

Complaint

Mrs D is unhappy that Zopa Bank Limited won't refund payments she made to a gambling website which she says was operating unlawfully.

Background

Mrs D has a card with Zopa. She made several payments using her card to an online casino. Before she set up an account with this online casino, she contacted it to ask whether it would accept customers from the United Kingdom. She has since discovered that the casino isn't regulated by the UK authorities at all. As far as Mrs D is concerned, this means it is operating unlawfully and her payments should therefore be refunded to her.

She made a complaint to Zopa but it declined to pay her a refund, so she referred her complaint to this service. It was looked at by an Investigator who didn't uphold it. The Investigator said that Mrs D had authorised the payments she made from her account and so Zopa was entitled to hold her liable for them. She also considered whether Mrs D might have had a valid claim under the chargeback rules or under section 75 of the Consumer Credit Act 1974 but was satisfied that these didn't offer any grounds to refund the payments either.

Mrs D disagreed with the Investigator's opinion. She said that there was a misrepresentation on the part of the casino. She said it claimed it could accept UK customers but in reality, they couldn't do so legally. Because Mrs D disagreed with the Investigator's opinion, the complaint has been passed to me to consider and come to a final decision.

Findings

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've come to the same conclusion as the Investigator and for broadly the same reasons. I understand Mrs D is unhappy that she only placed bets with the casino after she asked whether it accepted customers from the UK. It said that it did, and she took this to mean that it must have been subject to the regulation of the Gambling Commission – the body that is responsible for regulating gambling businesses in the UK. It's important to be clear from the outset that I can't make a finding the conduct of the online casino – that's outside the remit of this service. I can only investigate and decide whether Mrs D has been treated fairly by Zopa.

The starting point is that Zopa is entitled to hold a customer liable for a transaction that they've authorised. That doesn't seem to be in dispute here – Mrs D accepts that she placed bets with the online casino and so these payments were authorised. I recognise that she now says that she wouldn't have authorised those transactions if she'd been fully aware of the legal position of the business she was paying. Nonetheless, there is nothing in the regulations that entitles her to a refund in such a situation.

I can also see that Zopa considered whether Mrs D might have a valid chargeback claim or

whether it would be liable under section 75 of the Consumer Credit Act 1974.

Chargeback is a voluntary scheme run by the card scheme provider (so in this case, Visa) and Zopa is bound by the card scheme provider's rules. There is no right to a chargeback. It's for Zopa to decide whether it has a basis upon which it can raise a chargeback claim on its customer's behalf. It does so by taking into consideration the scheme provider's rules and looking at the evidence to see if the claim has any prospect of success. The scheme rules set out a range of categories in which a dispute can be raised. Unfortunately, these only cover gambling transactions in very limited circumstances and wouldn't be applicable on the grounds that Mrs D felt misled by the business saying it accepted customers from the UK. Overall, I can't see that any chargeback claim would've succeeded, so I don't think Zopa acted unreasonably in not raising one on Mrs D's behalf.

Zopa also considered whether it was liable under section 75 of the Consumer Credit Act 1974. This legislation gives a cardholder the right to pursue a 'like claim' for a breach of contract or misrepresentation against a creditor (in this case, Zopa) as they would have against the provider of the services. Mrs D says that there was a misrepresentation by the casino when it told her it accepted players from the UK. I've considered this point carefully, but I don't agree. Mrs D didn't ask the casino whether it was licensed and regulated by the UK authorities – she simply asked whether it accepted players from the UK. It said that it did, and that statement wasn't false. For me to find that it was a misrepresentation, I'd need to be satisfied that the statement was false. I don't think that was the case here. For that reason, I'm not persuaded Zopa needs to pay her a refund on the grounds of that she has a valid claim under s75.

Mrs D says that, since the online casino was unlicensed, these payments were illegal and therefore must be refunded. It's not my role to make a finding on the legal position of an unlicensed casino offering its services to UK customers. However, I'm satisfied that that it could only have implications for her contract with the casino, rather than the payment instructions she gave to Zopa which I'm satisfied she consented to.

Final decision

For the reasons I've explained above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 12 August 2022.

James Kimmitt
Ombudsman