Financial Ombudsman Service

complaint

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

background

Mr A took out a credit card with Capital One in 2006, with a limit of £500. It then increased his credit limit twice, in October 2016 to £1,500, and October 2017 to £2,500. He feels that it was irresponsible to lend to him in the first place, then to increase his credit limit twice, when he wasn't in a position to maintain repayments.

It has already been agreed that Mr A has brought part of his complaint to us too late for us to look at it. So, I will be limiting my findings to the aspects of the complaint which are in time. These are the two increases to his credit limit. Mr A thought that the increases were irresponsible. He wants Capital One to refund all the interest and charges and remove any default markers from his credit records.

Mr A explained he'd reached his maximum credit limit within months of receiving the card in 2006. This continued for the next nine years until 2015, during which time he only repaid the minimum amount, and missed multiple payments. He said he missed at least 20 repayments, some consecutively. But despite this, Capital One increased his credit limit twice. He feels that given his previous repayment history, it should have spoken to him directly, rather than him being able to 'opt out' of the increases.

One of our investigators looked into what had happened, but she didn't think the complaint should be upheld. She said that Capital One had assessed Mr A's creditworthiness prior to increasing the credit limit, by looking at his account repayment history and his external credit history. She said the repayment history showed Mr A had made the minimum payments and had no recent instances of over limit transactions or late payments. Further, she said Mr A's credit file had no adverse information recorded against it. The investigator's view was that Capital One was reasonable in offering Mr A the credit limit increases and had considered Mr A's ability to repay.

Mr A disagreed. He said he had been in debit for several years before Capital One increased his credit limit. He explained he had only paid the minimum amount and previously missed repayments, on a regular basis. He also had several other credit cards and loans at the time and was only making minimum repayments to these. He pointed out that the Financial Conduct Authority (FCA) has introduced news rules to help people with persistent debt, and these rules should have been applied to his account.

His complaint's now been passed to me.

my provisional decision

In my provisional decision, I said:

Mr A has referred to new FCA rules designed to help individuals in long- term debt. These rules came into force in March 2018, but firms were given six months to become fully compliant. However, these rules are not retrospective and do not apply to the period of time when the credit card increases took effect. That said, I must still consider whether Capital

One carried out proportionate checks regarding affordability, whether it was reasonable to increase the limit on two occasions, and whether it has treated Mr A fairly.

First, I've looked at affordability. So, (i) did Capital One carry out proportionate checks, and (ii) if so, did they give cause for concern? If it didn't carry out proportionate checks, should there have been cause for concern if it had?

Capital One explained it looked at Mr A's repayment history and external credit history. So, I've looked at what these show.

I've been provided with a copy of Mr A's credit file. I have also looked at his repayment history to Capital One. Although I accept that Mr A has said historically, he had missed repayments, the yearly periods leading up to both increases show that he was making his repayments as he should, and these were at least the minimum. He also had other borrowing, and I'm satisfied that around four of these accounts would have appeared on his credit file at the time of both increases. But again, he was making the required repayments.

Accordingly, I don't think there was anything too concerning here. That said, I've thought about whether Capital One should have made any further checks. Although the guidance doesn't specify exactly what checks should be done, they do need to be proportionate. In this case, given Mr A's tendency to only make minimum repayments, I think Capital One should reasonably have looked further into his financial situation. This is particularly so given that the first increase was to three times the original limit, and the second to five times the original limit.

So, I've thought about what more information could have been asked for. I think an income and expenditure form could have been completed, or a request made to look at Mr A's bank statements. Given that Mr A's credit card was granted back in 2006, I don't think Capital One would have had much current information about income and expenditure when the increases were granted – albeit I accept that minimum repayments were being made.

For this reason, I asked Mr A for his bank statements.

In the period leading up to the first increase in October 2016, the statements I have looked at show that Mr A's account was in credit with a substantial balance of between £7,000 and £12,000. But looking further into the account I can see that Mr A's expenditure is very much higher than his income - and in June 2016 there are payday loans of over £3,500. In September 2016 Mr A received £3,362.08 into his account but he paid £7,720.65 out.

I've also looked at the statements I've been provided with leading up to the second increase in October 2017. The ones I have are for July 2017 and September 2017. On the face of it, these don't cause immediate concern. In July 2017, Mr A's account was £2,451.21 in credit. In September 2017, it was £3,750.73 in credit. However, looking further at the account activity, I can see that Mr A's expenditure is very significantly higher than his income, despite his account being in credit. In July 2017, Mr A received £6,684.82 into his account. But he paid £11,233.87 out. Similarly, in September 2017, Mr A received £7,955.77 into his account, but paid £12,700.21 out. I think it's significant that other than (what I believe are) his wages of around £1,500 a month, almost all of the money coming into the account is from what appears to be gambling. This isn't a source of income that can be regularly predicted as, by its nature, gambling is unpredictable. The only income that can reasonably be depended upon is Mr A's salary. And all of the money going out is either gambling or loan repayments. On many days there are multiple apparent gambling transactions, totalling up to around £1,000 each. Further, I can see that a new direct debit for another loan was set up on 29 August 2017, with a repayment of £477.74. Therefore, I think the account activity shows a significant amount of discretionary spending, that wasn't supported by Mr A's regular, salaried income.

