

The complaint

Miss B complains that Capital One (Europe) plc have failed to refund multiple transactions she says she didn't authorise between 18 June and 2 July 2022.

The details of this complaint are well known to both parties, so I won't repeat everything again here. Instead, I'll focus on giving the reasons for my decision.

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.

Having done so, I agree with the conclusions reached by the investigator and have decided not to uphold it.

Having considered the facts before me as well as the relevant law, it seems to me that the key question I need to determine here is whether it's more likely than not that Miss B authorised the transactions. In other words, I need to decide whether Miss B made the transactions herself or gave someone else permission to do so. This is important because a customer will usually be liable for payments they've authorised and, generally speaking, a bank will be liable for any unauthorised payments. In this instance, the disputed transactions were made using mostly card present transactions at stores and ATMs. This means the physical card would've needed to have been present for most of the disputed transactions. And having considered the evidence, I'm satisfied the more likely explanation is that Miss B authorised the transactions. I'll explain why.

The explanation and testimony Miss B has provided to this service about how she uses her card and how it might have come to be compromised has been relatively inconsistent and implausible. She initially said her identity was used by a fraudster who compromised her device and cards were also stolen. She said the fraudster was able to gain access to her banking apps and had her cards. She said the fraudster applied for a £10,000 loan with one of her banking providers (Bank A) but this was reversed when Bank A text her. She said Capital One didn't notify her to say anything suspicious was going on.

But in communication with the investigator Miss B said:

- She only found out about the disputed transactions in January 2023 when she made a DSAR with Capital One.
- She misplaced the Capital One card in July, she believes this was after getting her nails done.
- She usually kept the card in her purse.
- No one had access to her card. She left it among friends and family, but other than this, no one would have taken the card out.
- Her PIN was noted down in her phone.

Capital One highlighted that the physical card was used with gaps between the transactions while payments were made. It also highlighted that the mobile app was accessed at the time of the transactions and no new device was registered, so it was Miss B's device being used. It further noted that an SMS was sent to Miss B's genuine mobile number on 22 June 2022 where a response was received confirming the spend.

Miss B said she had no recollection of receiving or responding to a text alert from Capital One. She suspects someone had her device at the time and maybe responded, then deleted the message.

The evidence shows me that Miss B's mobile app was regularly reviewed during the period of disputed spend. The evidence also shows me that Miss B's PIN was entered correctly first time after Miss B's last two genuine transactions were authorised via contactless payment. However, 3.5 hours later, a large chip and PIN transaction was completed where the PIN was entered correctly first time.

Miss B said she suspected that she misplaced her card shortly after the last genuine payment but her PIN was only noted in her phone. Miss B didn't say that her phone was lost or misplaced. Therefore, I think it's unlikely that an unknown fraudster would have found Miss B's card and guessed her PIN correctly first time, several hours after she said she thought she misplaced her card.

In terms of the transactions the evidence also suggests that Miss B would likely have been aware they were made at the time. I note she frequently logged into her account throughout the period of the disputed payments between June and July 2022. And given the considerable number of transactions she says were unauthorised, it seems unlikely that she wouldn't have noticed these being made at the time, particularly as some of them were very large payments. I don't find Miss B's statement plausible that someone else would likely have confirmed the SMS from Capital One on 22 June 2022. This was sent to her genuine mobile and Miss B said she was notified by Bank A that a loan was taken out in her name by text message – but this was received by her.

Upon receiving our investigator's view, Miss B said that the disputed transactions could only have been her ex-partner who became physically and emotionally abusive. She reported this to the police on 25 June 2022. She said she wouldn't have considered it to be him until our investigator pointed out that the mobile app was accessed via her IP address, and the only other person with access to her mobile would be him while she was asleep or at work as she occasionally worked from home. But she says she didn't disclose her PIN to him. Miss B said every time she changed her password her ex-partner got back into the account even if she would change it and if he couldn't access her phone he would become physically abusive. She said she usually accessed her device via Face ID and password but her ex-partner did not have authority for her phone to be used by Face ID and she did not have the fingerprint option on her device.

I'm sorry to hear of the very difficult personal circumstances Miss B experienced but I think this would have been key for her to have mentioned at the outset and so I find it unusual that she didn't. I note she said our investigators view about her device being used prompted her to suspect her ex-partner. But I've noted that Miss B reported him to the police during the period of disputed spend and she also says other debts were taken out in her name. I don't find it plausible that our investigator's view prompted her to disclose this information at such a late stage.

Capital One has also provided evidence to show that on 18 June, 21 June and 24 June 2022 Miss B's app was accessed using biometric authentication. Which means that face/fingerprint ID was used to access the device. But Miss B said she doesn't believe her

ex-partner added his biometric details on her device – which is plausible as she said he would become abusive when she changed her password. If his biometric data was on the phone, he wouldn't have required her password to access her phone.

I accept that Miss B said she was working when the disputed transactions were happening. It therefore seems that the more plausible explanation for the disputed transactions is either Miss B authorised them herself or gave somebody else her details, thereby giving her consent and authority for the payments to be made on her behalf.

I've also noted that there were credits received to the account before further disputed transactions were made which isn't consistent with a fraudster spending on the account. As a result, there isn't enough evidence to suggest that a scam has taken place here, or that an unauthorised third party carried out the transactions without Miss B's knowledge or consent. So, I don't consider Capital One has acted unfairly by declining to refund the disputed transactions, as I consider they were most likely than not to have been authorised by Miss B. I appreciate this will likely come as a disappointment to her, but I won't be asking Capital One to take any further action.

Finally, I recognise Miss B feels Capital One should have notified her when the suspicious transactions were being made. But as I've already explained, it did receive a text message from her mobile number confirming transactions on 22 June 2022. As I'm satisfied the transactions were authorised, I don't think Capital One were required to do anything differently. I recognise Miss B's credit file has been adversely impacted but as I explained, Capital One was entitled to hold her responsible for the transactions on the account. It would also be required to report accurate information to credit reference agencies.

My final decision

My final decision is, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 15 January 2024.

Dolores Njemanze
Ombudsman