

## **The complaint**

Mr S complains that Capital One (Europe) Plc won't refund him for two heaters he bought using his Capital One Credit card.

## **What happened**

In October 2022 Mr S purchased two heaters from an online Merchant paying £164.03 using his Capital One credit card. But he didn't receive these because he declined to pay a customs charge levied on the imported heaters. He says he didn't agree to pay this charge when he purchased the heaters. He says he hasn't had his money back, so he took his dispute to Capital One.

Capital One looked into the matter and has said it didn't consider Mr S's dispute should be successful through either chargeback or Section 75 of the Consumer Credit Act 1974 (the CCA)

Mr S didn't think this was fair, so he brought his complaint to our service. Our investigator looked into the matter. Overall, she didn't think Capital One had acted unfairly by declining Mr S's request for a refund. Mr S didn't agree. So the complaint has 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.

I should make very clear that this decision is not about the Merchant which isn't a financial services provider and doesn't fall within my remit regarding chargeback or Section 75. Mr S has made numerous arguments about the Merchant, and I appreciate his strength of feeling and the manner he's gone about expressing himself on these points. Whatever the issues there maybe with the Merchant and just because Mr S says he has lost out here, it doesn't necessarily follow that Capital One has treated Mr S unfairly or that it should refund him. And this decision is solely about how Capital One treated Mr S. And accordingly I'll only be addressing what Capital One's responsibilities here. I hope this point is sufficiently clear.

There's no dispute that Mr S used his Capital One card to make the purchase. So I don't think Capital One has done anything wrong by allocating the purchase amount to Mr S' account.

In certain circumstances, when a cardholder has a dispute regarding a transaction, as Mr S does here, Capital One (as the card issuer) can attempt to go through the chargeback process. I don't think Capital One could've challenged the payment on the basis Mr S didn't properly authorise the transaction, given the conclusion on this issue that I've already set out.

Capital One is required to consider whether there is a reasonable prospect of success when it is considering whether to go through the chargeback process or not. If it does go through

the process, then it must do so properly. And if Capital One takes the chargeback as far as it can then the card scheme provider (not Capital One) will then make an independent determination on the matter. So Capital One isn't solely responsible for the decision whether to refund or not, when going through the chargeback process. And it can fairly decide to not proceed at any stage if it doesn't think there is a reasonable prospect of success.

Here Capital One did raise a chargeback. And the Merchant defended the chargeback by responding with evidence and arguments including that it wasn't responsible for the customs charge levied and that Mr S had agreed the terms and conditions of the sale. So Capital One decided that Mr S' chargeback no longer had a reasonable prospect of success and so didn't pursue the chargeback further.

I've considered this carefully and note the Merchant's defence to the chargeback. In light of the circumstances here I cannot conclude that Capital One treated Mr S unfairly. I think considering the agreement in place and what happened here had it taken the chargeback to the end stage of the process it would have been ultimately unsuccessful. Accordingly I'm not persuaded Capital One treated Mr S unfairly by not pursuing the matter further.

There are some requirements set out in the CCA which have to be met before deciding whether there was a breach of contract or misrepresentation by the Merchant. However I don't think I need to make findings on these requirements because I'm satisfied Mr S hasn't been misrepresented to and I'm not persuaded there has been a breach of contract either.

There is no persuasive evidence that the Merchant was responsible for the payment of the customs charges. It is clear that the Merchant sent the heaters out for delivery from the evidence available. I've seen no persuasive evidence that either Mr S was misrepresented to or that the Merchant breached the agreed contract. As with a claim directly against the Merchant the onus is on Mr S to make out his 'like claim' against Capital One and its clear he's not shown such breach of contract or misrepresentation here. Accordingly Capital One hasn't treated him unfairly by not refunding him. So his complaint is unsuccessful.

For the sake of completeness I'll deal with some of Mr S' other arguments. As I've mentioned Mr S makes many arguments about what the Merchant did or didn't do. However I can only look at what Capital One is meant to do and whether it treated him fairly. Its obligations are (in brief) to process the transaction Mr S authorised, and consider his dispute through chargeback and S75 of the CCA. I'm satisfied it did this and did so fairly.

Mr S disagrees with the chargeback rules within the card schemes and asks what he can do about these. Chargeback processes are voluntary processes run by Card schemes and not Capital One. And I can only deal with what Capital One did in this dispute.

Mr S in response to the assessments of the Investigator hasn't provided any persuasive arguments as to what Capital One did wrong. And the only complaint here I can look into is about Capital One. Ultimately Mr S entered into a purchase agreement here with the merchant and the terms of that agreement are between he and the merchant. Capital One has treated Mr S fairly.

In summary I think that Mr S hasn't lost out here due to what Capital One did. I think Capital One made a fair decision in not pursuing the chargeback. And I don't think it could be held responsible under S75 either as I'm not persuaded a material misrepresentation or breach of contract has been made out. I do appreciate that this isn't the decision Mr S wants to read. But I don't think Capital One treated his unfairly.

### **My final decision**

For the reasons set out above, I do not uphold the complaint against Capital One (Europe) Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 11 April 2024.

Rod Glyn-Thomas  
**Ombudsman**