

The complaint

Mr C complains that Capital One (Europe) plc won't reimburse him the money he paid to what he 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.

Mr C was made aware of an investment opportunity. In November 2019, he spoke with a representative of a trading company. I'll refer to the trading company as 'B'. The representative persuaded Mr C to open a trading account with B and make an initial deposit of 250 Euros. Following the call Mr C realised he'd likely fallen victim to a scam. He noticed the payment was for around £214 and appeared on his account as having been taken by another business 'D' rather than 'B' who he believed he'd been dealing with.

Mr C immediately contacted Capital One and asked for the payment to be stopped. Capital One explained the transaction could not be stopped because it had been authorised and was still pending. They said that once the payment posted to his account, he would be able to dispute it. At Mr C's request they cancelled his card and reissued a new one. When the merchant took the payment (against the original card) Capital One transferred this to the new card. Capital One also recommended Mr C contacted B directly, which he did. But he says they refused to return his money.

Mr C went on to dispute the payment. Capital One asked for some further information which Mr C was unable to provide. Ultimately they declined to offer a refund. Mr C complained and when Capital One maintained their position, he referred his complaint to our service. One of our investigators didn't recommend that it should be upheld. As he disagrees, Mr C has asked for an ombudsman to review his 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.

Prevention

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 Mr C of such and referred him to the merchant directly. I also think it was fair and reasonable for them to transfer the authorised payment across to the balance of the 'new' card when it was re-issued at Mr C's request.

I've considered the British Standard Institute (BSI) PAS 17271 (2017) – Protecting Customers from Financial Harm from Fraud Code. But in the context of Mr C and his credit

card account – I don't think a payment of the value here (around £214) – was so unusual that it's reasonable to expect Capital One to have done more or to have intervened at the time it was made. Capital One aren't required to vet merchants that receive card payments, and I don't think they reasonably could have identified that the card payment Mr C authorised was being made as the result of a potential scam at the time.

Mr C has also mentioned the Contingent Reimbursement Model (CRM) which is a voluntary scheme through which victims of Authorised Push Payment (APP) fraud are often able to receive reimbursement from the banks involved. But unfortunately, this doesn't apply to payments made on credit cards. So, I can't use the CRM as the basis to ask Capital One to do more.

Chargeback

Chargeback is a voluntary scheme which in this case is 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 onto 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.

Albeit the scheme does allow for a chargeback if it can be evidenced that the funds never credited the trading account. But this was not the nature of Mr C's claim. His claim was that he'd fallen victim to a scam and was unable to withdraw his funds. This isn't something the Mastercard scheme provides protection against.

I appreciate that Mr C provided Capital One with the information that he had and which he was able to obtain. And despite it not being Mr C's fault that he was unable to provide further evidence, this doesn't change the fact that a chargeback in these circumstances was very unlikely to succeed. So, based on all the above I think declining to raise a chargeback was a fair and reasonable exercise of Capital One's discretion.

Section 75 of the Consumer Credit Act 1974 (CCA)

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 Mr C's credit card statement which shows the payment in November 2019. Mr C was therefore responsible for repaying the amount owed to his credit card provider and so he is the 'debtor'. As Mr C'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 B was the 'supplier'. However, the payment Mr C disputes wasn't made to B – it was made to another merchant 'D'. And as I've seen no evidence linking D (who Mr C paid) to the supplier B, Mr C doesn't have the required DCS agreement in place to make a section 75 claim. So I don't think Capital One acted unfairly by not offering a refund under section 75.

Summary

I'm sorry that Mr C lost money. But the crux of the matter here is that once a payment is authorised, it has effectively already been paid away. There are limited opportunities to pursue a refund through chargeback and the CCA. In these circumstances, I don't think Capital One did anything that prevented Mr C getting his money back. And for the reasons explained above, I don't think they ought to have prevented the payment in the first place. As such, I'm not going to tell them to do anything more to resolve this complaint.

My final decision

For the reasons set out above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 21 February 2022.

Richard Annandale
Ombudsman