

The complaint

Ms E complains that John Lewis Financial Services Limited refuses to refund money she lost to an investment scammer.

What happened

In July 2018, Ms E saw an advert showing celebrities from a well-known TV programme promoting Bitcoin. She made contact with an investment company I'll call 'B' who sold her an opportunity to make money with limited risk and was promised large profits. On 3 July 2018, she agreed to deposit £400 with B.

Another investment company I'll call 'E' contacted Ms E and the caller tried to persuade her to invest with them. Ms E wasn't comfortable with the caller as they contacted her at different times providing different names. One of the callers (Adam) assured Ms E that he was representing B and that they were regulated in Cyprus and Ms E was persuaded to invest more. On 5 July 2018, Ms E made three payments totalling £5,200, she also received a credit of £200 from E.

Adam asked Ms E to review her deposits and her investment performance on her trading platform with B. Ms E signed the necessary paperwork at Adam's request and also spent many hours on the phone with him. But when Ms E received her John Lewis bank statement, she noted another company I'll call 'X' as well as E took payments. Ms E suspected this could be a scam and contacted John Lewis for assistance with recovering her payments. On 21 October 2018, Ms E received a further credit of £1,384.80 from E. On 23 October 2018, John Lewis wrote to Ms E with its final response letter. It explained it was unable to attempt chargeback claims on her behalf because of Mastercard's limitations. It paid her £25 as a gesture of goodwill.

Unhappy with John Lewis' response, Ms E referred her complaint to this office. One of our Investigators felt that B was operating a scam and misrepresented themselves to Ms E. He suggested a s.75 claim should succeed. John Lewis didn't agree. The complaint was reviewed by another Investigator who felt the first payment to B should be returned on the basis that Ms E had established a misrepresentation claim under s.75. But he didn't agree the payments to E or X were recoverable because Ms E hadn't established a valid link between B, E and X and there was no evidence to suggest that E or X made misrepresentations to Ms E.

John Lewis agreed but Ms E did not reply, despite our Investigator chasing a response. The complaint has therefore been passed to me for review.

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 our second Investigator that this complaint should be upheld in part and I'll explain why.

I've first considered that Ms E had no valid chargeback rights because the Mastercard chargeback scheme significantly limits any chargeback options related to investments or gambling.

Section 75 Consumer Credit Act 1974

I've considered whether it would be fair and reasonable to uphold Ms E's complaint on the basis that John Lewis is liable to her under s.75. As a starting point, it's useful to set out what the Act actually says:

75(1) If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor...(3) Subsection (1) does not apply to a claim—

- a) under a non-commercial agreement,*
- b) so far as the claim relates to any single item to which the supplier has attached a cash price not exceeding £100 or more than £30,000*

To summarise there must be:

1. a debtor-creditor-supplier agreement falling under section 12(b) or 12(c); and
2. a transaction financed by the agreement; and
3. a claim for misrepresentation or breach of contract related to that transaction;
4. but not a claim which relates to any single item which the supplier has attached a cash price below £100 or in excess of £30,000

I'll deal with each requirement or exclusion in turn. First, there doesn't seem to be any dispute that a credit card account is a relevant debtor-creditor-supplier agreement under the Act.

I'm also satisfied that there is nothing that 'breaks' the debtor-creditor-supplier chain in relation to the first deposit transaction. Ms E understood she was investing with B and this is who she paid.

I have no doubt that X acted as a payment processor for E, not least because Ms E received refunds back directly from E which appear to be as the result of payments she made to X. But Ms B understood her agreement was with B. She's provided evidence of her broker Adam's email address and this corresponds with B's details. She also said she was able to access and review the performance of her deposits on B's platform. But there is no evidence that B is linked to E in anyway. I've seen that B was based in Estonia and E is based in Cyprus. Ms E has also not supplied any evidence that she had a contract or relationship with E and therefore there is no valid debtor-creditor-supplier chain for her payments to them.

My consideration of s.75 is therefore limited to Ms E's payment to B as this is who she held a contract with.

I'm satisfied Ms E's payment to B financed their agreement – which was that B would make her money and provide a trading platform that she could use and withdraw funds as and when she wished.

I'm further satisfied that Ms E's claim relates to the transaction in that she feels she was tricked into depositing the payment with B for the dual purpose of:

- a) Stealing the deposit money; and
- b) Encouraging Ms E to deposit larger amounts.

Ms E does not believe that B was operating legitimately and believes she was misled into thinking they were.

This claim – that Ms E was misled into depositing funds is clearly a claim “in relation to” the deposit-transaction. The claim must also be one for misrepresentation or breach of contract. In this case, if Ms E was told by B matters that were factually untrue in order to trick her into entering into the deposit-transaction, her claim would be for misrepresentation. Or, if B made binding promises to her as part of those transactions and went on to breach these that would make her claim one for breach of contract.

Finally, the claim mustn't relate to a single item to which the seller has attached a cash price of less than £100 or more than £30,000. Here, the 'cash price' of the deposit-transaction is the value of that deposit-transaction. It is both the consideration and subject matter of the contract.

I'm satisfied B told Ms E they operated a legitimate enterprise and that she could achieve returns of more than her deposit. Ms E was induced into entering into an agreement with B on the basis of these claims. There is supporting evidence in the form of regulator warnings published in October 2018 and January 2019, as well as negative reviews online that echo Ms E's testimony. B was also not regulated by the FCA (as required) or any other jurisdiction as far as I'm reasonably aware at the time of Ms E's deposit.

I'm satisfied Ms E has a claim for misrepresentation on the grounds that B made a series of misrepresentations, namely that they were operating a legitimate enterprise and that Ms E could earn a profit from her deposit-transaction.

John Lewis should put Ms E back into the position she would have been had the deposit-transaction of £400 not been entered into. So, she should receive refunds of this amount, less any amounts credited to her by B and I've noted they didn't credit any amounts to her account with John Lewis.

I'm not satisfied the payments to E are recoverable under s.75.

My final decision

My final decision is that John Lewis Financial Services Limited should refund Ms E the deposit-transaction, plus interest. It should:

- Refund the deposit-transaction of £400;
- Pay 8% interest on those sums from the date they were paid to the date of settlement.
- If John Lewis deducts tax in relation to the interest element of this award it should provide Ms E with the appropriate tax deduction certificate.

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

Dolores Njemanze
Ombudsman