are time limits for referring a complaint to the Financial Ombudsman Service, and Capital One thinks this complaint was referred to us too late. Our investigator explained why she didn't, as a starting point, think we could look at a complaint about the lending decisions that happened more than six years before the complaint was made. But she also explained why it was reasonable to interpret the complaint as being about an unfair relationship as described in s140, and why this complaint about an allegedly unfair lending relationship had been referred to us in time.

For the avoidance of doubt, I agree with our investigator that I have the power to look at the complaint on this basis. And while Capital One maintains its' view that the complaint has been brought too late, it has provided the information available to it to allow us to look into the merits.

In deciding what is fair and reasonable I am required to take relevant law into account. Because Miss M's complaint is about the fairness of her relationship with Capital One, relevant law in this case includes section 140A, section 140B and section 140C.

S.140A 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 (Miss M), 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.

S.140B 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 what Miss M has complained about, I need to consider whether Capital One's decisions to lend to her and increase her credit limit, or its later actions, created unfairness in the relationship between her and Capital One such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Miss M's relationship with Capital One is therefore likely to be unfair if it didn't carry out proportionate affordability checks and doing so would have revealed its lending to be irresponsible or unaffordable, and if it didn't then remove the unfairness this created somehow. I think there are key questions I need to consider in order to decide what is fair and reasonable in the circumstances of this complaint:

- Did Capital One carry out reasonable and proportionate checks to satisfy itself that Miss M was in a position to sustainably repay the credit?
- If not, what would reasonable and proportionate checks have shown at the time?
- Did Capital One make a fair lending decision?
- Did Capital One act unfairly or unreasonably towards Miss M in some other way?

Capital One had to carry out reasonable and proportionate checks to satisfy itself that Miss M would be able to repay the credit sustainably. It's not about Capital One assessing the likelihood of it being repaid, but it had to consider the impact of doing so on her.

There is no set list of checks that it had to do, but it could take into account several different things such as the amount and length of the credit, the amount of any monthly repayments and the overall circumstances of the borrower.

#### *Account 1*

Due to the time that's passed, we only have limited information about the lending decision Capital One took when it agreed Account 1. But what we do have, shows Miss M declared she was employed with an income of £22,468 a year. While we don't have full credit data available, there is evidence that there were no defaults or County Court Judgements (CCJs) registered against Miss M. So while I can't say for sure that reasonable and proportionate checks were carried out at this time, I can see some checks were conducted so I think it's reasonable to assume Miss M met the eligibility requirements at the time.

If I were persuaded that reasonable and proportionate checks were not carried out, in order to uphold the complaint I'd need to be able to show what Capital One would have found had it done more. And that information would need to show that Capital One had made an unfair decision to lend. But we don't have sufficient information from either party from 2010 that would enable us to reach such a conclusion. I don't think I can reasonably say therefore, that Capital One reached an unfair decision to agree Account 1 for Miss M.

#### *Account 2 – account opening*

Understandably, we have more information about Miss M's application and the checks carried out at the opening of Account 2 in January 2018. Miss M's application shows she was employed and earning £38,556 per year – around £2,450 a month – and she was a private tenant.

Her credit file didn't show any defaults or CCJs but she'd had a number of short term or payday loans. The last of these had been settled around 12 months before this application. It showed she had a number of active accounts including a hire purchase agreement and a loan. These totalled around £15,500 and were up to date. Contractual payments to the accounts totalled approximately £340, plus the payments Miss M was making to Account 1. At the time, she was paying the full balance (so up to £300) off Account 1 each month which doesn't indicate that she was struggling financially.

I think the checks Capital One carried out on Miss M's application for Account 2 were reasonable and proportionate. It agreed a relatively modest limit of £200 for her (£500 combined with Account 1) and I think it reached a fair decision to lend.

#### *Account 2 – limit increase*

In April 2018, Capital One offered Miss M an increase in her limit to £950. Understandably, most of the detail it gathered from the credit reference agencies was similar to that from the card opening just a few months earlier. But it showed her total indebtedness had reduced to around £13,700. So there was no indication I could see that Miss M wouldn't be able to manage the increase in the limit it offered.

Miss M has said that while her indebtedness had reduced, so too had her credit score, and she's provided some snapshots from a credit reference agency to support that. They do indeed, show that her credit score with that agency fell from January 2018 to March 2018

before picking up slightly in the April 2018.

Looking at the screenshots, I think it's most likely that her score fell when Account 2 was opened. In my experience, when a new credit line is taken, the individual's credit score falls for a few months while they demonstrate they can manage the new account. The January screenshot shows that Capital One had conducted a search, but the March one shows the account had been opened.

In my experience lenders place as much emphasis on the headline credit score as a consumer might when they check their file. Instead, they look at the data behind it and use that, coupled with what they know about a consumer, to create their own score and decide what they are prepared to lend. Of course, Capital One will have known that Miss M had recently opened Account 2, and it was satisfied with her use of it alongside Account 1.

I've seen nothing that makes me think Capital One failed to carry out a reasonable and proportionate check before offering Miss M a credit limit increase or by allowing her to take it. Given what it knew about Miss M through her handling of her existing accounts and what it found from her credit file, I think it made a fair decision to lend to her.

Miss M ran the account reasonably well for a number of months and paid the account off in full for the first few months. In September 2019, Miss M began to miss some payments. While she caught them up initially and appears to have been up to date by May 2020, she entered a payment plan using a third party which Capital One accepted. I've not seen any signs that Capital One acted unfairly or unreasonably towards Miss M in some other way.

Miss M has shared some very difficult information with us about her personal circumstances which took place after this lending had been agreed. I appreciate her doing so and acknowledge the last few years must have been extremely difficult for her. I wish her well for the future.

I realise my decision will come as a disappointment, but for the reasons explained above, I can't reasonably uphold her complaint about Capital One.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 28 April 2025.

Richard Hale  
**Ombudsman**