

The complaint

Mr S complains that Trading 212 UK Limited ('Trading 212') provided misleading promotional information. He wants Trading 212 to respond more fully to his complaint, consider amending its practices, acknowledge shortcomings and make a gesture of goodwill.

What happened

Mr S has a trading account provided by Trading 212. Using Trading 212's mobile app, Mr S saw a promotion from Trading 212 which said:

'Get free shares worth up to £100 for each friend you invite to Trading 212! Your friends get free shares too!'

Mr S shared the promotion with his wife who applied for an account in her name. Mr S and his wife then received free shares to the value of £10 each.

On 2 February 2023 Mr S complained to Trading 212.

On 1 May 2023 Trading 212 made its reply to Mr S's complaint, after Mr S chased for a response. Trading 212 apologised for taking longer than it should have to reply. And it said the marketing campaign offered 'free shares worth up to £100' but didn't say the value of the shares provided would necessarily be £100. It said participants were automatically given a code which would determine the amount the participant would receive. And relevant information was available in Trading 212's help centre page, and the legal documentation that participants had to read, acknowledge and accept to take part in the promotion.

Trading 212 provided the following excerpt from the terms and conditions which it said participants in the promotion had to read, acknowledge and accept in order to take part in the promotion:

'Reward Shares - each and any of the equity-based financial instruments transferred by Trading 212 to both the Referrer and the Referral and unique to each Participant, as a reward under the Campaign Terms, or the monetary value of such equity-based financial instruments where Trading 212 is unable to provide the instruments. The Reward Shares may be less than one share, the value of which may range from a minimum of 8 EUR up to 100 EUR (which will appear in the default currency of the Participant's account).'

Mr S referred his complaint to this service. He said the promotion was opaque because it used a headline of '£100' to draw consumers in and required consumers to click into the terms and conditions to see what they would get. And he said the qualification which said participants might get less than £100 wasn't prominent enough. He also said Trading 212 responded late to his complaint and didn't respond to further points he made after it had replied to his complaint. He said Trading 212's approach to him as a customer was 'indifferent' and 'blasé' and he found that distressing. He wanted Trading 212 to fully investigate, provide a detailed response, review its promotion and consider a more

transparent approach that would set more reasonable expectations. He also wanted a formal acknowledgement of shortcomings by Trading 212 and a gesture of goodwill.

One of our Investigators looked into Mr S's complaint. She said she didn't think Trading 212 needed to do anything. She said Trading 212 had acted in line with its terms and conditions and the wording of its promotional information had indicated that £100 was a maximum amount, and not a guaranteed amount.

Mr S didn't agree with the Investigator's view. In summary he said the following:

- Trading 212's headline relied on referring to its terms and conditions to establish the distribution of awards Trading 212 would make. This wasn't ideal for users of mobile devices. And the terms and conditions didn't highlight this information upfront.
- A qualifying line could've been used to better manage expectations so consumers would know that they might receive shares worth as little as £8.
- If few customers received £100 or similar, the headline was unfair.
- It was too simplistic to rely on the use of the words '*up to*' when deciding whether the marketing campaign was fair.

Mr S also reiterated that he was dissatisfied with the way Trading 212 had handled his complaint.

The Investigator said, in summary:

- The terms and conditions can be accessed in different formats. And they've been grouped together which is what we'd expect and an industry norm. And the onus is on the consumer to become familiar with the terms and conditions. Information about the terms of the campaign was also available in clear format on Trading 212's help centre page.
- This service isn't a regulator and so will not tell Trading 212 to amend its policies or procedures.
- Trading 212's help centre page set out for each level of reward by monetary value the percentage of participants that would receive that level of reward.
- Use of the words '*up to*' did mean Trading 212 didn't guarantee each consumer would receive the maximum reward. Those words are clear and should manage expectations.

The Investigator also said Mr S's concerns about complaint handling by Trading 212 were outside the jurisdiction of this service.

Mr S said he still questioned the fairness of the campaign, in particular the expectations generated by the headline and the distribution of rewards of different amounts which meant most participants received substantially less than £100. He said he understood this Service isn't a regulator, but in the circumstances thought it appropriate to consider whether Trading 212 was delivering the right consumer outcomes.

Because no agreement could be reached, the complaint was passed to me to review afresh and make 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.

Having done so, I'm not upholding the complaint. I'll explain why.

