

## **Complaint**

Mr M has complained about credit cards Capital One (Europe) plc (“Capital One”) provided to him. He says that the credit cards and the subsequent limit increases shouldn’t have been provided as they were unaffordable for him and this caused the lending relationship to be unfair.

## **Background**

This complaint is about two credit cards that Capital One provided Mr M with in September 2003 and July 2014.

The first account (“Account A”) was closed in July 2020 and the second account (“Account B”) remained open at the time of Mr M’s complaint.

The accounts had the following credit limits at the following times:

**Account A** – opened in September 2003 with a credit limit of £200 There were no credit limit increases on this account prior to it being closed in July 2020.

**Account B** opened in July 2014 with a limit of £200. The limit was increased to £1,200.00 in June 2021, £1,450.00 in June 2022 and then finally £1,700.00 in June 2023.

In December 2023, Mr M complained saying that the credit cards and the limit increases Capital One provided to him were unaffordable and caused him continued financial difficulty as he had to borrow further in order to make his payments.

Capital One did not uphold Mr M’s complaint. It was satisfied that the complaint to provide both credit cards was made too late. It didn’t think that it had done anything wrong when agreeing to provide the limit increases on Account B.

When responding to our request for its file on Mr M’s complaint, Capital One told us that it believed Mr M had complained about the initial decisions to provide both credit cards too late.

One of our investigators reviewed what Mr M and Capital One had told us. And he thought Capital One hadn’t done anything wrong or treated Mr M unfairly in relation to providing the credit cards or increasing Mr M’s credit limit on the occasions that it did. So he didn’t recommend that Mr M’s complaint be upheld.

Mr M disagreed and asked for an ombudsman to look at the 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 Mr M's complaint about the initial decisions to provide the cards was made too late because he complained more than six years after these lending decisions; as well as more than three years after he ought reasonably to have been aware of his cause to make this complaint.

Our investigator explained why Mr M's complaint was one alleging that the relationship between him and Capital One was unfair to him 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 Mr M's complaint. Given the reasons for this, I'm satisfied that whether Mr M'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 Mr M's complaint should be considered more broadly than just the lending decisions. I consider this to be the case as Mr M has not only complained not about the respective decisions to lend but has also alleged that this created an unfair lending relationship.

I'm therefore satisfied that Mr M's complaint is a complaint alleging that the lending relationship between himself and Capital One was unfair to him. I acknowledge Capital One may not agree that we can look at parts of Mr M's complaint, but given the outcome I have reached, I do not consider it necessary for me to make any further comment, or reach any findings on these matters.

In deciding what is fair and reasonable in all the circumstances of Mr M's case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Mr M's complaint can be reasonably interpreted as being about the fairness of the lending relationship between him and 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 (Mr 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. 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 Mr M's complaint, I therefore need to think about whether Capital One's decisions to initially lend to Mr M, increase his credit limit on the occasions it did, or its later actions resulted in the lending relationship between Mr M and Capital One being unfair to Mr M, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Mr M's relationship with Capital One is therefore likely to be unfair if it didn't carry out reasonable and proportionate checks into Mr M's ability to make his repayments in circumstances where doing so would have revealed the credit card or the limit increases to be unaffordable, or that it was irresponsible to lend. And if this was the case, Capital One then didn't somehow then remove the unfairness this created.

I've considered Mr M's complaint in this context.

*The expectations expected of Capital One when it agreed to provide the credit card on Account A to Mr M*

We do have an explanation about how we handle complaints about unaffordable and irresponsible lending on our website. However, the vast majority of our website guidance covers regulated lending. Furthermore, Capital One's decision to provide Account A to Mr M not only predates the regulation of consumer credit lending, it was also made prior to when the obligations, which our current guidance is based on, were introduced.

So I think that the information on our website and our typical approach to lending complaints has only very limited, if any, relevance to Mr M's complaint about Account A.

Mr M applied for a credit card in August 2003. This decision to lend not only predated the current regulator's (the Financial Conduct Authority ("FCA")) rules and guidance which came in, in April 2014, it also predated the regulation of consumer credit and the regulatory period of the previous regulator the Office of Fair Trading ("OFT").

Prior to the regulation of consumer credit, while a number of lenders signed up to various voluntary codes, a lender wasn't required to be regulated in order to provide credit. Therefore, the decision Capital One made to offer Mr M the credit card on Account A took place prior to the introduction of the main regulations and standards in relation to irresponsible and unaffordable lending.

Indeed, irresponsible lending only became a nebulous concept when the 2006 revisions to the Consumer Credit Act 1974 came into force on 6 April 2007. Even then, the main guidance regarding this wasn't introduced until the OFT published its Irresponsible Lending Guidance in March 2010.

