

## **The complaint**

Mrs H complains JAJA FINANCE LTD (“JAJA”) didn’t do enough to protect her from losing money to an investment scam.

## **What happened**

In August 2020 Mrs H made a payment of £2,206.60 to TransferWise using her JAJA credit card, funds which were then sent onto a merchant going by the name of Concept4x for what Mrs H thought was a legitimate investment.

Mrs H contacted JAJA when she realised she had been scammed. As JAJA didn’t reimburse Mrs H, she remained unhappy, and referred her complaint about JAJA to this service. As the investigator here (who recommended that the complaint be upheld) was unable to resolve the matter informally, the case has been passed to me for a 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.

I’ve decided to uphold this complaint, for materially the same reasons as the investigator. I’ll explain why.

### Recovery – chargeback and section 75 of the Consumer Credit Act 1974

After the payment was made, I couldn’t reasonably expect JAJA to have done anything further until Mrs H notified it of the scam. Then, because this was a credit card payment, the two potential avenues for potential recovery of the payment would have been chargeback, and section 75 of the Consumer Credit Act 1974.

However, Mrs H made the payment from her JAJA credit card to TransferWise (and not directly to Concept4x). This means the merchant here, for chargeback and section 75 purposes, would be TransferWise (and not Concept4x). TransferWise legitimately provided the services intended (which was to send money onto the details Mrs H provided). The transfer of the funds through TransferWise onto Concept4x would not give rise to a valid chargeback claim through JAJA, and there would be no valid claim under section 75 either, as the debtor-creditor-supplier link is broken given Mrs H paid TransferWise – a legitimate merchant. So I don’t think this payment was recoverable by JAJA once it had been made.

### Should JAJA have reasonably prevented the payment in the first place?

Having decided the above, I can only uphold this complaint if I think JAJA reasonably ought to have prevented the payment to TransferWise in the first place – therefore preventing Mrs H’s loss.

It’s common ground that Mrs H authorised the scam payment in question here. She was tricked by the scammer into instructing JAJA to make the payment. I accept this was an

“authorised payment” even though Mrs H was tricked. So although she didn’t intend the money to go to a scammer, Mrs H 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 JAJA 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.

My fellow ombudsmen and I have referenced the relevant rules, codes of practice and good industry practice at the time in many previous decisions published on our website.

JAJA has said that it did flag and block Mrs H’s payment. And that after a conversation with Mrs H, within which, it says, Mrs H confirmed the payment to be genuine, the blocks were removed to allow Mrs H to proceed with the payment.

The very nature of scams like this – where a consumer authorises a payment as a result of a scam – is that the consumer thinks the payment is for a genuine endeavour. So I think JAJA reasonably ought to have been aware that a consumer authorising a payment for what they think is a genuine endeavour does not mean they are not being scammed.

In order to properly protect Mrs H from the risk of harm, in a case like this where the payment flagged on JAJA’s systems for checks before it was processed (and JAJA spoke to Mrs H), I think JAJA reasonably ought to, therefore, when it spoke to Mrs H to check everything was in order, have asked her who the payment was for, what it was for, and for basic surrounding context, and to have then proceeded appropriately from there with the intention to disturb or unearth a potential fraud or scam. I’ve not seen evidence that satisfies me JAJA did this, in circumstances where I think it should have.

I have no reason to believe Mrs H wouldn’t have been open with JAJA, if it had such an appropriate conversation with her before processing the payment. In which case, I think JAJA would have quickly learned from its conversation with Mrs H the basic background to the payment instruction – that Mrs H was making a payment to TransferWise to transfer money to Concept4x for an investment.

Given JAJA’s obligations I’ve summarised above, and that JAJA reasonably ought to have been aware of the increase in sophisticated fraud and scams in recent years, including investment scams like this, I don’t think JAJA’s conversation with Mrs H ought to have stopped there.

The Financial Conduct Authority (the FCA – the UK regulator) published a warning about Concept4x in April 2020, some four months before Mrs H’s payment instruction, that it believed Concept4x may be providing financial services or products without its authorisation.

I've seen a snapshot of Concept4x's website in August 2020, on which Concept4x advertised itself as *"one of the world's fastest growing and best Forex trading platform"*.

The FCA banned the sale and marketing of binary options in the UK from 2 April 2019. And immediately prior to this, binary options/forex traders offering services in the UK were required to be regulated by the FCA, and Concept4x wasn't. I think JAJA really ought to have been aware of this, and following an appropriate conversation with Mrs H, given her a warning about investment scams like this.

From the information I've seen, I'm satisfied if JAJA had done this, it's most likely Mrs H would have decided the risk of proceeding with the payment was too high for her to accept. So I think ultimately, if JAJA had done what it reasonably ought to have done, Mrs H wouldn't have lost this money.

### **Putting things right**

I've thought about whether Mrs H should bear some responsibility by way of contributory negligence. I'm not satisfied such a reduction in compensation is appropriate here. I think Mrs H was in the dark and wouldn't have been aware of scams like this. In my view, it was the failure of JAJA to have an appropriate conversation with Mrs H when the payment flagged that really caused the loss.

JAJA should therefore reimburse Mrs H the money she lost to the scam, and pay Mrs H interest at 8% simple per year to compensate her from the date of loss to the date of settlement.

### **My final decision**

For the reasons I have explained, I uphold this complaint and I direct JAJA FINANCE LTD to pay Mrs H £2,206.60 plus interest calculated at 8% simple per year from the date of loss to the date of settlement. If JAJA FINANCE LTD deducts tax in relation to the interest element of the award, it should provide Mrs H with the appropriate tax deduction certificate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 4 November 2022.

Neil Bridge  
**Ombudsman**