

complaint

Mrs C complains that MBNA Limited won't refund a number of transactions she made with her credit card to a binary trading company. She says she was the victim of a scam.

background

I issued my provisional decision in July 2017. In my provisional decision, I explained that I didn't intend to uphold Mrs C's complaint.

In 2016, Mrs C responded to an advert from a third party, which I'll call B, which operated a binary options trading company. She registered a declaration of interest and was then persuaded to set up a trading account and invest.

Between June and August 2016 Mrs C made a number of payments into the trading account totalling £13,500 using her MBNA credit card. Mrs C says B provided her with an account manager and personal broker who advised her about what investments to make.

Mrs C became unhappy with the way her account was performing. So she asked B for her money back and to close her account. Mrs C says B wouldn't let her close her account and pressured her to continue investing. She then invested further money using her MBNA credit card. Mrs C then tried again to withdraw the balance, but B wouldn't let her.

Shortly after, she felt she'd been the victim of a scam. And she asked MBNA to return the money she'd paid using her MBNA credit card under section 75 of the Consumer Credit Act 1974 (section 75). But MBNA didn't agree.

In my provisional decision I said I wasn't satisfied that Mrs C's arrangements with B met the criteria for a claim under section 75.

Based on what I'd seen, I said Mrs C had already set up her trading account when she made the payments with her MBNA credit card. And from what I'd seen Mrs C's credit card payments were intended as deposits to the trading account she'd opened with B. Mrs C gave us a printout showing her deposit history. And I could see that every deposit made by Mrs C was directly used to invest in binary options. So I concluded based on the evidence that the money she'd paid into the account were simply deposits to fund her trading.

Overall, I wasn't persuaded that this arrangement fell under section 75. This meant I didn't need to consider whether there was a misrepresentation or breach of contract on B's part – because the payment was a deposit only to fund trades. So I didn't think MBNA had done anything wrong.

I asked Mrs C and MBNA to let me have any further information they wanted me to consider before I reached my final decision. MBNA didn't have anything further to add. Mrs C disagreed with what I'd said in my provisional decision. In summary she said:

- this wasn't all the payments were doing. She's said she also paid for the services of a broker who told her what to trade, when to trade and how much to trade
- the broker breached the terms of the contract and misrepresented that she'd be able to withdraw funds including bonus funds
- everything that was done was driven or guided by the broker and
- she is the victim of a scam and the broker has stolen money from her

my findings

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

I thank Mrs C for her submissions. I want to assure Mrs C that I do understand she has lost a lot of money. And I can certainly understand the distress she's now in because of this.

Mrs C has consistently told us that the payments she made weren't only to fund trading. She says it was intended to pay for a service as well, namely the advice, guidance and expertise of a broker.

I've thought about this carefully, including the detailed evidence Mrs C has provided about how the platform worked. But in the circumstances, I can't reasonably say this money was paid to finance an agreement for the trading account to be provided or for the services of an account manager or broker. I say this because everything I've seen suggests the money she paid on her MBNA credit card actually just gave her that amount of credit which could then be used to trade.

Mrs C used her MBNA credit card account to fund a trading account to trade in binary options. She says she was told about the returns she could make and when she could withdraw her funds. Mrs C says she had numerous phone calls and emails with B. And this is how she had all her dealings with the platform. But I can also see from the information provided that Mrs C was dealing with her trading platform on-line.

There is also an indication in the terms of the agreement that suggest Mrs C would've needed to register to use the service. And the terms of the agreement were available on the trading platform's website. I do accept its possible Mrs C was informed of the potential for positive returns but she hasn't been able to provide very much evidence to support her complaint that the on-line platform misled her about expected returns or how the account worked.

I've also considered the terms of the bonus agreement, which Mrs C signed on 22 June 2016, and the general terms and conditions to see if there's been a breach of contract.

Mrs C contracted for a trading platform to carry out trades on her behalf; I can't see there's been a breach in providing that service. And the agreement does set out on what basis Mrs C can make withdrawals. The bonus terms and conditions confirm certain trade values and amounts must be made before any withdrawal requests would be honoured.

It's also my understanding that the bonus amounts wouldn't have been credited until Mrs C accepted these terms and that B declined Mrs C withdrawal requests because she hadn't met the required conditions.

It's important to note that trading of this nature is speculative and both successful and unsuccessful trades are to be expected. Whilst I can see that Mrs C made B aware of her desired trading and profit outcomes on a number of occasions, I've been unable to locate any evidence that B specifically agreed to meet Mrs C's expectations or provided any guaranteed outcome. So when I weigh everything up I'm not satisfied a breach of contract or misrepresentation occurred.

I empathise with the position Mrs C has found herself in. But I'm satisfied it wouldn't be fair to require MBNA to take responsibility for what happened.

I understand Mrs C is concerned about B's authority to trade and do business in the United Kingdom. As I outlined in my provisional decision, the Financial Conduct Authority (FCA) does not regulate binary options in the UK currently. And B is located outside the UK.

my final decision

For the reasons I've explained, I don't uphold Mrs C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 15 January 2018.

Sharon Kerrison
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