

The complaint

Miss B complains Capital One (Europe) plc is holding her liable for a credit card agreement which she says she didn't apply for or use.

What happened

The details of this complaint are well known to both parties. So I've only provided a brief overview of the key events.

In September 2024, Capital One received and approved a credit card application in Miss B's name (under a previous surname she had used, but otherwise matching her details). However, she says she only found out about the account when she started receiving letters about the debt that had been accrued around December 2024.

Miss B reported the account as fraudulent, but Capital One concluded she was liable. When it maintained its position after Miss B complained, she referred the matter on to our service.

Our investigator didn't uphold Miss B's complaint. In summary, they didn't think there was a likely explanation for how someone else could have taken out and used the card without Miss B's knowledge or consent – so concluded Capital One could hold her liable.

Miss B has appealed the investigator's outcome. In summary, she says she didn't apply for or use the credit card and there is insufficient evidence to hold her liable for the debt. She also says Capital One shouldn't pursue recovery action until the dispute is resolved and has highlighted the impact of the matter on her given her personal circumstances – arguing Capital One treated her unfairly in light of these.

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've decided not to uphold it. I'll explain why.

I know Miss B feels strongly that Capital One has treated her unfairly in light of its regulatory obligations. However, it's important to bear in mind our service's role as an informal alternative to the courts. So, in explaining my decision, I'll focus on what I consider the crux of the complaint – which is that Miss B disputes applying for, and using, this credit card. The remainder of the complaint is about the consequences of her being held liable for this debt.

I'd also highlight that I can't be certain about what happened here. Instead, if there is a dispute about what happened, I'll decide what I consider more likely than not based on the available information.

I wouldn't consider it fair for Capital One to pursue Miss B liable for debt incurred on an agreement which she didn't agree to or use – as she asserts is the case here. This is in line with the relevant regulations that apply here, such as the Consumer Credit Act 1974 (CCA).

Looking first at the application, the audit information from Capital One supports that this was made from a model of phone which Miss B confirms she had, but says she wasn't using, at the time of the application and subsequent spending. While not definitive, taking this alongside the rest of the information as laid out below, it does seem unlikely that this happened to be a fraudster using the same type of device as one Miss B happened to have.

The application was also made using Miss B's genuine details such as her phone number, email address and postal address (except a previous surname, which Miss B says she hasn't used for some time, was provided). If a fraudster made the application, it would seem risky for them to use all of Miss B's contact details correctly – as it meant she would receive messages about the account, increasing the likelihood of the fraud attempt being uncovered.

In fact, Miss B says she did get *“a few emails relating to payments on the account”* – but as she didn't have a Capital One account she deleted them, assuming they were spam. I do consider it surprising that she would disregard these emails rather than taking steps to check what they might relate to.

The card was also activated via the Capital One app, requiring use of a One Time Passcode (OTP). This was sent to the number registered on the account for Miss B, which matches the one she has provided to our service.

All of this means that, in order to make this application, an unauthorised person would have needed to know lots of personal details about Miss B – and would also have required access to her phone and address (to obtain the OTP and card details). I don't have a plausible explanation for how a fraudster could have got this level of information and access.

Furthermore, there were several calls made to Capital One in relation to this credit card account. The first was made shortly after the application. The caller, giving their name as “Miss B” and providing verification details, said they had made the application and asked whether they could get a virtual card via the app before the physical card arrived – but was told they would need to wait until this was received.

There were then further calls from November 2024. At this point the caller said they had applied for the card but hadn't received it and hadn't set up the app. They referred back to having called shortly after the application to chase up receipt of the card. There are a few calls around this time, in which the caller reiterated having made the application but having not received or used the card.

Then, in December 2024, the caller said they not only hadn't used the card but hadn't applied for it. From this point, it's agreed Miss B was the genuine caller. However, as she disputes not only using the card but also making the application, it seems she disputes making the earlier calls.

However, having listened to and compared these calls, it does sound to me as though the voice matches throughout. As Miss B herself has acknowledged, it also seems whoever called had enough information and detail on her to pass verification. For example, in the earlier calls the caller repeatedly introduced themselves as “Miss B” – but did also mention the previous surname when told the one given didn't match the account. There is also reference in some calls to them coming from the same “established” number registered on the account.

I also struggle to see why a fraudster would have called to dispute the payments. Nor can I see why they would initially claim the application itself wasn't fraudulent, but the use of the card was. There isn't a clear incentive for them to dispute a debt which they wouldn't be pursued for.

Miss B says no “forensic evidence” has been provided to link her to the application or spending. However, I’m not persuaded all the evidence she has suggested should be provided would have much relevance here. For example, even if it was shown that the device used to make the application and payments wasn’t Miss B’s main device, that wouldn’t make it clear that the device used wasn’t also in her control (or the control of someone she had allowed to act for her). It also wouldn’t explain how someone could have made these payments given the use of a code sent to her confirmed number. Nor would it explain how and why the calls to Capital One were made.

Overall, I’m satisfied I have enough information to reach a fair decision on this case on the balance of probabilities. Based on what I’ve seen, I don’t think there is a plausible explanation for how someone could get the level of information and access needed to have applied for and used this agreement without Miss B’s knowledge or consent.

I do appreciate this will be disappointing for Miss B, given what she has told us about the impact this matter has had on her. But having carefully considered all the circumstances, I’m not persuaded Capital One has treated her unfairly in determining, based on the available information, that she is liable for this debt. It follows that I don’t think it needs to take action to resolve her complaint.

My final decision

For the reasons given above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Miss B to accept or reject my decision before 12 May 2026.

Rachel Loughlin
Ombudsman