

The complaint

Mr M complains that Capital One (Europe) plc provided him with an unaffordable credit card and credit limit increase.

What happened

Capital One provided Mr M with a credit card, details of which I've set out in the table below:

Date	Event	Credit limit
May 2015	Original limit	£1,000
September 2015	1 st credit limit increase	£2,000

Mr M complained to Capital One in June 2025. He said it had provided this credit card and credit limit increase irresponsibly, as had it completed proportionate checks before providing these credit limits it would have identified they were unaffordable for him.

Capital One issued a final response in July 2025 in which it didn't uphold Mr M's complaint. It said its checks before providing each of the credit limits were proportionate; and that it had made fair lending decisions. It went on to say that it considered Mr M's complaint had been made outside of the regulatory timescales for complaining; and that it therefore didn't consent to our service considering the lending events being complained about. Unhappy with Capital One's response Mr M referred his complaint to our service for review.

One of our investigators looked at the details of this complaint and considered it was reasonable to interpret it to be about the fairness of her relationship with Capital One. As such they went on to review the details of the complaint on this basis. Having done so, they didn't consider Capital One had acted unfairly in its lending decisions, or in any other way, so they didn't uphold the complaint.

Capital One didn't respond to our investigator's view; Mr M responded and disagreed. In summary, he set out why he considers his complaint was made within the regulatory timescales for complaining, and that Capital One didn't make fair lending decisions. Mr M asked for an ombudsman's review, so the complaint has been passed to me to decide.

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.

The information in this case is well known to Mr M and Capital One, so I don't intend to repeat it in detail here. I acknowledge the sensitive personal and financial information Mr M has provided in support of his complaint. I'd like to assure both parties I've carefully reviewed everything available to me even though I may not have commented on it, because I've focused my decision on what I consider to be the key points of this complaint. I don't mean to be discourteous to Mr M or Capital One by taking this approach, but this simply reflects the informal nature of our service.

Initially I think it's helpful for me to set out that there are time limits for bringing a complaint to our service, and Capital One has said this complaint was referred to us late. Our investigator set out within their view why they didn't think we could look at a complaint about these lending events that Capital One had provided more than six years before the complaint was made.

But they also went on to explain why it was reasonable to interpret Mr M's complaint as being about an unfair relationship as described in section 140A (s.140) of the Consumer Credit Act 1974 (CCA); and why they therefore considered Mr M's complaint about an allegedly unfair lending relationship had been made to us in time.

I agree with our investigator that I have the power to look at Mr M's complaint on this basis.

I acknowledge the detail Mr M has provided setting out his awareness of his cause for complaint when engaging with debt advisors in 2025; and has made us aware of personal circumstances which he's said should be considered exceptional which prevented him from complaining within the regulatory timescales.

Having considered the available evidence, while I don't doubt Mr M's testimony around his awareness of his cause for complaint, I'm not persuaded that he complained within three years of when he *ought reasonably* to have had an awareness of his cause for complaint.

I say this because Mr M's testimony is that these credit limits were provided when there would have been clear signs for Capital One that they were unaffordable for him. As such I consider Mr M ought reasonably to have been aware of a problem – that this account was unaffordable for him – and that he was suffering a loss through the application of interest and charges. I also consider Mr M ought reasonably to have considered, at least in part, that it may have been something Capital One did (or didn't reasonably do) that had caused this problem, given it had provided him with credit which he says was unaffordable for him.

I've also seen that by late 2019 Mr M experienced problems maintaining payments to the account, and by early to mid 2020 multiple payment arrangements were put in place by Capital One to support Mr M's financial difficulties. As Mr M couldn't maintain payments the account was restricted in 2021, meaning Mr M was no longer able to use it for purchases. During 2020 and 2021 Capital One was in extended communication with Mr M, setting out payment arrangements and the status of the account by way of arrears and default letters.

So, by the latest I consider Mr M ought reasonably to have had an awareness of his cause for complaint by 2021 when he was unable to maintain payments and the account was restricted. This means Mr M had until 2024 to make his complaint; and therefore, it was made outside of the three year part of the rule.

I can still look into complaints made outside the time limits if I'm satisfied the failure to comply with them was due to exceptional circumstances. The *Dispute Resolution: Complaints* (DISP) rules – set out within the Financial Conduct Authority (FCA) Handbook – don't define exceptional circumstances, but DISP 2.8.4G provides an example as '*...where the complainant has been or is incapacitated.*' I consider this provides important context.

So, for exceptional circumstances to apply I must be persuaded that Mr M's circumstances prevented him from engaging with Capital One to raise his complaint within the regulatory timescales. Mr M has made us aware of some sensitive personal circumstances which he's said our service should consider exceptional, making reference to the above provision.

