

The complaint

Mr M complains that Capital One (Europe) plc (“Capital One”) irresponsibly provided him with a credit card.

What happened

Capital One provided Mr M with a credit card and a limit of £1,000 in April 2023. I understand the credit limit wasn’t increased.

Mr M complained to Capital One. In summary, he said Capital One didn’t carry out sufficient affordability checks. And that its errors led to an unfair relationship under S140A of the Consumer Credit Act 1974.

In its final response, Capital One didn’t uphold Mr M’s complaint. In summary, it said the assessment it carried out showed the lending was appropriate and affordable for Mr M. Mr M didn’t agree and so he referred his complaint to our service.

Our Investigator upheld the complaint. In summary, they said the checks Capital One carried out weren’t proportionate because Mr M had recently entered into a payment plan on a hire purchase agreement. The Investigator said proportionate checks would have revealed Mr M wasn’t receiving an income for the few months leading up to this lending and his statements showed a number of returned direct debits. So, the Investigator concluded Capital One shouldn’t have lent.

Mr M agreed but Capital One didn’t. In summary, Capital One said Mr M declared he had an income and this was verified through a Credit Reference Agency. It also said Mr M did receive a salary in March, April and May 2023. Capital One said that despite the payment plan on Mr M’s hire purchase agreement, it considered Mr M’s income was high, he would have had almost £2,500 in disposable income each month, Mr M’s debt to income ratio was low and his existing Capital One card was being managed well.

The Investigator didn’t change their opinion and in summary, said this is because there were clear indications Mr M was experiencing financial difficulty. The Investigator recognised that Mr M’s income had returned at the end of March 2023 but he was in arrears on his hire purchase agreement and he had several returned direct debits including for council tax on his bank statements. Capital One didn’t agree and requested an Ombudsman make a final decision on the complaint.

Because the parties couldn’t agree, the complaint was passed to me to decide on the matter.

I contacted the parties, informally at first, to set out my thoughts on the complaint. I said:

“Capital One provided Mr M with a credit card and a limit of £1,000 in April 2023. I understand the credit limit wasn’t increased. Capital One needed to be satisfied that Mr M could repay sustainably within a reasonable time.

Our Investigator upheld the complaint primarily on the basis that proportionate checks would have revealed Mr M didn't have an income – and therefore this lending wasn't affordable.

I agree with our Investigator to the extent that Capital One's checks weren't proportionate – and I'll explain why.

On the one hand, I accept Capital One's checks suggested Mr M had a high salary and a relatively low existing credit balance, considering the amount being lent. And although Mr M had some defaults, these appeared to have happened some years before and so could be considered historical.

But whilst Capital One asked Mr M what his salary was and verified a slightly lower figure using Credit Reference Agency ("CRA") data, as well as using Office for National Statistics ("ONS") data to estimate his essential living costs, its credit checks revealed cause for concern. Mainly that, as our Investigator has highlighted, Mr M was in arrears on a utility account - a priority bill, and in a payment plan for a hire purchase agreement which of course is secured against an asset. Not maintaining payments towards commitments like these are usually a last resort and often a sign that someone is in financial distress.

So in the circumstances of this case, I think Capital One's checks ought to have gone further than they did and it ought to have obtained more information about Mr M's income and his committed living expenses to understand why he was having problems making priority payments. I therefore don't think checks were proportionate.

Had Capital One carried out proportionate checks, in contrast with what our Investigator has said, I think those checks would have revealed the lending was likely affordable – and I'll explain why.

Based on the evidence I've seen, further checks would have likely revealed Mr M had an income in December 2022 but didn't have an income for the months of January and February 2023. However, he started receiving an income again in March 2023, before this lending was agreed. I think this would have meant Capital One would have understood the, what appears to be, temporary pause in income would explain why Mr M had recent difficulties paying some of his commitments such as his utilities and hire purchase agreement. And this is supported by and explains why Mr M declared he had an income at the time of application – because, although he'd had a recent gap in earnings, he did in fact have an income at the time of lending and so this was a true reflection of his circumstances.

It does look as though Mr M may have been a contractor or self-employed. But this doesn't automatically preclude someone from being eligible for credit – and in this instance, I don't think the mere fact Mr M may have been self-employed or carrying out contract work, would mean he'd be any less likely to find this lending affordable than someone who was employed. In fact, his monthly income appears to exceed the figure Capital One relied upon to calculate whether this lending was affordable.

Although I wouldn't necessarily have expected Capital One to have checked bank statements, I've considered these to understand what Mr M's likely committed living expenses would have looked like – and therefore, what Capital One would have likely seen had it obtained more information about this. Capital One asked Mr M what his housing costs were and I can see he disclosed they were £950, which appears to be accurate in the few months leading up to this lending. Taking into account other committed living expenses showing on Mr M's statements alongside his credit commitments, I'm satisfied, based on the salary he was earning from March 2023, that he had more than sufficient disposable income to sustainably repay this new lending and allow funds for unforeseen circumstances.

I've also considered the fact that Capital One has raised that Mr M had another, existing credit card held with it. As part of its checks, it's reasonable that Capital One would take into account how Mr M was managing any existing lending with it, before agreeing to provide further credit. I haven't seen statements for Mr M's other account however judging by the credit checks Capital One carried out at the time of this lending, all credit cards were showing as having payments that were maintained and made on time. So in the absence of any other information suggesting otherwise, I'm satisfied there was nothing about Mr M's existing relationship with Capital One which suggests it ought not to have lent further.

Therefore, I'm satisfied that proportionate checks would have likely revealed this lending was affordable.

So for the reasons I've explained, I'm currently not minded to say that Capital One acted unreasonably here in its decision to provide Mr M with the credit card. So it follows that I'm not upholding this complaint. I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, for the reasons I've already given, I don't think Capital One lent irresponsibly to Mr M or otherwise treated him unfairly in relation to this matter. I haven't seen anything to suggest that Section 140A would, given the facts of this complaint, lead to a different outcome here.

I've also considered whether Capital One has acted unfairly in any other way. I can see Mr M exceeded the limit on his card several times although he didn't appear to incur any charges or fees for this. He also failed to make the minimum payment in December 2023, however rectified this the following month. From January 2024, judging by the account notes and credit card statements, Mr M had problems paying. But I can see payment plans were agreed and interest, for the most part, paused. The account was then charged off in October 2024. So, although it's clear Mr M did have problems managing his card, given it appears to have supported Mr M by agreeing payment plans and pausing interest, I don't think Capital One ought to have done more in order to meet its obligations to show Mr M forbearance. So I'm not currently minded to uphold this part of Mr M's complaint either."

Capital One said it didn't have further comment but Mr M didn't agree. Mr M said Capital One failed to carry out the appropriate checks to check his affordability and yet provided him with two credit cards. He maintained the lending was irresponsible.

Given Mr M has disagreed with my initial findings, I am issuing this formal 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.

Having done so, in the absence of any new information from Mr M, I see no reason to depart from what I set out in my initial findings. I'm therefore not upholding this complaint for the reasons explained above.

Whilst Mr M has now mentioned two credit cards, this decision is only about the credit card provided in April 2023.

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 Mr M to accept or reject my decision before 23 December 2025.

Sophie Kyprianou
Ombudsman