

complaint

Mrs T complains that Capital One (Europe) Plc wrongly registered a CIFAS marker on her credit file stating that she had been a victim of an attempt to impersonate her.

background

In March 2018, Mrs T applied to Capital One for a credit card. But Capital One was unsure that the application had genuinely been made by her. It recorded a CIFAS marker against her credit file, to the effect that she had been a victim of impersonation. Mrs T says the marker prevented her from obtaining credit elsewhere, and that this in turn prevented her from booking a holiday. She says Capital One did this in bad faith, that it failed to tell her about the marker so that she could challenge it, and that it ignored her complaint. She complained to our Service. She asked for £1,000 compensation.

Our investigator did not uphold this complaint. He said that before Capital One recorded the CIFAS marker, it had written to Mrs T to ask her to confirm that she had made the application herself. The letter had been correctly addressed, so if it had been lost in the post then that was not Capital One's fault. Capital One had been entitled to record the marker, as it had a duty to protect itself and its customers from fraud. It had since removed the marker, in 2019. It had not ignored her complaint, but had sent her a final response letter 13 days after she had complained, explaining its actions and telling her about her right to appeal to this Service.

Mrs T said she did not receive that letter either. She said it had been fabricated by Capital One after she complained to our Service. She asked for an ombudsman to review her case.

my findings

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

I have seen the letter Capital One wrote to Mrs T, dated 15 March 2018, asking her to get in touch and confirm that she made the credit card application herself. It also says that if she does not do so, then Capital One may amend her credit file. It is correctly addressed, so if it was not delivered by the mail then that is unfortunate, but I can't blame Capital One for that.

On receiving no reply by the deadline in the letter (28 days), Capital One recorded the CIFAS marker. It was certainly entitled to do that. It is not in dispute that there was no fraud, and no-one was impersonating Mrs T, but that does not mean that Capital One was wrong to take precautions against fraud. Banks are expected to act on suspicions, not only on established facts. I won't write a decision which could discourage businesses from taking reasonable steps to prevent fraud.

In an email to Mrs T on 3 April 2018, in response to a complaint she had made about excessive security checks, Capital One mentioned its March letter and again asked her to get in touch. So even if the letter was lost in the post, she was told about it shortly afterwards by another means of communication. (That was before the original deadline, which was extended to 28 days after that email.) Capital One accepts that it should also have mentioned this in a phone call, and it didn't, but I think the April email makes up for that.

The marker was removed at some time between March and May 2019. Mrs T has complained about how long that took, given that she complained in November 2018. I can see why she is complaining about that, and I don't think she is being unreasonable, but at the same time I accept that Capital One still had to satisfy itself that the application was genuine. I'm satisfied that Capital One acted in good faith and with proper motives.

It's a shame if what happened resulted in great inconvenience to Mrs T, but that does not change my view. Sometimes banks will suspect fraud – and take action against it – even when no fraud has actually taken place, and it is inevitable that sometimes innocent people will be inconvenienced as a result. But often that cannot be helped. It is better to err on the side of caution, because if banks only took action when they were certain that a fraud had definitely taken place, then it might be too late by then. The inconvenience of being defrauded is usually far greater than the inconvenience caused by anti-fraud measures, especially when a customer does not get their money back.

I cannot agree that Capital One ignored Mrs T's complaint about the CIFAS marker. Three days after she complained (in November), Capital One replied to her email to acknowledge her complaint. It attached a leaflet to that email, explaining that it could take up to eight weeks to respond to her complaint in full. I know she received that email, because she sent it to us when she brought this complaint to our Service. In fact Capital One sent her its final response letter eight days later.

The reason Mrs T says the final response letter has been fabricated is because the first sentence reads “#Please destroy letter, sent via email.” Since it's evident that Mrs T received the first email, I think it's likely that she also received the email containing the final response letter. I accept that it wasn't sent in the post as well, but it didn't have to be. I think the sentence I have quoted just means that the letter was edited after it was emailed to her so that if it was automatically printed it would not be posted in the mail. It's a note to Capital One's post department. It's not proof that the final response letter was never sent, and that it was concocted subsequently. There is no evidence of that.

Two months later, after Mrs T complained that she had not received a response to her complaint, Capital One emailed her again to apologise. It attached another copy of the final response letter.

my final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 5 March 2020.

Richard Wood
ombudsman