

## The complaint

Mr S complains that Capital One (Europe) plc (Capital One) lent to him irresponsibly.

## What happened

Mr S had a credit card with Capital One, the initial lending decision for a limit of £200 was made in July 2018. The credit limit wasn't increased after this point.

In March 2025, Mr S complained to Capital One saying it had lent to him irresponsibly and failed to appropriately check whether the lending was affordable. He said this led to unaffordable borrowing and financial hardship.

Capital One looked into Mr S's complaint and said Mr S was too late to complain about the initial lending decision and so it wouldn't be investigating the complaint further.

Mr S didn't accept what Capital One said and referred his complaint to our service. One of our investigators looked into it. When our investigator requested information from Capital One, it provided what it had but said it didn't consent to us looking into the whole complaint because it had been brought too late under the complaint handling rules set by the Financial Conduct Authority (FCA).

Our investigator disagreed with Capital One that it had been brought too late under the rules, so considered the merits of the complaint. But he didn't think Capital One had acted unfairly in providing the credit.

Mr S rejected the investigators view and Capital One didn't respond. As there was no agreement, the complaint has been passed to me for 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.

Having done this, I issued a provisional decision saying:

*“There are time limits for referring a complaint to the Financial Ombudsman Service, and Capital One thinks this complaint was referred to us too late. Our investigator explained why he didn't, as a starting point, think we could look at a complaint about the lending decisions that happened more than six years before the complaint was made. But he also explained why it was reasonable to interpret the complaint as being about an unfair relationship as described in Section 140A of the Consumer Credit Act 1974 (s.140), and why this complaint about an allegedly unfair lending relationship had been referred to us in time.*

*For the avoidance of doubt, I agree with our investigator that I have the power to look at the complaint on this basis. I think this complaint can reasonably be considered as being about an unfair relationship as Mr S says the credit card provided was unaffordable for him. This may have made the relationship unfair as he's said he had to pay more in interest than he*

*could afford and was unable to reduce the debt. I acknowledge Capital One still doesn't agree we can look at parts of this complaint, but given the outcome I have reached, I don't intend to comment on this further.*

*In deciding what is fair and reasonable I am required to take relevant law into account. Because Mr S's complaint can be reasonably interpreted as being about the fairness of his relationship with Capital One, relevant law in this case includes s.140A, s.140B and s.140C of the Consumer Credit Act 1974.*

*S.140A says that a court may make an order under s.140B if it determines that the relationship between the creditor (Capital One) and the debtor (Mr S), 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, including:*

- 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.*

*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, requiring a refund, or to do or not do any particular thing.*

*Given what Mr S has complained about, I need to consider whether Capital One's decision to lend to him, or its later action or inaction, created unfairness in the relationship between him and Capital One such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness. Mr S' relationship with Capital One is therefore likely to be unfair if it didn't carry out proportionate affordability checks and doing so would have revealed its lending to be irresponsible or unaffordable, and if it didn't then remove the unfairness this created somehow.*

*I think there are key questions I need to consider in order to decide what is fair and reasonable in the circumstances of this complaint:*

- Did Capital One carry out reasonable and proportionate checks to satisfy itself that Mr S was in a position to sustainably repay the credit?*
- If not, what would reasonable and proportionate checks have shown at the time?*
- Did Capital One make a fair lending decision?*
- Did Capital One act unfairly or unreasonably towards Mr S in some other way?*

*Capital One had to carry out reasonable and proportionate checks to satisfy itself that Mr S would be able to repay the credit sustainably. It's not about Capital One assessing the likelihood of it being repaid, but it had to consider the impact of the repayments on Mr S. There is no set list of checks that it had to do, but it could take into account several different things such as the amount of the credit, the amount of the monthly repayments and the overall circumstances of the borrower. Typically, the higher or more onerous the borrowing the more detailed we would expect the checks to be.*

*Capital One has said that it relied on the information Mr S provided in relation to his income and checked his credit file to understand his existing commitments and credit history. It's*

been able to provide a copy of the application data, and the results of the credit check it completed.

