

The complaint and background

Mr B blames Think Money Limited for not doing enough to help him recover payments to a scam binary-options trading company.

He disputes the following payments:

| Date | Merchant | Payment method | Amount |
|------------------|----------|-----------------------|----------------------|
| 30 January 2018 | G Ltd | Mastercard debit card | £750 |
| 30 January 2018 | G Ltd | Mastercard debit card | £2,500 |
| 30 January 2018 | G Ltd | Mastercard debit card | £2,501 |
| 30 January 2018 | G Ltd | Mastercard debit card | £2,499 |
| 30 January 2018 | G Ltd | Mastercard debit card | £2,498 |
| 30 January 2018 | G Ltd | Mastercard debit card | £2,498 |
| 30 January 2018 | G Ltd | Mastercard debit card | £5,000 |
| 1 February 2018 | G Ltd | Mastercard debit card | £2,500 |
| 1 February 2018 | G Ltd | Mastercard debit card | £7,500 |
| 1 February 2018 | G Ltd | Mastercard debit card | £7,505 |
| 26 February 2018 | G Ltd | Mastercard debit card | £2,500 |
| | | | Total: £38,251.00 |

Mr B received £100 from G Ltd on 31 January 2018, he then received a further credit of £200 on 1 February 2018.

Mr B further disputes the following bank transfer:

| Date | Merchant | Payment method | Amount |
|-----------------|----------|------------------------|---------|
| 1 February 2018 | E Ltd | International transfer | £15,000 |

Mr B pursued G Ltd for a refund and in April 2018 it offered him a goodwill gesture of £6,500 providing Mr B signed a settlement agreement with them.

Taking the various credits into consideration, Mr B's alleged total loss is £46,451.

Think Money denies liability for what happened, saying that Mr B made authorised payments to two different companies which matched his normal account usage and there was no adverse information about either of the companies at the time of his payments. Accordingly, there were no grounds for a chargeback claim under the Mastercard scheme, nor was the bank liable to him under any other grounds.

On 30 July 2021, I issued a provisional decision rejecting this complaint. For completeness, I repeat my provisional findings below:

Not every complaint referred to us and categorised as a binary options or forex trading scam is in fact a scam. Some cases simply involve high-risk investments that resulted in disappointing returns or losses. Some binary options platforms may have promoted these

products—which are unregulated—using sales methods that were arguably unethical and/or misleading. However, whilst customers who lost out may understandably regard such acts or omissions as fraudulent, they do not necessarily meet the high legal threshold or burden of proof for fraud, i.e. dishonestly making a false representation and/or failing to disclose information with the intention of making a gain for himself or of causing loss to another or exposing another to the risk of loss (Fraud Act 2006).

Banks and other Payment Services Providers (“PSPs”) have duties to protect customers against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering (see below). But when simply executing authorised payments, they do not have to protect customers against the risk of bad bargains or give investment advice — and the Financial Conduct Authority (“FCA”) has confirmed that a fraud warning would not constitute unauthorised investment advice (see its predecessor’s 2012 consultation paper on investment fraud). So, the first question to resolve is whether this particular retailer/trader was a fraudster.

Mr B’s account of what happened suggests he was induced into entering into an agreement with G Ltd on the basis of their promise of high returns along with a dedicated account manager to guide him through trades. The involvement of E Ltd came about through Mr B’s dealings with G Ltd and he was told (by G Ltd) that E Ltd were part of them. It was on this belief that Mr B instructed an international payment transfer on 1 February 2018.