That's not to say that there weren't any expectations or standards in relation to lending at the time Mr M applied for the credit card on Account A. The then British Bankers' Association ("BBA") had a Banking Code, which was in place at the time and represented good industry practice.

However, it would be fair to say that its obligations and responsibilities were much more limited and they certainly were not the same as they are now. For example, the concepts of irresponsible lending, borrower focused assessments and proportionate checks were not part of the expectations or requirements at the time.

What subscribers to the banking code agreed to do at the time of Mr M's application for the credit card on Account A, was assess whether it felt that a borrower would be able to repay any credit provided. I therefore need to consider Mr M's complaint about Account A in relation to these expectations that were in place on a lender (like Capital One here) at this time.

*Application to Mr M's complaint – Bearing in mind the expectations at the time did Capital One act fairly and reasonably towards Mr M when agreeing to provide the credit card on Account A?*

Capital One hasn't been able to say much about the checks that it carried out at the time it accepted Mr M's application for account A. It has only been able to provide a copy of Mr M's signed application form and an output of the information Mr M completed as part of his application for the card.

On the other hand, Mr M says that this credit card was unaffordable for him and shouldn't have been provided.

What's important to note is that Mr M was provided with a revolving credit facility rather than a loan. And this means that Capital One was required to understand whether a credit limit of £200 could be repaid within a reasonable period of time, rather than in one go. It's also fair to say that a credit limit of £200 will have required low monthly payments in order to clear the full amount that could be owed within a reasonable period of time.

Capital One hasn't been able to provide any details on what it found out about Mr M as a result of the credit checks that it carried out prior providing the card on Account A. Given the application took place over twenty years ago, I simply wouldn't expect a lender to have retained this information. Therefore, I've not drawn any adverse conclusions as a result of Capital One not being able to provide this information.

In any event, I'm also mindful that I've not been provided with any information and neither has it even been argued, that Mr M had any significant adverse information – such as defaulted accounts or county court judgments ("CCJ") recorded against him at the time he was provided with Account A.

Furthermore, Capital One has provided the details of what Mr M declared at the time of his application. From what I can see, Mr M said that he was employed as a Business Manager and earning £15,000.00. a year. Given there wasn't a requirement to verify a customer's income at this time, I think that Capital One was reasonably entitled to rely on what Mr M had declared.

Capital One clearly felt that Mr M could repay £200 within a reasonable period of time as result of how much he earned. Indeed, I think it is unlikely that Capital One would have lent in circumstances where it didn't consider that there was a decent chance of it being repaid any sums that it advanced.

Given, as I've explained, it's fair to say that the standards expected of lenders at this time was far more light touch than it is today, the low amount required to make the monthly repayments and what Mr M said he earned at the time, I'm not persuaded that it was unreasonable for Capital One to feel that Mr M could repay £200 within a reasonable period of time.

As this is the case, I'm satisfied that it was not unfair for Capital One to offer Mr M Account A with a limit of £200 and therefore there was no unfairness created at this stage.

*The expectations expected of Capital One when it agreed to provide the credit card on Account B to Mr M*

Capital One agreed to provide Mr M with Account B and all of the subsequent credit limit increases after the regulation of Consumer Credit had passed to the FCA.

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 Mr M's complaint.

Capital One needed to make sure it didn't lend irresponsibly. In practice, what this means is Capital One needed to carry out proportionate checks to be able to understand whether Mr M could afford to repay any credit it provided.

Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. 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 it – 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 or the amount lent was high. And the longer the lending relationship goes on, the greater the risk of it becoming unsustainable and the borrower experiencing financial difficulty. So we'd expect a lender to be able to show that it didn't continue to lend to a customer irresponsibly.

*Application to Mr M's complaint – Bearing in mind the expectations at the time did Capital One act fairly and reasonably towards Mr M when agreeing to provide the credit card on Account B?*

Capital One says it carried out similar checks to those carried out at the time it provided Account A to Mr M. It says that due to Account B being relatively well managed he was then offered the subsequent credit limit increases.

In fairness even though the lending was taking place after the regulation of consumer credit had passed to the FCA by this stage, given the amount being lent, I wouldn't have expected Capital One to do too much more when it took the decision to initially provide Mr M with Account B.

Once again, Capital One hasn't been able to provide any details on what it found out about Mr M as a result of the credit checks that it carried out prior providing the card on Account B. Given the application took place more than a decade ago, there isn't a need for Capital One to have retained this information. Therefore, I've not drawn any adverse conclusions as a result of Capital One not being able to provide it.

