

## **The complaint**

Mr N complains that Capital One (Europe) plc (Capital One, hereinafter) hasn't refunded the losses he's incurred when placing bets through an overseas gambling website, which he claims is a scam.

## **What happened**

The facts are well known to both parties, so I have outlined the key details. In summary, Mr N made several payments between October and December 2024 to an overseas gambling website that I'll refer to as M.

From his Capital One credit card Mr N made 66 payments totalling £50,905.41, which went to various payment service providers M used to top up Mr N's gambling account. Mr N also made several payments from his bank account with a bank I'll refer to as B.

Mr N made a claim with Capital One in October 2024 to recoup payments he made to M, as he wasn't able to withdraw his winnings. He also asked Capital One to block all future payments to this merchant. However, his request wasn't actioned by Capital One and he continued being able to make other payments to M. His claim was also rejected.

Later on Mr N was able to withdraw over £15,000 worth of winnings from M into his account with B, but he then encountered issues when trying to withdraw his latest winnings towards the end of December 2024, which led him to enquire further about M with the UK Gambling Commission.

The Gambling Commission advised Mr N that M was unlicensed to offer its services in the UK, and this was illegal. So, Mr N reported his gambling transactions to Capital One and B and asked them both to raise chargeback claims on his behalf, thinking he had been scammed.

Capital One refused to refund him. It said that it hadn't blocked payments to M because it was a gambling website based overseas and therefore the UK Gambling Commission ban on credit card payments didn't apply to M. It also said that it didn't have any chargeback rights to refund gambling transactions. It then added it couldn't refund the payments under the Consumer Credit Act 1974 either.

So, Mr N referred a complaint to the Financial Ombudsman Service.

Our Investigator found that, whilst M may have been offering gambling services to UK customers illicitly, there wasn't enough evidence proving it was an actual scam. They also said that, even if Capital One had intervened and banned the merchant as Mr N had requested, it couldn't have stopped all payments going to M, as it used different payment service providers with different Merchant Category Codes (MCCs, hereinafter) to top up Mr N's account. So, it wouldn't have been able to detect and stop all payments going to M.

Our Investigator agreed with Capital One there were no grounds under which chargeback or Section 75 of the Consumer Credit Act 1974 claims would be successful to recoup Mr N's losses.

However, based on the credit card activity and Mr N's request to block the merchant, Capital One should have intervened by offering compulsive spending support much earlier than it did. For this reason, our Investigator recommended Capital One paid Mr N £150 compensation.

Mr N disagreed with our Investigator's view. He argued he didn't receive the service he had paid for, as he wasn't able to withdraw his winnings in the end, and all of the payments went to the same merchant, M, so the requirements for a chargeback or Section 75 claim could and should have succeeded. He added that a chargeback would have been successful because M was offering services to UK customers when it shouldn't have and it was acting illegally. Mr N was adamant that credit card payments to gambling sites had also been banned by the UK Gambling Commission and it would not be fair for Capital One to be processing them, especially as Mr N asked it to block all payments to M, which Capital One didn't act upon.

In light of this disagreement, I have been asked to review everything afresh and reach a decision on the matter.

### **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.

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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 focused on what I think is the heart of the matter here. And if there is a submission or point that I've not addressed, it isn't because I've ignored it.

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.

Where the evidence is incomplete, inconclusive, or contradictory, I must make my decision on the balance of probabilities – that is, what I consider is more likely than not to have happened in the light of the available evidence and the wider surrounding circumstances.

I would like to start by saying I'm very sorry Mr N has been battling with a gambling addiction and I understand that these events have had far reaching consequences for him and his loved ones. I thank him for the details he has shared with this service.

I've thought carefully about whether Capital One treated Mr N fairly and reasonably in its dealings with him, when he made the payments and he reported them as fraudulent, or whether it should have done more than it did.

Having done so, I've decided to uphold Mr N's complaint in part. I'll explain why.

*Did Mr N fall victim to a scam?*

Capital One is expected to process authorised payment instructions without undue delay in accordance with the Payment Service Regulations and the terms and conditions of its customer's account. But as a payment service provider, it also has long-standing obligations to help protect customers from financial harm from fraud and scams.

Any reimbursement, in consideration of industry guidance and best practice, would however be reliant on finding that the customer had been the victim of a scam. Reimbursement would not be due where the evidence shows that the customer instead has a civil dispute with the party they paid.

Such a civil dispute would include scenarios where agreements were not fulfilled, or where investments collapsed, as a result of a firm failing and going into administration.

I've therefore considered whether Mr N was a victim of a scam when making payments to M.

In order to conclude that the payments Mr N made were part of a scam, I'd need to be reasonably satisfied, from the available evidence, that M set out to defraud him from the start.

