

Complaint

Miss A complains, in summary, that Bank of Scotland plc did not help her recover all the money she paid to a binary options trading platform using her Bank of Scotland Mastercard credit card.

Background

After seeing a well-known celebrity advertising a company, T Ltd, offering binary options trading, Miss A made a series of payments totalling £13,058.90 to it. She used various payment methods linked to the accounts she held with Bank of Scotland to do so. One of those payment methods was via her VISA debit card – linked to her Bank of Scotland current account. Another was via her Bank of Scotland Mastercard credit card – and these payments alone are the subject matter of this complaint:

- £209.90 on 8 November 2017 to T via Mastercard credit card
- £1,049.50 on 13 November 2017 to T via Mastercard credit card

Miss A was able to see her investments doing well on her platform until T disappeared and she could no longer access the platform. Miss A contacted Bank of Scotland to say she had been the victim of a scam and asked it to help recover her funds.

Bank of Scotland successfully processed chargebacks for the VISA debit card transactions linked to Miss A's current account. But declined to process chargebacks for the transactions linked to Miss A's Mastercard. It also stated section 75 of the Consumer Credit Act 1974 didn't apply because no goods or services were purchased.

Miss A brought her complaint to this service.

Our investigator asked Bank of Scotland for further information on 19 August 2020, with a deadline of responding by 2 September 2020. Bank of Scotland did not respond, so the case was passed to me to decide.

I issued my provisional decision to both parties on 21 October 2020, with a deadline of responding by 4 November 2020 – and I've included those findings here:

A chargeback isn't guaranteed to result in a refund. There needs to be a right to a chargeback under the scheme rules. And under those rules the merchant or merchant acquirer can defend a chargeback if it doesn't agree with the request.

If a chargeback is defended, the card issuer can make a second presentment of the chargeback by providing further supporting evidence. If it is still defended by the merchant, it can ask the card scheme provider to decide whether a refund should be given. This final part of the chargeback process is called arbitration.

We would consider it good practice for a chargeback to be attempted where the rights exist and there is some prospect of success.

The Mastercard chargeback rules relevant to the date of Miss A's transactions state that; chargebacks are available to the card 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.

I'm satisfied that chargeback rights are limited through the Mastercard scheme rules when it comes to claims relating to gambling, investment or similar. But they aren't excluded altogether. Having clarified this point with Mastercard, I'm satisfied there would be an appropriate chargeback route if a merchant does not make funds transferred to it available for use in the type of transactions for which it received them.

Miss A claimed that the merchant disappeared and blocked her from accessing her account. I think a chargeback would have more than likely succeeded on this basis. This is further strengthened by the successful claim on Miss A's debit card linked to her current account.

I upheld Miss A's complaint and provisionally awarded her the return of all funds deposited with T via her Mastercard credit card along with applicable interest.

The deadline for a response has now passed and, over six months after our investigator's request for further information, Bank of Scotland has still failed to respond.

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, my provisional decision is unchanged.

Our statutory rules provide – at DISP 3.5.8 to 3.5.15 of the Financial Conduct Authority Handbook – that we may give case-management directions and fix or extend deadlines; and that we may:

...reach a decision on the basis of what has been supplied and take account of the failure by a party to provide information requested;

And that...

If a respondent fails to comply with a time limit, the Ombudsman may: (1) proceed with the consideration of the complaint; and (2) include provision for any material distress or material inconvenience caused by that failure in any award which he decides to make.

I've therefore concluded that, in the absence of a response from Bank of Scotland to my provisional decision, it is fair and reasonable to proceed on the basis of the evidence we already have and to take account of Bank of Scotland's failure to reply.

As Bank of Scotland had no comments to make, my final decision is that I uphold this complaint for the reasons set out above and before.

Although most of Miss A's distress or inconvenience probably resulted from the criminal acts of the fraudulent merchant, I think Bank of Scotland could have done more to protect her from the impact of its statutory duty to co-operate with our complaints process (*DISP Rule 1.4.4 of the Financial Conduct Authority Handbook*).

I therefore consider £100 compensation for distress or inconvenience to be appropriate. I'm aware that compensation hasn't previously been awarded. But given where we are in the complaint journey, and the fact compensation for distress and inconvenience is a matter of discretion, I believe it should fairly be paid in this case.

My Final Decision

For the reasons I have explained, my final decision is that I uphold this complaint. I direct Bank of Scotland plc to pay Miss A:

- The money she lost (totalling £1,259.40) within 28 days of receiving notification of her acceptance of my final decision; plus
- Interest (less any tax properly deductible) – either (i) at the simple rate of 8% per year on the two payments from the date they were paid to the date of settlement; *or* (ii) if the account accrued interest because the relevant statement balances weren't paid in full, interest should be paid at the rate actually charged for those two payments from the date Miss A reported the fraud to the bank; plus
- £100 compensation for the distress and inconvenience caused also within 28 days of receiving notification of her acceptance of my final decision, failing which interest will thereafter accrue at 8% simple per year (less any tax) until payment is made.
- Should an outstanding balance be owed on Miss A's credit card account relating to the payments to T and/or interest on those payments, Bank of Scotland plc is entitled to repay this balance first from the settlement outlined in the bullets above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 26 February 2021.

Dolores Njemanze
Ombudsman