Nonetheless, I've not been provided with anything to indicate that Mr M had any significant adverse information recorded against him that is likely to have been picked up by any credit check at this point either. What Capital One has been able to provide is the output of the information Mr M provided during his application. It says that Mr M declared he was a Project Officer with an annual salary of £24,000.00 a year at this point.

Having considered all of this, I'm satisfied that it did indicate that Mr M could make the low monthly repayments required to clear a balance of £200 within a reasonable period of time. As this is the case, I'm satisfied that it was not unfair for Capital One to offer Mr M the credit card on Account B with a limit of £200 and therefore there was no unfairness created at this stage.

*The credit limit increases Capital One offered to Mr M on Account B*

As I've explained in the background section of this decision, Capital One increased Mr M's credit limit on Account B on three occasions. The limit was increased to £1,200.00 in June 2021, £1,450.00 in June 2022 and then finally £1,700.00 in June 2023.

Capital One has been able to provide the details of what it saw on the credit checks it carried out before it agreed to increase Mr M's limit on the occasions that it did. Capital One's credit checks showed that Mr M didn't have any CCJs or defaulted accounts recorded against him

at either of these times. These credit checks also showed that Mr M did have some active credit and that he was up to date on his payments on them.

Bearing in mind the extra being granted at the time of the limit increases and the fact that Mr M could be left with having to repay £1,200.00, £1,450.00 and then £1,700.00 within a reasonable period of time, I do think that it would have been reasonable and proportionate for Capital One to have found out a bit more about Mr M's regular non-discretionary living costs before offering these increases. This is particularly as Mr M had previously entered into a repayment plan to clear arrears on the card.

To be clear, as the arrears had been cleared over two years prior to the limit increase, I don't think that this in itself meant that Mr M shouldn't have been lent to. What it meant was that Capital One needed to get a bit more information from Mr M on his actual regular living costs before it could reasonably conclude that the limit increases were affordable for him. As I can't see that this was something that Capital One did do, I don't think that it carried out reasonable and proportionate checks before providing the limit increases to Mr M.

That said, having looked at copies of the current account statements Mr M has provided, I'm not persuaded that Mr M's regular non-discretionary living costs were such that they meant the repayments required to repay £1,200.00, £1,450.00 and £1,700.00 within a reasonable period of time were unaffordable.

I accept that Mr M says that his actual circumstances at the time were worse than what this information shows. He's said that he was using his overdraft and had other credit. However, I don't think that a customer using their overdraft means that they are in a dire position as Mr M says. Furthermore, Capital One wasn't responsible for monitoring Mr M's overdraft use and if Mr M is unhappy at the way that he was allowed to use his overdraft that is a matter for him to take up with his bank.

I'd also add that while Mr M has referred to having other credit this wasn't excessive and Capital One's credit checks show that it was being well maintained. There is also no prohibition on lending to a customer simply because they have existing credit. This is particularly where that existing credit isn't excessive and appears to be being well managed.

Indeed, if I take Mr M's argument to its logical conclusion here, it would mean that any application made by a customer who has existing credit commitments, regardless of how much they are or how they are being maintained, should automatically be declined. Quite frankly, such an approach would not only be absurd and irrational, it is clearly unlikely to result in a firm acting fairly and reasonably.

For the sake of completeness, I'd also make it clear that Capital One did not need to request bank statements from Mr M either – particularly as the last two credit limit increases were for only £250 extra on each occasion. Capital One simply needed to find out more about Mr M's non-discretionary living costs and add this to what it knew about his existing credit. It could have asked Mr M for evidence of bills or other proof of payment to verify this, if it felt it necessary to do so.

As I can't see that Mr M's actual living expenses and non-discretionary expenditure were much higher than what Capital One most likely assumed, I don't think that Capital One could reasonably be expected to know that limit increases were unaffordable.

So I'm not persuaded that requesting further information about Mr M's actual living costs, would have shown Capital One that it shouldn't have offered to increase Mr M's credit limit in June 2021, June 2022 or June 2023. Consequently, I'm not persuaded that Capital One doing more here would, in any event, have made a difference to its lending decisions and I

don't think that it was unfair for it to offer these credit limit increases, or that it doing so created unfairness either.

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

So overall and having considered everything, while I can understand Mr M's sentiments and appreciate why he is unhappy, I'm nonetheless not upholding this complaint. I appreciate this will be very disappointing for Mr M. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

### **My final decision**

For the reasons I've explained, I'm not upholding Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 27 May 2025.

Jeshen Narayanan  
**Ombudsman**