

Complaint

Miss M has complained that Capital One Europe plc (“Capital One”) irresponsibly provided credit cards as well as subsequent credit limit increases to her. She says that the credit cards and limit increases were unaffordable and this caused difficulty going forward.

Background

Capital One provided Miss M with a first credit card (“Card A”), with a credit limit of £1,000.00 in January 2017. It subsequently offered Miss M a credit limit increase to £2,000.00 in December 2018.

Capital One provided Miss M with a second credit card (“Card B”) which had a credit limit of £500 in August 2019. The credit limit on this card was never increased.

In August 2024, Miss M complained saying that both credit cards as well as the limit increases Capital One provided were unaffordable and caused her continued financial difficulty. Capital One didn’t uphold Miss M’s complaint about Card A. However, it agreed that it shouldn’t have provided Card B and agreed to refund all the interest, fees and charges Miss M paid on this account. Miss M remained dissatisfied after Capital One’s response and referred her complaint to our service.

One of our investigators reviewed what Miss M and Capital One had told us. He wasn’t persuaded that Capital One failed to act fairly and reasonably either when initially providing Miss M with Card A or the credit limit increase on it. Furthermore, as Capital One had agreed to add interest to the refund on Card B, he was satisfied that what it had already agreed to do on this card was fair and reasonable in the circumstances. So the investigator didn’t recommend that Miss M’s complaint be upheld.

Miss M disagreed with the investigator’s conclusions and asked for an ombudsman to look at her 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 part of Miss M’s complaint was made too late because she complained more than six years after the decision to provide Card A; as well as more than three years after she ought reasonably to have been aware of her cause to make this complaint.

Our investigator explained why it was reasonable to interpret the complaint as being one alleging that the relationship between her and Capital One was unfair to her 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 Miss M's complaint. Given the reasons for this, I'm satisfied that whether Miss M's complaint about some of 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 Miss M's complaint should be considered more broadly than just the initial lending decision. I consider this to be the case as Miss M has not only complained about the respective decisions to lend but has also alleged that the repayments she had to make as a result of the decisions to lend to her unfairly caused her continued financial difficulty.

I'm therefore satisfied that Miss M's complaint can therefore reasonably be interpreted as a complaint about the fairness of her relationships with Capital One. Capital One may still disagree that we can look at all of Miss M's complaint, but given the outcome I have reached, I do not consider it necessary to make any further comment or reach any findings on these matters. This extends to Miss M's arguments that her complaint was made in time.

In deciding what is fair and reasonable in all the circumstances of Miss M's case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Miss M's complaint can be reasonably interpreted as being about the fairness of her relationships with 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 (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 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 Miss M's complaint, I therefore need to think about whether Capital One's decisions to provide credit cards to Miss M and increase her credit limits, or its later actions resulted in the lending relationship between Miss M and Capital One being unfair to Miss M, 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 reasonable enquiries into Miss M's ability to repay in circumstances where doing so would have revealed the credit cards or limit increases to be irresponsible or unaffordable. And if this was the case, Capital One didn't then remove the unfairness this created somehow. I've considered Miss M's complaint in this context.

Our typical approach to unaffordable and irresponsible lending complaints

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 Miss M's complaint.

Bearing in mind Miss M's response to our investigator, I think that it would be helpful for me to set out that we consider what a firm did to check whether any repayments to credit were affordable (asking it to evidence what it did) and then determine whether this was enough for the lender to have made a reasonable decision on whether to lend.

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 that information – 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, the amount lent was high, or the information the lender had – such as a significantly impaired credit history – suggested the lender needed to know more about a prospective borrower's ability to repay.

That said, I think that it is important for me to explain that our website does not provide a set list of mandated checks that a lender is expected to carry out on every occasion. Indeed, the requirements have not and still do not mandate a list of checks that a lender should use. Any rules, guidance and good industry practice in place over the years has simply set out the types of things that a lender could do when considering whether to lend to a prospective borrower.

It is for a lender to decide which checks it wishes to carry out, although we can form a view on whether we think what was done was fair to the extent it allowed the lender to reasonably understand whether the borrower could make their payments. Furthermore, if we don't think that the lender did enough to establish whether the repayments that a prospective borrower might have to make were affordable, this doesn't on its own mean that a complaint should be upheld.

We would usually only go on to uphold a complaint in circumstances where we were able to recreate what reasonable checks are likely to have shown – typically using information from the consumer – and this clearly shows that the repayments in question were unaffordable.

Was the decision to provide Card A and the subsequent credit limit increase unfair?

As previously explained, Card A was opened in January 2017 with a credit limit of £1,000.00 and the credit limit was increased to £2,000.00 in December 2018. Both of Miss M's credit cards, under the regulator's rules and guidance, are also known as revolving credit facilities. As these were revolving credit facilities, this meant that for Card A, Capital One was initially required to understand whether Miss M could repay £1,000.00 and then £2,000.00 within a reasonable period of time. Not whether she could pay the entire amount in one go.

