

The complaint

Miss R complains that Capital One (Europe) plc won't reimburse her the money she paid to what she says was an investment scam.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide an overview of some of the key events.

Miss R saw an investment opportunity advertised on social media and registered her interest. In January 2020, she was contacted by a representative of a trading company. I'll refer to the trading company as 'M'. The representative persuaded Miss R to open a trading account with M and make an initial deposit of \$250. The following day, Miss R realised, she'd likely fallen victim to a scam. She immediately contacted Capital One. She asked for the payment to be stopped. Capital One explained, the transaction could not be stopped because it had been authorised and processed. She asked that Capital One reimburse her via Mastercard's chargeback scheme or under section 75 of the Consumer Credit Act 1974.

Capital One responded. It said it couldn't pursue a chargeback claim because the merchant had provided all the services. And that Miss R didn't have a claim under section 75 as the specific criteria which applies to the Act wasn't met in this case.

Unhappy with Capital One's response Miss R brought her complaint to our service. One of our investigators didn't recommend that it should be upheld. As she disagrees, Miss R has asked for an ombudsman to review her complaint.

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.

Having done so, I've reached the same outcome as the investigator, and for broadly the same reasons. I'm sorry to disappoint Miss R. I know this isn't the outcome she'd been hoping for. But my role requires that I consider if Capital One acted fairly and reasonably when declining the claim. I think they did, and I'll explain why.

Chargeback

Chargeback is a voluntary scheme run by Mastercard whereby it will ultimately arbitrate on a dispute between the merchant and customer if it cannot be resolved between them after two 'presentments'. Such arbitration is subject to the rules of the scheme — so there are limited grounds on which a chargeback can succeed.

Our role in such cases is not to second-guess Mastercard's arbitration decision or scheme rules, but to determine whether the regulated card issuer (i.e. Capital One) acted fairly and reasonably when presenting (or choosing not to present) a chargeback on behalf of its cardholder.

Our service has clarified this matter with Mastercard directly, it explained that if a cardholder authorised and engaged in a transaction with the intent to participate in gambling, investment or similar services, then cardholder-dispute chargeback rights are restricted regardless of whether the activity was illegal or brand damaging. It went on to explain that issuers have no chargeback rights related to the use of these chips or value, unspent chips, or withdrawal of such value, or on any winnings, gains or losses resulting from the use of such chips or value. In short, Mastercard consider the purpose of the Mastercard transaction to load funds into the gambling or investment account and not what activities are subsequently done with the funds.

Whilst the scheme does allow for a chargeback if it can be evidenced that the funds never credited the trading account. This was not the nature of Miss R's claim. Her claim was that she'd fallen victim to a scam and was unable to withdraw her funds. So, based on the above I don't think declining to raise a chargeback was neither an unfair nor unreasonable exercise of Capital One's discretion.

Section 75 of the Consumer Credit Act 1974

Section 75 gives a debtor the right to pursue a 'like claim' for breach of contract and/or misrepresentation against a creditor as they would have against the supplier of goods or services. For a section 75 claim to apply there are a number of criteria that need to be met, one of which is a valid debtor-creditor-supplier (DCS) agreement between the parties.

I've seen a copy of Miss R's credit card statement which shows the disputed payment of £191.64 on 12 January 2020. Miss R was therefore responsible for repaying the amount owed to her credit card provider and so she is the 'debtor'. As Miss R's Capital One credit card was used to make this payment, Capital One was the 'creditor'. And from everything I've seen it is clear M was the 'supplier'. However, the payment Miss R disputes wasn't made to M – it was made to another merchant. And as I've seen no evidence linking the merchant Miss R paid to the supplier – M, Miss R doesn't have the required DCS agreement in place to make a section 75 claim. So I don't think Capital One acted unfairly in declining her claim.

I appreciate Miss R says all this could've been avoided if Capital One had stopped the payment when she contacted them. But once a credit card payment has been authorised and is being processed it can't be cancelled by the card issuer. So I don't think Capital One acted unreasonably when they informed Miss R of such.

My final decision

For the reasons set out above, I am unable to uphold this complaint or make any award against Capital One (Europe) plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 8 February 2022.

Sonal Matharu
Ombudsman