

## **complaint**

Mrs N complains that MBNA Limited won't reimburse her for her losses after she used her credit card to transfer money to an investment business that turned out to be a scam.

## **background**

Mrs N opened a trading account with a business which I'll refer to as "T". T was a binary options trading platform which took money from clients and placed trades on different financial markets. Binary options are a form of gambling on movements in financial markets.

Mrs N used her MBNA credit card to make two payments of £5,000 each to T. When she became dissatisfied with T, however, it refused to return the money she'd sent. She asked MBNA to reimburse her because, she said, T was operating a scam and she was entitled to seek payment from MBNA under section 75 of the Consumer Credit Act 1974.

MBNA declined Mrs N's claim. It said she'd authorised the payments to T. It wouldn't consider a claim under section 75 of the Consumer Credit Act 1974 because the payments hadn't been used for purchases; rather, they'd been deposits and were, therefore, simply a transfer of funds to which section 75 didn't apply.

Mrs N pointed out that T had been the subject of a warning from the regulator, the Financial Conduct Authority. She suggested that MBNA might have prevented her from dealing with that business.

When Mrs N referred the complaint to this service, one of our investigators considered it. He didn't think that MBNA should reimburse Mrs N's losses. Mrs N didn't agree and asked that an ombudsman review the case.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mrs N has suggested she's been the victim of a scam. She hasn't suggested, however, that she didn't intend to send money to T. To that extent, therefore, she authorised the payments. I don't think she disputes that. The general position is that an account provider – such as MBNA – should make a payment when instructed to by its customer. It's not usually obliged to carry out checks on the payee though, and I don't believe MBNA was in this case. It was primarily for Mrs N to satisfy herself that T was a legitimate business, not for MBNA to verify that for her.

I turn therefore to the issue of section 75. In certain circumstances a credit card holder who has a claim for breach of contract or misrepresentation against a supplier will have a similar claim against the credit card provider. One condition attached to that, however, is that the transaction giving rise to the claim must be "... *a transaction financed by the agreement* ..." – meaning the credit card agreement in this case.

MBNA says that the credit card payments in this case weren't purchases, but deposits – that is, transfers to a trading account. It didn't appear that any part of those payments had been allocated to, for example, the services provided by T.

I broadly agree with MBNA about this. Mrs N's agreement with T was, in very broad terms, that it would invest money for her. That was the "*transaction*" referred to in section 75. I don't believe it can properly be said, however, that that transaction was financed by the credit agreement between Mrs N and MBNA. It was to be financed, if at all, from her trading account with T. I accept of course that the trading account was, in turn, funded from Mrs N's credit card account, but I don't believe that means the credit card directly funded the services that T said it would provide. It follows that section 75 doesn't apply here.

In deciding what's fair and reasonable, I must have regard to any relevant law; in this case, that includes section 75. I don't believe in the circumstances that MBNA has treated Mrs N unfairly.

I've approached this complaint on the basis that Mrs N was, as she says, the victim of a scam perpetrated by T, and she has my sympathy. I'm not persuaded however that this was the responsibility of MBNA.

### **my final decision**

For the reasons I've set out, my final decision is that I don't require MBNA Limited to take any further steps to resolve Mrs N's complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs N to accept or reject my decision before 31 January 2020.

Michael Ingram  
**ombudsman**