

The complaint

Mr A complains that Capital One (Europe) plc registered a marker at CIFAS, the national fraud database.

What happened

Mr A had two card accounts with Capital One. He says that he was contacted by a third party who said that the amounts owing could be paid off for him. And then Mr A could repay back half of the money. Credits of £184.75 and £440.22 were made to his accounts in May 2017. Mr A says that he became suspicious when the third party asked him to use a money transfer service to repay the amounts. And that he did nothing more about this because he had serious health issues. He wants the marker removed as he intends to work again in financial services.

Capital One said it hadn't made any mistake. It had received two charge back requests for the amounts involved. And the cardholder debited with the money had said that these weren't genuinely made payments. It had written to Mr A in May 2017 to say that his facilities had been withdrawn. And that a CIFAS marker was added to the account.

Our investigator didn't recommend that the complaint be upheld. He said that there was a high bar to register a marker. Mr A had said that he had received a phone call seemingly at random about his borrowing. When he was asked to pay money back he had doubts about the legitimacy and the person calling disconnected the call. Mr A said that due to a serious hospitalisation after being shot he'd not been in the right frame of mind to make financial decisions. Our investigator noted though that despite the doubts Mr A had he did nothing to rectify things. And so, he thought Mr A was complicit in what happened.

Mr A didn't agree. He provided some medical evidence about an injury to his eye. He said that prior to receiving a call about his borrowing he had been involved in a horrific kidnapping and has had extensive injuries including to his eye.

He'd agreed to what had been proposed about his borrowing. And he checked a few days later and saw the payments had been credited and didn't think much of it. He then realised that the payments had been returned and received a call saying he needed to make the money transfer. And realised something wasn't right. He then needed major surgeries and had hospital visits and treatments for two years. Capital One went completely from his mind. Mr A said he wasn't in the right health to deal with financial matters. He is now up to date with his finances. He said *"I am educated in financial services to a very high level and understand how fraud etc works... I have worked in financial services for over 20 years and now I am unable to gain employment due to the CIFAS markers"*. He said that if he was healthy he would have done more research and on the payments being returned called Capital One and the police to report the matter.

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 need to consider whether the report to CIFAS was made fairly. On this point, Capital One needs to have more than a suspicion or concern. It has to show it had reasonable grounds to believe that a fraud or financial crime had been committed or attempted and that the evidence would support this being reported to the authorities.

I have considered the medical evidence Mr A has provided which clearly shows he has had a serious eye injury. Notably a medical note dated 10 October 2017 summarises findings then as *"left eye severe trauma from alleged assault with knuckle duster 5 weeks ago"*. The contact notes for Capital One record that a third party reported a health issue in July 2017 for Mr A, and this related to a car accident leading to hospitalisation. Mr A has given his own testimony to our investigator and said that he couldn't talk for nine months and had treatment over two years.

Mr A has said he was called at random. He's later said that the person calling knew his name and address and that he had two credit cards and the balances. The arrangement here he says involved a third party paying off his credit card balances. And then him benefitting from paying that third-party half of the amount back or he has also now said the amount over time at least. Frankly this doesn't make sense to me because the fraudster would have relied on Mr A making payments to benefit. And risked as here that the fraud would be discovered before Mr A made any payment. Mr A has given various periods of time before he was contacted to pay the third party but not that this was immediate.

Mr A says he is very experienced in financial services. I don't think it's most likely someone in that position would be taken in by this type of arrangement. There was no documentation I've seen. He has given different details of when this happened in relation to any health issues. He's told our investigator that he was already injured at the time of the first call. But also, that this happened one to two weeks before he was assaulted. He's said he was able to call the person back and ask questions. In any event he'd described being able subsequently to check and see that the payments had been made and then removed. He was unable to realise that the initial transaction was suspect. But he then was able to do so when it came to him being asked for money. And he says the day of that call coincides with the one on which he needed surgery and so he couldn't alert Capital One then or afterwards.

I won't be able to say exactly what happened and I'm thinking about what is most likely. I don't doubt that Mr A had injuries and needed hospital treatment. But he's not persuaded me that these occurred such that he was unable to realise that these payments weren't legitimately obtained. And I find his explanation of how the fraudsters sought to benefit lacks credibility. He's been inconsistent over some of the details when discussing this with our investigator in calls separated by less than a month this year. I appreciate the passage of time may have affected his memory, but these differences make his testimony now less reliable. The medical evidence he does have supports his injuries and hospital treatment *after* these payments. And might account for him not being able to contact Capital One about things. But I find it most likely he was complicit in what originally happened.

Capital One says that it applied the CIFAS marker because Mr A received fraudulent funds into his accounts. So, I've looked at whether Capital One was fair to apply the marker, based on the evidence it had, and the investigation it carried out. CIFAS guidance says the business must have carried out checks of sufficient depth to meet the standard of proof set by CIFAS. This essentially means that Capital One needs to have enough information to make a formal report to the police. And that any filing should be for cases where there are reasonable grounds to believe fraud or financial crime has been committed, rather than mere suspicion.

Having reviewed Mr A's account of events and the evidence Capital One has provided, I'm satisfied that Capital One had sufficient evidence for the CIFAS marker to be recorded. In coming to this view, I've taken into account the following reasons:

- Mr A received fraudulent funds into his account and didn't report this to Capital One at the time.
- He would have had the benefit of this money in repaying his borrowing with this potentially allowing him to redraw funds from his account .
- Capital One had grounds to believe that Mr A had used fraudulently obtained funds based on the evidence it had.

I appreciate that Mr A will be very disappointed by my findings here given what is at stake for him and his serious health issues. But I'm afraid I don't have a reasonable basis to require Capital One to do anything further.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 30 June 2022.

Michael Crewe
Ombudsman