I consider that if Capital One had looked at the bank statements, which I think would have been proportionate as I explained, it would not have offered the two credit increases. This is because the account activity would suggest that Mr A was likely entering an unsustainable cycle of debt, which further borrowing would exacerbate. This means I agree it was irresponsible of Capital One to offer the increases. I accept that Mr A could have turned down the offer of the increases. But that doesn't detract from my consideration that it was irresponsible that they were offered at all.

Accordingly, I am proposing that Capital One refund all interest and charges relating to the two credit limit increases of October 2016 and October 2017 - together with 8% simple interest a year, in respect of each repayment Mr A has made, which has been allocated to interest and charges - from the date of each repayment to the date of the settlement. It may do this directly to the credit card account, to help reduce the outstanding balance. This is because I am currently satisfied the increases shouldn't have been granted. However, it's reasonable of Capital One to require the principal sums to be repaid, given that Mr A has had the benefit of them. It also follows that any negative information on Mr A's credit file, that wouldn't have appeared had it not been for the increases, should be removed. However, it's reasonable to continue to show the total sum outstanding, as this does remain outstanding and would be a true reflection of the account.

Responses to my provisional decision

Mr A says that he is satisfied with the decision. He wanted to know if he would have to pay interest on all further payments or just the principle?

Capital One has disagreed with my provisional decision. In summary it said that it carried out proportionate checks in view of the information it had. It says that there was no indication of financial difficulty looking at the payment history. It has also said that Mr A queried the validity of the transactions. It also says that the credit limit increases were optional, and Mr A did not have to accept them.

my findings

I've re-considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've also considered again my provisional findings in the light of Capital One's response to it.

Capital One have said that the checks they carried out were proportionate because the credit increases were small, and Mr A was making his minimum payments. I have said that Mr A typically made his minimum payments but not always. And that should have alerted Capital One of the need to get more information.
Capital One has said that the credit advanced was low and the monthly repayments relatively low. I disagree, Mr A had the card for ten years when the first credit increase was given and as I have said the first increase was to three times the original limit, and the second to five times the original limit. I don't consider this to be a low credit limit for Mr A especially in relation to Mr A's income which had basically remained the same for those 10 years or in relation to the original credit limit. I think the increases were significant enough

that the payment record would have been a cause of concern and I still think Capital One should have looked at it further. Had they done so, as I have said they would have realised that Mr A's regular income is small compared to the amounts going through the account, mainly for gambling transactions which by their nature are not a secure form of income.

Capital One have raised that Mr A has queried some transactions made through his card to some gambling websites, he said that these transactions were not made by him. After investigation Capital One said that these transactions were made by Mr A. It has suggested that this is contradictory. I don't see anything contradictory in Mr A querying the transactions as well as saying that the increases were irresponsible because he was in financial difficulty.

Capital One have also pointed out that the increases were voluntary, and Mr A could have declined them. Although I agree they were voluntary, the nature of being in financial difficulty is that it would be unlikely that a person in that position would decline credit offered. So, although I think what Capital One are saying is a counsel of perfection it isn't realistic.

Mr A has questioned if he would have to pay interest on all further payments or just the principle. To clarify the position, I am satisfied that Mr A should pay the principle sum given that he has had the benefit of that money. He shouldn't be charged interest on the credit increase amounts that were given to him in October 2016 and 2017 as he shouldn't have been given these increases

For all these reasons and the reasons outlined in my provisional findings I am not persuaded to change my mind.

my final decision

For the reasons I have given, I uphold the complaint in part against Capital One (Europe) plc.

I direct Capital One (Europe) plc to refund all interest and charges relating to the two credit limit increases of October 2016 and October 2017. It should add 8% simple interest a year, in respect of each repayment which has been allocated to interest and charges, from the date of each repayment to the date of the settlement*. It may do this directly to the credit card account.

I am also directing it to remove any adverse information from Mr A's credit file that directly relates to the two credit limit increases of October 2016 and October 2017.

*If Capital One (Europe) plc considers that it's required by HM Revenue & Customs (HMRC) to withhold income tax from those parts of the award constituting the 8% interest, it should tell Mr A how much it's taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax from HMRC if appropriate.

Mr A should refer back to Capital One (Europe) plc if he's unsure of the approach it has taken, and both parties should contact HMRC if they want to know more about the tax treatment of this portion of the award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 15 February 2020.

Esperanza Fuentes
ombudsman