I am satisfied that G Ltd were not carrying out legitimate forex, CFD or binary-options trades but were instead dishonestly defrauding customers, e.g. by not actually making trades/bets with the money received from clients but simply manipulating their online ‘trading platform’ to show purported gains—with initial token pay-outs—in order to induce further ‘investments’ from victims such as Mr B. In the absence of evidence to the contrary, I have concluded this because:

- In 2018, binary-options, forex and CFD traders operating in the UK were required to be regulated by the Financial Conduct Authority — whereas G Ltd were not. Nor were they regulated in any other jurisdiction so far as I am reasonably aware. This indicates they were operating illegally, probably with dishonest intentions. Legitimate firms tend to comply with regulatory requirements.*
- On 13 March 2018, a warning about G Ltd was placed on the Investor Alerts Portal of the International Organization of Securities Commissions (“IOSCO”). The Superintendencia del Mercado de Valores of Panama reported that they were offering financial services in its jurisdiction without authorisation. A warning from the FCA followed on 18 April 2018.*
- There are several reports in the public domain—e.g. foreign press and online forums—stating that G Ltd were scammers. This hearsay is not in itself sufficient evidence of fraud. But in the context of known regulatory facts, it may fairly and reasonably be regarded as circumstantial evidence that helps build an overall picture of scammers dishonestly seeking gains at the expense of others.*

E Ltd on the other hand has no adverse information reported about them. From what I have found, they are based in Hong Kong and has been in operation since 2017 and their operation status as a company is listed as ‘live’. There are no regulator warnings that have been published about them. Whilst I accept Mr B’s account that he felt G Ltd and E Ltd were the same, they are two separate entities and there is no credible data that links either company for me to reasonably conclude they were one and the same. For the purposes of

my decision, whilst I'm satisfied that G Ltd was a scam, I have no credible evidence that persuades me with any degree of certainty that E Ltd was also a scam.

Having concluded that G Ltd was a scam rather than just a bad bargain or poor investment choice, I must now go on to consider four more issues in order to determine the outcome of the complaint:

- a) Did Think Money deal with Mr B's chargeback claims fairly?*
- b) If so, were any of the disputed transactions still so unusual or uncharacteristic for Mr B and/or his account that Think Money's fraud alerts ought reasonably to have triggered some sort of intervention?*
- c) If triggered, would Think Money's intervention have made a difference and prevented or reduced the loss?*
- d) And if so, was Mr B partly to blame for what happened such that it would be fair and reasonable to reduce compensation proportionately?*

chargeback

Chargeback is a voluntary scheme run by Mastercard whereby it will ultimately arbitrate on a dispute between the merchant and customer if it cannot be resolved between them after two 'presentments'. Such arbitration is subject to the rules of the scheme — so there are limited grounds on which a chargeback can succeed. Our role in such cases is not to second-guess Mastercard's arbitration decision or scheme rules, but to determine whether the regulated card issuer (i.e. Think Money) acted fairly and reasonably when presenting (or choosing not to present) a chargeback on behalf of its cardholder.

Chargeback in Mr B's circumstances will apply to the Mastercard debit card payments he made to G Ltd only. Think Money did not attempt chargebacks on Mr B's behalf because it says Mr B did not provide it with sufficient evidence, e.g. G Ltd were operating illegally.

I'm aware that the various card schemes handle the matter of investment trading disputes very differently.

Having clarified this matter with Mastercard directly, it explained that if a cardholder authorised and engaged in a transaction with the intent to participate in gambling, investment or similar services, then cardholder-dispute chargeback rights are restricted regardless of whether the activity was illegal or brand damaging. It went on to explain that issuers have no chargeback rights related to the use of these chips or value, unspent chips, or withdrawal of such value, or on any winnings, gains or losses resulting from the use of such chips or value. In short, Mastercard consider the purpose of the Mastercard transaction to load funds into the gambling or investment account and not what activities are subsequently done with the funds. In this case, Mr B's claim relates to G Ltd operating fraudulently, so I don't think there was any recourse for Think Money to try to recover Mr B's debit card payments to G Ltd through the Mastercard chargeback scheme.

It would be unreasonable to expect a bank to present a chargeback that had no reasonable prospects, particularly as that could incur costs (at arbitration) for the bank if the merchant were to defend the claim successfully, which seems likely here. I also have to consider that Mr B signed a compromise agreement with G Ltd following its 'gesture of goodwill'. Mr B hasn't provided a copy of this agreement but I've seen similar ones and a common clause is that the customer (i.e. Mr B) would agree not to take any action against the merchant (i.e. G Ltd). This would have been strong grounds to defend a chargeback claim as a binding settlement had been agreed by both parties.

