

The complaint

Miss M, who is represented by a third party, complains that Capital One (Europe) plc ('Capital One') irresponsibly provided her with credit on two credit cards account that she couldn't afford to repay.

What happened

In November 2016 Miss M entered into an agreement to have access to credit by way of her first credit card account with Capital One. She was given a credit limit of £500.

Then, in February 2019, she applied for and was granted a second account, with an opening credit limit of £200.

Miss M says she had significant difficulties keeping up with the payments on her cards. Both cards went into default in early 2024. Miss M therefore says it was irresponsible of Capital One to agree to grant her the two cards.

Our investigator didn't recommend the complaint be upheld. She thought that ultimately Capital One had made a fair lending decision for each card. And it didn't act unfairly or unreasonably in continuing to provide Miss M with the two accounts and the supporting it gave her.

Miss M didn't agree and so her complaint has been passed to me for a final 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 part of this complaint was referred to us too late because the decision to grant the first account took place more than six years ago. Our investigator explained why it was reasonable to interpret the complaint as being about an unfair relationship as described in Section 140A of the Consumer Credit Act 1974, and why this complaint about an allegedly unfair lending relationship had been referred to us in time.

Seeing as I've decided not to uphold Miss M's complaint for either of the two accounts, and given the reasons for this (which I'll go on to explain), whether Miss M referred her complaint about the lending decisions for the first card happened more than six years ago in time or not has no impact on that outcome. Like the investigator, I think Miss M's complaint should be considered more broadly than just the two lending decisions, seeing as she complained not just about the decision to lend but also the impact this had on her over the course of her relationship with Capital One. Miss M's complaint in this respect can therefore reasonably be interpreted as a complaint about the fairness of her relationship with Capital One. I acknowledge Capital One doesn't agree we can look at the complaint about the first card, but given the overall outcome I have reached, I don't intend to comment on this further.

In deciding what is fair and reasonable I am required to take relevant law into account. Because Miss M's complaint can be reasonably interpreted as being about the fairness of her relationship with Capital One, relevant law in this case includes s.140A, s.140B and s.140C of the Consumer Credit Act 1974 ("CCA").

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 its 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 therefore need to think about whether Capital One's decision to provide credit to Miss M for these two cards 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, where doing so would have revealed its lending to be irresponsible or unaffordable, and if it didn't then remove the unfairness this created somehow.

When assessing affordability, there isn't a set list of checks that Capital One needed to complete, but they needed to be borrower focussed and proportionate to things like the type of lending, the cost of the lending as well as the amount, and how long it would take Miss M to reduce what she owed on each of the two accounts.

It's with this in mind that I'll consider each of the two accounts in turn.

Account opened in November 2016

Unfortunately, Capital One has been unable to provide us with the details of what Miss M put in her application for the first card. The credit check Capital One completed showed that Miss M had previously had some payment issues with other credit. This is evidenced by the fact she was in two active payment plans and had had four account defaults in the previous two years, the most recent being in June 2016. I think this was enough to indicate that Miss M may be at risk of getting into further financial difficulty. It therefore would have been proportionate for Capital One to have got a more thorough understanding of her financial circumstances before lending to her.

I think it would have been proportionate for Capital One to have asked Miss M for more information about the income she received and what it was being spent on. This would have helped to establish what Miss M's wider financial circumstances looked like, and whether

she was at risk of getting into further difficulty – something that was important for Capital One to establish before agreeing to lend to her.

We asked Miss M for some further details and evidence about their financial circumstances. This was to help us understand what, if anything, Capital One might have found out if it completed reasonable and proportionate checks. However, Miss M hasn't provided sufficient information - by way of bank statements or otherwise - to help us determine whether or not made a fair lending decision. As I'm not persuaded that Capital One has acted unfairly, I don't think they need to do anything to put things right.

Account opened in February 2019

I've seen Miss M's application for the second card. The salary figure she declared was at such a high level that I wouldn't have expected Capital One to have placed reliance on it without carrying out further checks. She also said she was living with her parents and had been doing so for the past six months. That's something that suggests her committed spending each month might have been slightly lower than usual.

Again, the credit check showed Miss M's history of payment difficulties. She had also recently gone over the limit on another credit account. I therefore think it would have been proportionate for Capital One to have got a more thorough understanding of her financial circumstances before giving her this new account. I've also kept in mind that Capital One went on to set a relatively low credit limit of £200. This looks to be reflective of Miss M's ability to sustainably repay the new account alongside her existing credit and non-credit commitments.

To try and get a better picture of Miss M's financial situation, our investigator again asked her for further details and evidence about how she was managing her finances. On this occasion she was able to provide us with some bank statement information.

I've reviewed three months of bank statements leading up to the lending decision. These show the type and level of Miss M's spending. I've seen that Miss M's level of income was variable, but broadly speaking was £1,000 to £1,100 each month. There were also PayPal transactions producing occasional income. Miss M's committed spending - principally from rent, travel and existing credit expenses – looks to be around £700 each month on average. Also, I've seen there was also £2-300 spent on household food shopping each month. I've also kept in mind that her December 2019 spending was slightly higher, which is to be expected in the run-up to the Christmas period. There's also an element of non-discretionary spending – that is, spending Miss M was choosing to make at the time but didn't necessarily have to. So I think Miss M's main source of income was broadly in line with her spending. Given the lower credit limit with this card, I think Miss M was in a position to maintain the card sustainably alongside her existing credit and non-credit commitments. Had Capital One completed proportionate checks, I think it's likely it would have seen this too.

All of this means, that I don't think Capital One acted unfairly by granting Miss M this second account. And since I can't say that Capital One has acted unfairly, I can't request it to do anything to put things right.

I would add that, from what I've seen of Miss M's account history with Capital One, there isn't enough for me to make a finding that it acted unfairly or unreasonably in relation to providing support to Miss M as and when she needed it, especially once she got into difficulties with both accounts, leading to them going into default in 2024. This included letting her know about persistent debt on the accounts, restricting her account use and notifying her that she was at risk of her having the accounts defaulted.

Overall, and based on the available evidence, I don't find that Miss M's relationship with Capital One is currently unfair. It's not clear enough to me that Capital One created unfairness in its relationship with Miss M. And I don't find Capital One treated Miss M unfairly in any other way either based on what I've seen.

I am sorry to have to disappoint Miss M on this occasion.

My final decision

For the reasons given above, 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 22 April 2025.

Michael Goldberg

Ombudsman