

## **complaint**

Mr and Mrs W complain that Clydesdale Bank Plc did not help recover the money (and winnings) paid to an online gambling company that turned out to be a scam.

As Mrs W had all the dealings with Clydesdale Bank Plc, for ease of reading, I'll refer to all submissions as having come from Mrs W herself.

## **background**

In November 2018, Mrs W deposited around £2,000 (using her Mastercard debit card linked to her current account with Clydesdale) onto a gambling website - winner365.com. She won around £4,200 and when she tried to withdraw her winnings she was unable to.

After some further research, Mrs W found that winner365.com was not licensed to operate in the UK. She asked Clydesdale if it could help her process a chargeback claim because winner365.com refused to process her withdrawal requests and had taken incorrect amounts from her. Clydesdale explained to Mrs W that it couldn't help process chargeback claims in relation to her winnings but could consider a claim that incorrect amounts were taken if she could supply evidence. Mrs W said she had been blocked from accessing her account and the website was due to be shut down shortly.

Mrs W complained and Clydesdale issued its final response declining to refund any payments made, so Mrs W referred her complaint to this service.

One of our investigator's didn't uphold Mrs W's complaint. He didn't find that Clydesdale acted unreasonably by declining to process chargeback claims for Mrs W. Mrs W asked for an ombudsman to review the complaint and it has therefore been referred to me for determination.

## **my 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 don't uphold Mrs W's complaint and I'll explain why.

Firstly, I don't dispute that Mrs W was the victim of a scam and winner365.com was not licensed to operate in the UK as required by the UK's Gambling Commission. It was therefore operating illegally when Mrs W transacted with it. I also don't dispute that Mrs W has presented evidence that she had winnings with winner365.com that it didn't honour.

However, winner365.com operating illegally and dishonourably did not automatically entitle Mrs W to a claim under Mastercard's chargeback scheme rules.

Chargeback is a voluntary scheme run by Mastercard whereby it will ultimately arbitrate on a dispute between the merchant and customer if it cannot be resolved between them after two 'presentments'. Such arbitration is subject to the rules of the scheme — so there are limited grounds on which a chargeback can succeed. Our role in such cases is not to second-guess Mastercard's arbitration decision or scheme rules, but to determine whether the regulated card issuer (i.e. Clydesdale) acted fairly and reasonably when presenting (or choosing not to present) a chargeback on behalf of its cardholder (Mrs W).

There was no chargeback claim presented in this case under any reason code. In my judgment, this omission by Clydesdale was not an unreasonable exercise of its discretion on whether or not to pursue the matter against winner365.com.

Mastercard's 2018 chargeback rules (applicable to the time of Mrs W's transactions) state:

Chargebacks are available to the issuer for transactions in which any value is purchased for gambling, investment or similar purposes. However, issuers have no chargeback rights related to the use of these chips or value, unspent chips, or withdrawal of such value, or on any winnings, gains or losses resulting from the use of such chips or value.

This supports Clydesdale's decision not to process chargeback claims following Mrs W's complaint that she was unable to withdraw her winnings. And that's specifically because Mastercard said Clydesdale had no right to.

Having discussed the matter of fraud and scams with Mastercard, it has explained that cardholder dispute chargeback rights are restricted regardless of whether the activity was illegal. In short, Mastercard considers the purpose of the transaction to load funds into the gambling or investment account and not what activities are subsequently done with the funds. So even though Mrs W had valid claims surrounding the legitimacy of winner365.com – it didn't change Clydesdale's chargeback options – which were significantly limited by Mastercard.

For the reasons set out above, I am not persuaded that Clydesdale acted unfairly or unreasonably in connection with any rights or responsibilities under the Mastercard chargeback scheme.

I've also thought about Mrs W's suggestion that incorrect amounts were taken from her account. I listened to a call Mrs W had with Clydesdale on 22 November 2018. This call was in relation to Mrs W having insufficient funds to process a payment of £254 to winner365.com. During this call, the adviser at Clydesdale informed Mrs W that transactions of £185 and £418.82 had already left her account. The adviser asked Mrs W if she was paying a merchant in America and she said yes. The adviser went on to explain that Clydesdale charges a 2.75% fee for this type of transaction, which Mrs W said she understood. I don't find that Mrs W disagreed with any of the amounts quoted to her in that call. Whilst I accept she went on to make further payments, I'm not persuaded that Mrs W disputed the amounts charged by winner365.com at the point the payments were taken. I also don't find that she didn't understand a fee would be applied to her foreign transactions.

I have noted that Clydesdale asked Mrs W for evidence that winner365.com took incorrect amounts when she raised her concerns with it. Having considered the evidence supplied by Mrs W (including chat conversations with winner365.com) I've not seen anything that persuades me the amounts taken from her were incorrect. It follows that I don't think Clydesdale treated Mrs W unfairly by not taking her claim of incorrect amounts being taken any further.

#### **my final decision**

For the reasons set out above, and despite my natural sympathy for Mrs W's losses, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs W to accept or reject my decision before 29 August 2021.

Dolores Njemanze  
**ombudsman**