For the reasons set out above, I am not persuaded that Think Money acted unfairly or unreasonably in connection with any rights or responsibilities under the Mastercard

chargeback scheme, so I cannot uphold this complaint on that ground.

For the avoidance of doubt, I've not considered whether Mr B had any chargeback rights in relation to his payment to E Ltd and that's because this was an international transfer which is not subject to the chargeback scheme.

unusual or uncharacteristic activity

Think Money should be aware of our general position on a PSP's safeguarding and due diligence duties to protect customers from the risk of financial harm due to fraud. We have published many decisions on our website setting out these principles and quoting the relevant rules and regulations. It is unnecessary to rehearse them again here in detail.

It is common ground that the disputed payments were 'authorised' by Mr B for the purposes of the Payment Services Regulations 2017 ('the Regulations'), in force at the time. This is because they were made by Mr B using the legitimate security credentials provided to him by Think Money. These must be regarded as 'authorised payments' even though Mr B was the victim of a sophisticated scam. So, although he did not intend the money to go to scammers, under the Regulations, and under the terms and conditions of his account, Mr B is presumed liable for the loss in the first instance.

However, taking into account the law, regulatory rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Think Money should fairly and reasonably:

- Have been monitoring accounts—and any payments made or received—to counter various risks, including anti-money-laundering, countering the financing of terrorism, and preventing fraud and scams;*
- Have had systems in place to look out for unusual transactions or other signs that might indicate its customers were at risk of fraud (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer; and*
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment; or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.*

I am not satisfied there were enough 'triggers' in this case to have alerted Think Money that Mr B's account was being subjected to unusual and uncharacteristic activity. I say this because Mr B made regular gambling transactions prior to his payments to G Ltd. In the month of January 2018, he paid over £50,000 (in multiple transactions) to one particular gambling website. So, I don't think the payments to G Ltd on the face of it were unusual or uncharacteristic. That being said, Mr B's payments to G Ltd did trigger Think Money's fraud detection systems. The initial transactions triggered Think Money to contact Mr B via text message to confirm that he had initiated the payments. Following that, Think Money say Mr B was prevented from making further payments 'due to the additional security checks and thresholds being triggered on his account'. As Think Money's fraud detection systems were triggered, I think it's reasonable for me to conclude that it had reasonable grounds to suspect a fraud or scam, which prompted requests for Mr B to phone it.

First, regulated firms ought reasonably to take notice of common types of scams. As long ago as June 2012, the FCA's predecessor indicated—in its consultation paper entitled

Banks' Defences Against Investment Fraud: detecting perpetrators and protecting victims—that it was good industry practice for firms to build up an updated watch-list of types of scams and potential perpetrators; and regularly to share “timely and detailed intelligence” with other banks, UK and overseas regulators, the police, etc. Whilst the regulator gave no specific timings, it is not unreasonable in my view to expect a bank to update its watch-list and communicate internally to staff within, say, one month of an alert being posted by the FCA or IOSCO. In my judgment, such alerts should automatically trigger alarm-bells—and lead to the payment being paused—pending further enquiries (and a possible scam warning) to the payer.

In Mr B's case, there was no warning about G Ltd on IOSCO's Investor Alerts Portal until after Mr B made all of his payments. Because of this, I don't think Think Money should have been triggered to ask questions at his initial payment. Though, it's clear the pattern of transactions that followed required Mr B to phone Think Money to discuss those payments as text message authorisations were no longer sufficient. Following the block of Mr B's debit card in relation to his payments to G Ltd, Mr B called Think Money on 30 January 2018 and the following call note was recorded:

He advises that the payment is for 2500.00 GBP. He advises that the payment has been split by the company due to the initial amount being declined. He is asked what the payment is for and he advises that this is for an investment and the funds have originated from his pension. The customer advises that he has hit a variable limit on his card and is unable to complete the transaction.

