

The complaint

Mr H complains that Capital One (Europe) plc won't refund the money he lost to a scam.

Mr H has used a professional representative to bring this complaint to our service and they have made submissions on his behalf. For consistency, I'll refer to Mr H throughout.

What happened

The background to this complaint is well known to both parties, so I won't repeat it in detail here, but in summary I understand it to be as follows.

Mr H says he fell victim to an investment scam after responding to an online advertisement about a cryptocurrency investment. The investment was offered by a company (that I'll call R).

R allocated an account manager to Mr H (that I'll call Mr J). He persuaded Mr H to make eight card payments to two merchants (Merchant 1 and 2), commencing from 18 June 2021, to what he thought was his investment. Mr H continued to make payments until late October 2021. He says he realised it was a scam when he tried to withdraw his 'profits', and the fraudster stopped responding.

Mr H reported the scam to Capital One who declined to refund him. It said the merchant Mr H paid offered the services and adhered to the contract between them so a chargeback would not have been successful. It said when Mr H disputed further payments, it asked him to provide further information to support his claim. But by the time he responded, the time limits for Capital One to dispute the payments on Mr H's behalf via the chargeback scheme had since passed. Capital One declined a Section 75 Claim because it too said this would not be successful. It also said it had no reason to believe Mr H was falling victim to a scam, so it did not intervene and acted appropriately in carrying out his instructions.

Mr H referred his complaint to our service, but our Investigator didn't uphold it. They weren't persuaded that Mr H had provided sufficient evidence of the circumstances surrounding the disputed payments. And on that basis, they didn't think it would be fair or reasonable to uphold the complaint. They also said that even if Mr H had supplied more evidence, he didn't think an intervention from Capital One would have deterred Mr H from proceeding.

Mr H didn't agree with this. He thought he'd provided sufficient evidence and sent further evidence for our Investigator to consider. He said that Capital One ought to have requested his evidence at the time of his dispute. And Capital One didn't take reasonable steps to satisfy he wasn't falling victim to a scam. He also said Capital One ought to have recovered his funds via the chargeback process.

Our Investigator didn't change their view. They maintained Mr H had not provided sufficient evidence, despite asking for this multiple times. And they considered that Mr H realised he had been scammed and raised this with another bank he'd lost funds from (Bank B) as well as the Financial Conduct Authority (FCA), yet he continued to make further payments. They said there was nothing to suggest that Mr H would have stopped making payments, had

Capital One intervened. They also noted Capital One did ask Mr H for evidence at the time of his claim, but he did not provide this.

As no agreement could be reached, this case was passed to me for a decision to be issued.

When investigating Mr H's complaint, I contacted Mr H for clarification on some of the inconsistencies I'd found in the evidence he provided. (I'll come on to discuss these, and Mr H's response, in more detail later on in my decision). I've carefully considered his comments when forming my decision, which is set out below.

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 aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

I'm sorry to learn that Mr H fell victim to a series of scams and lost a significant sum of money. Any sum of money is too much to lose to a scam. So, I don't underestimate how upsetting this has been for Mr H.

However, my role here is to consider a complaint about Capital One – not the fraudster who stole Mr H's money. Instead, I need to decide whether Capital One has acted fairly and reasonably. This is taking into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

It's also important to remember that the scam occurred between Mr H and the fraudster. Capital One can't know exactly what the fraudster told Mr H, or the circumstances which led to Mr H parting with his money. And neither can I. Instead, I need to rely on evidence and testimony provided by Mr H to determine what happened and decide whether Capital One can fairly and reasonably be held liable for Mr H's losses. And where there is an absence of evidence, or given information is otherwise unclear or contradictory, I need to decide on the balance of probabilities, what I think is most likely to have happened.

Taking the above into account, I've reached the same outcome as our Investigator – and for broadly the same reasons – that being due to the lack of clear and consistent evidence from Mr H, it would not be fair or reasonable to hold Capital One liable for his losses.

I know this will be disappointing for Mr H. I'll explain my decision below.

Can Capital One fairly and reasonably be held liable for Mr H's losses?

Upon my review of this case, and a second connected complaint Mr H referred to our service about Bank B, I found a number of inconsistencies which I asked Mr H to clarify. For example:

- On his Capital One complaint, he said the scam with R began in June 2021. However, on his Bank B complaint he said it began in October 2020.
- Despite him saying he didn't start investing with R until June 2021, he has provided

evidence of an invoice from F (who he says merged into R) dated 11 March 2021 and showing a withdrawable amount of €23,396.

