

The complaint

Mr E is unhappy that Capital One (Europe) plc sent him an unknown third party's personal information and is concerned that Capital One may have sent his personal information to an unknown third-party.

What happened

Mr E submitted a Data Subject Access Request ("DSAR") to Capital One to see all the data that Capital One held on file for him. However, when Capital One fulfilled the DSAR, the package that Mr E received from them in the post contained all the data that Capital One held on another person who was unknown to Mr E.

Mr E wasn't happy that he'd received information about this other person, which included personal details such as date-of-birth and address, and he was concerned that Capital One had made a similar mistake with his information and had sent it to an unknown third party. So, he raised a complaint.

Capital One apologised to Mr E for sending him another person's information and made a payment of £100 to him as compensation for any trouble or upset he may have incurred. Capital One also confirmed that no other DSARs had been fulfilled that day but noted that they were unable to definitively confirm that his information hadn't been sent to another person. Mr E wasn't satisfied with Capital One's response, so he referred his complaint to this service.

One of our investigators looked at this complaint and liaised with Mr E and Capital One about it. During their review, Capital One reassessed their position on this complaint and offered to pay a further £150 to Mr E for any worry or trouble he'd incurred. But Capital One did confirm that they hadn't received any other reports of a DSAR being fulfilled incorrectly, and so felt it was most likely that they hadn't sent Mr E's information to another party.

Our investigator felt that Capital One's revised offer represented a fair resolution to Mr E's complaint. However, Mr E disagreed, and so the matter was escalated to an ombudsman for a final decision.

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.

Mr E is concerned that Capital One may have sent his information to an unknown third party, such that a breach of data regulations may have occurred. But it must be noted that this service isn't a regulatory body, and so it isn't for me to decide whether a data breach has or hasn't taken place here. Because of this, I've approached this complaint from a general fairness perspective, in line with the role and remit of this service.

If Mr E would like a decision as to whether a data breach has occurred, then he would need to refer that aspect of his complaint to the Information Commissioner's Office ("ICO") who

are the relevant regulatory body in this instance.

Capital One accept that they made a mistake by sending someone else's information to Mr E when incorrectly fulfilling his DSAR. And I can understand, from Mr E's perspective, how he might have lost confidence in Capital One because of this and have concerns that Capital One might have committed a similar error with his own information and might have sent it to another person.

Importantly, however, there hasn't been any confirmation that Capital One have sent Mr E's information to another person. For instance, Capital One haven't received any reports from anyone other than Mr E that a DSAR has been fulfilled incorrectly. And I feel that if another person had requested a DSAR from Capital One, and if it had been incorrectly fulfilled using Mr E's information, then I feel that it's highly likely that the other person who had requested that DSAR would have been in contact with Capital One about it.

Additionally, Capital One have confirmed that Mr E's DSAR was the only DSAR fulfilled on the day in question. As such, I don't feel that it's likely that what happened here was an 'information switch', so to speak, where the mistake was that two DSARs were fulfilled, with the postage for both being accidentally switched so that each DSAR was sent to the wrong address. Instead, I feel that it's most likely that what happened here was a human error wherein the wrong file was printed and then sent to Mr E, but wherein it wasn't the case that Mr E's information was sent to anyone else.

This doesn't mean that I don't acknowledge Mr E's concerns here, and as explained above I can understand if Mr E has lost confidence in Capital One. But ultimately, I don't feel that it's likely that Mr E's information was sent to another person. And this service doesn't award compensation for mistakes that might have, but which most likely didn't happen, but only for events that did occur.

In this instance, Capital One did send Mr E information relating to another person. And Mr E was concerned about his own information. But, as explained above, I don't feel that it is likely that Mr E's information has been sent to anyone else. And in consideration of this, I feel that Capital One's offer to pay a further £150 to Mr E, taking the total amount of compensation to £250, does represent a fair and reasonable outcome to this complaint.

In taking this position I've considered the full circumstances of this complaint, as I've described them above, along with the general framework this service uses when assessing compensation amounts, details of which are available on this service's website. And, having done so, I'm satisfied that a total compensation amount of £250 is a fair amount here.

Finally, Mr E has recently offered to provide photographs of the information that he received from Capital One about the other person to this service. I would ask Mr E to send this information to Capital One, preferably in document form if Mr E still has those documents, and then to delete any photographs that Mr E may have of that information.

This is because Mr E has no right to that information, regardless of the fact that it was sent to him in error. However, I reiterate my request that Mr E return the information to Capital One, as this will allow Capital One to better understand the mistake that they made.

All of which means that while I will be upholding this complaint in Mr E's favour, I'll be doing so only to instruct Capital One to pay the further £150 to Mr E that they've already offered to pay, and I won't be issuing any further or alternative instructions to Capital One beyond this.

I realise this won't be the outcome Mr E was wanting, but I hope that he'll understand, given all that I've explained, why I've made the final decision that I have.

Putting things right

Capital One must pay a further £150 to Mr E, taking the total compensation to £250.

My final decision

My final decision is that I uphold this complaint against Capital One (Europe) plc on the basis explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 25 November 2024.

Paul Cooper
Ombudsman