In another call the next day (31 January 2018) following the blocking of Mr B's card yet again, this call note was recorded by Think Money:

....Customer advises of his dislike for banks stating that if he could take it all out he would. The customer is asked if he received an SMS regarding the declined transaction. The customer advises that he has and that this is a transaction he is trying to make. The agent advises that due to the amount of funds debited over the past few days, he would need to stop spending on the debit card for a few days. He advises that he will close the account if this carries on

A further call on 31 January 2018 stated the following:

Inbound call received from Mr B – He advises that he is having problems making a payment using his debit card. He advises that he is trying to transfer 2500.00 to [G Ltd]. He is aware of the previous transfers advising that he knows it is a lot and reassures the agent that these payments were undertaken by him. He advises that he is expecting more money to come into his account in the next few days. The agent asks if he will be making any further payments to [G Ltd] after today – he advises not.

I have taken from some of the comments recorded that Mr B found Think Money's calls to be somewhat of a nuisance. However, if Think Money had fulfilled its duties and carried out due diligence by asking suitably probing questions, there is no reason to doubt that he would have explained what he was doing. In such circumstances, whilst the bank had no duty to protect him from a bad bargain or give investment advice, it could have invited him to check whether the payee was registered with the FCA. At that time, there was information in the public domain—which a bank ought to have known even if a lay consumer ought not—about the very high risks associated with binary options, forex and CFDs including many warnings of potential fraud (e.g. Action Fraud's June 2016 warning; the European Securities and Markets Authority's July 2016 warning; the Financial Conduct Authority's consultation paper of December 2016; the Gambling Commission's December 2016 scam warning that “an unlicensed operator is likely operating illegally”; the Financial Conduct Authority's forex trading scam warning of August 2017, and so forth).

There is no evidence that Think Money provided Mr B with any meaningful warnings or gave him other reasons to doubt the legitimacy of the payments he was making. There were several missed opportunities to intervene.

If Think Money had asked Mr B what the payments were for and the basic surrounding context, it is likely he would have fully explained what he was doing and that everything had been done over the phone and online with G Ltd. I've taken account of the following call note recorded on 27 February 2018 – where Mr B's card was blocked by Think Money:

The customer completes security and the agent advises that he is calling in relation to declined card payments to G Ltd. The customer advises that he recognises the activity, and confirms that he was making the payment. The agent asks if he is still looking to make the payment and he advises not as "he has had enough of it now, he has put so much money into it now. It's a shares and bonds thing. And thought OK then if I was going to make a good return on it then I'll go for it and that's what I did". He asks if the company needs to transfer money to his account [or] do they just need the SC/ACC number. The agent references recent GI refunds on the debit card. The customer advises that every now and again he may win a large amount of money.

Think Money did not need to know for certain whether Mr B was dealing with a fraudulent binary options/forex/CFD trader or investing in a legitimate (albeit highly speculative) product; reasonable grounds for suspicion are enough to trigger a bank's obligations under the various regulations and principles of good practice. I consider there were such grounds here and, therefore, that Think Money ought reasonably to have provided a scam warning in light of all the information then known to financial professionals about the risks associated with unregulated, overseas binary options.

I've taken note of Think Money carrying out additional internal checks into Mr B's international transfer to E Ltd and satisfied itself there was no cause for concern. As I explained already, there was and is no credible evidence that suggests E Ltd are fraudulent. I accept that Think Money carried out additional checks on E Ltd but I've not seen that any similar checks (to the standard completed with E Ltd) were carried out on G Ltd at the time of Mr B's payments. I don't accept Think Money's reasoning for not questioning Mr B's payments to G Ltd on this basis and I think it should have done more than simply verifying the payments were authorised by him. I therefore conclude that Think Money was at fault here — so I go on to consider whether such acts or omissions caused Mr B any loss.

causation

Although I have concluded that Think Money could and should have done more to protect Mr B, there is evidence that suggests he was willing to take high risks and had a history of gambling. Even if Think Money had warned him in the way that I think it ought to have, I think it's likely Mr B would have continued to send money to G Ltd. During a conversation I had with Mr B, he said he suspected G Ltd was a scam early on but was convinced to pay them more money. It seems more probable that even if Mr B enquired about G Ltd's licensing, he would have been persuaded to continue to invest with them. After all, there were no regulatory warnings at the time about G Ltd, so given that they persuaded him to continue to invest even though he suspected it was a scam, I'm not satisfied a warning from Think Money would have dissuaded him or caused him to act differently.

