

The complaint

Mr D complains Capital One (Europe) plc trading as Capital One, treated him unfairly by not refunding the money he paid, using his credit card, for an item that wasn't delivered.

What happened

Mr D purchased a luxury bag online from a retailer I'll refer to as Company L, on 17 June 2023. He paid £1970 using his Capital One credit card.

Delivery was expected by 27 June 2023, so when this didn't happen Mr D says he contacted Company L by phone shortly after. Company L investigated but told Mr D they'd received confirmation from the delivery company the bag had been delivered to the address given, and identification taken.

Mr D disputed this, so contacted Capital One in September 2023 to ask about claiming a refund. Mr D was told he'd need to complete a claim form to start the process of a chargeback and he had six years in which to do so.

Mr D says he completed the form and returned it by post, but as he didn't hear from Capital One for some months, he contacted them again on 8 November 2023. Capital One told Mr D they'd not received his completed form, so asked him to complete this again. He did so, emailing Capital One his completed claim form on 26 January 2024.

Capital One reviewed matters but concluded Mr D had raised a chargeback too late. They said he had 120 days to raise a chargeback, but as this time had passed, they weren't able to pursue the claim. They did however acknowledge he'd been given incorrect information about the time limits and applied £50 credit to his account by way of apology, as well as explaining he could raise a dispute under Section 75 of the Consumer Credit Act 1974 (CCA).

Mr D didn't agree, saying he didn't want to raise a claim under section 75, and considered a chargeback would have been successful had he not been given incorrect information. So he referred the matter to this service.

An Investigator here reviewed things but didn't think Capital One had acted unfairly by not pursuing a chargeback. Saying the claim had been made too late and in any case, was unlikely to be successful as the evidence Mr D provided suggested the delivery had been made successfully. She did however acknowledge Mr D had been given the wrong information around time limits, and that had caused some inconvenience, so recommended Capital One pay a further £100 in compensation.

Capital One agreed with what our Investigator said. Mr D didn't agree and asked for his complaint to be considered by an Ombudsman, saying Company L hadn't evidenced the bag was delivered to the correct recipient. As such, this 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 think it would be helpful to explain, in this decision I'm only able to consider how Capital One handled the dispute Mr D raised with them. I'm not able to consider the actions of Company L or the delivery company, as that isn't within the jurisdiction of this service for these types of complaints.

When a consumer approaches their credit card issuer with a problem with a purchase made using their card, there are two avenues via which the business can help.

The card issuer can try to reclaim the amount (or part of the amount) the consumer paid on their card, via the dispute resolution mechanism operated by the card scheme, and which is often known as "chargeback". They can also consider honouring a claim under section 75 of the CCA. In this case Mr D has chosen not to pursue a claim under section 75, so I've taken this into account when considering whether Capital One have acted fairly.

Chargeback

Chargebacks are governed by rules set by the card scheme to which the consumer's card belongs. It's my understanding the credit card Mr D holds is a Mastercard, based on what he's told this service and from the limited information supplied by Capital One. However, even if the card was a Visa card, the rules relating to both aren't materially different in Mr D's case.

Chargebacks are not guaranteed to succeed, the recipient of the funds (Company L in this case) can choose to challenge or defend a chargeback if they don't think they are valid. A consumer also cannot require their card issuer to attempt a chargeback, as it isn't a right. However, our service does consider it good practice to do so, if it is within the time limits and there is a reasonable prospect of success.

Mr D wanted to dispute a payment made on 17 June 2023 for a bag he purchased from Company L, because he says it wasn't delivered.

Capital One acknowledged Mr D was given incorrect information when he called them in September 2023 to enquire about raising a chargeback. He was told he had up to six years to raise a dispute – which wasn't correct. As a result, when Capital One received information from Mr D in January 2024, necessary to raise a dispute, they said it was too late.

The Mastercard scheme rules include provisions relating to how long after a transaction takes place, it is permissible to raise a chargeback. Where an item has been purchased online, but not delivered, as here, the relevant time limits to attempt a chargeback are: *No more than 120 days from the latest anticipated date that the goods were to be provided.*

If this time limit is exceeded, then it is too late to raise a chargeback. In this case, Mr D has shown the bag was expected to be delivered by 27 June 2023, which meant he had until 25 October 2023 to raise the chargeback.

Mr D says he first returned the dispute form to Capital One a couple of months before his call of 8 November 2023. However, Capital One have shown they didn't receive this, so no chargeback could be raised.

