

The complaint

Mr R complains that John Lewis Financial Services Limited refuses to refund money he lost to a binary options investment scammer.

What happened

Mr R saw Greenfields Capital (GC) on a social media advert. He left his contact details on their webform and a broker representing GC contacted him. The broker persuaded him to invest and he agreed to deposit a small amount of money using his debit card account. He was required to provide his identification documents to complete his registration with GC but when he didn't do so, they returned the funds he had deposited. Mr R says he found this reassuring.

Mr R was contacted by the broker and was provided with a testing platform with GC, the broker asked him to download 'AnyDesk' so that he could advise on his trades. Mr R deposited a small amount of money using his debit card account and he made trades and noted some small gains. The broker suggested that Mr R deposit a larger sum to make larger gains. He was reluctant but the broker advised that if he used his credit card account, he would be covered by the chargeback scheme. He was encouraged to check with his credit card company (John Lewis) and he says it confirmed (on two separate occasions) that he would be protected by using his credit card.

Mr R made the following payments using his John Lewis Mastercard credit card which are also the amounts he is seeking to recover in this complaint:

Date	Merchant	Amount	Running total
2 November 2017	GC	£10,000	£10,000
2 November 2017	GC	£2,000	£12,000
6 November 2017	GC	£2,500	£14,500

Towards the end of November 2017, Mr R's account with GC lost money to trades. GC reassured Mr R that it would return the losses and when this didn't happen, he contacted the FCA for guidance. Mr R contacted John Lewis on 1 December 2017 to report that he thought he'd been scammed, he provided a crime reference number and asked for it to carry out a dispute claim. He also referenced his earlier call with them where they advised his payments would be protected. On 5 December 2017, John Lewis advised Mr R that it couldn't treat the transactions as fraudulent because he provided his card details to GC and pointed out that it flagged the third payment as risky and only approved it once Mr R confirmed the transaction was genuine.

Mr R attempted to engage further with GC to retrieve his money but was unsuccessful. He contacted John Lewis on 10 January 2018 to discuss his credit card repayments. He discussed the disputed transactions again and John Lewis reviewed whether he may have chargeback options. John Lewis wrote to Mr R in February 2018 to explain that he didn't have chargeback options according to the Mastercard dispute rules. It further concluded he had no s.75 rights under the Consumer Credit Act 1974.

Mr R asked John Lewis to review its position in March 2018 which it agreed to do. Whilst it did so, John Lewis applied adverse information on Mr R's credit file in respect of falling short of his credit card repayments. Mr R complained but it took John Lewis some time to rectify the problem.

John Lewis acknowledge there have been some service failings specifically surrounding a system limitation that doesn't allow it to remove arrears and also surrounding the amendment of Mr R's credit file. In recognition of its failings, it fully amended Mr R's credit file from October 2017 onwards; refunded all interest and fees amounting to £1,188.89; removed arrears to show the account was in an up to date position; paid compensation at various stages amounting to £875 and explained Mr R's s.75 and chargeback rights. John Lewis maintains it made the correct decision not to refund the disputed payments.

Unhappy with John Lewis' response, Mr R referred the matter to this service.

Our investigator didn't think John Lewis made a mistake when Mr R initially called it for general information relating to credit card purchases. He also felt that John Lewis fairly explained the transactions weren't covered by s.75 or chargeback.

Mr R didn't agree. The complaint has therefore been passed to me for determination.

On 27 April 2022, I issued a provisional decision upholding this complaint. For completeness, I repeat my provisional findings below:

Firstly, I don't think John Lewis acted unreasonably in declining to pursue Mr R's chargeback claim. Mastercard significantly limits any chargeback options available for investment or gambling disputes, so I don't think John Lewis had any dispute rights available to use in light of Mr R's claim that he had been scammed.

John Lewis is 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 R for the purposes of the Payment Services Regulations 2009 ('the Regulations'), in force at the time. This is because they were made by Mr R using the legitimate security credentials provided to him by John Lewis.

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 John Lewis 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'm satisfied GC were scammers. Various regulators published warnings about them on the International Organization of Securities Commissions (IOSCO) Investor Alerts Portal

between March 2018 - April 2018. The regulators included Superintendencia del Mercado de Valores in Panama and Czech National Bank in Czech Republic. The FCA also published a scam warning about GC in March 2018. All the warnings were published after the date of Mr R's payments, so I don't think the payment to them alone ought to have triggered John Lewis' fraud team to intervene. But I do think the first payment of £10,000 was unusual for Mr R. It was a very large amount and Mr R hadn't previously made payments of this magnitude from the statements I've seen. We know that John Lewis' fraud team did flag the third payment which I'll discuss below but I'm satisfied there ought to have been fraud triggers for the initial payment.

I've noted that Mr R called John Lewis prior to paying GC. I agree with our investigator's conclusions that he just asked for general information about credit card protection and didn't ask specific questions around the type of transaction he was about to make or GC. Though I do think the purpose of this call was to reassure himself that he'd be protected if he was provided with a service and were to be 'ripped off'. This was further emphasised when Mr R stated to the John Lewis adviser: '....presumably that's because when I make a transaction electronically and I go through a verification process, the verification process is on you to make sure you're sending money to a legitimate business'. The adviser replied: 'yes that's correct'. Mr R said: 'so in other words, I can feel safe that....if I make a Visa or Mastercard transaction online that the verification process I go through is your security process to check the originator or the recipient of the funds can make sure they're legitimate'. The adviser said: 'that's correct yes'. Mr R said: 'that makes me feel a lot safer'.