Having reviewed these I can see the search completed on Mr S' credit history showed that he had five active accounts, including a communications account, two bank accounts, and two credit cards both with limits of £500. There were no late or missed payments showing for any of these accounts. The data did show some historic payday lending and historic missed or late payments to another account, but all of this took place more than a year before Capital One's decision to provide this lending.

It appears the historic data didn't affect Capital One's decision to lend, and I don't think this is unreasonable. I say this because records from this long before a potential lending decision, don't normally provide an accurate reflection of an individual's current circumstances. So, it's reasonable to rely on more recent data and data about active accounts.

I appreciate Mr S has provided further evidence that he received a CCJ in 2016 and at the time of the lending he had pay day loans, had recently missed payments on other credit, and was in a debt management plan set up by Step Change. Unfortunately, this isn't reflected in the information that was provided to Capital One when it completed its checks at the time of the lending. Whilst I don't doubt the evidence Mr S has provided, Capital One was entitled to rely on the information it received from the credit reference agencies. So, it wouldn't be reasonable or fair for me to say, it should have done something differently based on information it reasonably didn't have at the time.

Mr S has said he had another credit card with Capital One at the time of the application and that he wasn't managing this well, having missed some payments to the account. He says that this should have indicated to Capital One that he couldn't afford the lending, but I don't necessarily agree.

It's true that Capital One should take into account how a customer is managing existing debt with it before lending further. But an occasional missed or late payment would likely not be enough to prevent it from lending if it otherwise seemed affordable. In addition to this the credit file information Capital One had access to doesn't show that Mr S was struggling to maintain either of his other credit cards or was over indebted.

Capital One has said Mr S told it his annual income was around £24,000 but it's said it didn't verify this. Looking at the regulations in place at the time of the lending, there was no obligation on Capital One to verify Mr S' income and it was entitled to rely on the information he supplied. Given this, the lack of adverse information reported by the credit reference agencies (including in relation to any other lending with Capital One) and the relatively low amount of credit being offered, I think the checks Capital One completed were proportionate.

Based on the information available, there was nothing to suggest Mr S was likely to be unable to sustainably repay what he was being lent. So, I'm not satisfied that further checks would have been required or that the decision to approve the lending was unreasonable.

I can see that Mr S did miss some payments to the account that resulted in Capital One writing to him for payment and offering support. However, it appears that Mr S was always able to rectify things and sometimes make overpayments to the account. This is broadly in line with what I'd expect to see where an account falls behind. So, I haven't seen anything here to suggest Capital One treated Mr S unfairly throughout the life of the agreement.

I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. But overall, it's not clear enough to me that Capital One created unfairness in its relationship with Mr S by lending to him irresponsibly, or in the way it

*handled the account under the credit agreement. And I haven't seen anything to suggest that s.140A or anything else would, given the facts of this complaint, lead to a different outcome here.*

*I'm very sorry to disappoint Mr S, but for the reasons set out, I don't find that Mr S' relationship with Capital One was unfair, and I can't conclude Capital One treated him unfairly in any other way based on what I've seen."*

Capital One didn't respond, but Mr S responded to say although no adverse information had been recorded by Capital One in relation to his other account, he had been over the credit limit in the months before a further £200 was agreed. So, he thinks this should have indicated the new lending was unaffordable.

I've carefully considered the statements and Mr S' points but this hasn't changed my decision. For a low limit of £200 I wouldn't necessarily expect Capital One to conduct a detailed review of another account with a relatively low limit of £500.

I can see that Mr S was over limit in some months, but this wasn't in every month, and he was also making payments on time and some of these were overpayments. So, I don't think there's enough here for me to say that Capital One should reasonably have known the lending of £200 would be unaffordable.

Having considered Mr S' comments, I see no reason to depart from my provisional decision.

### **My final decision**

My final decision is that I don't uphold Mr S' complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 19 March 2026.

Charlotte Roberts  
**Ombudsman**