

The complaint

Mrs L has complained that Capital One (Europe) plc won't refund transactions she says she didn't make or otherwise authorise.

What happened

During a period of over two weeks in March 2023, Mrs L's Capital One credit card and PIN were used for over £800 of spending.

Mrs L reported this to Capital One. She initially confirmed that she'd made some of the payments herself, but in later calls said that she hadn't used the card since she was abroad in January 2023, so all the spending since then was fraudulent. She kept her card in her bag, with the PIN written on the back. She lived alone, no one else had access to her card, and she confirmed repeatedly that no one close to her had used her card.

Capital One held Mrs L liable for the payments in dispute, as they were made in her local area at many of the usual places she'd spent at herself, and Mrs L had been checking her account online while the payments were going on and would've seen them at the time.

Our investigator looked into things independently and didn't uphold the complaint. Mrs L appealed, so the complaint's been passed to me to decide.

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.

Broadly speaking, Capital One can hold Mrs L liable for the payments in dispute if the evidence suggests that she authorised them.

I'm satisfied from Capital One's technical evidence that the payments in dispute used Mrs L's genuine card, and the correct PIN. So I can see that these transactions were properly authenticated. The question, then, is whether the evidence suggests that it's most likely Mrs L consented to the transactions, or not.

First, I've considered the possibility that the payments were made by someone who Mrs L did not know – such as a thief or fraudster. It is possible that someone could have stolen her card and used the PIN that she wrote on the back of it.

Mrs L kept this card in her bag along with other valuables. But she confirmed that nothing else was missing. And it's not very likely that a thief would only take this card and not any of the other contents or even the bag as a whole. It's possible a thief might take just the card when it was outside the bag – e.g. when Mrs L last used it. But she said she last used it in January 2023 while on a different continent. So if a thief stole the card at that point, it's exceptionally unlikely that they'd then wait around two months to use it, and that they'd happen to travel to the UK and use it near Mrs L's home.

Following from that, I might've expected a thief to try to take as much money as possible, as quickly as possible, before the card gets blocked. But here, the person using the card spent at a relatively moderate pace over the course of over two weeks, seemingly confident that Mrs L was not about to block it.

The person using the card did not check the balance before they spent a significant amount. And they stopped trying to use the card once Mrs L blocked it. This tends to indicate that they might have known how much was available and when Mrs L reported the card as lost – which an unknown thief or fraudster would not have known.

So it does not seem very likely or plausible that an unknown party did this.

It is possible that someone known to Mrs L may have made the transactions without her permission, such as a friend or family member. But I don't think that's particularly likely either. Mrs L lived alone, and she confirmed repeatedly that no one close to her had used her card. So it seems that she effectively ruled out this possibility herself.

The final possibility I've considered is that Mrs L either made the payments herself or gave someone else permission to make them.

This possibility fits very well with how the payments were made: over the course of over two weeks, near Mrs L's home, at many of the places where she normally did her genuine spending. And in her initial call with Capital One, Mrs L did say she recognised some of the now-disputed payments and confirmed some of it as being her own spending.

Mrs L repeatedly checked her account online while the disputed payments were being made. She said she only did this to make payments, but I can see she did not make any payments on those occasions. It's unlikely that Mrs L would check her account so frequently if she hadn't used it since the January. And it's unlikely she wouldn't notice her card was missing for such a long time if she was otherwise actively keeping tabs on the account. But perhaps most importantly, Mrs L would have seen her card's balance increasing significantly each time she signed in, yet she didn't tell Capital One anything was wrong until the spending stopped. It is not likely or plausible that Mrs L would wait so long to report the disputed payments if they were made without her consent.

I've also not seen any evidence that makes it seem implausible or unlikely that Mrs L could've authorised these payments or given someone else permission to make them.

I appreciate why Mrs L would like to see CCTV footage. Such footage is only kept for about a month, so it's much too late to get that now. And even if it was still available, it would've only shown what the person making the transactions looked like. It would not have shown whether they had Mrs L's permission or not. And as I explained above, based on the evidence it's unlikely that the payments were made without Mrs L's consent.

In summary, it's not very likely or plausible that an unknown person made these payments, or that someone known to Mrs L did this without her permission. But it does seem both likely and plausible that the payments were made with Mrs L's consent. So it seems fair for Capital One to decline a refund in this case. This is a difficult message for me to give, and I know it's a difficult message for Mrs L to receive. But given the evidence I have, and the balance of probabilities, I'm unable to reasonably reach any other conclusion.

Lastly, I do appreciate that Mrs L found it frustrating dealing with Capital One. I've listened to her calls, and did not find anything particularly inappropriate or unreasonable in the way Capital One dealt with her. And while I understand she would've liked things to happen faster, Capital One did deal with the matter within a reasonable time. So I've not found that they did anything which would warrant an award of compensation in this case.

My final decision

For the reasons I've explained, I don't uphold Mrs L's complaint.

This final decision marks the end of our service's consideration of the case.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 25 October 2023.

Adam Charles
Ombudsman