I don't think that John Lewis missed an opportunity to provide specific information on binary options transactions or GC specifically, but I do think Mr R clearly took reassurance that John Lewis would check that GC were legitimate before processing the payment. This information was not correct and I do think Mr R was misled by this statement.

I've further noted that John Lewis' security team flagged the final payment to GC of £2,500 on 6 November 2017. Mr R was sent a text to confirm the transaction as genuine but he opted to call John Lewis for further guidance. I've included my notes on this call here:

Mr R: this is all a bit new to me, so GC is an options trader....I've deposited some money with them....initially I was concerned that it could be a scam and I did some research and I've done all the due diligence that I could do about them and what I'm reading is that it is legitimate....and I did check with one of your colleagues before I made the transaction....I don't know if you know anything about options trading but a lot of people are doing this now so it's not a new thing but basically I said look I'm very concerned and he said look, phone up your credit card company and confirm that we can't take a payment from a credit card unless we're a legitimate company because you'll have to go through the verification process and once you do that verification process basically that is the credit card company checking out the beneficiary account and confirming the beneficiary account is legitimate and legal and what's more, if it wasn't legitimate and legal or if anything goes wrong, you're entitled to get your money back from the credit card company....so I confirmed that with your colleague who confirmed that was absolutely correct. So from my point of view as an individual that gives me all the protection I need really it just alerted me again so I just wanted to phone again to check that everything was ok.

John Lewis adviser: all that is.....due to the larger amount previously....our system just wanted to send an information check....it's no reflection on the actual company....you don't need to worry....you are right, everything on the credit card is guaranteed, it's all covered, it's not an issue of that...

I think John Lewis missed an opportunity to provide Mr R with a meaningful warning about binary options scammers.

If John Lewis had fulfilled its duties by asking suitably probing questions, there is no reason to doubt that Mr R would have explained what he was doing. After all he proactively called John Lewis when he received a fraud text when he simply could have confirmed the transaction as genuine but he wanted to discuss it further and reassure himself that he is protected should anything go wrong. In such circumstances, whilst the bank had no duty to protect him from a bad bargain or give investment advice, it could have explained to him the very high risks of getting involved with unregulated and unlicensed binary options dealers. It could have also explained its own customer experiences with unregulated and unlicensed high-risk investment traders in that customers would often be prevented from withdrawing available balances and would be provided with fake trading platforms that look legitimate. After all, at that time, there was information in the public domain—which a bank ought to have known even if a consumer ought not—about the very high risks associated with binary options trading, 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; and the Gambling Commission’s December 2016 scam warning that “an unlicensed operator is likely operating illegally”; City of London Police’s October 2017 report noting victims had lost ‘over £59m’ to binary options fraud; and so forth).

If John Lewis had asked Mr R what the payment was 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 his ‘broker’. John Lewis did not need to know for certain whether Mr R was dealing with a fraudulent high risk investment 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 John Lewis 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 forex and binary options dealers.

If John Lewis had given a warning and correctly explained that Mastercard’s dispute rules didn’t cover most issues with binary options transactions and that it didn’t think section 75 could apply to these payments, I believe that Mr R would have paused. If John Lewis had directed Mr R to the FCA for further guidance, I’m persuaded he would have contacted them (as he did so at a later date). There is no evidence that he was willing to take high risks or had a history of speculative investments or gambling. It seems more probable that he would have made further enquiries into the operation of binary options scammers and discovered the various regulatory warnings about the risk of unregulated investment scams. In other words, I am satisfied that a warning from his trusted bank would probably have exposed GC’s smoke and mirrors, causing him not to ‘invest’ and preventing any losses.

Even if he had not worked out that this was a scam, it is likely that a warning would have alerted him to the common issues arising in relation to binary options and unregulated high risk investment dealers, which in turn would have revealed the truth behind his supposed broker’s (mis)representations — i.e. that they were required to be regulated by the UK’s Gambling Commission even though binary options was not yet regulated by the FCA. So before Mr R’s payments were actually processed, he would probably have stopped in his tracks. But for John Lewis’s failure to act on clear triggers of potential fraud or financial harm, Mr R would probably have not lost any money.

In the circumstances, I do not think it would be fair to reduce compensation on the basis that Mr R should share blame for what happened. Mr R carried out due diligence checks on GC prior to investing with them. He found no adverse information and believed it was a

legitimate company. Before making larger payments to them, he sought clarification from John Lewis that he would be protected using his credit card (which corroborated GC's advice) and that John Lewis would check that GC were legitimate before allowing any payments to go through to them. I don't think there were any further reasonable steps he could have taken unless he was prompted to do so by John Lewis.

I think John Lewis provided some poor customer service to Mr R which it has acknowledged. I think the steps it took to put things right by refunding fees and charges, rectifying his credit file and paying compensation was fair and reasonable in the circumstances and I make no further award on this point.

Responses to my provisional decision

Mr R and John Lewis both replied and accepted the provisional 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.

In light of Mr R and John Lewis' responses in order to decide what is fair and reasonable in all the circumstances of this complaint. I therefore see no reason to depart from my provisional decision.

My final decision

For the reasons set out above, John Lewis Financial Services Limited should:

- Refund all three of Mr R's disputed payments (totaling £14,500), less any credits received to Mr R's John Lewis credit card account from GC.
- Refund any transaction fees applied to each of the disputed payments at bullet point one.
- Refund interest and charges applied to Mr R's John Lewis credit card in respect of the disputed payments only.
- Pay 8% interest on any payments Mr R made towards his John Lewis credit card account in relation to the disputed payments only. If John Lewis deducts tax in relation to the interest element of this award, it should provide Mr R with the appropriate tax deduction certificate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 10 June 2022.

Dolores Njemanze
Ombudsman