



<u>Decision Ref:</u>	2021-0060
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Credit Cards
<u>Conduct(s) complained of:</u>	Disputed transactions Complaint handling (Consumer Protection Code) Failure to provide product/service information
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The complaint concerns the Complainant's credit card account with the Provider, a bank against which this complaint is made.

The Complainant's Case

The Complainant states that on **13 November 2017** he began trading online with a third party *"binary trading company"* ('the merchant'). The Complainant lodged €30,000 into this online trading account in eight instalments between **13 November 2017** and **29 December 2017**. The Complainant states that he managed to recover €6,000 from the merchant but was unable to recover the remaining €24,000. The Complainant states that after a short period of time his €30,000 grew to a sum of €68,000 but that he was prevented from withdrawing this money due to a *"clever policy"* employed by the merchant whereby *"they issue bonuses when lodgements are made to the account and by accepting these bonuses it effectively created a situation that prevented me from withdrawing funds until the account achieved multiple values of the funds invested"*.

The Complainant states that on **17 January 2018** one of the merchant's brokers advised him that the merchant was discontinuing its binary trading platform and moving into foreign exchange (Forex) trading. The Complainant states that at this point *"the pressure started"* as the broker indicated that Forex trading did not deliver the same profit potential as binary trading and therefore the maximum trading session investment amount (previously capped at 20%), needed to be raised. The Complainant states that he *"resisted this initially but on the 23rd January, [he] bowed to incessant pressure"*.

The Complainant states that he then invested €62,000 in five Forex trades but none of *“the trades came in”*. The Complainant acknowledges that he *“gave the go-ahead to proceed with the 5 trades, but something was not right with this session”*. The Complainant states that he raised a complaint with the merchant by email which was not responded to and that numerous attempts to get hold of the merchant’s broker failed.

The Complainant states that he also raised a complaint with the Provider on **29 January 2018** and received a response on **26 February 2018** stating that the only line of enquiry available through it is *“if the trading account has not been funded. Unfortunately as the merchant have provided you with the services in line with the [credit card provider’s] rules and regulations, the [Provider] is unable to assist you any further”*.

The Complainant states that in **November 2018** he engaged a third party company to assist with the recovery of the funds. He states that this third party company, which specialises in chargebacks, advised that the Complainant has a *“strong case to recover [his] funds”*. The Complainant explains the rationale for this as being that the merchant *“did not have the required licence to hold client funds and nor were they able to show that the funds transferred to them were genuinely used to trade on the live market meaning that the funds were not transferred to where they should have been...so in effect it’s their belief that the transactions were authorised but [the Complainant] did not receive the service [he] paid for”*.

The Complainant states that on **3 January 2019** and **15 January 2019** he submitted all of the above information to the Provider and requested the Provider to raise several chargebacks in relation to the transactions he carried out to the merchant through his credit card. He stated:

“I am requesting for a chargeback dispute to be raised against [Merchant] exercising the chargeback reason “Services Defective/Not as Described” – Reason Code 4853”

The Complainant states that *“the merchant did not provide the service as described on their website and in their promotion material. The merchant does not possess the requisite licensing required to be able to provide training services in regulated financial products”*.

The Complainant states that he requested the chargebacks because the merchant was:

“...supposed to provide me with a platform to trade with on the live market, however they provided me with a software demo account instead...This demo account did not have the ability to execute trades or have access to the live trading market”.

The Complainant received a response from the Provider on **22 January 2019** which he states repeated the earlier response of **26 February 2018**. This response advised the Complainant that if his trading account with the merchant was not funded he would need to provide evidence of this and furthermore, that the time for constraints for raising a claim through his credit card had been exceeded.

The Complainant raised a complaint with the Provider on **14 February 2019** which was acknowledged on **20 February 2019** and a Final Response Letter was sent on **25 February 2019**, and subsequently with this Office.

The Complainant made submissions to this Office by email dated **11 August 2020**. In this email the Complainant stresses that the key issue in his chargeback case is that the services provided by the merchant were defective/not as described (Reason Code 4853). He emphasises that the merchant was not licensed to trade in this jurisdiction and as such was not in a position to operate a legitimate trading platform. Therefore, the Complainant states that his trading relationship with the merchant *"was all smoke and mirrors and the trading platform, whilst appearing to be legitimate and operating live, was created to give the impression that the trading platform was bona fide."* The Complainant states that considerable evidence was provided in his submission that the merchant was/is not licensed as a financial services provider/investment intermediary in the UK where it claimed to be located and *"their location was a key reason I traded with them"*. Therefore, the Complainant argued that code 4853 should come into play.

