

## **The complaint**

Mr N complains about the way Capital One (Europe) plc trading as Capital One (“Capital One”) dealt with his complaint for money back in relation to a payment he made to a travel company.

## **What happened**

The circumstances of the complaint are known to both parties. So, I won’t go everything again in detail. But, in summary, Mr N made a flight booking with a travel company and paid £899.49 with his Capital One credit card. He says he didn’t receive a booking confirmation e-mail from them and was unable to contact them to discuss this. Mr N says he couldn’t know that the flights were booked and when he spoke to the airlines in question, they said they didn’t have a record of a booking for him. So, Mr N booked flights with another travel company and received quick confirmation of this.

Mr N put in a claim with Capital One, who raised a chargeback to try to recover the money he’d paid. The chargeback was defended by the merchant and Capital One declined to take it any further.

Mr N complained to Capital One, who said it had been unable to pursue the chargeback any further following the merchant’s defence. And Capital One said it couldn’t consider a claim under Section 75 of the Consumer Credit Act 1974 (“s.75”). So, Mr N complained to us. One of our investigators looked into what had happened but didn’t make any recommendations.

Our investigator said that Capital One reached a fair outcome on the chargeback claim as the merchant had provided evidence that they had sent a confirmation e-mail to Mr N about his booking. He also felt that Capital One hadn’t acted unfairly by saying that Mr N didn’t have a valid s.75 claim.

Mr N didn’t agree. He said that the crucial and key piece of evidence was the booking confirmation e-mail and the travel company, and Capital One, should be able to provide this, but hadn’t. He pointed to the merchant’s defence to the chargeback showing that an item had been unissued as evidence they hadn’t sent him the confirmation e-mail.

As things weren’t resolved, the complaint has been passed to me to decide.

## **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’m considering whether Capital One acted fairly and reasonably in the way it handled Mr N’s request for getting his money back. In situations like this, Capital One can consider raising a chargeback or assessing a claim under s.75.

The chargeback process provides a way for a card issuer to ask for a payment to be

refunded in certain circumstances. The chargeback process is subject to rules made by the relevant card scheme and isn't a guaranteed way of getting money back. I consider it good practice though for a card issuer to raise a chargeback where certain conditions are met and there's some prospect of success.

Here, Capital One raised a chargeback and it was defended by the merchant who sent evidence they say showed that Mr N was sent a booking confirmation e-mail of the flights he'd booked.

I've thought about the dispute conditions that might have been relevant here. There wasn't a problem with the actual travel service paid for as the flights, as far as I know, went ahead as scheduled. So, I don't think that conditions relating to services not being as described or not being provided would be relevant. I also don't think that the condition relating to a credit not being processed was relevant as I've not seen any evidence that the booking was refundable in this scenario. The one that's most relevant is where the purchase transaction didn't complete, as Mr N says he didn't receive any confirmation from the travel company.

I've seen though that the merchant sent Capital One several screenshots of their records which sets out that a confirmation e-mail was sent to Mr N's e-mail address, on the day the booking was made. I appreciate that Mr N says he didn't receive this, and that he's referred to another section of one of the screenshots which refers to something being unissued. But the merchant had sent reasonably clear evidence that an e-mail was sent, and the section Mr N refers to isn't clear enough in my view to have shown Capital One that this wasn't the case.

When a merchant defends a chargeback, as happened here, a bank doesn't have to carry out a detailed investigation into what happened to decide which party deserves the money. And I don't think the merchant's evidence was noticeably poor or lacking in credibility. So, I don't think Capital One acted unfairly by not taking the chargeback further.

I've next thought about Capital One's liability under s.75. This is a statutory protection that enables Mr N to make a like claim against Capital One for breach of contract or misrepresentation by a supplier paid by credit card in respect of an agreement it had with him for the provision of goods or services. There are certain conditions that need to be met for s.75 to apply. I'm satisfied those conditions were met.

The issue here though is that I've not seen there's a breach of contract or a misrepresentation that Capital One could be held liable for, for essentially the same reasons I've given when considering how it handled Mr N's chargeback. The flights went ahead as scheduled, and I think there's reasonable evidence to show that the travel company sent a booking confirmation e-mail to Mr N. While it would of course have been preferable if the travel company had sent us a copy of the actual e-mail including the attachments that were included, they haven't done so despite Capital One asking for this. I don't though think that means that they haven't sent reasonable evidence that this was sent to Mr N, and I'm broadly satisfied that Capital One was entitled to think they had.

Taking everything into account, I have to remember I'm considering a complaint against Capital One and not the travel company. So, I must consider its obligations as a provider of financial services, which in this case is the way it handled the chargeback claim and its liability for breach of contract or misrepresentation under s.75. Even though I completely understand Mr N's frustration and why he thinks it would be fair to receive a refund, it doesn't mean I can direct Capital One to do this, when I've not got the grounds to do so. So, I'm not going to direct Capital One to take any action.

**My final decision**

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 26 September 2024.

Daniel Picken  
**Ombudsman**