- He wasn't clear on who the relevant 'characters' were in the scam, such as the 'account manager'. And he provided evidence of other scams he fell victim to at the same time, involving one of the same characters mentioned in the scam with R.
- His evidence showed he dealt with a different investment company (called F) who he'd said he'd had no direct contact with. But other evidence provided contradicted this.
- At other points he said F merged into R. And F was a subsidiary of another company (called G). He's been unclear on which company he completed his initial research into and who he was dealing with at different points in time.
- Capital One's evidence shows contact from Mr H in July 2021 detailing a different scam. Yet he says the payments he made from his Capital One account were part of the investment scam with R.
- Other evidence was provided with no clear links or relevance to the scam with R. For example, records from the FCA register, screenshots of an online 'wallet', and a 'broker check report' as well as literature for a later scam.

In response, Mr H himself acknowledged some of the evidence provided appears contradictory or unrelated, and there are discrepancies in the timeline provided. He says the fraudsters exploited him with an array of confusing interconnected scams, each with its own backstory. This made it hard for him to recall the exact events. Whilst I accept this might be true, I still need to rely on clear and accurate information and evidence to fairly assess this complaint about Capital One.

I understand Mr H feels strongly that had Capital One intervened, it would have prevented his losses. However, there are two key issues here:

1. The circumstances behind each of the individual payments in dispute, are unclear. I accept Mr H was scammed, but it's not entirely clear which payments relate to which scam, how long that scam had been going on for at the time the payments were made, or which company he thought he was dealing with at the time. Without a clear understanding of the circumstances behind the payments in dispute, I can't be confident about what most likely would have happened if Capital One had intervened. That is to say, I'm not as persuaded as I'd need to be that an intervention from Capital One would've made a difference to preventing Mr H's loss.
2. Even if the evidence and timeline were clearer, there is evidence to suggest Mr H knew, or reasonably ought to have known he was being scammed by R, yet he proceeded to make payments. This suggests to me that he wouldn't have heeded a warning from Capital One.

For example:

- Despite raising his dispute with Capital One in July 2021, he continued to make further payments (to a second merchant) until late October 2021.
- He contacted G (whom he believed F was a subsidiary of) in March 2021 as he feared he was being scammed. G told him that the person Mr H was dealing with wasn't known to them, despite them claiming to work for F. In this same email, G told Mr H that F's website had no connection to G and was a 'fraudulent website'. This is relevant because he says F merged into R.

- In July 2021, the FCA told Mr H they suspect he'd been scammed and discouraged him from sending further funds. This email appears to relate to R and another scam involving the impersonation of the FCA.
- He told Capital One in July 2021 that the FCA had warned him it was probably a scam, in response to questions about merchant 1. He also told Capital One in early October 2021, that Bank B also told him that R was a fraudulent company.
- In correspondence between Mr H and a fraudster in July 2021, Mr H said *"My bank thinks that this is a scam and has frozen my account. I have no way of knowing if it is a scam or not. (I was defrauded in a similar way before)"*. I accept this email may relate to a different scam, however due to the unclear testimony and timeline from Mr H, I can't rule out that it relates to the scam with R. Failing that, it does suggest Mr H wasn't receptive to a bank's warnings of fraud.

Despite the above points, Mr H continued to make further payments as part of the scam until late October 2021.

Considering this, I'm in agreement with our Investigator that on balance, it seems unlikely that a better intervention from Capital One would've deterred Mr H from making further payments. So, I don't find it could have fairly or reasonably prevented his loss.

Recovery of funds

I'm also in agreement with our Investigator that there was no reasonable prospect of Capital One being able to recover Mr H's funds.

As already set out by our Investigator and in my decision, Mr H's evidence submissions have been lacking or otherwise unclear. I think that too would've impacted Capital One's ability to recover his funds, including through a chargeback and Section 75 claim.

I can see Capital One asked Mr H for evidence multiple times, and he largely was unable to provide this. He also continued making further payments whilst his dispute was ongoing, before raising a second dispute. Again, he provided Capital One with limited evidence to assess the dispute. It wasn't really until January 2023, that Mr H provided more detail about the circumstances of his claim. By this time, a significant period had passed since Mr H made the payments. As the timescales for submitting a chargeback are strict, I think a chargeback had little prospect of success.

Whilst Capital One did also explore a Section 75 claim, for a claim to be considered, specific conditions must be met. There must be a valid debtor-creditor-supplier agreement, and linked to that, there must be proven misrepresentation or breach of contract. In this case, Mr H's issue was with R. But he made payments to merchant 1 and 2 and it's not clear what their role was – or what link existed between them and R. Overall, Mr H provided limited evidence and information to support the success of such a claim such that I don't find Capital One treated him unfairly when he reported the scam.

My final decision

For all of the above reasons, my final decision is that I do not uphold this complaint about Capital One (Europe) plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 24 April 2025.

Meghan Gilligan
Ombudsman