

## The complaint

Mr M complains that Capital One (Europe) Plc are pursuing him for the outstanding balance on a credit card in his name that he says he didn't apply for.

## What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here. From late 2022 until late 2023 Mr M says he was the victim of a scam. He says he was tricked into making payments believing at the time that he was investing in cryptocurrency. He was continually told he needed to make further payments to release money he believed he'd already accrued.

Of relevance to this complaint is a Capital One credit card in Mr M's name. The credit card was applied for in April 2023 and issued shortly afterwards. Mr M used the credit card to make a cash withdrawal of £190 in May 2023. He says this money was then paid into his bank account and subsequently lost to the scam.

When Mr M realised he'd been scammed, he reported this to Capital One. Capital One said they were still going to hold Mr M liable for the outstanding balance as he'd authorised the payment in question.

Mr M complained and when Capital One maintained their position the matter was referred to our service. One of our Investigators didn't recommend that the complaint should be upheld. In summary she concluded Capital One had acted fairly. Mr M disagreed and asked for an Ombudsman to review his complaint.

I initially wrote to Capital One to tell them I was satisfied that Mr M had been the victim of a scam and invited them to make him an offer to resolve the complaint. Capital One declined to write off the lending, but they did offer to remove the cash fees, interest and charges to date. This offer was put to Mr M, who declined it, he still thinks the whole balance should be written off. As the matter couldn't be resolved informally, in July 2024 I issued a provisional decision in which I said:

*"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*Having done so, I'm intending to reach a slightly different outcome to that of our Investigator. So, I'm issuing this provisional decision to give both sides a further opportunity to comment before finalising my decision.*

*In reaching my conclusion, I'm placing a lot of weight on the chat message history between Mr M and the scammer. I find this to be persuasive evidence as it is, in effect, a contemporaneous record of what was said at the time. I believe both Mr M and Capital One already have a full copy of this, and if they don't it can be shared upon request. Our Investigator has already quoted many of the relevant parts. But I'll summarise what was said and will only use direct quotes where appropriate.*

*In April 2023 Mr M was desperately seeking funds to pay towards his 'investment'. He believed at the time this was required to release a significant amount. He describes to the scammer how he's been unable to get a loan. Part of what the scammer said to him on 13 April 2023 was: "I will send you credit card so you can withdraw money out for us to be able to do this... The credit card is mine, so I will send it to you so you can withdraw the money and deposit it for the free. Mate I'm doing this because I really want to help you and you are now like a brother to me."*

*Mr M then shared sufficient personal information to allow applications to be made. He was told this was so the scammer's 'account manager' would allow the card to be sent. A week later on 20 April 2023 the scammer said: "I couldn't send my card so I did a new card that I will put money for you to withdraw for me mate... I will put enough money in the card so you can send it to me and also pay the agent... I'm trusting you with my money." On 28 April 2023 the scammer said "...it is just a card I applied for you once you get the card I will fund it so you can pay the fees from my money." Later the same day, Mr M said "...this is scary lol uve managed to get cards out in my name Lol."*

*As I mentioned above, I find this chat evidence to be persuasive, and strictly on the point of whether Mr M entered into the agreement with Capital One for the credit card in question, I'm not persuaded he did. Particularly as the email address and phone number provided aren't the same as he's used to communicate with our service.*

*So as I'm not persuaded that Mr M entered into the agreement (or that he instructed the scammer to do so on his behalf), I don't think it would be fair and reasonable for Capital One to hold him to the terms of that agreement. This means that Capital One shouldn't charge Mr M any interest, charges or fees in relation to the amount owed. They also should remove any record of this credit card from the credit reference agencies.*

*However, Mr M did make use of the Capital One credit card. Specifically by making a £190 cash withdrawal on 24 May 2023. And even if that cash was paid into a bank account and then lost to the scammers, this doesn't mean Capital One can't pursue him for that amount. I think the above chat, in combination with the documentation provided alongside the card and PIN, makes it abundantly clear that the credit card was in Mr M's name. Indeed, Mr M's own words in his chat with the scammer acknowledge that he knew he was receiving a credit card he hadn't applied for and that it was in his name. And rather than reporting this at the time, Mr M later used the card as I've described above. I've taken account of Mr M's individual circumstances and that he says he was being pressured by the scammer. But despite this, when using the card, I think it's most likely he knew he was effectively spending on a credit card in his name. And so this isn't a case where I think it would be fair and reasonable to prevent Capital One from seeking to recover the £190 from him. I would still expect Capital One to treat Mr M positively and sympathetically and to reach an affordable repayment plan with him.*

*In this case, Mr M did initially make some monthly repayments towards the balance on the credit card. These would have been split with part of those payments reducing the balance, and other parts going towards interest and charges. But given Mr M's wilful use of the card in these circumstances, I think the fairest approach in this particular case is to allow Capital One to offset any payments already received against the amount outstanding (even where I don't agree they should apply interest or charges). This means that all the payments already made, will count towards reducing the principal amount.*

*I appreciate that Mr M says another credit card was taken out around the same time in very similar circumstances. And that that lender decided to write it off. I can only comment on the actions of Capital One, and another lender taking those steps doesn't obligate Capital One*

*to do the same. Nor is this a basis upon which I can direct that the balance should be written off as he would like.”*

Mr M responded to say he accepted my provisional decision. Capital One said they were happy to remove interest, charges and fees, and to only pursue the amount of £190. But they weren't prepared to remove this from Mr M's credit file until settlement had been received.

### **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.

As both sides agreed with most of my proposed redress, the only point of contention is the time at which Capital One should remove details of the card from their reporting to the credit reference agencies. As I've mentioned above, Capital One don't think this should happen until the debt is settled.

I've thought carefully about this. But I'm not minded to change from what I've set out in my provisional decision and for the same reasons. Principally, my finding is that Mr M didn't enter into the credit agreement with Capital One himself. And in the circumstances of this case, this means I don't think it would be fair and reasonable to use this agreement as the basis of any reporting to the credit references. I don't agree that amending his credit file should be contingent on the debt being settled. This obviously doesn't impact my finding that it's fair and reasonable for Capital One to pursue Mr M for anything outstanding in relation to the £190 in question.

### **My final decision**

For the reasons set out above, my final decision is that I uphold this complaint.

Capital One (Europe) Plc must not pursue Mr M for any interest, charges or fees in relation to the credit card account. They must also not pursue him for more than the sum borrowed.

Capital One should take into account any payments already received from Mr M and use the full amount of those payments to reduce the amount they can pursue. Capital One should also remove any record of this credit card from credit reference agencies that they've reported to.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 19 August 2024.

Richard Annandale  
**Ombudsman**