I understand that at the time of her application Miss M declared that she had an annual income of £25,000.00. Capital One also carried out credit checks before initially agreeing to provide Card A and then increasing the credit limit. Capital One's credit checks appear to show that Miss M didn't have any significant adverse information such as defaulted accounts or county court judgments ("CCJ") recorded against her. I appreciate that Miss M may disagree with this but the amount that she already owed wasn't excessive either.

What is important to note is that a credit limit of £1,000.00 didn't require especially high monthly payments in order to clear the full amount that could be owed within a reasonable period of time. And the information I've seen about Miss M's circumstances does suggest that Capital One was reasonably entitled to conclude that Miss M had the funds to make the payments required to repay £1,000.00 within a reasonable period of time.

As this is the case, I'm satisfied that it wasn't unreasonable for Capital One to have agreed to have provided Miss A with Card A in January 2017. It follows that I'm not persuaded that there was any unfairness created at this stage.

The limit increase on this credit card saw Miss M's credit limit being increased to £2,000.00. However, I'm mindful that in the period between February 2018 and the period when Miss M's limit increase was offered in November 2018, the payments Miss M made to Card A averaged more than the monthly payments that would be required to repay £2,000.00 within a reasonable period of time. So there's an argument that Miss M's repayment record suggested that the limit increase was affordable.

In any event, I'm not persuaded that Capital One carrying out further checks would have led to it deciding against offering to increase Miss M's credit limit. I say this because at the absolute most, it could be argued that Capital One ought to have found out more about Miss M's actual living costs. However, having considered the information Miss M has provided, I can't see that her monthly committed living costs meant that she wouldn't be able to make the repayments that she could have had to make had she used the extra credit.

In these circumstances, I'm not persuaded that Capital One asking Miss M about her living costs, rather than relying on estimates, would have seen it decide against offering to increase her limit. And I'm therefore not persuaded it was unfair for Capital One to offer to increase Miss M's credit limit in December 2018, or that doing so caused unfairness.

Miss M's complaint about Card B

As explained in the background section of this decision, Capital One subsequently provided Miss M with Card B, which had a credit limit of £500, in August 2019.

Capital One has accepted that it shouldn't have provided Miss M with this credit card and agreed to refund all of the interest, fees and charges she paid on this card as a result. Since the complaint has been with our service, Capital One has also agreed to pay interest on the refund from the point Miss M would have been owed overpayments in 2021.

Bearing this in mind and the fact that Capital One has also agreed to remove any adverse information that it may have recorded about this credit card, I'm satisfied that Capital One has now put things right in the way that I would have directed it to had I upheld the complaint.

I've seen that Miss M is unhappy at the way that Capital One has handled this complaint. I know she disputed the interest on the refund at the outset and so she feels that this should have been paid much sooner. In the first instance, as the interest Miss M was due was calculated to the date of settlement, I'm not persuaded that she has lost out as a result of Capital One's failing to pay this interest at the outset.

In any event and most importantly complaint handling isn't an activity which falls within my jurisdiction. Ultimately, it is the regulator which monitors firms' actions in relation to the complaint handling rules and which deals with any non-compliance in this area. I note that Miss M has referred to the fact that the guidance on our website states that we can make an award for distress and inconvenience. But this has to relate to an activity that falls within our jurisdiction – such as the decision to provide the Card B in the first place.

In this instance, it's clear what Miss M is unhappy about is the way that Capital One handled her complaint and the delay it pay her the interest on her refund. This isn't the same as the decision to provide Card B in the first place. So while I appreciate that Miss M is unhappy at

the way Capital One handled her complaint and feels that this caused her distress, I'm afraid that this isn't a matter I can consider or award her compensation for.

For the sake of completeness, I would also add that given the amount of the credit limit on Card B, the fact that awards for distress and inconvenience are typically modest and Miss M has now been paid interest up until the date of settlement, I wouldn't have made a distress and inconvenience as a result of Capital One's decision to lend, had I reached the decision to uphold this complaint.

Overall, and based on the available evidence I don't find that Miss M's relationship with Capital One in relation to Card A was unfair. I've not been persuaded that Capital One created unfairness in its relationship with Miss M by irresponsibly lending to her whether when initially agreeing to provide her with Card A, or in respect of the limit increase.

Furthermore, any unfairness that may have been created by Capital One providing Card B to Miss M has since been removed as a result Capital One refunding the interest, fees and charges, with interest, that it charged on this card. Based on what I've seen, I don't find Capital One treated Miss M unfairly in any other way either.

As this is the case and having carefully considered everything, while I can understand Miss M's sentiments and appreciate that she feels very strongly about matters, I'm nonetheless not upholding this complaint. I appreciate this will be very disappointing for Miss M. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 15 January 2026.

Jeshen Narayanan
Ombudsman