

The complaint

Mr K has complained Capital One (Europe) plc has ignored issues around ID theft that have taken place on his credit card account. He has also disputed a large number of transactions.

What happened

Mr K opened an account with CapOne in November 2016. The account had a credit limit of £200 and over three years Mr K was given six different cards as cards were lost or stolen.

In December 2019 Mr K called CapOne and partially settled the account by paying £200. CapOne confirmed they would not be asking Mr K to repay the outstanding amount which stood at over £260.

Mr K brought a number of complaints to the ombudsman service. At this time he complained that there'd been a number of transactions made from 3 December 2016 to 13 September 2018 on his CapOne account that he'd not made.

After CapOne had completed their investigation, they said they believed Mr K had made and authorised these transactions himself. Mr K confirmed he wanted our service to continue our investigation.

Our investigator reviewed the transactions based on the evidence provided by CapOne. She noted the evidence given to us by Mr K that he'd been a victim of ID fraud. Overall she agreed with CapOne it was most likely Mr K had made the transactions himself. Specifically she felt it was unlikely an unknown third party – although Mr K named various parties he believed were responsible – would have got hold of card details for a number of cards and only used them to gamble.

Mr K disagreed with this outcome. He's asked an ombudsman to review his complaint. Although Mr K had completed a number of subject access requests with the various gambling companies, he didn't share this information with our service.

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 conclusion as our investigator. I'll explain why.

Where there is a dispute about what happened, I have based my decision on the balance of probabilities. In other words, on what I consider is most likely to have happened in the light of the evidence.

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

The regulations which are relevant to Mr K's complaint are the Payment Services Regulations 2009 and 2017 (PSRs). These primarily require banks to refund customers if they didn't make or authorise payments themselves. Other factors do apply but nothing that's had a major impact when I consider these transactions were made with a credit card.

To help me reach this decision, I've considered evidence provided to us by CapOne and Mr K. I've also noted the detail in our investigator's view of 29 June 2021 but feel no need to rerun some of the arguments made there. This view also contains a run-down of all of the transactions and their timing. I don't intend to repeat this detail either. I'm also aware of the detailed response Mr K made to us about this outcome on 25 July 2021.

Firstly I should confirm I don't dispute Mr K's vivid evidence he's been a victim of ID fraud. He's named various people he believes are responsible for what happened. And it's not just his account with CapOne that he believes had been compromised.

However the evidence I've seen – including detailed submissions from CapOne which includes Mr K's address changes and alternative card numbers provided to Mr K – do not support his argument that his CapOne cards were used without his authority.

The vast number of disputed transactions – in 2016, 2017 and 2018 – were made online to gambling companies. We've not been able to get any confirmation from these companies about whose account these transactions were made. Mr K confirmed that he did on occasion gamble online. He's also told us he accessed information about these accounts from the companies involved. He's confirmed this shows his identity was compromised. However Mr K has not shared this evidence with us so I am unable to verify this.

Winnings from gambling gets paid back to the credit or debit card used to make the transactions. This means there's no gain – apart from the gambling itself – for someone to use someone else's card to gamble. I wouldn't say it rules it out definitively but it certainly makes it much less attractive.

I also note three different card numbers were used for the transactions. This means someone would need to continually be getting hold of Mr K's revised card details. It's also clear from the other transactions being made with these cards that these remained in Mr K's possession throughout this period.

I'd also wonder why someone would be using Mr K's credit card with CapOne. He only had a credit limit of £200 which didn't offer any fraudster much headway.

Mr K has told us he only really realised the scope of the disputed transactions some time after his account was closed. However Mr K used CapOne's app from around February 2018 and made ad-hoc payments towards his credit card account. Both of these facts suggest he was reviewing his monthly statements and would have been aware at the time if he'd seen transactions he didn't recognise.

For example Mr K has disputed three transactions with a gambling company made in August 2018. These total nearly £225 (along with the additional cash fees CapOne charged). Since this would be all of Mr K's credit used in a month, I'd have expected Mr K to have noticed these immediately if he'd not made them.

One aspect of Mr K's complaint is that the incorrect card number was used for one disputed transaction. At the same time Mr K has admitted making a booking with the hotel company involved. I'd have to say that it's unlikely the card details are wrong but in any case there's no impact on Mr K here.

Mr K disputed iTunes transactions as he believed his iTunes account had been taken over. There were some transactions which Mr K disputed as I can see credits for those on his account statement. Mr K hasn't referred his concerns about the further disputed transactions to the merchant. I think he should have done as I'm not sure how he expects CapOne to be able to demonstrate to the merchant that Mr K was a victim of ID fraud. Mr K has all the relevant data about the mobile phones of his that he believes were compromised.

Mr K has raised other issues that he wants us to consider. Specifically how CapOne managed his account but I can't see that he raised these issues or that CapOne ever completed an investigation on these. I can't consider this prior to CapOne considering these issues.

I know Mr K feels very strongly about what happened but overall I believe it's more likely he authorised the disputed transactions.

My final decision

For the reasons I've given, my final decision is not to uphold Mr K's complaint against Capital One (Europe) plc.

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

Sandra Quinn
Ombudsman