The Complainant made further submissions to this Office by email dated **14 August 2020**. In this he states that his *"key issue is based on the fact that the merchant misrepresented themselves in their dealings with me"*. The Complainant contests the Provider's assertion that he should have been competent enough to do due diligence into the merchant prior to investing his money with the merchant. The Complainant states that the Provider *"did not apply due diligence by allowing me to trade with a non-licensed trading company"*.

The Complainant made further submissions to this Office on **17 August 2020** stating that *"there is little or no protection available for amateur investors such as me"*. He states that his issue concerns the licencing position of the merchant to actually trade and the impact of this on his complaint. The Complainant states that the response from the Provider has been *"a buck passing exercise with my complaint going through the motions"*. The Complainant places reliance on the report of the third party company he engaged who specialise in chargebacks who he states were *"very confident of getting a full chargeback refund on the basis that the [merchant] was not licenced to trade in this jurisdiction and hence could not legally operate a legitimate trading platform"*. The Complainant states that *"this critical factor, in my opinion, clearly demonstrates that such actions trigger the chargeback in that I did not and could not receive the services as described"*. The Complainant states that to date the Provider has not addressed his query on the *"licencing position of [the merchant] and its relevance to my complaint"*.

The Complainant made further submissions to this Office on **28 August 2020** wherein he stated that he continued to disagree with the Provider's verdict and repeated his assertions regarding the licensing status of the merchant.

The Complainant is also dissatisfied with the way in which the Provider has handled his complaint and feels that the Provider has not looked into his concerns and has dismissed his complaint.

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The Complainant wants the Provider to raise a chargeback dispute against the merchant, exercising the chargeback reason *"Services Defective/Not as Described"*. The Complainant is seeking to recover the balance of funds transferred, namely the sum of €24,000.

The Provider's Case

The Provider in its Final Response Letter dated **25 February 2019** submits that:

"Any investigation we undertake would need to be carried out direct with the retailer's bank and also in accordance with the relevant card scheme rules. This procedure is known as a "chargeback" and is the same procedure all credit and debit card issuers would have to adhere to. However, we are only able to assist in certain instances and would have to follow [the credit card provider's] strict rules, regulations and timescales, for any claim to be valid".

The Final Response Letter further states that the:

"[Credit card provider] recognises that when funds are loaded into an investment account, the [credit card provider] service is considered provided as described. As such, issuers are not entitled to process a cardholder dispute concerning these and other account related services, such services include but are not limited to withdrawal of account balance and trading/investment decision. [Credit card provider] will not consider the Terms & Conditions concerning such transaction. Any disputes raised for non-receipt of funds via the withdrawal process is invalid as this is not the service purchased, the service was for funding a trading account which you have advised has been funded and trading has undertaken. The [Provider] would therefore be unable to assist you under these rights".

The Provider made submissions to this Office dated **4 August 2020**. In these submissions the Provider states that it has not progressed a chargeback in this instance *"due to the fact that the circumstances of the case are not within [the credit card provider's] Rules and Regulations"*. The Provider states that the credit card provider considers that when funds are loaded into an investment account, as was the case in this matter, the credit card service is considered to have been provided. The Provider states that *"any disputes raised for non-receipt of funds via the withdrawal process is invalid as this is not the service purchased; the service was for funding a trading account which the Complainant advised has been funded and trading has been undertaken"*. The Provider states that the credit card provider only allows chargebacks to be raised if *"no trading platform was ever created"*.

The Provider states that Pages 52-53 of the Credit card provider's Rules state:

"Chargebacks are available to the issuer for transactions in which any value is purchased for gambling, investment or similar purposes.

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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."

The Provider states that it is *"not aware that the merchant's website is fraudulent. The [Provider] considers that it was the Complainant's responsibility to carry out due diligence with any company he chose to conduct business with, prior to paying funds to said company"*.

The Provider states it acknowledged and responded to the complaint raised in **February 2019** speedily and provided the Complainant with its explanations as to why a chargeback claim could not be processed regarding his authorised transactions with the merchant. The Provider states that it is *"undisputed that the Complainant authorised all the above-mentioned transactions...in order to load these funds onto a trading platform with [the merchant]"*.

