

complaint

Ms M complains Capital One (Europe) Plc unfairly placed a Credit Industry Fraud Avoidance System (CIFAS) marker against her name. She wants Capital One to remove the marker and compensate her for the distress and inconvenience this caused.

background

Ms M had a credit card with Capital One.

In March 2017, a payment of £200 was made to Ms M's credit card account. The payment was made through Capital One's automated phone service.

In May 2017, Capital One was contacted by bank A through the VISA chargeback scheme. Bank A said their customer did not authorise the payment of £200 to Ms M's credit card account. Capital One explained they couldn't defend the chargeback and they returned the £200 payment to bank A's customer.

Following the chargeback Capital One made a decision to close Ms M's account. They also thought Ms M had misused her credit card account so they applied a CIFAS marker. Capital One didn't ask Ms M any questions about the payment of £200 before making the decision to close the account and apply the CIFAS marker.

Our investigator reviewed Ms M's case and asked some additional questions about the £200 payment. Ms M says the payment onto her credit card was made by someone she knew. She says she had used her credit card to pay towards decorating this person's home. And then he'd repaid her by making the £200 payment from his account. Ms M says she's no longer in touch with the person who made the payment.

Ms M says because Capital One applied the CIFAS marker, her bank (bank B) blocked and closed her current account. This meant she had problems accessing her money which caused her a great deal of trouble and upset. Ms M subsequently opened another bank (bank C) account, but was told this would also be closed. Ms M complained to bank C and it told her about the CIFAS marker.

An investigator looked into Ms M's complaint. She thought Capital One was unfair when it applied the CIFAS marker. And said it hadn't carried out any investigation to make sure the marker was applied correctly. So she said Capital One should remove the marker. She also said Capital One should pay Ms M £500 compensation for the stress and inconvenience the marker caused her. Capital One said it hadn't done anything wrong. But said if Ms M was able to provide evidence that the payment it would review the situation.

Ms M accepted what the investigator said. Capital One disagreed. It said it didn't contact bank A for more information about the chargeback request because it wouldn't have shed any more light on the situation. And it didn't speak to Ms M to find out what she had to say about the payment onto her credit card account. Capital One also said the spending on Ms M's credit card didn't support what she'd said. As no agreement could be reached the complaint has come to me to decide.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Capital One says it applied the CIFAS marker because Bank A said their customer didn't authorise the payment made to her account. So I've looked at whether Capital One was fair to apply the marker, based on the evidence it had, the investigation it carried out. And what the rules say about applying such markers.

CIFAS guidance says the business must have carried out checks of sufficient depth to meet the burden of proof set by CIFAS. I haven't seen any evidence that Capital One contacted Ms M at the time and asked her for information about the payment of £200 made to her account. And it's confirmed that it didn't contact the bank which raised the charge back for any clarification. So in this particular case, I'm not satisfied that Capital One carried out sufficient checks to satisfy the burden of proof required to apply the marker. And based on the evidence I've seen, I'm not satisfied Capital One had cause to register the marker.

I think Capital One should've contacted Ms M as this would've given her the opportunity to explain the circumstances surrounding the payment onto her account. Had it done so, Ms M would've been able to explain more about the payment.

Unfortunately, at the time of bringing the complaint to our service, Ms M was no longer in contact with the person who'd made the payment. So, she couldn't provide additional information or go back to him to discuss the chargeback.

The information Capital One held was the chargeback request it had received from another bank. So I don't think it had enough evidence to satisfy the criteria set out in the CIFAS guidelines. And I agree with the investigator that it was unfair for Capital One to put the marker against Ms M in these circumstances and it should now be removed.

Ms M has written comprehensively about the impact of the CIFAS marker being recorded. I also note what Ms M says about how inconvenient and time consuming it's been to sort this matter out and to have her other bank account closed. She's also said she was without access to any money and had to visit a branch to withdraw funds.

From what Ms M has said I don't doubt that the marker recorded by Capital One has impacted on her greatly. And Capital One should pay compensation because they didn't carry out sufficient checks before applying the CIFAS marker. When I consider the significant impact the marker had on Ms M, I think £500 compensation is fair and reasonable in her individual case.

my final decision

For the reasons I've explained, I uphold this complaint. I require Capital One (Europe) Plc to contact CIFAS and ask them to remove the CIFAS marker Capital One Europe placed on Ms M's record and to pay Ms M £500 for the distress and inconvenience caused by applying the marker.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 1 March 2019.

Sharon Kerrison
ombudsman