

## **The complaint**

Mr R complains that Capital One (Europe) plc placed a marker at CIFAS the national fraud database.

## **What happened**

Mr R says he has now discovered that the marker had been added in February 2019 when his account was closed. He says that this had affected his ability to access financial products elsewhere.

Capital One says it didn't make a mistake. It had been concerned at payment irregularities at the time and had written to him about this saying it would be closing his accounts. It wouldn't be removing the CIFAS marker.

Our investigator didn't recommend that the complaint be upheld. She said that the marker that Capital One had applied was a 'misuse of facility' one. This related to fraudulent funds being received into Mr R's account. To apply this marker the guidance from CIFAS was that:

*"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."*

She said that Capital One had information that Mr R's account had been in receipt of fraudulent funds. And that Mr R had told her that he didn't know where this money had come from. There were attempts to make payments into his account with different debit cards. Payments from three of them were unsuccessful. But later payments did go through. She didn't accept Mr R's explanation that someone had taken his card from his wallet and made the payments and returned it. And he had called Capital One to ask for the balance at that time.

Mr R didn't agree and wanted his complaint to be reviewed. He is trying to obtain evidence to show that his personal items were taken from a public event.

## *My provisional decision*

I issued a provisional decision about this complaint on 7 June 2022. I set out below what I said.

I needed 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.

Through our investigator I asked it to confirm whether it had any direct contact with the financial business that issued the card used to take actual payments. And for it to provide its own information that supported a conclusion that the payments were fraudulent. It stated that

it didn't have any contact from that financial business and particularly to show that the genuine cardholder didn't recognise these payments. And it no longer had the other information it relied upon. It referred to contact with Mr R towards the end of January 2019 that had raised concerns about Mr R allowing a third party to have access to his account.

As our investigator has said attempts were made to credit payments to Mr R's account in the early hours of the morning of 6 February 2019 using three different card numbers. All of these were declined. There is no further information about those payments. The successful ones were made that afternoon. There was one for £50 with one card number and then three being £50, £100 and £86.72 with another. Capital One says that its specific concerns were about the latter three payments. It didn't speak to Mr R about the payments at the time.

I didn't doubt that this pattern of attempted and actual payments to Mr R's account was suspicious. And was a reasonable basis for Capital One to decide to close his accounts. But I wasn't satisfied that Capital One has demonstrated that it had sufficient information at the time that the marker was applied to show that the funds were fraudulently obtained. And to be in a position to be able to report such a fraud to the authorities. I would have expected it to retain any information it relied on and to provide consistent and accurate documentation about what happened.

I also agreed that Mr R's explanation of how his account could have been used by a third party without his knowledge isn't supported by any evidence. He wasn't asked for an explanation at the time. And he's now said that he doesn't recognise the payments and had nothing to do with any fraud.

Our investigator has set out that the grounds for adding a CIFAS marker have to be more than suspicion. As I'd said I didn't find that Capital One had sufficient grounds to show and report that fraud had been made or attempted. And given this finding then whether or not Mr R allowed his account to be used by someone else to make these payments or not doesn't really assist in considering the CIFAS marker. I didn't think it's reasonable to hold what he's later said about that against him in the circumstances.

So, I considered that the marker should be removed. Mr R has said that this has affected his ability to access financial products. A marker on the database shouldn't lead to automatic refusal - and financial businesses must still make their own checks and make their own decisions. I didn't have evidence about that in any event. I noted that Mr R says he was trying to build his credit record at the time, and I couldn't say what if any other information was recorded about him that would have been relevant. I'd need to think that this marker was the sole reason that he couldn't access other products. I wasn't able to conclude that on the information available. I did though find that he has been caused a measure of trouble and upset in having to deal with this marker and I intended to award him £300 in compensation.

### **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.

Mr R said he agreed with my decision. He wanted to make sure this didn't change. And he provided a supporting statement from a friend at university with him at the time.

Capital One didn't agree. It provided its internal criteria for loading a payment fraud marker and it explained why these had been met. There were concerns about calls made about the

account and the information about it.

I set out above that I'm considering whether there are grounds for a CIFAS marker and referring to guidance from CIFAS. I want to make clear that I'm not reviewing Capital One's internal processes generally. I have considered what it said but I don't think it appropriate to quote processes around fraud in a public document as they don't change my assessment. And that's also because I am only looking here at what happened in Mr R's case

I remain of the view that there were clear grounds for suspicion and the potential that Mr R had allowed someone else to use his account. But I have still not had any third-party confirmation that the payments in question had been reported as fraudulent. I set out above that I'd expect Capital One to have retained the information that supports a marker and to have given a consistent explanation. The CIFAS guidance quoted above is that Capital One's evidence "*...must be clear, relevant and rigorous such that the member could confidently report the conduct of the subject to the police.*"

I don't consider that this high bar was met. And I don't think that this can be fairly achieved by questioning Mr R's later explanation – and which wasn't asked for at the time. For these reasons I don't need to place any weight on what he says about that. I recognise his difficulties too in trying to substantiate something which had happened years earlier.

In light of this I won't be departing from my reasoning or conclusions in my provisional decision.

### **My final decision**

My decision is that I uphold this complaint and I require Capital One (Europe) Ltd to:

- 1) Remove the CIFAS marker.
- 2) Pay Mr R £300.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 19 August 2022.

Michael Crewe  
**Ombudsman**