

complaint

Mr C complains that Capital One (Europe) plc ("the bank") continues to hold him liable for debt on a credit card that he never took out and that does not belong to him.

background

Mr C became aware that his identity had been stolen when he started receiving collections letters from various credit providers. He had not taken out any of the credit cards concerned. He was able to persuade all of the other credit providers that he had been the victim of identity theft and they ceased to hold him liable for the debts concerned.

However, the bank in this case continued to hold him liable, believing that he did genuinely take out the credit card and spend on it.

Mr C complained to the bank, but it maintained its position in holding him liable for the credit card debt. The complaint was then brought to this service, and our adjudicator upheld it on the basis that she believed that Mr C had not taken out the credit card and had genuinely been the victim of identity theft fraud. The bank objected and sought referral to an ombudsman.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Having done so, I am satisfied that our adjudicator reached the correct decision when she upheld the complaint.

I note that in her first view she concluded that it was likely that Mr C had been the victim of a mis-trace, but on receiving the further information the bank submitted in this respect, issued a further view in which she accepted that it was not a mis-trace scenario.

Nonetheless, she remained persuaded on the basis of the other evidence that Mr C had not opened the credit card account and had not spent on the card.

In reaching this conclusion I do think that it is relevant that Mr C's genuine spending on his current account doesn't match the spending profile in the credit account, although the bank doesn't agree. This is particularly in respect of the cash withdrawals made on the credit card when there were sufficient funds in his current account. In the absence of conclusive evidence as to what actually happened here, we have to rely on this type of circumstantial evidence to build a picture of what is most likely to have happened.

In addition, I see that the bank is disputing that Mr C contacted the other bank (the bank from which the credit card payments were being made) to tell it he had been a victim of fraud, where we know in fact that he had. In that case the other bank accepted that identity fraud had taken place.

Having considered all of the available evidence myself, I am satisfied that it is most likely that Mr C was the victim of identity theft in this case, and that the bank should not continue to hold him liable for the credit card debt.

my final decision

My final decision is that I uphold the complaint, and direct the bank to:-

- Remove any connections between Mr C and the debt owed to it
- Cease debt collection activity against Mr C.
- Pay Mr C £150 to reflect the worry and inconvenience caused

Ashley L B More
ombudsman