

complaint

Mr A complains that Capital One (Europe) plc won't refund to him the money that he paid for some trading contracts. His complaint is made against Capital One under section 75 of the Consumer Credit Act 1974 and the chargeback rules.

background

Mr A used his Capital One credit card in March and April 2017 to make payments totalling £1,500 to a binary options trading company. It declined his request when he asked to withdraw some of his money so he complained to Capital One under section 75 and the chargeback rules – and he said that he was the victim of a fraud or scam. Capital One said that the nature of Mr A's dispute with the trading company didn't meet the chargeback criteria. It also said that the payments only had the effect of transferring funds from one source to another so weren't made in payment for any goods or services and weren't covered by section 75. And it said that trading in binary options was recognised as a gambling activity and, under its terms and conditions, payments to gambling establishments in respect of gambling activities are defined as "*cash withdrawals*" which aren't covered by section 75. Mr A wasn't satisfied with its response so complained to this service.

The investigator didn't recommend that this complaint should be upheld. He referred to the bonus policy in the trading company's terms and conditions – and he said that it would appear that Mr A hadn't met the conditions of the account so couldn't withdraw his money. So he was unable to say that a breach of contract or misrepresentation had occurred. And he was unable to say that Capital One had done anything wrong.

Mr A has asked for his complaint to be considered by an ombudsman. He says, in summary, that: he has severe mental health issues and that the trading company has taken advantage of him; the bonus policy is hidden on the internet platform and sets target amounts of trading activity that he couldn't reach or afford; and it's an unfair contract. He also refers to adverse articles about binary options trading – including some documentary films available on the internet.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Capital One has rejected Mr A's claim under both section 75 and the chargeback rules – and I will consider each of them separately.

In certain circumstances, section 75 gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there's been a breach of contract or misrepresentation by the supplier. To be able to uphold Mr A's section 75 complaint about Capital One, I must be satisfied that there's been a breach of contract or misrepresentation by the trading company.

Mr A hasn't been able to provide a copy of any contract with the trading company to show what was agreed between them. But the trading company's terms and conditions are available on the internet and set out its bonus policy. I consider it to be more likely than not that Mr A would've been required to accept the terms and conditions before his trading account was set up. The bonus policy includes the circumstances under which money may be withdrawn from the account. These are complex arrangements but I'm not persuaded that

there's enough evidence to show that the trading company has failed to comply with its terms and conditions or that it's breached its contract with Mr A.

Mr A clearly feels that the contract was misrepresented to him. But he hasn't been able to provide enough evidence about the incorrect information that was given to him to persuade me that he entered into the contract as a result of a misrepresentation.

There's no right for a consumer to require that a chargeback claim be made. But if the right to make a chargeback claim exists under the applicable scheme rules – and if there's a reasonable prospect of success – I consider it to be good practice for a chargeback claim to be made. But Capital One says that the nature of Mr A's dispute with the trading company didn't meet the chargeback criteria. And I'm not persuaded that there was any reasonable prospect of a successful chargeback claim in these circumstances. So I don't consider that Capital One acted incorrectly in not making a chargeback claim for Mr A's payments.

Trading in binary options is highly speculative and a high risk investment – but Mr A chose to invest in binary options. The trading company is located overseas, the trading takes place overseas and isn't regulated by this country's financial regulators. Mr A has referred to highly critical articles in the media about the trading of binary options. But I can only uphold his complaint about Capital One under section 75 if there's been a breach of contract or misrepresentation by the trading company. And for the reasons set out above, I'm not persuaded that there's enough evidence to show that the trading company has breached its contract with Mr A or that he was induced into entering into the contract by its misrepresentation.

I sympathise with Mr A for the mental health issues that he suffers. But I consider that Capital One has dealt with Mr A's complaint correctly. And I find that it wouldn't be fair or reasonable in these circumstances for me to require it to refund any money to Mr A – or to take any other action in response to his complaint.

my final decision

For these reasons, my decision is that I don't uphold Mr A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 20 November 2017.

Jarrold Hastings
ombudsman