

complaint

Ms B's complaint is about the decision by GKFX Financial Services Limited to remove a cash bonus that was applied to her spread betting account.

background

I issued a provisional decision on this complaint – a copy of which is attached and forms part of this final decision. I set out the background to the matter and explained why I didn't think Ms B's complaint should be upheld. I also asked Ms B and GKFX to let me know if they had anything more to say before I made my final decision.

Ms B didn't agree with what I'd said. In summary, she said:

- Financial promotions should be clear, fair and not misleading so if GKFX wanted certain trades to be excluded, or certain timeframes to be excluded, it has to be mentioned clearly in their terms and conditions.
- GKFX has misled me that trades have to make a profit. Spread betting is gambling so it doesn't have to be for profit. Most people gamble for a buzz or to take part in promotions or contests.
- GKFX doesn't make money from its customers losing money. GKFX doesn't care what the purpose of the trade is and its only interest is the spread, as this is how it makes its profit.
- There are many reasons why a broker offers a bonus – for example, they get more customers. Not all of the customers who take part will fulfil the requirements and receive a bonus.
- Even if the market isn't so volatile at night, the size of the trades was large and the risk was much more than if she'd traded smaller amounts. And the trades were open for well over two minutes on average and definitely over 100 seconds, which is fine according to GKFX.
- GKFX had seen her trades from the previous promotion and if it had decided it no longer liked a certain trading style then it should've told her beforehand. So she should be refunded the losses and her account reset to zero.
- The Advertising Standards Authority (ASA) has found that even if a promotion seems unfair in retrospect, as long as the terms have been fulfilled then the promotion should be honoured.

GKFX confirmed it agreed with my provisional decision and didn't want to add any further comments.

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 still don't uphold this complaint.

It's clear Ms B feels strongly that GKFX should pay her the bonus, or at the very least it should refund the losses she's made. And I assure her I've read her submissions carefully, as well as listening to the call recordings she's sent to us. While I do understand the points she's made, they don't change my decision.

As I explained in my provisional decision, I need to decide what's fair and reasonable and that's not limited to what the terms and conditions allow (or don't allow) GKFX to do. Whether or not the terms and conditions clearly set out what Ms B could and couldn't do to get the bonus, I need to decide whether Ms B would've realised that the way she was trading wasn't in the spirit of how the promotion was intended.

I agree with Ms B that there are many reasons why GKFX might've offered the promotion. But the main driver would almost certainly be to improve its business/profit. It's unlikely it would've been to pay a bonus to customers who'd exploited a loophole in the terms and conditions. I can't see what benefit GKFX would gain from this.

The principle of betting is that you risk a sum of money (or something else of value) on the outcome of an unpredictable event. By trading at less volatile times of day and for a short period of time, Ms B wasn't taking the usual risk of spread betting because the movements in the market were significantly less. I'm not suggesting Ms B wasn't taking any risk at all. But she was minimising the risk she was taking.

Looking at the trades Ms B placed after the bonus had been credited to her account, it's noticeable that they're much smaller, open for longer and there aren't any positions that were closed without the price moving at all. This suggests Ms B's trading decisions prior to the bonus being paid, were made with the goal of getting the bonus as quickly as possible, taking as little risk as possible.

I understand the point Ms B is making in relation to the call recordings. These do seem to suggest the way Ms B was trading wouldn't be a problem. But the questions asked in the calls weren't given any context. And the information provided by GKFX in these calls wasn't something Ms B relied on when she was trading. So I don't think this is enough for me to say GKFX should pay Ms B the bonus.

I think Ms B knew that the way she was trading wasn't what GKFX had expected when it offered the promotion. So I still don't think she was dealing in good faith and I think it's reasonable that GKFX withdrew the bonus from her account.

Ms B has suggested that had she known in advance that GKFX wouldn't pay the bonus if she traded the way she did, she wouldn't have traded the way she did and she should be refunded the losses she suffered. But Ms B is an experienced spread bettor and I'm sure she understands that she's responsible for any losses she suffers. If she'd made a gain, she wouldn't be suggesting that it should be paid back to GKFX and I wouldn't be saying it needed to do this.

