

## **The complaint**

Miss H is unhappy with how Capital One (Europe) plc dealt with gambling transactions on her credit card.

## **What happened**

In March 2019, a member of Miss H's family used her credit card on a gambling website without her knowledge. As a result, Miss H went over her credit limit, for which she was charged interest. When Miss H checked her credit card account in June 2019, she found that there were, again, a large number of recent payments to a gambling website. Miss H was concerned that she hadn't received any alerts from Capital One that her card was being used for gambling transactions or that she was close to and went over her credit limit.

Miss H complained to Capital One and asked for her card to be blocked and a new one issued. Capital One replied that it had fraud prevention measures in place but not all transactions would necessarily trigger these. The card had also been used at the same merchant previously, which meant the system might not have required verification for the transaction. It confirmed that the interest charged was correct and that a manager had refunded £30 of cash fees as a gesture of goodwill. It also reduced the cash facility on the card to £1 meaning that it couldn't be used for gambling transactions in future.

Miss H complained to this service. Our investigator partially upheld the complaint. She thought that Capital One had acted reasonably in how it dealt with the original complaint. However, as it had misadvised Miss H about some pending transactions and couldn't show one way or the other that it had sent the alerts, Capital One agreed to pay an additional £50 compensation.

As Miss H did not agree, the complaint has been referred to me.

## **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.

I'm aware that this has been a distressing and upsetting time for Miss H and that she was very concerned about the amount of money that she owed on her credit card as a result of the gambling transactions. The transactions were made by a family member and, for reasons that I entirely understand, Miss H didn't want this to be dealt with as fraud.

The first issue is whether Capital One should have alerted Miss H to the gambling transactions. Looking at Miss H's credit card statements, I can see that there were gambling transactions, for a relatively small amount, in January 2019 and in February 2019. In March 2019, there were multiple gambling transactions to a different gambling company totalling a much higher amount. In May 2019, a number of gambling transactions, to the same

company as in January and February and for a relatively small amount, were made on the account. In June and July 2019, a large number of gambling transactions were made on the account, to the same company as in January and February.

I have thought about this carefully. Gambling is a permitted transaction on a credit card and it therefore isn't an issue in itself when someone uses their credit card for this purpose. Some relatively small gambling transactions were made on the card in January and February. I have seen the credit card statement showing the transactions and Miss H therefore should have been aware of them, even if only when she received the bill. At that point, she could have raised concerns with Capital One about them if she wished to. As she didn't do so, I don't think Capital One had any clear reason to think that there was an issue with the card being used for gambling transactions, even when the amounts involved increased greatly. The transactions were paid off quickly and, without the knowledge of what was actually happening – that Miss H's family member was using the card without her permission – I can't see that there was any reason for Capital One to query the transactions. On that basis, I don't think Capital One did anything wrong by not alerting Miss H to the gambling transactions.

The second issue is Miss H's concern that she didn't receive any alerts about her balance and credit limit. Capital One says that alerts are automatically generated and that, although it can't prove this, they would have been sent. Miss H says she didn't receive them.

In January, February and May 2019, the total spend on the account, including the gambling transactions, was considerably less than the credit available on the account. The alerts therefore wouldn't have been triggered. In March 2019, the transactions on the account should have triggered an alert that Miss H was within 10% of the credit limit and also when she went over it. Although, given that the transactions were made over a short period of time, I can't say with any certainty that the alerts would have been triggered at a time that enabled her to take action any quicker than she did.

For the transactions in June and July 2019, although these took Miss H close to her credit limit, she wasn't within 10% of it and she didn't go over her credit limit. To explain this slightly further, although the total of the transactions on the account did go within 10% of the credit limit, the overall amount owed on the account at any one time was never within 10% of the overall credit limit. This was because a payment was credited to the account during the billing period. As a result, I can't see that the transactions on the account would have triggered an alert that Miss H was within 10% of her account limit.

Looking at the impact of not receiving the alert in March 2019, Miss H appears to have been aware of the gambling transactions very soon after they were made. She then promptly made a large payment to her account which covered the cost of the first batch of transactions. More gambling transactions then showed on the account and another payment to cover those transactions was credited to the account a few days later. On that basis, I think that whether or not Miss H received the alerts, she was aware of the transactions very soon after they were made and she was able to make payments to the account. I accept that these transactions would have caused Miss H great concern and that it was fortunate that she was able to make the payments so promptly, but I can't see that there was any clear delay in Miss H becoming aware of the transactions and her then being able to take action.

I accept that if the alerts weren't received and Miss H hadn't checked her account, this could have impacted her differently. However, as that didn't happen, I'm unable to say what the effect would have been. Nonetheless, I can see that Miss H is likely to have had an expectation that she would receive these alerts. I'm aware that Miss H was also given incorrect information on one occasion when she asked Capital One if there were other

pending transactions on her account. When our investigator raised this with Capital One, it accepted that this was a mistake.

I know that Miss H is also concerned that a credit card could be used where the name on the card didn't exactly match the name on the gambling website. I can see why she would think this but it isn't uncommon for names not to match. For example, someone might pay for a plane or train ticket for someone else or have initials on their credit card but use their full name on a particular website. The same principle applies here. If Miss H wants to raise this with the gambling website, she would need to do this herself as it is not within the remit of this service.

Having thought about this case as a whole, I think the first time Capital One would reasonably have been expected to know there was an issue was when Miss H contacted it in July 2019. When she raised her concerns Capital One made some changes to Miss H's account so that gambling transactions were no longer allowed. It also refunded £30 of cash fees as a gesture of goodwill but said that it wouldn't refund the charges related to going over the credit limit. In the circumstances, the gambling transactions were, in effect, authorised. They were therefore legitimate charges based on the transactions on the account.

### **Putting things right**

As a result of issues raised by our investigator, Capital One agreed to pay an additional £50 compensation. This was because it couldn't provide evidence that it had sent the balance related alerts and for not providing accurate information when Miss H queried if there were other pending transactions on the account. I think that is reasonable in the circumstances.

I am very sympathetic to Miss H's situation and the distress and upset it caused her. However, looking at the circumstances of the case, and the additional compensation that Capital One has agreed to pay, I don't think it needs to do anything further.

### **My final decision**

For the reasons I have given, it is my final decision that the complaint about Capital One (Europe) plc is partially upheld. This is because it couldn't show evidence that it sent the alerts and because of the inaccurate information it gave on pending transactions. As a result, I require it to:

- Pay the £50 additional compensation that it offered, if it hasn't done so already.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 20 July 2020.

Louise O'Sullivan  
**Ombudsman**