But I don't think, based on what I've found, that I can safely conclude that. I say this because:

- Whilst M isn't licensed by the UK Gambling Commission, it still appears to be a genuine overseas gambling site with a gambling license from Curacao. Moreover, it's been operating for a number of years, which is a most unlikely occurrence with scam gambling sites, as their operations get eventually shut down due to numerous scam reports.
- Mr N gambled on M's website without issues for two months and was able to withdraw more than £15,000 in winnings. This is a very significant amount in proportion to what he paid to M, and I think it's very unlikely a scam operation would have allowed him to withdraw such a high sum.
- Having conducted independent research on M, I'm persuaded it was a genuine overseas gambling site. This consideration was also influenced by the overwhelming number of customers' reviews available. I think the negative reviews further reconfirm this, as most customers complain about withdrawals and verification processes being slow and not being able to win or take advantage of bonuses, as opposed to being outright scammed of their own funds.
- When Mr N struggled to withdraw more of his winnings, M referred him to its terms and conditions about withdrawal limits, which cap weekly and monthly winnings withdrawals to a maximum amount. I've reviewed those terms and conditions and can confirm that what Mr N was advised when he spoke to M's representative is in line with what its terms and conditions say. Mr N hasn't submitted enough evidence to prove that M was withholding his winnings without good cause or that it was breaching its terms and conditions.
- Mr N and the Gambling Commission claim that offering services to UK customers without a UK license is illegal, but that isn't the same as saying M set out to scam Mr N. M's objective is to offer gambling services online, and the evidence before me persuades me that, on balance, Mr N made payments to access M's services and place genuine bets on its website successfully.
- Overall, I haven't seen sufficient evidence to persuade me that, more likely than not, M intended to scam Mr N of his funds during the time he made payments to its

gambling website.

This is not to say that there is no issue at all between Mr N and M, as I recognise Mr N experienced some difficulties in withdrawing his winnings from M's platform.

However, the Financial Ombudsman Service is an independent and alternative dispute resolution service and, as such, we need to conduct our own investigation of the facts.

As I've mentioned above, I need to come to my own independent conclusion as to whether the evidence before me is enough to find that, on the balance of probabilities, a scam has occurred in this instance.

And for the reasons I've explained, I'm not persuaded this is the most likely scenario here, so I do not find Capital One is liable to refund Mr N on the basis he fell victim to an authorised push payment scam.

*Was Capital One required to intervene during Mr N's payments anyway?*

Mr N has disclosed to our service that he was struggling with a gambling addiction. I sympathise with him and the gambling struggles that he has, and I hope he is now in a position where he is getting the right help and support for this.

It might be helpful for me to say here that, as we are not the regulator, I cannot make a business change its systems or processes – such as what it must have in place to assist customers with their spending or what accounts should be monitored for, as we have no regulatory or disciplinary role.

It's correct that the UK Gambling Commission banned credit card payments to UK licensed gambling establishments since 2020. Mr N argued that all of his payments went to M, an overseas gambling website.

However, the auditing information Capital One shared with our service shows that none of the disputed transactions went directly to M, but rather to a variety of payment service providers using different MCCs – which is the main data through which gambling transactions are identified, blocked and excluded by payment systems.

So, I can't criticise Capital One for processing Mr N's payments to M, where these went to merchants using MCCs that couldn't be identifiably associated with gambling, and I can't conclude it was unfair of Capital One to process these payments.

However, independently of what MCC codes were linked to his transactions, Mr N told Capital One he wanted to block all future payments to M when he raised his chargeback claim on 8 October 2024, so I consider that, from that point onwards, Capital One was put on notice Mr N was using his credit card to gamble on overseas gambling websites and he wanted these transactions blocked.

Whilst I wouldn't tell Capital One exactly what tools it needs to have in place to support a customer with a gambling addiction, I would expect it to step in and offer appropriate support where I consider it should've reasonably become aware there might be a problem with its customers' spending. Mr N doesn't appear, at this point, to have disclosed a gambling addiction to Capital One but I think it could have reasonably inferred this from his request for payments to M to be blocked. So, I would have expected Capital One to offer support to Mr N targeted at gambling addiction and to have taken steps to block the payments to M if it had the facility to do so.

The evidence available shows that Capital One didn't block any payments, and that it didn't offer support to Mr N nor did it signpost him to helpful organisations until a few weeks later.

I've thought very carefully about whether this shortcoming on Capital One's part impacted Mr N's losses and I've come to the conclusion that it didn't. I'll explain why.

I'm not persuaded that Capital One could have blocked all payments to M at that point. It's told us it could have blocked the specific merchant Mr N lodged a chargeback claim against, and Mr N did go on to make further payments to this merchant after he asked for it to be blocked. However, if Capital One had taken steps to block this particular merchant I don't think this would have stopped Mr N making further payments to M.

