

The complaint

Mr T complains Capital One (Europe) plc won't refund him for transactions he didn't make.

What happened

Mr T received a message from Capital One to verify a payment made on his credit card. Mr T responded to the message to say he didn't recognise the payment, and Capital One stopped it from debiting.

Mr T then reviewed the spending on his credit card and noticed other transactions he hadn't made. Capital One investigated the transactions, and refunded Mr T temporarily.

Capital One decided Mr T had made the transactions, so it took back its refunds. Mr T complained and was passed to the fraud department. Capital One still wouldn't agree to refund Mr T and said it had sent one time passcodes for the transactions.

Unhappy with this response, Mr T brought his complaint to this service. An investigator looked into things and thought Mr T's complaint should be upheld. The investigator thought any transactions disputed, made without the one time passcode, should be refunded.

The investigator also thought Mr T had spent a lot of time disputing these transactions and Capital One should pay him £150 to compensate for this.

Capital One disagreed and said the transactions were made using an internet protocol (IP) address similar to one Mr T uses and the transactions didn't fit the usual spend of a fraudster. Capital One asked for an ombudsman to decide things.

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.

The transactions in dispute were made using a credit card. The consumer credit act says Capital One can't hold Mr T liable for transactions he didn't make, or allow someone else to make on his behalf. So, I need to decide if it's more likely than not Mr T made the transactions or allowed someone else to.

The transactions Mr T's disputing are to an online food delivery company and a ride sharing company. These payments are for relatively small amounts.

All the transactions are distance contracts, so Mr T's physical card wasn't used, just the details recorded on the card. Capital One's terms and conditions say: "You will not be liable in any amount if someone, not acting or to be treated as acting as your agent, and without your prior knowledge or consent, carried out a fraudulent transaction where the cardholder does not need to be present (for example, on the Internet, by telephone or mail order)."

Capital One has said it can't get further information about the transactions from one of the retailers, as it won't share this data. Capital One can't show Mr T benefitted from these transactions, there's nothing to show the purchases were carried out on an account in his name or delivered to his address.

And all a random third party would need is Mr T's card details, to enter into their account as a payment method, and the transactions could be made. There's no requirement, for this type of payment, to have regular access to Mr T's card.

Capital One's relying on the fact it sent one time passcodes to Mr T's device, and these codes were input into the purchase screen. I've looked at the transactions Mr T's disputing, and there are over 70 he's said weren't made by him.

Capital One sent one time passcodes, and these were input successfully, on two of these disputed transactions. In total, it appears Capital One sent one time passcodes five times, but three were unsuccessful. This seems odd, if Mr T had made these transactions, I'd expect him to have successfully entered the one time passcodes each time.

Instead, two were abandoned and one was unsuccessful. This means two timed out and one had the wrong code entered. But only one of these transactions was attempted again. I think it's more likely Mr T would have attempted genuine transactions again.

Instead, whoever made the payments didn't go ahead with the purchases on two occasions. This seems very odd behaviour if it was Mr T making the payments. I'm assuming whoever attempted the payment with the food delivery company wanted the order, but they didn't go ahead once asked for the one time passcode.

If it was Mr T placing the order, I'd assume he would have been able to complete the payment. Not completing the payment suggests it wasn't Mr T.

I think it's possible someone else was making the transactions, but didn't always have access to Mr T's phone, or the ability, to verify the one time passcode.

I don't think Mr T made the transactions and I don't think Mr T allowed someone else to make the transactions. I don't think Capital One can fairly hold Mr T liable for any transactions Mr T didn't authorise, via one time passcodes.

I've considered what Capital One has said about similar IP addresses, but I don't think this is enough evidence to say Mr T carried out the transactions. IP addresses change, and someone close to Mr T, making the transactions, would likely have a similar IP address.

I've also considered what Capital One says about the transactions not fitting a fraud pattern. But fraudsters often don't follow patterns, so I don't think the type of spending on the card is enough to say Mr T must have made the transactions.

The onus is on Capital One to show, on the balance of probabilities, Mr T carried out the transactions or allowed someone else to. I don't think Capital One has shown this, so it follows I don't think it's fair to hold Mr T liable for any transactions he's disputed where no one time passcode has been sent.

Putting things right

Since I don't think it's fair to hold Mr T liable for payments where no one time passcode has been sent, Capital One should refund these payments. Capital One should also refund any associated interest for these payments.

Capital One took back the refund it had given Mr T, and there's now a balance owing on the card. And it appears Capital One has recoded adverse information on Mr T's credit file. I think Capital One should remove this adverse data as I don't think it can fairly hold Mr T liable for the balance owing.

And I can see Mr T spent some considerable time trying to resolve this, and asked for a full breakdown of the transactions, but was instead sent many years of statements. I think this will have caused Mr T a fair degree of distress and inconvenience, so I think a payment of £150 is fair in the circumstances.

My final decision

My final decision is I uphold this complaint and Capital One (Europe) plc must:

- refund all the disputed payments not authorised by a one time passcode
- refund any interest associated to these payments
- remove any adverse data reported in respect of Mr T's credit card
- pay Mr T £150

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 29 March 2023.

Chris Russ
Ombudsman