

## complaint

Ms J complains that Capital One (Europe) plc (Capital One) allowed her to go over the credit limit on her credit card on a number of occasions. She also thinks the card was mis-sold to her because she says it was supposed to build up her credit score, but she thinks she incurred extra charges as a result and that this has had a detrimental effect on her credit file. She wants the charges to be refunded.

## background

The background to this complaint, and my initial conclusions, were set out in my provisional decision dated 24 February 2020 - a copy of which is attached and forms part of this final decision.

In my provisional decision I explained why I thought this complaint should be upheld and invited both parties to send any additional comments or evidence they wished to make. I said I thought that Capital One had acted responsibly in giving Ms J the first credit card. I also said it wasn't obliged to make her aware that she'd exceeded her credit limit and it shouldn't have to refund any charges as a result of that matter.

But I didn't think Capital One had acted fairly in providing a second line of credit with a much higher limit. I said it should repay the interest and charges that had been applied to the second card and pay Ms J £100 for the distress and inconvenience caused.

Ms J said she accepted the findings and didn't have anything further to add. But Capital One disagreed. It said that it didn't believe Ms J's complaint had been about irresponsible lending and therefore it hadn't addressed that issue.

I thought that the issue of irresponsible lending had been part of the original complaint. I asked Capital One if it had anything further to support its claim or had any further points to raise following the provisional decision. But Capital One didn't respond.

## my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. As neither party has provided any further submissions for me to consider, I see no reason to change the conclusions I came to in my provisional decision.

Capital One said it didn't believe Ms J had included a complaint about irresponsible lending within her overall complaint, so it hasn't been able to address that matter.

In her first complaint email to Capital One, dated 27 January 2019, Ms J headed the email **"irresponsible lending-card should not have been provided due to poor credit history complaint"**. And in its response Capital One stated *"we've also passed your complaint regarding irresponsible lending to our specialist team to investigate this further and will respond to you separately within 56 days"*.

In its final response letter Capital One said *"We're sorry you feel we've lent to you irresponsibly, by opening two accounts for you and then increasing their credit limits when your credit history was poor. While we appreciate the inconvenience caused, we've looked at your situation again and can't uphold your complaint, with our reasons detailed below"*.

Within its explanation Capital One concluded that *“As such, there were no indications from your application that there were concerns about whether the card we gave you was affordable”* and also *“Based on the above approach and the information we took into account at the time of your applications, we believe our decision to open these accounts was appropriate”*.

So, taking all of the above statements into account I can't agree that Ms J's complaint didn't include the question of *“irresponsible lending”* or that Capital One didn't have the opportunity to answer it. Capital One's final response letter clearly identified the problem of whether its lending had been responsible or not. It then confirmed it had assessed Ms J's affordability and carried out sufficient checks to ensure it was appropriate to issue her with both credit cards.

I think it's clear that Capital One did answer Ms J's complaint and in my provisional decision I set out my reasons for why I don't think the second credit card was lent responsibly. Capital One hasn't provided any response to explain why it disagrees with that decision so there's no reason for me to reconsider my position.

### **my final decision**

For the same reasons I've already given in my provisional decision, I uphold Ms J's complaint against Capital One (Europe) plc.

Capital One (Europe) plc should repay all interest and charges applied to the second credit card account from the date it was first issued until the date the account was settled, and it should pay 8% simple interest on that refund. It should also pay Ms J £100 for the impact this matter has had on her and it should amend any adverse information reported to the credit reference agencies as a result of that particular lending.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms J to accept or reject my decision before 11 June 2020.

Keith Lawrence  
**ombudsman**

### **copy of provisional decision**

#### **complaint**

Ms J complains that Capital One (Europe) plc acted irresponsibly in allowing her to take out two credit cards and authorising transactions which meant she exceeded the credit limits on a number of occasions. She says the cards were supposed to build up her credit score, but she thinks she incurred extra charges as a result and that this has had a detrimental effect on her credit file. She wants the charges to be refunded.

#### **background**

Ms J took out a credit card with Capital One in February 2015 with a credit limit of £300. The card was supposed to help “*build up*” her credit score. Capital One says Ms J met her repayments so when she applied for another card in June 2017 it was happy to approve an application for that card with a credit limit of £750.

After she received the second card, Ms J exceeded its (higher) credit limit each month from September to December 2017. This led to her incurring further charges which she said affected her credit history. So she complained and asked for the charges to be refunded. She also complained about the sale of both cards and that Capital One allowed her to exceed the credit limit through certain transactions.

The outstanding balances on both cards were repaid by February 2018.

Capital One didn’t uphold the complaint. It said it had made a commercial decision to authorise transactions which might allow Ms J to go over her credit limit, and although she had exceeded the limit on five occasions it didn’t think it had done anything wrong.

Capital One also said it had been satisfied that Ms J could afford the credit limit it had offered her when she first applied. It had been aware of her credit history and she had satisfied its affordability assessments. It said most of Ms J’s repayments had exceeded the minimum required and were made on time so she showed herself to be creditworthy and that’s why it approved a second card in June 2017. It did apologise for not closing her accounts on the date they were fully paid off but said it had now closed them and would arrange for her credit file to be updated.

Ms J wasn’t happy with that outcome so she brought her complaint to us where one of our investigators looked into the matter.

