

The complaint

Mr H complains that Capital One (Europe) Plc (Capital One) failed to uphold his complaint about an unauthorised transaction on his credit card and refund the amount in dispute.

What happened

I set out the background to this complaint in my earlier provisional decision. For clarity I repeat it here.

Around 8.30pm on 14 January 2023, Mr H discovered a fairly serious water leak at his home. Due to the lateness of the hour he attempted to source an emergency plumber and found a company I'll call "P" on the internet.

He telephoned P who were happy to help and advised they could have a plumber with him within around 90 minutes. P said this was conditional on Mr H agreeing to a £200 call out fee and a further £200 towards any subsequent labour costs. Mr H agreed and authorised a payment of £400 on his Capital One credit card.

A plumber attended his property at around 9.30pm and left at 1.am. The plumber was able to trace the leak and complete a repair.

At 2am on 15 January 2023, Mr H received a further telephone call from P requesting he authorise a further payment of £645. Mr P declined to do so, he asked for an invoice for the work carried out.

Mr H says he was concerned about such a telephone call in the early hours and contacted Capital one at around 9am on 15 January to query any recent transactions. He was informed that two pending transactions had been received on his account, one for £400 and another for £645.

Mr H requested Capital One cancel his credit card and raised a dispute regarding the additional £645.

Mr H says Capital One asked him to contact P directly to attempt to resolve the matter. Mr H did so again requesting an invoice, but this proved to be unsuccessful.

On 30 January 2023, Mr H was contacted by the plumber who attended his property. He informed Mr H that he hadn't been paid for work completed. The plumber explained he was a local self-employed plumber. Mr H asked the plumber to provide him with a costing of what he would have charged for his services that evening, the plumber estimated the costs at £355.

Capital One contacted Mr H and initially refunded the £645 but explained the merchant, P had 45 days to challenge the chargeback.

By early March 2023, Mr H has heard nothing and so he complained to Capital One about the delay in resolving this matter. Capital One agreed that there had been an unacceptable delay and awarded Mr H £100 compensation.

On 17 April 2023, Capital One rejected the chargeback and reinstated the £645 to Mr H's account. It said that this was as a result of the merchant providing evidence of that the service requested had been carried out. The merchant provided an invoice for the work completed.

Dissatisfied, Mr H complained to Capital One.

In its final response Capital One said it didn't uphold Mr H's complaint with regard to the disputed transaction. It said that the merchant had provided evidence that the service Mr H had requested was provided and as such his claim did not meet the requirements of the chargeback scheme. It went on to say it had considered a Section 75 claim but again as it could find no evidence of misrepresentation or a breach of contract it wasn't able to pursue the claim. As such Capital One was unable to refund the £645.

Mr H was very disappointed and brought his complaint to this service.

An investigator looked into matters for Mr H and didn't find that Capital One had acted unfairly in its investigation of Mr H's complaint and so he didn't uphold his complaint. Mr H didn't agree with the investigators findings and requested an ombudsman review. In my provisional findings, I set out what is considered fair and reasonable when looking onto Mr H's complaint. I explained I need to have regard to the relevant law and regulations, regulator's rules, guidance and standards and codes of practice and (where appropriate) what I consider having been good industry practice at the time.

Capital One had two possible routes for obtaining a refund for Mr H, a claim against itself under Section 75 or by raising a claim under the chargeback process. I looked at each of these options in turn.

In the first instance, Capital One approached Mr H's complaint against the merchant using a method known as chargeback. This is a transaction reversal made to dispute a card transaction and obtain a refund if there's a problem with the goods. It works by the credit card company withdrawing funds which were previously paid to the supplier and putting them back in the consumer's account. A supplier can dispute a chargeback with the bank if it can prove the chargeback is invalid.

I explained there's no automatic right to a chargeback, nor is a chargeback a guaranteed method of getting a refund. The card scheme operator checks the nature of the problem against the possible chargeback reasons to see whether the claim will be successful. If the credit card company feels the claim won't be successful, it doesn't have to raise a chargeback. The main requirement for getting money back through chargeback is evidence that there's been a breach of contract.

Capital One raised the chargeback and a temporary credit was put on Mr H's account, he was informed that the merchant had 45 days to challenge this by providing evidence to the contrary. The merchant supplied Capital One with an invoice which it said demonstrated that it had provided a service. Capital One accepted this as sufficient evidence and closed the chargeback dispute process, but it gave Mr H the option to look at a claim under S.75.

The evidence provided by the merchant confirmed what Mr H had already told them, namely that he needed an emergency plumber to repair a leaking water pipe and P had provided the service as requested. There was also no dispute about the initial £400 Mr H authorised, however, Mr H gave persuasive testimony that he was told the costs were £200 for the emergency call out and £200 towards the cost of any labour. His dispute was in regard to £645 second payment.

I said when considering a complaint about a financial services provider, I'm not determining the outcome of a claim that a party might have under section 75. I take section 75 into account when I think about what's a fair way to resolve the complaint, but I don't have to reach the same view as, for example, a court might reach if Mr H made a claim through them for breach of contract or misrepresentation.

When something goes wrong and the payment was made, in part or whole, with a credit card, as is the case here, it might be possible to recover the money paid through a section 75 claim. This section of the Consumer Credit Act (1974) says that in certain circumstances, the borrower under a credit agreement has an equal right to claim against the credit provider as against the supplier if there's either a breach of contract or misrepresentation by the supplier.

Capital One, in its final response, set out the criteria that must be met for a S.75 claim to be considered. It said:

The price of the goods or services purchased must be at least £100 but not exceed £30,000.

