

The complaint

Mrs S complains that Capital One (Europe) plc failed to refund transactions she didn't recognise.

What happened

Mrs S saw there were several transactions on her Capital One credit card that she didn't recognise and spoke to them about it. These unrecognised transactions that had taken place over a two-week period and amounted to over £400.

Capital One looked into what happened and made a temporary refund to Mrs S while they carried out their investigation. They identified that a number of the transactions had been confirmed after One Time Passcodes (OTPS) had been sent to the registered mobile phone number on the account. Another larger disputed transaction had been confirmed after a message was sent to the same phone and received a positive response to a security question about the payment.

Capital One told Mrs S they were holding her liable for the disputed transactions and took back the temporary refund. Mrs S was left unhappy and made a complaint. She was represented in the complaint and further evidence about security messages was supplied to her representatives. Capital declined to make any refund and Mrs S brought her complaint to the Financial Ombudsman Service for an independent review.

Mrs S's complaint was looked into by one of our investigators when considered evidence supplied by both parties. Mrs S confirmed she hadn't made these transactions, nor had she lost her card or allowed anyone else to access it. She also said she never received any messages from Capital One on her phone and no one else had access to her phone.

Capital One provided details of the transactions including copies of the additional authentication procedures carried out. Notes of contact with Mrs S were included including the registration of a mobile phone number that was done some months earlier and later received the OTPs and text messages from Capital One.

After reviewing the information, the investigator concluded that the evidence suggested it was Mrs S who'd authorised the payments. The following was referred to in the investigator's report:

- OTPs and text messages were exchanged with the registered mobile phone for Mrs S's account.
- The device ID used to make the transactions matches the device ID used to make a previous purchase that is not in dispute.
- Two of the merchants had also been used previously without complaint.
- No one else had access to the card or phone.

- There were gaps in the use of the card to make disputed transactions that didn't match usual fraudulent behaviour.

Mrs S disagreed with the investigators outcome and continued to deny making the payments. Her representatives believed that Capital One were already suspicious of the transactions because they temporarily refunded them at the start of the claim.

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 relevant law surrounding authorisations are the Payment Service Regulations 2017 and the Consumer Credit Act 1974. The basic position is that Capital One can hold Mrs S liable for the disputed payments if the evidence suggests that it's more likely than not that she made them or authorised them.

Capital One can only refuse to refund unauthorised payments if it can prove Mrs S authorised the transactions, but Capital One cannot say that the use of the card payment details conclusively proves that the payments were authorised.

Unless Capital One can show that consent has been given, it has no authority to make the payment or to debit Mrs S's account and any such transaction must be regarded as unauthorised. To start with, I've seen the bank's technical evidence for the disputed transactions. It shows that the transactions were authenticated using the payment tools issued to Mrs S. I'll now need to consider the information provided by both parties to determine whether there's sufficient evidence to hold Mrs S responsible for the disputed transactions or not.

It's Mrs S's case that she wasn't aware of or authorised these payments. She's said that she never let anyone else use her card or allowed anyone else access to her phone.

Capital One have provided evidence that several of the disputed transactions needed additional authentication steps before releasing the payment in the form of OTPs. These were sent to Mrs S's registered phone. The additional steps were successfully completed (meaning the OTPs were correctly submitted after receipt) allowing the payments to be released.

One other disputed transaction required a reply to be made from the registered phone in the form of a Yes or No answer (Y or N). The evidence shows that the transaction was attempted early in the morning and was held by Capital One's system pending the reply. That reply "Y" was received mid-morning on the same day.

The evidence provided by Capital One points to several disputed transactions needing additional security steps to be completed with the registered phone. It seems unlikely that an unknown third party could regularly gain access to her phone (and her card details), input the codes etc and return the phone without Mrs S being aware of it.

Without those additional security steps, several of the disputed transactions would have failed. I've also thought about the way they were spread out. Mrs S's claim was that the disputed transactions took place over (about) a two-week period. It's unusual to see large gaps in the spending of a "stolen" card because any thief wouldn't know when the card would be blocked. Generally (but not always) these types of theft see rapid use of the card to maximise the funds taken from it. That wasn't the case here and there was a gap of over 10

days between some of those disputed transactions.

Additional evidence supplied by Capital One showed that Mrs S had previously made payments to two of those merchants without any issues. Also that the same device ID had been used as part of the security process on a successful transaction made some months earlier. What this means is that there's evidence of a previous relationship with some of the merchants involved in Mrs S's complaint and the same device had earlier been used to authenticate a payment.

I've also considered the point raised by her representatives concerning their view that Capital One were suspicious because of the refund they made. Generally, when a customer raises such an issue with their card provider, they'll make a temporary refund as a matter of course. The payment of it doesn't necessarily infer that Capital One thought the payments were suspicious, they were reacting to what they'd been told by Mrs S. I don't think here that the temporary refund can infer anything about the situation.

Overall, the evidence points towards Mrs S's card and registered phone being used to make these transactions. Because it's unlikely that they could have been obtained without her knowledge and she denied giving anyone else permission, I think it's more likely than not that she was responsible for making these payments or allowing others to use her account. I think it's reasonable for Capital One to hold her liable for the disputed transactions and I won't be upholding this complaint.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 13 June 2023.

David Perry
Ombudsman