

## complaint

Mr T complains that Capital One (Europe) plc irresponsibly lent to him by increasing the credit limit on his credit card with them when he was already over his limit. He doesn't think they should've done this. He also complains about charges applied to his account.

He would like late payment and default markers removed from his credit file and a refund of charges that were applied to his account.

## background

Mr T applied for a credit card with Capital One in 2000. His credit limit was set at £200. Over the years, the limit increased. The last two increases were in December 2013 (when it went from £1,800 to £2,550) and September 2015 (when it increased to £3,050).

It appears that Mr T did use this credit and sometimes went over the limit. But he always seemed to make payments to bring his account back on track.

But, in May 2016, Mr T began to miss payments.

Following representations on his behalf from a debt charity, a long term arrangement was put in place in July 2016.

Mr T missed payments under this new arrangement. So, Capital One applied late payment markers and a default to his credit file.

Mr T says that he had issues with gambling at the time. Many charges were applied to his account regarding this as gambling payments were treated as cash transactions.

Mr T complained to Capital One.

Capital One wrote to Mr T saying that:

- They had checked Mr T's income before lending to him. Following these affordability checks, they hadn't given him the maximum credit that they could've in 2000.
- They did increase the credit limits but they pointed out that:

***"The offers of extensions to your credit limits were based on data we received monthly from the credit reference agencies, our affordability checks being satisfied and how you conducted your account. Your balance wasn't over the agreed credit limit when these offers were made."***

- They noted that his account did sometimes go over the limit but Mr T managed to make payments to bring his account back on track.
- The credit increases were an option. Mr T could've opted out.
- It was up to Mr T how he used his account. Any fees charged by Capital One were in line with the terms and conditions of the account.
- They had entered into a long term arrangement with him which he had defaulted on.

Capital One didn't think that they had lent irresponsibly. They pointed out that no interest or fees had been applied to the account since July 2018.

Mr T wasn't happy with this decision so he came to us.

Our adjudicator found that she was limited to looking at the last two credit increases because they were the only ones within the last six years. She thought that Capital One had dealt with the complaint fairly.

Mr T didn't agree so the complaint has now come to me.

### **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I also think that I can only look at the last two credit increases as the others are outside of the six year time limit.

I'm afraid Mr T won't be happy with my decision. I think that Capital One has acted fairly and reasonably. I will explain why.

I can see that Capital One did carry out checks on affordability before they lent to Mr T and also when they increased the credit limit. I think that Capital One were justified in saying that the account was affordable.

Mr T's statements show that he made regular payments to the account and, on the times that he was late, he made up the payments soon after. This shows to me that he was managing his account, even though it might have been difficult for him.

At the time of the credit increases, Mr T's account showed no defaults. It was up to date or settled. So, again, I don't think Capital One would've have been acting irresponsibly in lending to him.

When Capital One did increase the credit limit, they wrote to Mr T and gave him the chance to opt out. Mr T could've told them not to increase the credit limit but he didn't. I appreciate that he might not have done this because of his gambling problem, but I can't see how Capital One could've known about this and acted on it without having been told about it.

I note that Mr T says that Capital One should've known about the gambling problem because he made many transactions involving gambling which would've shown up on the account. I appreciate that this was a difficult time for Mr T but I don't think that it was for Capital One to tell Mr T how to spend his money. I think that they were limited to checking that the account was affordable before lending to Mr T. I think that they did this.

Fees were applied to Mr T's account because gambling transactions are treated as cash withdrawals. I'm afraid that, because this was in the terms and conditions of Mr T's account, Capital One were able to charge them. I am unable to ask Capital One to refund them.

Because Capital One have truthfully reflected what has happened regarding the late payments and default, I am unable to ask them to change Mr T's credit file.

I am sorry that this is not the outcome that Mr T wanted. It is clear that he has been through a difficult time. But, I can't see that Capital One lent irresponsibly or acted unfairly or unreasonably.

**my final decision**

For the reasons given above, I won't ask Capital One (Europe) plc to do anymore.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 26 March 2019.

Rita Parmar  
**ombudsman**