

complaint

Ms T complains that Capital One (Europe) plc failed to act on her instruction to close her credit card account, leading to the card being used fraudulently to run up a debt that she is being asked to pay.

background

Ms T had a credit card account with Capital One, which she says she used for a period of time and then decided to close. Ms T says she paid off the balance on the account and then phoned Capital One to instruct it to close the account – after which she cut up the card and thought no more about it.

Almost two years later, Ms T received a statement from Capital One showing a balance outstanding on her account, which was still open. Having contacted Capital One, Ms T says she was told that her account had been used to withdraw money from cash machines using a replacement card.

Ms T says she did not use the card and should not be held liable for the debt. Capital One was unwilling to refund the disputed transactions and so Ms T brought her complaint to this service – where it was investigated by an adjudicator.

The adjudicator obtained information and evidence from Ms T and from Capital One, including technical information about the card and the transactions. From the available evidence, the adjudicator concluded that Capital One was entitled to hold Ms T liable for the debt and so did not recommend that the complaint should be upheld. Ms T did not agree and made further representations, the main points of which I summarise:

- She did not report her card lost or stolen and did not request a card or personal identification number ("PIN"). Her contact with Capital One was to instruct them to close her account.
- She does not accept that statements continued to be sent for the account – she stopped receiving statements for over two years and assumed the account was closed.
- She would like to see cctv footage of the repayments that Capital One says were made over the bank counter to her account during the period in question, as well as showing her making the cash machine withdrawals. She believes that she is entitled to see this.
- The withdrawals made with the card, and the payments into the account, remain a mystery to her. She would like further investigations made into what happened, and a decision that she should pay half the debt and Capital One the other half might be a fairer outcome.

my findings

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

Ms T has explained to us that she only ever recalls phoning Capital One in order to instruct it to close her account. But the records from around that time do not show that Capital One received any instruction to close the account. The only phone call noted in the records at that time was to report the card as being lost or stolen, resulting in a new card being issued to Ms T's address. There is no phone call recording in existence.

No new PIN was ever sent to Ms T, and it was over a year after the new card was sent and activated by the recipient before it was used to make the disputed cash machine withdrawals. Ms T says she was away when the withdrawals were made, and did not make either the disputed cash machine withdrawals or the repayments that were made towards the debt. She also says that nobody had access to her home or post while she was away.

I note that Ms T says she did not receive any of the statements that Capital One says were issued during the relevant period, and which incorporated the paying-in slips later used by someone to make repayments towards the debt. I find it improbable, however, that a third party who had managed to intercept Ms T's statements would use them to make payments towards her credit card account debt.

As the adjudicator has already explained to Ms T, we are not in a position to obtain cctv footage from the locations where cash machines were used or deposits made. In any event, Capital One is not prevented from holding Ms T liable for these transactions simply because it cannot produce footage of her making them.

The overall evidence concerning the nature and pattern of the disputed transactions does not, in my opinion, point to fraud by a third party. From what she has told us, I think that the more likely explanation is that the withdrawals were made or authorised by Ms T in circumstances that she has since forgotten. It follows that I find that Capital One is entitled to hold Ms T liable for the disputed transactions – and I would remind Capital One of its duty to deal fairly with Ms T (who is now retired) in arriving at a suitable repayment arrangement.

I note that Ms T is concerned that multiple accounts may have been opened in her name at Capital One, but I am able to reassure her that this is not the case – there were card number changes, and an account number change when the card was reported lost or stolen, but only one account was ever in existence.

As a final point, it seems that Ms T is also suggesting that Capital One provided us with personal information and data about her without her consent. But that did not happen; in the complaint form which Ms T signed when she asked us to deal with her complaint, she gave us her authority to obtain such information as we needed from Capital One.

my final decision

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

Under the rules of the Financial Ombudsman Service, I am required to ask Ms T to accept or reject my decision before 2 March 2015.

Jane Hingston
ombudsman