

The complaint

Mr B complains that Capital One (Europe) plc (“Capital One”) failed to refund a transaction he didn’t recognise.

What happened

Mr B explained that he logged on to this Capital One account to check it was functioning properly. He then tried to use his Capital One card to withdraw some cash, but the automated teller machine (ATM) retained his card. Mr B said that he tried to call Capital One, but his phone ran out of battery, so he went home to charge it. His card was still in the ATM.

Mr B said that when his phone had been charged, he received a notification about a purchase for £999.00 made from a well-known merchant I’ll refer to as A. The transaction used his card and personal identification number (PIN) to make the payment. Mr B contacted Capital One about the unrecognised transaction. They blocked his card and issued a new one. Mr B reported the incident to the police.

Mr B says Capital One declined to refund him, believing he’d carried out the transaction himself. Mr B complained and told Capital One that he’d carried out a private investigation and sent them a copy of an invoice and a short video clip of a person Mr B believed had used his card to purchase the item from A.

Capital One reviewed their investigation and confirmed to Mr B they weren’t going to refund him as they believed he’d carried out the transaction himself. Capital One referred to a previous claim Mr B had made earlier in the year. Capital One also closed Mr B’s account.

Mr B remained unhappy and brought his complaint to the Financial Ombudsman Service for an independent review.

Both parties provided information about the complaint. Mr B confirmed his earlier version of events and that:

- There was no error message displayed on the ATM.
- No one else knew the PIN or had access to the card.
- Mr B believed the ATM had a device attached to it that took his card and obtained his PIN.

Capital One’s evidence showed that:

- Mr B’s evidence timed the store video at 13:03 pm and the receipt was also at 13.03pm.
- The disputed transaction was shown to have been made at 16:15 pm that day.
- Mr B was active on his phone via the Capital One app at the time of the transaction.
- A consistent IP address was used to view the app and block the card.

- The “Chip count” didn’t change, indicating that the card was never used in the ATM.

After reviewing the evidence, the investigator concluded that it was fair for Capital One to hold Mr B liable as he believed Mr B had authorised the payment. It was commented that no one else knew the PIN and the timings didn’t match Mr B’s evidence. Also, that Mr B was using his app at the time of the payment, so would have been aware of the purchase. Additionally, there was no evidence to show an attempt had been made to use an ATM. Reference was made to earlier claims made by Mr B.

Mr B disagreed and reconfirmed his earlier belief, he added that the invoice and the copy of CCTV was officially provided by A. Mr B suggested the time difference was because the person who used his card may have come back into the store at a later time to make the purchase. Mr B also believed there was a discrepancy regarding his credit limit and he confirmed he’d made one other claim where he was a victim of fraud.

As no agreement could be reached, the complaint has now been passed to me for a 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.

Having done so, I’m not upholding Mr B’s complaint as I believe it’s more likely than not he authorised the payment himself. I’ll explain why I think that.

Mr B is responsible for any transactions on his account that he authorises. That’s confirmed in the Payment Service Regulations 2017 and the terms and conditions of his account. So, if the evidence shows it’s more likely than not Mr B authorised the transaction he’s disputed, then Capital One will have acted fairly and reasonably in holding him responsible for them.

Capital One confirmed the time on the transaction as 16.15 pm. I’ve seen the records that show this which differ somewhat to Mr B’s case. He argues here that he used his app to check his account was ok and then his phone ran out of battery. Capital One’s records show Mr B using his app via his phone before, during and after the disputed transaction.

The evidence provided by Mr B shows a person in A’s store and an invoice purporting to be from that person. Both timings show 13.03 pm which is several hours before Capital One record the payment. I recognise that the payment data could potentially lag, depending on how the system is operating at the time, but I don’t think that’s the answer here.

Mr B has argued the timing difference could be because that person re-entered the store to make the purchase. If that was the case, the invoice would likely record that time and not one from earlier. The invoice also doesn’t include any payment information, so it’s not possible to link the transaction to Mr B’s card.

Having looked at Mr B’s evidence, I was surprised that A released any information to him, particularly given their own responsibilities over customer privacy. I did also note that there was an error on the invoice describing the device. Whilst it’s possible that a genuine invoice could have this, I don’t think in this case it’s likely. I do have some doubts around the authenticity of this evidence and given the timing differences, I don’t think it’s particularly relevant to the disputed transaction.

I’ve also considered the issue of the “Chip count”. Capital One have argued that it didn’t change, indicating that the card hadn’t been entered into the ATM. It’s possible that a device

attached to an ATM could divert the card and may well obtain the PIN without the chip count changing, but when considering the entirety of the evidence, I think it's likely the card was never used in an ATM.

It's the case here that Mr B hadn't given anyone else permission to use his card and no one else knew his PIN. So, when considering the evidence as a whole, I think that on a balance of probabilities, it's more likely than not that Mr B was responsible for this transaction, whether he authorised it himself or enabled others to use his card. In conclusion it was both fair and reasonable that Capital One held him liable for the payment.

Several comments were made about the credit limit. The current limit was approved several years ago, so I'm satisfied it has no bearing on the relevance of whether Mr B authorised the transaction or not.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 2 June 2025.

David Perry
Ombudsman