

## **The complaint**

Mr B complains that Capital One (Europe) plc refused to uphold his chargeback request.

## **What happened**

Mr B made a number of deposits into an online trading account using his Capital One credit card. Mr B became dissatisfied with the service being provided by the company and on 18 March 2020 he emailed the company to ask for a refund "*of his transactions*". The following day the company emailed Mr B a refund receipt that said 1,250 euros had been refunded.

Mr B says he didn't receive the refund so he contacted Capital One to ask it to refund him the deposit of £1,604.63 he'd paid to this company using either the chargeback scheme or a s75 claim on the basis that the company had promised the refund but then failed to pay it.

Capital One said s75 didn't apply as trading in binary options, which was what Mr B had been doing, is treated in the same way as a gambling transaction. Under the terms and conditions of his credit card, payments for gambling were also treated as cash withdrawals and, because of this, there was no debtor- supplier relationship which was necessary for a claim under s75. Consumer Credit Act 1974. While Mr B had said he'd been asking for the refund of his deposit, it seemed what he was actually asking for was a withdrawal and this wasn't covered. It noted that even if the initial deposits came within s75, these would only be covered to the extent that they'd been successfully paid into the account and not to any subsequent trades. Mr B had agreed that the initial deposits had been successfully credited to his trading account and that his problems related to the way the account had actually been dealt with after that. This this wasn't covered by the legislation.

Capital One said it had considered whether a chargeback would apply but as the request had been for a withdrawal, not a refund, and the amount refunded hadn't related to any specific transaction, it didn't agree that it did.

Mr B remained unhappy and brought his complaint to our service. Our investigator however didn't think Capital One had done anything wrong. He said it wasn't for us to decide if the claim would have been successful but to look at whether Capital One handled Mr B's claim correctly. He'd reviewed the chargeback rules, and the terms and conditions for Mr B's credit card account and felt Capital One's decision was in line with these. For that reason, he couldn't say Capital One had made a mistake so he wouldn't be asking it to do anything more.

Mr B disagreed and said that the issue was the company's failure to make the refund as stated and not the underlying nature of the transactions on the account. While he accepted s75 didn't apply, the failure to make an agreed refund was specifically covered in the chargeback rules so he felt Capital One hadn't applied them correctly and that his claim should have been allowed. He asked for his complaint to be referred to an ombudsman.

## **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 can see how strongly Mr B feels about this matter and why he feels so disappointed by Capital One's decision. However, having reviewed the evidence, I don't think Capital One has done anything wrong as I don't consider this transaction was covered by either the s75 or chargeback processes, as I'll now explain.

I've read and considered the whole file but I'll focus my comments on what I think is relevant. If I don't comment on any particular point, it's not because I haven't taken it into account but because I don't think I need to comment on it to explain the decision.

Where there's no information on any point, or the information is unclear or contradictory, I've made my decision on the balance of probabilities, in other words what more likely than not to have happened taking into account the circumstances of the case.

When a consumer uses their credit card to pay for goods or services and something goes wrong, then it may be possible for the consumer to claim back the cost of that transaction from the credit card provider, either under s75 Consumer Credit Act 1974 (CCA) or using a chargeback.

I've seen Mr B accepts Capital One's explanation as to why it wasn't possible to make a claim under s75 so I won't comment on that further other than to say that I consider Capital One's explanation to be reasonable and in line with both the terms and conditions of Mr B's credit card account and the Act.

Turning next to the chargeback, I should explain that the chargeback scheme is a voluntary scheme that's intended to offer protection to consumers for a specific service or purchase that hasn't happened or which has fallen short of what was agreed. However, a chargeback doesn't apply in every case as the transaction needs to come within the rules of the scheme. The rules are set by the card issuers, which in this case was Mastercard, but Capital One is required to comply with them.

I'd also add that in considering this complaint, I'm not looking at the merits of the chargeback claim but at whether Capital One has followed the rules correctly and reasonably.

I've seen that in his claim form to Capital One Mr B was claiming a refund of a deposit of £1,604.63 on the basis that the merchant had agreed a refund and then sent him a receipt saying it had refunded him £1,250 euros but nothing had been received.

Mastercard is very clear that trading in binary options is not covered by the chargeback scheme and that includes any disputes regarding withdrawals. All that is covered is the initial deposit into the trading account but, as Mr B has confirmed, the deposits were processed successfully so it wouldn't be possible to ask for a chargeback on that basis.

I understand Mr B's view that the claim relates to the failure to pay the refund and not the underlying transactions on the account. I've looked at this very carefully but I can't agree. The scheme rules are clear that some transactions are excluded and if the underlying transaction is excluded then it seems reasonable that the refund process would also be excluded.

I've seen Mr B had made a number of payments into his online trading account. He'd then made a number of trading transactions through that account. By the time he contacted the company in March 2020 to ask for a refund of "his transactions", it wasn't possible to say if the money in his account was the money originally deposited or if it had come from other activities on the account.

In his email of 18 March Mr B said he understood there should be about 49,500 euros in the account at that time and he wanted a return of all of this. This was significantly more than he'd deposited into the account and for that reason, I consider it more likely, on balance, that this was the results of his trading. That's supported by the fact Mr B asked for a refund of all "his transactions", not just the deposit. In other words, I consider Mr B was asking for a withdrawal of the funds on his account and not a refund of a specific transaction.

As trading in binary options are specifically excluded from the chargeback process by Mastercard - and that includes any disputes over withdrawals - I can't agree that Capital One was wrong to say that this transaction wasn't covered under the scheme.

I realise this isn't the decision Mr B is hoping for but I hope that I've explained why this transaction wasn't covered by the chargeback process. For that reason, I can't agree Capital One has done anything wrong and I won't, therefore, be asking it to do anything more to resolve this complaint.

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 24 February 2021.

Cerys Jones  
**Ombudsman**