In other words, I am satisfied that a warning from Think Money probably would have made no difference to Mr B. Any failings by Think Money were not the dominant, effective cause of his losses; they were just part of the background history or occasion that led up to them.

In light of my conclusions above on causation, it is unnecessary for me to go on to consider whether Mr B was himself partly to blame for what happened (contributory negligence). Indeed, I have already concluded that he was responsible for his own investment or gambling decisions, and that such choices were the proximate cause of his losses.

Responses to my provisional findings

Think Money did not have anything further to add.

Mr B and his newly-appointed representative disagree with my provisional decision. Whilst submissions have come from both Mr B and his representative, for ease of reading, I'll refer to all the submissions as having come from Mr B alone.

Mr B made submissions both in writing and by telephone. I have carefully considered and digested those submissions in full and I summarise the key points below:

- When Mr B opened his account with Think Money around 2007, he believed it would safeguard his money and carry out due diligence when processing his payments.
- Mr B pays £15 per month for the protection of his finances and Think Money's failure to act is very damaging to its reputation.
- Think Money knew G Ltd were scammers two months prior to him becoming aware of this and felt it was under a duty to inform him and the FCA.
- G Ltd sounded legitimate and were very persuasive and persistent in their pursuit of Mr B.
- Mr B was not a habitual gambler and played Bingo which many people in the UK do and this should not be held against him. Just because he plays Bingo doesn't mean he doesn't have the capacity to know the difference between giving consent for his money towards Bingo versus his money being stolen and it was compulsory for Mr B to be informed of this as per the Mental Capacity Act.
- When Mr B signed a settlement agreement with G Ltd, he did so out of desperation, and it should be inadmissible.
- Mr B was very stressed and had not been able to provide the facts in a detailed way and the ombudsman had only spoken to Mr B once and did not know him, whereas the investigator had spoken to Mr B over a longer period and could untangle what he was trying to say.
- Around 2019, Mr B found some banking information that suggested G Ltd and E Ltd operated from the same address.
- Think Money should have tried to reach out to the bank involved with the scam to attempt to recover the payments and if no money was left it should have informed Mr B of this. Think Money should not have contacted G Ltd who shouldn't have been allowed to know they were being investigated. This was negligent and a breach of duty to safeguard Mr B's account.

My findings

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

I understand how upsetting this is for Mr B. I do empathise with his circumstances and am very mindful of the losses he has suffered as a result of G Ltd's cruel actions. When making a determination, we do so on the balance of probabilities. In other words, I am required to conclude what most *likely* occurred. It is based on the relative weightiness of the evidence presented by both parties. I found the way Mr B used his account to be relevant to the likelihood of him taking a different course of action if warned by his bank against scams. I

found it unlikely that Mr B would have taken a different course of action. There were a few reasons for this. Mr B gambled higher sums than the total amount he is disputing on a Bingo website he regularly used during the period of his disputed transactions. This statement isn't intended to be disparaging to Mr B. He is of course entitled to spend his money as he wishes. But it's not unreasonable for me to conclude that he has demonstrated a willingness to take high risks with his money – and that's simply because gambling involves high risks that you may lose your money.