The Provider also notes that it is not privy to the details of the contract between the Complainant and the merchant and is also unaware of the reasons why the Complainant waited almost one year from the time the Provider advised that a chargeback would not be possible, to the time he raised a formal complaint with the Provider.

The Provider made further submissions to this Office on **28 August 2020** stating that it wished to stress that the *"contract for services is between the Complainant and the [merchant]...it was the Complainant's responsibility to complete due diligence before conducting business with [the merchant]"*. The Provider also states that it *"cannot control whom or to where the Complainant choses to send funds"* and states that there is *"no change to chargeback rights due to the location of the parent company of the trader"*. Finally, the Provider states that it is the merchant's acquiring provider which is liable for completing the relevant checks on the merchant regarding licencing etc. and that *"this is not the responsibility of the customer/payer Provider"*.

The Complaints for Adjudication

The complaint for adjudication is that the Provider has incorrectly declined to raise and process chargebacks relating to the payments made by the Complainant using his credit card between **November** and **December 2017**. There is a secondary complaint concerning the manner in which the Provider has handled the complaint raised.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainant given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

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In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on 3 February 2021, outlining my preliminary determination in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

Following the issue of my Preliminary Decision, the Complainant made a submission under cover of his e-mail to this Office dated 23 February 2021, a copy of which was transmitted to the Provider for its consideration.

The Provider advised this Office under cover of its e-mail dated 24 February 2021 that it had no further submission to make.

Having considered the Complainant's additional submission, which did not raise any new issues but, rather, expressed dissatisfaction with my Preliminary Decision, together with all submissions and evidence furnished to this Office by both parties, I set out below my final determination.

In respect of the complaint for adjudication that the Provider has incorrectly declined to raise and process chargebacks relating to the payments made by the Complainant using his credit card between **November** and **December 2017**, I note that the Complainant has provided several screenshots of information supporting his contention that the merchant is not licenced to provide brokerage/financial services in the United Kingdom. Of particular note is a screenshot from the UK's Financial Conduct Authority warning consumers to be "*especially wary of this unauthorised firm*". The evidence put forward by the Complainant would certainly suggest that the merchant he invested his money with is not regulated, however, this does not necessarily mean that it is a fraudulent merchant and unfortunately for the Complainant it is not the responsibility of the Provider to conduct an investigation into the veracity of the merchant's trading platform or the licensing requirements for same. As the disputed transactions took place through the use of a credit card, the Provider was correct to refer to the credit card provider's chargeback guidelines.

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In this regard I note that Page 52 of the Credit card provider's chargeback guide (updated **30 April 2019**) states:

"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."

Bearing the foregoing in mind, the reality of this situation is that the Complainant made the informed decision to lodge money onto a trading platform which purported to allow him invest in financial products. There is an element of risk involved in investments of this nature which was taken on and accepted by the Complainant and this is particularly the case where these investments are unregulated. I note that the Complainant has not disputed that he authorised any of the transactions to the merchant and I also note that he was fully aware that he was trading on this platform and indeed, it wasn't until after he had been trading for four months that the Complainant raised an issue with the merchant about the services it was providing. I further note that it was not until 11 months after the Provider had failed to grant the chargeback that the Complainant made his complaint.

Therefore, I do not accept the Complainant's contention that the Provider is obliged to provide a chargeback due to the loss of his investment in an, likely unregulated, investment platform.

The evidence shows that the Provider carried out the transaction as authorised by the Complainant.

There is a secondary complaint concerning the manner in which the Provider has handled the complaint raised. In this regard, I note that a complaint was raised with the Provider on **14 February 2019** and acknowledge on **20 February 2019** (within five working days pursuant to provision 10.9 of the Consumer Protection Code 2012 (as amended)). I further note that the Provider issued a Final Response Letter very promptly in this matter on **25 February 2019** and that in this letter it provided a clear rationale and explanation for its refusal to grant the chargeback.

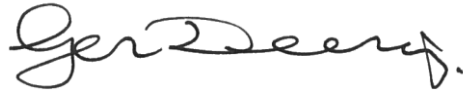
For the reasons outlined in this Decision, I do not uphold this complaint.

Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is rejected.

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The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.



GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

8 March 2021

Pursuant to *Section 62* of the *Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will publish legally binding decisions in relation to complaints concerning financial service providers in such a manner that—

(a) ensures that—

- (i) a complainant shall not be identified by name, address or otherwise,
- (ii) a provider shall not be identified by name or address,
- and

(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.