Mr D sent the completed form again on 26 January 2024, far in excess of the 120-day timeframe. So, it follows that I don't think Capital One treated Mr D unfairly by failing to pursue a chargeback at that point, as it was too late to do so.

While it's clear Mr D was given incorrect information, that doesn't necessarily mean it would be fair or reasonable to refund the amount he paid. I can't say for certain what would have happened, had Capital One given Mr D correct information, but I can consider what is most likely to have happened, had the chargeback been raised in time.

Chargebacks can only be raised for reasons specified by the card scheme. If a particular dispute doesn't fall neatly within one of those reasons, then it may not be a suitable dispute to raise via a chargeback. The type of dispute Mr D wanted to raise, would have been most suitable under the Mastercard rule *"Goods or Services Not Delivered"* or *"Goods or Services Not Provided"*. To meet the criteria for either, the rules say in summary, the Goods or Services were not provided or received by the date expected.

The rules go on to say that to defend a dispute the merchant, Company L in this case, would need to provide evidence to show the goods were delivered as agreed.

In this case Company L disputed Mr D's claim when he contacted them directly, and said the delivery company had confirmed delivery.

Mr D has also provided our service evidence, from the delivery company, showing the address the bag was delivered to matched the order confirmation details.

Mr D has raised concerns about the parcel being delivered to an unauthorised person, however the order also shows delivery was due to be made to a third party, who I'll refer to as Mr X, at a specific address. The delivery notification, Mr D provided, states:

"According to our records 1 parcel was delivered on 27/06/23 at 9.18 A.M., and left at RESIDENTIAL. The shipment was received by [MR X] as follows:"

The delivery notification then shows the parcel was signed for, at the correct address.

Mr D disputes this and has told our service the property is one of multiple occupancy, so questions whether another resident could have taken delivery of the parcel. But there is no evidence that was the case, as explained above. And having looked at the address online, the property has a single front door, and the delivery company were responsible for ensuring the parcel was delivered to the correct address, which seems most likely to have happened in this case.

I can only consider how Capital One handled this claim, but in doing so I've also seen an email from Company L, giving Mr D the opportunity to provide Mr X's identification, to compare it to the identification taken on delivery. Mr D hasn't said he provided this, so there wouldn't have been any further information for Capital One to consider, had the chargeback been raised in time.

All of the above, in my view, would have been enough to defend the dispute had Capital One raised it within the time required. It follows that having considered the reasons for which a chargeback can be raised under Mastercard's rules, I think it unlikely a chargeback would have been successful under these or any other reason codes. I think it likely Company L would have defended it, for the same reasons it did when Mr D contacted them.

Given this, while Capital One didn't attempt a chargeback, as it was raised out of time, I don't consider Mr D lost out as a result. Because I don't think a chargeback would have

succeeded in any case, as the evidence provided suggests the bag was delivered as it should have been.

Section 75 of the CCA

Section 75 of the CCA allows consumers who have purchased goods or services using a credit card, to claim against their credit card issuer in respect of any breach of contract or misrepresentation by the supplier of those goods or services, so long as certain conditions are met.

As Mr D paid using a credit card, Capital One have given him details of how to raise a claim under section 75 on several occasions, but Mr D has said he doesn't want to pursue a claim in this way, as he doesn't consider it would be successful. As such, Capital One haven't considered a claim under section 75 – which isn't unreasonable. But in any case, I'm not persuaded had Mr D raised a claim under section 75, it would have been successful, for the same reasons the chargeback was unsuccessful - the supplier has provided evidence of delivery to the correct address.

Customer service failings

This leaves me to consider whether the £50 Capital One paid Mr D for the incorrect information they gave him was reasonable. Our Investigator didn't consider this was enough, and asked Capital One to pay a further £100, which they have agreed to do.

As explained, I don't consider Mr D's chargeback claim had a reasonable prospect of success in any case, but Capital One did give Mr D incorrect advice and that led to him submitting a chargeback claim after the time limit had expired, so he was put to some inconvenience as a result. As such, I consider a payment of a further £100, in addition to the £50 already paid is reasonable in the circumstances.

I do understand this decision will come as a disappointment to Mr D. But based on what I've seen, I can't conclude Capital One treated him unfairly by not pursuing a chargeback, as it was raised too late, and I don't consider there to have been a reasonable prospect of success as the evidence provided suggests the bag was delivered as it should have been.

My final decision

For the reasons I've explained above I uphold this complaint and require Capital One (Europe) plc trading as Capital One to pay Mr D £100 compensation, in addition to the £50 previously paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 3 December 2024.

Victoria Cheyne
Ombudsman