She said the complaint shouldn’t be upheld. She said Capital One had made Ms J aware of the charges and fees through its terms and conditions, and through her monthly statements. She thought they’d been applied fairly. She also said Ms J had used a mobile app to manage her accounts and felt she would have been aware, through this, of her outstanding balance – as well as having that same facility when using ATM’s. For that reason she thought Ms J could have checked her balance at any time and had a responsibility to manage the account so it didn’t exceed the credit limit.

Ms J didn’t agree. She said she didn’t think she should have been given the two cards because she’d been on a low income and in debt at the time. She said she had to borrow money to pay off the cards and other loans she had in order to make repayments on the Capital One cards. She provided some screen shots of her credit report from when she applied for her cards but the investigator didn’t think it proved that Capital One had lent irresponsibly to her.

As Ms J still didn’t agree she asked for her complaint to be referred to an ombudsman so it’s been passed to me for a review.

### **my provisional findings**

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

#### *Did Capital One lend Ms J the first card responsibly?*

Ms J says she shouldn’t have been given credit cards because of her low income and the level of outstanding debt. She says this was irresponsible lending from Capital One. So I’ve looked carefully at the application process involved here as I would have expected Capital One to have completed reasonable and proportionate checks when deciding if Ms J would be able to repay the credit it

offered in 2015. And I would also have expected it to have made a fair decision to lend based on those checks.

In this case I can see Capital One confirmed Ms J's income, employment status and her credit file so I think its checks were proportionate for the relatively low amount of credit it offered. And while I can see Ms J had previously defaulted on some credit agreements, these were historic and the outstanding balances had been significantly reduced over the years. So I think Capital One performed sufficient checks to understand whether Ms J could afford credit at the level it did and I think that was a fair and reasonable decision.

*Should Capital One have allowed cash withdrawals which allowed Ms J to exceed her credit limit?*

Ms J says Capital One continually allowed her to withdraw cash and make transactions which meant she exceeded her credit limit. She says it shouldn't have allowed this, especially for *so called* 'credit repair' cards as this made her credit history worse. But Capital One says its terms and conditions don't state that transactions will be declined if they take a customer over their credit limit.

And in most cases – if a transaction is below a certain limit, Capital One don't have the opportunity to authorise or decline it – so it's not able to affect that situation anyway.

I've carefully considered Capital One's credit card terms and conditions and there's no suggestion that Capital One is obliged to make someone aware that it's going to exceed their credit limit following a transaction – although it says it reserves the right to do so in certain circumstances. But it's clear the responsibility lies with the consumer, as the terms and conditions say "*when purchases, cash withdrawals, credits to your account and balance transfers are added together-along with interest and all other fees, charges and expenses-the total must not go over your credit limit*".

I've also taken into account that Ms J would have been able to check her account balance when making cash withdrawals at ATM's and on her phone when accessing the mobile app to make a transaction. So, overall, I don't think Capital One was obliged to make Ms J aware that she was exceeding her credit limit and I don't think it should refund any charges incurred as result of that.

*Did Capital One lend Ms J the second card responsibly?*

Having said that I think Capital One acted responsibly when issuing Ms J her first card, I'm not of the same opinion regarding the second application. I'll explain why.

After she was given the first card Ms J made 12 cash withdrawals using the card. This led to 'over limit' charges being applied on a number of occasions. In addition she exceeded her credit limit on nine separate occasions between getting the first and second cards. Ms J only paid off the outstanding balance on the card one month before she applied for the second card – and she's told us that she had to borrow money from elsewhere to do that, although I accept Capital One wouldn't have been aware of that at the time.

But I don't think Ms J was managing her card properly and by continually exceeding the credit limit and using the card to withdraw cash I think she was displaying warning signs of suffering financial problems. That said, I think Capital One followed its processes correctly when considering if Ms J should be given a second card, and I've seen evidence that it carried out the same kind of checks that it did when it approved the first card. But that doesn't mean that these processes led to a fair outcome in the individual circumstances here.

The information about what Capital One specifically relied on before choosing to lend here is limited. But whatever it considered, I think the information available to it showed that Ms J was struggling with her existing card and would be likely to struggle with a further line of credit. This was a credit card that didn't have any immediate benefit, such as lower interest rates for example – but offered her credit of over twice the credit limit that she had previously struggled to manage.

I've also seen how Ms J took out a significant number of lines of credit after she received her first credit card from Capital One. At least eight of these agreements *could* have been payday loans from the information Capital One gathered from Ms J's credit file. This supports that if Capital One had made further investigation into Ms J's situation in 2017, then this would have suggested that it wasn't fair to provide her with further lending.

I think, based on all the evidence I've seen, Ms J wasn't able to manage her £300 credit card limit, although I accept it was fair for Capital One to lend to her in the first place. But I don't think it was fair to give her a second line of credit – to the value of £750, in the circumstances.

Ms J had managed to clear the balance on her first card at the time of the applying for the second one, so in effect- Capital One agreed to her having £1,050 of available credit. From what I've seen that decision wasn't fair or reasonable on Ms J.

### **my provisional decision**

I intend to uphold Ms J's complaint against Capital One (Europe) plc in part.

Capital One (Europe) plc should repay all interest and charges applied to the second credit card account from the date it was first issued until the date the account was settled, and it should pay 8% simple interest on that refund.

Capital One should also pay Ms J £100 for the impact this matter has had on her and it should amend any adverse information reported to the credit reference agencies as a result of that particular lending.

Keith Lawrence  
**ombudsman**