

The complaint

Miss J complained that Capital One (Europe) plc trading as Capital One sent her threatening letters for payment and that she couldn't afford to make her repayments due to the charges being applied to her account. She said that she was unable to talk on the phone and didn't receive the support she should have from Capital One.

After referring her complaint to this service, a complaint about irresponsible lending was also considered.

What happened

Miss J was provided with a Capital One credit card account in April 2019. She said that the charges applied to her account resulted in her not being able to manage her repayments and that Capital One sent her threatening letters and stopped her using her card. Miss J explained that the notes on her account clearly state that she cannot talk on the phone but said that this was the only way to contact Capital One. Miss J said she needs to be able to use her account and didn't think she had been provided the support she should have been.

Capital One issued a final response to Miss J's complaint dated 11 June 2024. It said that 60 days of breathing space was added to Miss J's account on 6 February 2024 and explained that interest and fees may start to be applied if it didn't hear from Miss J's debt advice organisation by the end of the breathing space. It said that the breathing space ended on 9 April and interest and fees started again. It said that the interest rate was set out in the credit agreement and visible on the monthly statements and explained when fees were charged. Capital One said that as a gesture of goodwill it would refund the interest and fee charge in May 2024. It further confirmed that ongoing breathing space had been applied to Miss J's account from 28 May 2024.

Capital One said that Miss J's account had been suspended and set out what needed to happen to prevent Miss J permanently losing the card and the account being defaulted. It explained the letters that had been sent and apologised that Miss J found these threatening but said this wasn't its intention. Capital One didn't uphold Miss J's complaint.

Miss J referred her complaint to this service. Our investigator contacted Capital One to explain that as well as the issues raised by Miss J, she felt the responsibility of the lending should also be considered.

Capital One investigated its decision to provide Miss J with the credit card account and issued a final response to Miss J accepting that the credit shouldn't have been provided. It offered to refund all interest and fees charged on the account along with statutory interest. It explained that the total refund would be £437.54 and this would be offset against Miss J's defaulted balance and the remaining amount of £225.47 would be cleared. It also said that the account would be removed from Miss J's credit file.

Our investigator considered the issues Miss J had raised about receiving letters and her account being stopped but explained that because Miss J's account was in arrears Capital One had to make sure she was aware of this. She thought the support offered in terms of

breathing space was reasonable and that Capital One had acted responsibly by not allowing Miss J to continue using the card whilst it was in arrears. Therefore, she did not uphold this part of Miss J's complaint.

In response to the concern about irresponsible lending, our investigator thought the offer made by Capital One was fair. She understood that Miss J wanted to have her account reinstated but noted that it had been accepted by Capital One that the account shouldn't have been provided.

Miss J didn't agree that Capital One's offer was fair. She said that Capital One's actions had caused her severe financial and reputational harm, and she wanted compensation for this. Miss J said that she wanted the refund of £437.54, issued directly to her, without any offset or deductions. She also requested the immediate erasure of all adverse data, including the default, from her credit file and additional compensation of £600 for the financial distress, reputational damage, and distress caused by Capital One's actions.

Our investigator noted Miss J's comments but explained that she still thought the offer made by Capital One was fair. As a resolution hasn't been agreed, this complaint has been passed to me, an ombudsman, to issue 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.

When assessing a complaint, I take all relevant rules, regulations and guidance into account but my decision is based on what I consider fair and reasonable given the unique circumstances of the complaint.

I am sorry to hear that Miss J doesn't feel that she received the support she should have when she was experiencing difficulties making her payments and I note her comments about the charges applied to her account. I have looked at the agreement Miss J entered into, and this set out the interest rate and how this would be applied to the account. It also included a schedule of charges that could be applied. Therefore I think it reasonable to say that Miss J was made aware of the interest and charges on the account when this was opened.

Capital One has provided a copy of Miss J's account notes and I can see that she contacted it in February 2024 to explain she was struggling to make her payments. Breathing space was applied to Miss J's account for 60 days and she was sent a letter dated 7 February 2024, explaining that no interest or fees would be applied during this period. The letter further explained that Capital One would still need to send messages as required by law in regard to the account and that Miss J wouldn't be able to use her card in this period.

The breathing space ended on 9 April 2024. Miss J had contact with Capital One in May 2024 when it was noted that she was unable to speak on the phone. Following further communication ongoing breathing space was added to Miss J's account on 28 May 2024. Miss J was sent a letter explaining the details including that no interest or fees would be added to her account and that she wouldn't be able to use the card.