The cost of the services totalled £1045.00 and so it met the criteria.

There must be a valid debtor-creditor-supplier relationship.

In this case there must be a very particular relationship in place between Mr H, Capital One and P. This relationship is known as a debtor-creditor-supplier relationship. So, Mr H would need to be the debtor, Capital One the creditor and P the supplier. I said I was satisfied the relationship between the parties is valid and meets the definition of the d-c-s relationship.

There must be a proven claim against the supplier - This means that there must be a proven claim for misrepresentation and/or breach of contract against the supplier.

I explained in order for me to uphold the claim I must be satisfied on a balance of probabilities that there has been breach of contract or misrepresentation of the services to Mr H. To do this I would need to see the terms and conditions of the contractual agreement to provide the services, and I said this was where I found a concerning lack of information.

Capital One seem to have reached its decision without sight of a contract, as I couldn't find that any terms and conditions had been provided. So, in effect I said what we have is one parties word against another.

Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances. Mr H says when he rang P at 8.30pm, it said it would provide an emergency plumber if he authorised a payment of £200 for a call out fee and £200 towards any subsequent labour costs. He decided to take this based upon what he had read on the website.

I considered the information on P's website. The terms of service only confirm there is a £200 call out fee, there are no other terms and conditions available to view.

Under the section entitled How much do you charge? It says:

Every job we do is subject to a different cost to help keep our prices competitive. We'll be more than happy to talk through what it is you need doing and we'll be able to get a quote over to you!

Mr H said the plumber stayed until 1am, a total of 3.5 hours. He then said he received a call at 2am asking him to authorise a further payment, which he refused, instead requesting an invoice for the work completed and the cost of labour.

I said I found it extremely unusual that a company would firstly make a telephone call at 2 am requesting further authorisation for payment, it had not previously quoted for nor given detail of the hourly rate for labour or cost of parts.

S.75 may not cover unauthorised payments, but I said in my view Capital One should have looked beyond this part of Mr H's complaint and assessed if there had been a breach of contract and/or misrepresentation.

I explained I thought it important to consider what the definition of misrepresentation is namely a false or misleading statement or a **material omission** which renders other statements misleading.

Mr H was well within his rights to ask for an invoice for the work completed before payment. He says he did not agree to any terms and conditions precisely because none were presented to him. Further, had P informed him the cost would be £200 per hour, Mr H says he would not have undertaken their services as he had no idea how long the job would take. I listened to the telephone calls between Mr H and Capital One and this service, I found his testimony to be compelling and consistent, so I have no reason to doubt what he says. I said I hadn't seen any evidence of any contractual obligation to pay £200 per hour for labour thereafter, nor any upfront quote or estimate or confirmation of charges being provided to Mr H.

The terms of service as detailed on the website do not go beyond the £200 call out fee, as such I wasn't persuaded Capital One had acted fairly in declining Mr H's S.75 claim. I explained if Capital One presented the terms of service, it has had sight of that are different to those I have detailed, then I would consider any such submission before issuing my final decision.

I found there to be no dispute about the initial emergency call out charge of £200 and an additional £200 towards labour costs. So, I said I find it fair and reasonable that this amount stands.

The plumber who actually attended then supplied Mr H with an invoice cost of £365 for the labour and parts of the work carried out. This seems to be a fair and reasonable charge for the repair of a pipe, the parts being minimal, but the time taken at least 3.5 hours. This is then a total of £565 (£200 for the emergency call out fee and £365 for the labour and parts incurred). In the absence of any terms and conditions allowing further charges it follows that I intend to ask Capital One to refund £480 to Mr H's credit card account.

Capital One has apologised for the delays in responding to Mr H's complaint and awarded £100 compensation which I find fair and reasonable in the circumstances of this complaint.

Capital One responded to my provisional decision and accepted my findings.

Mr H also responded and accepted the decision but raised a few further points he asked me to consider.

- Mr H said when he was called at 2 am in the morning no further amount was mentioned. He refused to authorise any payment and asked for an invoice.
- The plumber who attended said he would have charged £365 including a call out fee.

- He has not seen any invoice from P to date.

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 thank both parties for their responses and Mr H for his additional submissions.

I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.

Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. Rather, I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

Mr H has provided clarification rather than new evidence and he accepted my provisional decision, but I think it fair and reasonable to respond to his points and explain how I reached my decision.

It's important to remember that I have considered a complaint against Capital One rather than the company P.

I explained that where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances. I then have to consider what is fair and reasonable in terms of the redress. Mr H acknowledge to Capital One that he had agreed to the initial £400, and so there isn't a breach of contract or misrepresentation here and for this reason the amount stands.

I appreciate the plumber who attended gave an invoice which he said would have included his call out charge. But it was P who Mr H engaged with for the service and so it is reasonable in my view that there would have been some charge for sourcing the plumber and providing the service.

It is difficult in circumstances such as those presented in this complaint to find what that balance should be. A service was provided and as such the issue is one of cost and whether or not that was misrepresented to Mr H – rather than it not being provided at all. Working with the all the information I am satisfied that the redress I have directed is fair and reasonable in the circumstances of this complaint.

My final decision

For the reasons I have given I uphold Mr H's complaint and direct Capital One (Europe) Plc to:

- refund £480 to Mr H's credit card account.
- Refund any interest charged from the date the £480 was charged to Mr H's account to the date refunded
- Pay Mr H 8% simple interest on the £480 from the date charged to the date refunded.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 8 April 2024.

Wendy Steele
Ombudsman