I take Mr B's point that the risk of gambling on a legitimate website is different to the risk of paying funds to a scammer. But Mr B also informed me in a telephone conversation that he suspected G Ltd were scammers 'early on'. And despite Mr B's concerns, he still decided to pay them. In addition to this point, Think Money did intervene in several of the disputed transactions and had conversations with Mr B to question the payments he was making. He made it clear that he knew what he was doing and the level of interruption to his payments to G Ltd were unwanted. Taking all of this together, whilst I concluded that Think Money had breached its duty to warn Mr B of scams, I'm not persuaded its inaction was the *proximate* (i.e. dominant or effective) cause of his losses. I cannot safely conclude that such losses would have been prevented but for the acts or omissions of Think Money. Based on what I've seen, I think that Mr B would have continued to pay G Ltd regardless of any potential scam warning from Think Money. It of course could only have been a general warning about potential investment scams as there were no regulator warnings about G Ltd at the time of Mr B's payments. And I don't think a general warning would have dissuaded him from making the payments he now disputes.

There is no independent expert evidence here that Mr B was not of sound mind or incapable of making investment decisions, even high-risk ones. (The Mental Capacity Act is therefore immaterial to the outcome.) A bank's duty is to guard against the risk of fraud and scams; it is not to give investment advice or protect consumers from bad bargains. I note Mr B's comment that suggests Think Money was aware that G Ltd were scammers two months prior to him becoming aware of this. I presume he means that it ought to have known they were scammers when a regulator warning was published. As I note in my provisional decision (and above), there was no adverse information that G Ltd were subject to any regulator warnings *at the time of Mr B's disputed transactions*. It would be expecting too much for Think Money to proactively contact customers that historically paid a merchant subject to new regulator warnings. Whether or not Think Money would choose to report G Ltd to the FCA is a matter for it to decide as it sees fit. Mr B is of course entitled to report his concerns about G Ltd to the FCA and/or the police. When Think Money contacted G Ltd, this was done to assist Mr B when he said he couldn't get hold of them, so I don't agree with his suggestion that it breached any duty to him by taking this action.

There are circumstances where a firm – like Think Money – is expected to assist with the recovery of funds where a payment has been made by bank transfer. This is in accordance with the Payment Service Regulations 2017 and good industry practice. Circumstances include where the funds have gone to an incorrect account or were sent as the result of a scam. In relation to Mr B's payment to E Ltd – which was the only disputed transaction sent via bank transfer – this was sent to the recipient that Mr B intended to send it to, i.e. to the correct account details. Think Money also carried out additional security checks about E Ltd before sending the payment and it was satisfied there were no concerns about it at the time of Mr B's payment instruction.

As I mention in my provisional decision, there is no evidence E Ltd were subject to any of the same regulator warnings as G Ltd. It also appears still to be in operation. I don't find the evidence provided by Mr B around E Ltd's bank account details to be credible evidence that it operated a scam. This evidence was also not obtained at the time Mr B reported the scam to Think Money in 2018 but only obtained in 2019. There was certainly no credible evidence

to suggest that Think Money had any valid grounds (at the time Mr B reported the scam to it) to attempt to recall his payment.

Even if Think Money did have grounds to attempt to recover Mr B's payment to E Ltd, Mr B is adamant that G Ltd and E Ltd are one and the same company. Mr B signed a settlement agreement with G Ltd to accept its goodwill gesture of £6,500. I've seen similar agreements and offers are made in full and final settlement of the claim against the merchant and there are usually clauses preventing action being taken against them or their associates, which would probably rule out any claims against E Ltd too (assuming Mr B were correct about there being a link, which remain unproven). I appreciate Mr B felt under duress when signing this settlement agreement but there is no evidence that it was in fact signed 'under duress'. Feeling under pressure – even significant pressure – to resolve a dispute out of court is not the same as actual 'duress' in the legal sense of that word, i.e. where someone really has no option but to sign due to unlawful threats or coercion such as violence, blackmail, etc. There is no persuasive evidence that this was not a valid or freely-executed settlement. In the circumstances, I am satisfied that its existence significantly limited any recovery action Think Money could reasonably have taken.

Final decision

For the reasons set out above and before, I am not persuaded that Think Money Limited acted unfairly or unreasonably with regard to Mr B's disputed transactions to G Ltd and E Ltd, so I am unable to uphold this complaint or make any award against the bank.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr B to accept or reject my decision before 29 October 2021.

Dolores Njemanze
Ombudsman