Given the issues Miss J raised about struggling to make her payments, I think that Capital One acted fairly by applying breathing space to her account and stopping interest and fees being applied during those periods. The letters sent to Miss J about this provided a clear explanation of what would happen to the account while in breathing space, so I think Miss J had the information she needed at this time. I understand that Miss J wanted to continue to have use of the card but given she was struggling with the payments, I think the breathing

space applied was reasonable and by stopping use of the card this prevented Miss J increasing her debt.

Miss J said she was sent threatening letters by Capital One. I have looked at the letters sent and I can understand how these could be upsetting. But, Capital One is required to send letters to a customer when their account is in arrears and to inform them of any action it may be taking. The letters sent gave Miss J details of the arrears on her account and notice of the intention to default the account. As these were letters that Capital One was required to send, and they contained the information we would expect to ensure Miss J was aware of the status of her account, I do not find I can say that Capital One was wrong to send these.

Based on the above, I do not uphold this part of Miss J's complaint.

As part of the investigation into Miss J's complaint, the issue of irresponsible lending was addressed. Capital One accepted the lending shouldn't have been provided to Miss J and said that all interest and fees would be refunded along with statutory interest and offset against Miss J's outstanding balance. This is what we would expect to happen in a situation of irresponsible lending. Capital One then said that the remaining balance would be cleared. I find this was a fair response to Miss J's circumstances. Additional to the refund and account being cleared, Capital One said the account would be removed from Miss J's credit file. This put Miss J back in the position she would have been had the account not been provided, and I think this is a fair resolution to this part of her complaint.

I appreciate that Miss J wanted her account reinstated but I do not find that Capital One was required to do this. Capital One accepted the account shouldn't have been provided based on Miss J's circumstances and so it wouldn't be right to expect Capital One to reinstate the account.

Miss J said that Capital One's conduct constituted a violation of Section 140A of the Consumer Credit Act 1974. She said that offsetting the refund against the balance was an attempt to preserve funds unjustly, without due regard for the distress caused. She said that Capital One's actions directly resulted in financial distress, reputational damage, and an unfair contractual relationship. I have considered Miss J's comments but, in this case, the complaint about irresponsible lending has been upheld and I am satisfied the redress that Capital One offered results in fair compensation for Miss J in the circumstances of her complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

I appreciate that Miss J believes the refund of interest and fees should be paid directly to her, but as she had an outstanding balance on the account, which was money Miss J had the benefit of, I think it reasonable that the refund would be used to reduce this. I note that Capital One has then said the remaining balance would be cleared, which provides further benefit to Miss J.

Miss J has commented on the information Capital One recorded with the credit reference agencies. While I note her comments, Capital One provided details of the information that would be recorded in its letters to Miss J and this accurately reflected the account of the time. Subsequently the account has been identified as being irresponsibly provided and so it is fair that any adverse information, including the default is removed as Miss J has said. Capital One said in its final response letter dated 23 January 2024 that the account would be removed from Miss J's credit file which would include removing all late marks and the default and so I find this resolves this issue.

I understand that Miss J wants compensation for the upset she has been caused. While I do not underestimate the distress she has experienced while trying to manage credit that

shouldn't have been provided, in this case I find the actions already set out are fair. I say this because Miss J's initial complaint was about the support she received when experiencing financial difficulties and this wasn't upheld. The issue of irresponsible lending was then investigated following her referral of her complaint to this service. When this was raised, Capital One acted in a timely way to investigate this issue and upheld this aspect of the complaint. In cases of irresponsible lending, we would expect all interest and fees to be refunded as well as adverse information be removed from a customer's credit file, as Capital One set out. In this case, additional to this Capital One said the remaining balance after the refund of £225.47 would be cleared. I find this was a fair resolution to the issue raised and I do not require any further payments to be made.

I know Miss J will be disappointed by my decision but in this case, I think the offer made by Capital One provided a fair resolution to this complaint.

Putting things right

Capital One should, to the extent this hasn't already happened, take the actions set out in its final response letter dated 23 January 2025:

- Refund all interest and charges on Miss J's account along with 8% simple interest per year* on any overpayments calculated from the date of each overpayment to the date of settlement. Offset the refund against the outstanding defaulted balance and then clear the remaining account balance.
- Remove the account from Miss J's credit file.

*HM Revenue & Customs requires Capital One to deduct tax from any award of interest. It must give Miss J a certificate showing how much tax has been taken off if she asks for one.

My final decision

My final decision is that Capital One should take the actions noted above in resolution of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or reject my decision before 12 May 2025.

Jane Archer
Ombudsman