

## **Complaint**

Mr Z is unhappy with Capital One (Europe) plc's decision to load a Cifas marker against his name.

## **Background**

Mr Z had a credit card with Capital One. In June 2018, a direct debit payment was made to that credit card account for £1,145.04. It came from a current account Mr Z held with a different business. That direct debit was reversed the following day because there weren't sufficient funds in the current account. Nonetheless, Mr Z spent on his credit card during the period between the balance on his Capital One account changing and it later being reversed.

Mr Z's account was then blocked until he was able to make a payment to bring the balance back down. It wasn't until January 2019 that Capital One sent him a notice of default requiring the repayment of the balance in full. At that point, Mr Z hadn't made any payments towards his account for over six months. Capital One considered that Mr Z had deliberately exploited the situation to spend money on his credit card account that he knew would be reversed imminently. In February 2019, it closed the account and loaded a Cifas marker against his name.

Mr Z was unhappy with Capital One's decision and so he referred a complaint to this service. His case was allocated to one of our Investigators. Mr Z told the Investigator that this was a simple oversight on his part, and that he hadn't acted deliberately.

Our Investigator was unpersuaded. He said that there was only £1 worth of credit in Mr Z's current account and so he would've known that the direct debit couldn't have been honoured by that bank. He also thought the fact that Mr Z didn't subsequently make any payments to reduce the debt suggested he hadn't intended to do so. The Investigator also noted that the statement history for Mr Z's account showed that there were multiple occasions where direct debits had been reversed. Overall, the Investigator was persuaded that Mr Z had acted deliberately and that Capital One was therefore reasonable in its decision to load the Cifas marker.

Mr Z disagreed with the Investigator's opinion. He said that he had previously transferred money into his current account from a different account. On this occasion, he simply forgot to make the transfer prior to the direct debit being paid. Because Mr Z disagreed with the Investigator's opinion, the complaint has been passed to me to consider and issue a final decision.

## **Findings**

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

The question I must consider here is whether Capital One acted fairly and reasonably in loading a marker with Cifas. It's a member of Cifas which means it's agreed to abide by the National Fraud Database Principles. Those principles set a high standard that a firm must meet if it wants to load adverse information against a customer's name. It says that in order to do so:

*"There must be reasonable grounds to believe that an identified fraud or financial crime has been committed or attempted ... [and] ... The evidence must be clear, relevant and rigorous such that the member could confidently report the conduct of the subject to the police."*

The onus is on Capital One to demonstrate that this standard has been met. I've considered the evidence provided by both sides and I'm satisfied that it's done so here.

There are different types of markers. Capital One loaded a Category 6 marker against Mr Z's name which covers "*misuse of facility*" – a broad category that would nonetheless include the type of action that Capital One suspects Mr Z of carrying out. The current account had a negative balance of £8999 and an overdraft limit of £9000 on the day the direct debit was due. I find it likely that Mr Z was aware that there were insufficient funds in that account to make the payment to Capital One.

He's said that he was in the habit of making payments into that current account from a separate account but that in this instance, he forgot to do so. But this doesn't explain why, once the error came to light, he didn't make any attempt to correct it by making further payments to Capital One. By the time Capital One defaulted his account, it appears that Mr Z hadn't made any payments for over six months and it didn't load a Cifas marker until the account was eventually closed.

I can't know with complete certainty what Mr Z's intentions were and so I must reach a conclusion here on the balance of probabilities. Overall, I'm persuaded that the weight of the evidence shows it's more likely than not that Mr Z didn't intend to repay his debt to Capital One and so he'd used a bank account which couldn't make the direct debit payment to allow him to spend further credit on his Capital One account.

In view of that, I think it was fair and reasonable for Capital One to load a Cifas marker against his name and I don't think it needs to remove it now.

### **Final decision**

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Z to accept or reject my decision before 18 March 2022.

James Kimmitt  
**Ombudsman**