I'd first like to say I am sorry to hear of these circumstances Mr M has made us aware of. I don't doubt that these circumstances are exceptional to him, and I acknowledge that thinking about and making this complaint wouldn't have been a priority.

Having very carefully considered the information Mr M has provided, I'm not persuaded that I can consider his circumstances to be exceptional, at least in terms of the rules I must apply. I say this because while I acknowledge the circumstances Mr M has made us aware of, I'm not persuaded that he was wholly prevented from engaging with Capital One to make his complaint within the regulatory timescales. Mr M's testimony confirms he was engaging with Capital One throughout the years, and I've seen Capital One's contact notes which show engagement with Mr M in each year between 2018 and 2024. So, it follows that Mr M wasn't prevented from engaging with Capital One throughout this time; and I'm therefore not persuaded that he was prevented from making his complaint within the regulatory timescales because of exceptional circumstances.

However, I'm satisfied Mr M's complaint can reasonably be considered as being about an unfair relationship; as his complaint is that Capital One didn't complete checks in line with its regulatory obligations, which led to lending being unfairly provided.

The provision of this credit card and the credit limit increase may have made the relationship between Mr M and Capital One unfair, as he may have paid more in interest and charges than he could afford. I acknowledge Capital One doesn't agree we can look at any events more than six years before Mr M's complaint was made, but as I don't intend to uphold this complaint I won't be commenting on this further.

In deciding what's fair and reasonable I'm required to take into account, amongst other matters, relevant law. As I consider Mr M's complaint is about the fairness of his relationship with Capital One, relevant law in this case includes s.140A-C of the CCA.

S.140A says a court may make an order under s.140B if it determines that the relationship between the creditor (in this case 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. Capital One has confirmed the relationship is ongoing as it is still collecting the debt.

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 the details of Mr M's complaint, I need to consider whether Capital One's decisions to lend to him, or any other actions it may have taken, created an unfairness in the relationship between him and Capital One; and if it did, whether Capital One took reasonable steps to remove that unfairness.

We've set out our approach to complaints about irresponsible and unaffordable lending as well as the key rules, regulations and what we consider to be good industry practice on our website. I've followed this approach when considering Mr M's complaint.

Having done so, I don't consider Capital One made unfair lending decisions when providing Mr M with these credit limits. I say this because:

- For the original credit limit Capital One has provided us with the information it obtained and took into account when making its lending decision.
- This included validating Mr M's income and regular non-discretionary expenditure, as well as completing a credit check to understand both his existing commitment to, and recent management of, credit accounts.
- I consider these checks were proportionate to the terms of lending Capital One was initially providing; and given there was no information which I consider ought reasonably to have caused it concern, I'm not persuaded that more detailed checks would have been proportionate in the individual circumstances.
- Capital One increased Mr M's credit limit around four months later; and while it has provided us with income and expenditure details, it hasn't been able to provide a copy of the credit check it completed. I don't consider this unreasonable given the time that's passed since this check, and the data retention obligations on Capital One. However, while this check was completed within a reasonable time to the original checks, I can't safely understand what information it would have obtained.
- Given Capital One no longer holds the information, our investigator asked Mr M if he could provide us with any financial information in the lead up to this limit increase. We usually find that bank statements and/or a credit file from around the time help us to recreate what better checks would more likely than not have identified at the time.
- Mr M has told us he's been unable to obtain bank statements dating back to 2015; and given what I've set out above about data retention obligations, I don't find that unsurprising. He has provided us with a credit file however it is dated from 2025, and therefore doesn't allow me to obtain a reasonable understanding of his financial position in the lead up to this limit increase in 2015.
- Taking into account the evidence available to me I can't reasonably understand what better checks at the time would more likely than not have shown Capital One. So, it therefore follows I can't reasonably conclude that it made an unfair lending decision when providing Mr M with this credit limit increase.

For the reasons I've found above, I'm not persuaded that Capital One acted unfairly when providing Mr M with these credit limits.

I've gone on to consider if Capital One acted unfairly in any other way during this relationship. I note that Mr M experienced financial difficulties in late 2019 through to early 2021. I've seen that Capital One initially provided forbearance with payment arrangements, and latterly breathing space. However, ultimately Mr M was unable to maintain payments to the account, so it was restricted.

Reviewing the history of the account and the actions Capital One has taken, I've not seen anything which leads me to conclude Capital One acted unfairly in any other way in relation to this agreement.

I acknowledge my decision will be disappointing to Mr M. As I've set out above, I am sorry to hear of the personal circumstances he has made us aware of; my decision here is in no way intended to downplay these circumstances, or the financial position Mr M is in. But for the reasons set out above I don't uphold this complaint, and it therefore follows I'm not directing Capital One to take any further action in resolution of the complaint.

My final decision

My final decision is that I don't uphold Mr M's complaint about Capital One (Europe) plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 3 March 2026.

Richard Turner
Ombudsman