Ms B has also referred to a number of cases that have been considered by the ASA, which she thinks are similar to hers. But the ASA looks at things in a different way to me. I understand Ms B has contacted the ASA and it's possible it might reach a different conclusion to me.

my final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 27 July 2017.

Claire Allison
ombudsman

copy of my provisional decision

complaint

Ms B's complaint is about the decision by GKFX Financial Services Limited to remove a cash bonus that was applied to her spread betting account.

background

Ms B opened a new spread betting account with GKFX in September 2016. She deposited £50,000 into the account and was able to take part in a 30% cash bonus programme. £15,000 was credited to her account and if she did a minimum number of trades over a two month period, she could withdraw this as cash. Ms B fulfilled the trade volume requirement within the time period allowed.

In November 2016, GKFX told Ms B it was removing the bonus from the account. It said Ms B had "*abused the terms of the promotion*" by placing bets without the orders being subject to major price variations because they were done when the volatility of the product 'ESX50SB' was extremely low. It said this resulted in trading big volumes without the risks associated with trading under normal market conditions.

Ms B said she'd traded the volume of trades she needed to and followed all the terms and conditions of the promotion. She says there has been a risk as she traded when the market was open and on the day of the US elections.

Our investigator thought Ms B had followed the terms and conditions of the promotion, so she didn't think it was fair for GKFX to withdraw the bonus. GKFX didn't agree, so the complaint has been passed to me to review.

my provisional findings

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

This complaint is about whether Ms B has tried to get a large bonus from GKFX unfairly. Both Ms B and GKFX are relying on the terms and conditions of the promotion to support their side of the argument. But I need to decide what's fair and reasonable and that's not limited to what the terms and conditions allow (or don't allow) GKFX to do.

Spread betting is a high risk activity and gives the potential for investors to generate significant profits. When GKFX offered the promotion, it would've expected its customers to take the considerable risk involved with this type of trading and to be doing so with the aim of making a profit. I think it's reasonable to expect both parties to deal with each other in good faith. If I thought Ms B was deliberately trading in a particular product, at particular times, to avoid the usual risks of spread betting, I don't think she'd be dealing in good faith. And it follows that it would be reasonable to GKFX to withdraw the bonus.

All of Ms B's trades, except one, were in the product 'ESX50'. GKFX says this product is made up of equities whose national markets were closed by the time Ms B placed her orders, which makes the price very stable. But Ms B says the market is open right through the day until 9pm and there's plenty of market movement and volatility. And she was trading around the US election when there was lots of volatility.

ESX50 or Euro Stoxx 50 is a stock index of Eurozone stocks. Most of Ms B's trades were done after 8pm, when the European stock markets would be closed. Her positions were generally open for less than five minutes. She made small profits or losses and there were often trades where the position was closed when the price hadn't moved at all. Ms B did lose some money but by trading the way she did, she was able to limit her losses so she'd still be better off overall, when the bonus converted to cash.

The pattern of Ms B's trading doesn't suggest she was doing so with the objective of making a profit from the trades. It's more suggestive of someone who is doing lots of trades, without taking much risk, keeping any profits or losses to a minimum. By doing this, I don't think Ms B was dealing in good faith.

I understand Ms B has taken part in previous, similar promotions offered by GKFX and the way she's traded hasn't been raised as an issue before. But it doesn't follow that GKFX wasn't allowed to review her trading patterns for subsequent promotions and withdraw the bonus if it spotted something that it felt suggested she wasn't acting in good faith. Similarly, I don't think it was unfair of GKFX to withdraw the bonus after it had been converted to cash.

Having looked at everything that's been submitted so far, I don't think it was unreasonable for GKFX to withdraw the bonus it had credited to Ms B's account.

my provisional decision

My provisional decision is that I don't intend to uphold this complaint.

Claire Allison
ombudsman