The purpose of this decision is to set out my findings on what's fair and reasonable, and explain my reasons for reaching those findings, not to offer a point-by-point response to every submission made by the parties to the complaint. And so, while I've considered all the submissions by both parties, I've focussed here on the points I believe to be key to my decision on what's fair and reasonable in the circumstances.

To begin with, I think it's important here to reiterate what our Investigator said about the role of this service. The role of this service is to determine what, if anything, has gone wrong in the individual circumstances of Mr S's complaint, and what the effect of that was on Mr S. If I find Trading 212 has acted unfairly or unreasonably towards Mr S and by doing so has caused him detriment, then I'll require Trading 212 to take action to put things right for Mr S. Such action would typically involve making good a financial loss he's suffered or compensating him for distress or inconvenience. It's not the role of this service to establish whether a business is delivering good outcomes for consumers in general. And it's not within the remit of this service to tell a business to change its procedures or to change the way it operates in order to meet regulatory requirements. That's the role of the regulator – the Financial Conduct Authority (FCA), which has the power to instruct Trading 212 to make changes to its policies and procedures, if necessary. So in this decision I won't comment on whether Trading 212 is delivering good outcomes in general. And I won't comment on whether or how Trading 212 should alter its policies and procedures.

Mr S's complaint is that Trading 212's promotion was unfair, in particular because, he said, the promotional information it provided failed to be clear, fair and not misleading (which is a requirement of the FCA). I've looked at whether, in the particular circumstances of Mr S's participation in the promotion, Trading 212 has failed to treat him fairly and reasonably.

The terms and conditions of the promotion which Mr S was required to acknowledge and agree to said rewards would range from €8 to €100. Mr S received a reward of about £10. So the reward Trading 212 paid Mr S was in line with the terms and conditions. But Mr S says the promotional information from Trading 212 misled him into thinking he would receive £100. And so he suffered disappointment when instead Trading 212 gave him only £10.

Having looked at the promotional information Trading 212 provided Mr S, I don't think it misled Mr S. I think Mr S had enough information and the information was clear enough that he could make an informed decision about whether to participate in the promotion. And the reward he received was in the range that could reasonably have been expected based on the promotional information.

Firstly, Trading 212's marketing headline didn't say Mr S would necessarily receive £100 if he participated in the promotion. The offer of £100 was qualified by the words 'up to'. The words 'up to' appeared in the headline, adjacent to and immediately preceding the mention of '£100'. So I think Trading 212 indicated upfront that £100 was a maximum amount rather than a fixed amount that would apply in all cases.

The terms and conditions Mr S had to acknowledge and agree to provided more detail about what could be expected. They gave a definition of 'reward shares' which included the information that rewards ranged in value from €8 to €100. I can't say that information itself was unclear or misleading. Although Mr S said it wasn't ideal for users of mobile devices to

have to scroll through the terms and conditions to find that information, our Investigator pointed out – and I agree with her – that the information was available in other formats. I haven't seen that the terms and conditions were excessively long. And I don't think it's unreasonable to expect Mr S to familiarise himself with the terms and conditions that he had to accept in order to participate in the promotion.

Mr S said the promotion was unfair if most consumers received substantially less than £100. But as a consumer choosing whether to take part in the promotion, Mr S had information given to him by Trading 212 about the range of rewards. And he could've seen the distribution of awards on Trading 212's help centre page about the promotion if he wanted to know the probability of receiving rewards of particular amounts. He had enough information available to him to make an informed decision about whether to participate in the promotion. Mr S was under no obligation to participate in the promotion and wouldn't have suffered any loss by choosing not to participate. So I can't say the spread of rewards across the stated range of rewards meant Mr S was treated unfairly or unreasonably.

For completeness I note that I can't consider elements of Mr S's complaint that are about complaint handling. I can determine complaints about regulated activities and ancillary activities connected to the conduct of regulated activities. But complaint handling, on its own, is usually distinct from that. In some cases, addressing the firm's complaint handling might be a necessary part of determining the overall complaint. That is not so in the present case.

Overall, I can understand Mr S's disappointment at receiving only £10 from Trading 212 in return for his participation in the promotion. And I realise Mr S has concerns about issues that fall outside the scope of this decision. But for the reasons I've set out I haven't concluded that Trading 212 acted unfairly or unreasonably towards Mr S in the circumstances of his complaint. So I won't be requiring Trading 212 to do anything to put things right for Mr S.

My final decision

For the reasons I've set out above, my final decision is that I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 5 March 2024.

Lucinda Puls
Ombudsman