

complaint

Mr F has complained that Spreadex Limited failed to remove a credit limit from his account after he had made it clear that he had a gambling problem. The removal of the credit limit was one of the conditions Mr F wanted to be met if he was to repay the deficit on his account.

Mr F considers the failure to remove this credit limit was a breach of the agreement he had with the business and that it directly led to further debt on his account.

Mr F also opened a second account and has complained that there was an error on the business' online system regarding the placement of a decimal point, which led to further financial loss on that account.

background

Mr F and Spreadex are in dispute about money Spreadex says that Mr F owes to it in respect of spread betting losses of around £3,600. Court proceedings have been started and have been stayed pending the outcome of Mrs F's complaint to the Financial Ombudsman Service.

One of our adjudicators considered this complaint and concluded that it should not be upheld. In summary, he said that the removal of the credit limit was not something that would have limited Mr F's losses as he had intended (i.e. limiting losses to the amount deposited). The adjudicator considered that based on his experience Mr F would have been aware of the risks involved when placing spread bets.

The adjudicator did not consider Mr F had made it clear to the business that he had a gambling problem and disagreed with the suggestion that Spreadex had encouraged him to gamble irresponsibly.

The adjudicator also acknowledged the fact that Mr F opened a second account using different details when the initial debt was unpaid and still in dispute. The adjudicator did not consider that there was any evidence of an error on the firm's website causing the problem with a decimal point as alleged.

Mr F has since written in response to the adjudicator's view, saying that he considered this service should take a less legalistic and a more ethical or moral view of his gambling problem. He reiterated that he believed an agreement was put in place to remove the credit limit and that this was subsequently broken by the business. Mr F maintained that he was trying to proactively manage his gambling problem and that Spreadex encouraged him to bet irresponsibly.

In addition, whilst Mr F agreed that a single bet could potentially take him over his credit limit, he did not consider that bets should be permitted when the credit limit had already been exceeded. Therefore, Mr F argues that if the credit limit had been removed, he would have been able to control his gambling as he would not have been able to place further bets after a single bet had taken him into debt.

As a final point, Mr F recalls that he made it clear to Spreadex that he would be opening a second account whilst the debt on his original account was being disputed. He considers this

was a 'deposit only account' and that it was not questioned by Spreadex. He says his address details had changed since opening his first account.

Mr F did not make any comments regarding the debt on the second account.

On reading the adjudicator's view and Mr F's response, Spreadex replied to make a number of points including the following:

- The removal of the credit limit was never formally confirmed to Mr F because he refused to agree an instalment plan and the debt was not fully repaid until the end of April 2011 – six months after it had been incurred.
- The credit limit remained on the account and Mr F made full use of it over a six month period.
- During that period Mr F made no further attempt to request the removal of the credit limit.
- Mr F never asked to be self-excluded due to a gambling problem
- £1,720 of the debt was incurred on the second account, where no credit limited applied
- It would not have allowed a second account to have been opened if it had been aware that it was Mr F opening it (there was no record of a change of address and Mr F's first name was abbreviated).

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. In doing so, I have reached the same conclusion as the adjudicator and for broadly the same reasons.

On the central point, I do not agree that Mr F's email made the point that he had a problem with gambling. Indeed, as I think Mr F intended at the time, it gave the impression that he was trying to be a responsible gambler. The email does not once refer to Mr F having a gambling problem. The impression was more of a cash flow or affordability problem. There is no reason why a person who is not a problem gambler might encounter a cash flow problem, or make a miscalculated bet that caused a temporary problem, and then take responsible steps to avoid a repeat of the problem. This is what Mr F appeared to be doing. Certainly, Mr F said he wanted to make arrangements to clear the debt and to carry on betting - in effect - on a reduced scale, gambling responsibly.

In reply, Spreadex said it does encourage responsible gambling and referred him to information on its website about responsible gambling. In doing so Spreadex was trying to be helpful. I cannot see that Spreadex was actually obliged to do so given the contents of the email or that it failed to go far enough in term of recognising Mr F as a problem gambler - in the sense of being unable to control his desire to gamble rather than one who had a problem paying a debt.

As regards the moral obligations of the business, I am not persuaded that there was anything further it should have done in the circumstances, and I consider it was always Mr F's responsibility to bet responsibly and within his limits.

The position might have been different if Mr F had been more open with Spreadex. It might be that not being open about a gambling problem is part of the problem. If so, that is a challenge for Mr F personally and Spreadex generally. I certainly do not say that Spreadex

has no responsibility in this area or that it can reasonably ignore a problem it is, or should reasonably be, aware of. But it is difficult for Spreadex to know there is a problem if Mr F is not open about it and generally presents as being reasonable and responsible.

Mr F has said that he is aware of the potential to lose more than his deposit, regardless of whether a credit limit is in place or not. A 'deposit only account', according to Mr F, is merely a standard Spreadex spread betting account without a credit facility attached. Mr F's contention is that the credit facility allowed him to place further bets when he was already trading on a deficit, whereas this would not have been possible if the credit facility had been removed i.e. he would have had to deposit money in the account before placing further bets. Mr F's understanding is correct, however this does not alter the fact that in both scenarios there was a risk of owing either more than the specified credit limit or more than the amount deposited.

Spreadex accepts that it did not remove the credit facility. I do not consider it necessarily follows that Spreadex should be held responsible for the debt on the account. I can see no evidence to suggest that Spreadex actively encouraged Mr F to start placing bets under the false pretence that the credit facility had been removed.

It is clear that Spreadex did say it would remove the credit facility (as well as confirming it would postpone any legal action) if an agreement could be made regarding a monthly payment plan. However, Spreadex has said that the instalment plan was never agreed, and has provided evidence which shows that no payments were made by Mr F for over six months. For this reason, the credit facility was not removed and the business did not confirm to Mr F that it had been. Therefore, I am unable to agree that this constituted a breach of any agreement.

After repaying the previous debt in April 2011, Mr F began trading on the account again in June 2011. As he did not deposit any money into the account, Mr F would have been aware that the business had not removed the credit facility. However, Mr F placed three trades in one day in June 2011 and seven trades the day after. During this time the account was in credit.

After a few days the account was £415 in debit and Mr F made a card payment to bring the account back to £0. I am satisfied that at this point Mr F would have been aware that the business had not removed the credit facility on his account. However, despite Mr F later claiming that Spreadex had failed to prevent irresponsible gambling, he did not question the presence of the credit facility at the time. Instead, Mr F continued to place trades up to early December 2011, making a further 24 card payments. Between late July 2011 and mid November 2011, Mr F took profits on six occasions (totalling getting on for £5,000) with the account reverting to a balance of £0 each time.

In my view, Mr F had many opportunities to repeat his request that the credit facility be removed from his account but he did not do so.

Further, it is notable that debts on the second account without a credit facility were similar to those on the account with the credit facility and so it is difficult to accept that the failure to remove the credit facility caused losses to be incurred.

In all of the circumstances, I do not consider Spreadex should be held responsible for the losses on either of Mr F's accounts.

my final decision

For the reasons set out above my final decision is that I do not uphold this complaint.

Philip Roberts
ombudsman