I say this because, the specific merchant Mr N reported was only one of many different payment service providers Mr N paid in the course of two months to top up his gambling account with M. So, even if Capital One had blocked that merchant, it looks like Mr N would have had access to several other merchants to continue making payments to M. And because those merchants didn't use MCCs that could be identifiably linked to gambling, Capital One couldn't have known that those transactions were also going to M.

Moreover, having considered Mr N's activity from his bank account with B, and the fact he also took out a loan to continue making payments to M, I'm further persuaded that, more likely than not, Mr N would have continued to make payments to M from his account with B or another account – as he in fact did, even in the unlikely event that Capital One had been able to block all payments to M's merchants or apply a temporary spending freeze to Mr N's credit card.

I should also note that, when Capital One did signpost Mr N to its specialist team in its final response letter and explained what it could do to support him, including adding a spending block, he didn't contact it to explore those support measures. So, it's difficult for me to conclude Capital One would have prevented further transactions, had these support measures been explained to Mr N at an earlier stage.

In light of the above findings, I think that, on balance, Mr N would have continued to gamble on M's website no matter how strong Capital One's intervention was. For this reason, I don't think Capital One's lack of action at the earliest opportunity furthered Mr N's gambling losses. However, in line with what our Investigator recommended, I'm also of the opinion that Capital One should pay £150 compensation to Mr N to make up for not offering appropriate support against gambling and compulsive spending addiction to him, as early as it could have.

### *Recovery*

Mr N claims Capital One should have recouped his payments to M via chargeback claims. Mr N thinks that these claims would have been successful as he didn't receive the service he paid for and because M was offering services to UK customers illegally.

The chargeback scheme is a voluntary scheme set up to resolve card payment disputes between merchants and cardholders. Capital One is bound by the card scheme provider's chargeback rules, Mastercard, in this instance.

Whilst there is no 'right' to a chargeback, I generally consider it to be good practice that a chargeback be raised if there is a reasonable chance of it succeeding. But a chargeback can only be made within the scheme rules, meaning there are only limited grounds and limited forms of evidence that will be accepted for a chargeback to be considered valid, and potentially succeed.

Mastercard's default position on gambling transactions is that chargeback rights are only available in situations where the purchased value failed to appear in the account agreed between the cardholder and the merchant. It further confirmed that no chargeback rights are available for refunds, withdrawals or transfer requests, terms and conditions or account access, winnings, gains or losses, or use or subsequent use.

Moreover, in order to understand the designed purpose of the Mastercard chargeback rule relating to transaction laundering, and whether or not it could be applied to claims such as the one Mr N attempted to make, we have contacted Mastercard to understand the intention behind the rule and the circumstances in which it can be relied on.

In its submissions to this service, a representative from Mastercard confirmed that there are no chargeback rights for any sort of gambling transaction, such as the ones Mr N made, and that the rule relating to transaction laundering would not be applied in circumstances where an incorrect MCC has been used to circumvent a gambling block, as it happened here.

They further clarified that the onus sits with the acquirer to ensure that merchants are using the correct codes to identify themselves, but that there are no chargeback rights in scenarios like the one Mr N finds himself in.

Based on the above, I'm satisfied Capital One acted reasonably by concluding the dispute wasn't covered under the Mastercard chargeback scheme and there was no reasonable prospect of success. This is because the scheme isn't intended to cover disputes about the outcome of gambling or the withdrawal of funds, which is at the crux of Mr N's chargeback claims.

Moreover, whilst Mr N argued he didn't receive a service from M, I must respectfully disagree, as the evidence shows he was able to top up his gambling account with M through his payments, and then use said funds to place bets in a variety of ways on M's website.

So, based on the above considerations, I've also found that chargeback claims wouldn't have succeeded in the circumstances.

Finally, with regards to a Section 75 of the Consumer Credit Act 1974 claim, I agree with our Investigator's findings that Mr N's transactions didn't meet the requirements for it to be successful, given that a debtor-creditor-supplier agreement could not be proven in the circumstances because none of Mr N's payments went directly to M, as explained in detail above.

Moreover, Mr N's concerns mostly revolve around the withdrawal of his winnings from his gambling account with M, but I don't think he's provided sufficient evidence to our service or Capital One that these funds were withheld without good cause or not in line with M's terms and conditions, or that there was in any event a misrepresentation or breach of some kind.

So, for these reasons, I can't conclude Capital One did anything wrong in not raising Section 75 claims on Mr N's behalf, as I don't think they had any reasonable prospects of success.

In conclusion, I don't think Capital One could have done more to attempt to recover Mr N's funds in this instance.

**My final decision**

For the reasons given above, I uphold this complaint in part. To put things right Capital One (Europe) plc should pay Mr N £150.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 17 March 2026.

Daria Ermini  
**Ombudsman**