

The complaint

Mrs T complains that Capital One (Europe) plc failed to make her aware of unusual transactions on her credit card account.

What happened

Between 3 October 2019 and 11 October 2019, Mrs T's son made a total of 156 purchases through a music app linked to Mrs T's credit card account.

Capital One didn't contact Mrs T until 11 October 2019, by which time a further 135 purchases had been made.

Mrs T disputed the transactions. Capital One said it couldn't process a chargeback because the merchant hadn't done anything wrong. It said that Mrs T's card was registered with the merchant and that she had entered into transactions with the merchant before.

Mrs T remained unhappy and brought her complaint to this service. She feels that Capital One should've identified the unusual activity and contacted her sooner than it did. She says she shouldn't be held liable for the transactions because they were carried out by her young son who didn't understand that by downloading music, he was spending real money. Mrs T says that Capital One should've noticed that the transactions were out of character for her account because her previous transactions with the music app had been minimal.

Our investigator upheld the complaint. She didn't think that Mrs T had authorised the transactions and said the number of transactions in such a short period of time should have alerted Capital One to the fact that something was wrong. The investigator said that although Capital One had identified the activity as suspicious and contacted Mrs T, it should've made contact much sooner. She recommended that Capital One refund the disputed transactions.

Capital One didn't say that it disagreed with the view, but it queried the date from which transactions should be refunded.

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've had regard to the Payment Services Regulations 2017. These say that a payment from someone's account can only be authorised if the payer has given consent. I've thought about whether Mrs T can be said to have authorised the transactions, and whether she consented to the payments.

Capital One has provided evidence to show that Mrs T's card details were used to authorise the payments. But there's nothing to suggest that Mrs T gave her son authority to carry out the transactions on her behalf. In this case, Mrs T's son has accessed a password without permission, and Mrs T wasn't aware of the transactions made on the account. In these circumstances, I'm not satisfied that Mrs T authorised the transactions, because she didn't give consent, and she tried to put safeguards in place by not saving the password on her

device and by storing the password in a separate place which she thought was safe.

I've also had regard to the BSI PAS Code of Practice. Capital One hasn't signed up to the code, but it brings together rules which are considered to be good industry practice, so I'd expect Capital One to follow the spirit of the code. The code is designed to protect customers from fraud or financial abuse. There are two particularly relevant things to look at with relation to Mrs T's case. These are the changes in the way Mrs T's account was being operated and the sudden increase in spending with the merchant.

Capital One has said that Mrs T had entered into transactions with the merchant before. I can see from the statements that this is correct, but not to the extent of the multiple transactions which form the subject of this complaint. I think the number of transactions made in such a short space of time ought to have alerted Capital One. I can see that Capital One did make contact with Mrs T on 11 October 2019 but by this time there had been multiple transactions over the preceding 8 days. I think Capital One should have contacted Mrs T much sooner. If it had, she would've been able to stop the transactions and minimise her loss.

Taking all the circumstances of the complaint into account, I'm of the view that Capital One could've done more.

Putting things right

To put things right Capital One should refund the disputed transactions. It should also refund any interest which has accrued on the disputed amount and remove any adverse information from Mrs T's credit file.

My final decision

My final decision is that I uphold the complaint. Capital One (Europe) plc must:

- Refund the disputed transactions between 3 October 2019 and 11 October 2019
- Refund any interest charged on the disputed transactions
- Remove any adverse information from Mrs T's credit file

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 10 February 2021.

Emma Davy
Ombudsman