

The complaint

Mr and Mrs F complain that Smart Currency Exchange Limited (SC) failed to advise them appropriately about a currency exchange.

What happened

Mr and Mrs F say they had previously used SC for a foreign property purchase in 2018. They decided to use the company again for the sale of that same property. They also say after initial discussions with SC, they had a conversation with it in September 2022 about “locking in “an agreed exchange rate. Mr and Mrs F say SC told them the exchange rate was at a high but were not told what would happen if the sale fell through, which is what did take place. They say they lost about £6,400 as a result of exchange rate differences when SC sold back the currency. Mr and Mrs F say the product was mis-sold and would like the money refunded. They say they didn’t “lock in “the money in 2018 and so unaware of what that would mean.

SC says the account was opened in 2018 and Mr and Mrs F were given the account terms and conditions. They say a contract was agreed and later cancelled by Mr and Mrs F and so there was a currency loss which it says they are liable for. SC says it didn’t provide advice and its terms and conditions are also available online.

Mr and Mrs F brought their complaint to us, and our investigator upheld it. The investigator thought SC should have done more to ensure Mr and Mrs F understood the risks and that the previous agreement did not involve fixing an exchange rate. The investigator recommended the money be refunded, interest added, and £400 compensation paid.

I asked both sides for further information. Mr and Mrs F confirmed they knew there was a contract between them and SC but say there is no mention about what would happen if their sale fell through.

SC says the decision to proceed was made by Mr and Mrs F and doesn’t accept the investigator’s view.

My provisional view

I issued a provisional view, and I came to the provisional view that Mr and Mrs F agreed to “lock in “ the currency rate having been told it had reached the highest level in well over 500 days. I thought provisionally they made that decision without advice from SC and agreed to a contract between the parties which meant there were consequences when it was cancelled. I looked carefully at the original account terms and conditions which I thought Mr and Mrs F agreed to when they first used SC. I was satisfied those terms and conditions made clear that SC doesn’t provide advice and that a customer is responsible for any losses occurred. I said that whilst I sympathise with Mr and Mrs F’s position, I couldn’t fairly hold SC responsible for what took place.

I listened very carefully to all of the telephone calls between the parties leading up to the key call in September 2022. I said it was clear that Mr and Mrs F wanted to sell their property

and initially were content to proceed with the exchange rate on the date of sale.

In September 2022 the exchange rate was favourable to Mr and Mrs F, and I was satisfied SC told them that as well as the amount of extra money they would be receiving. During the call Mrs F was told the rate may not be as favourable on the actual sale date some days later. I said I was satisfied that during the call Mrs F told SC "Let's lock in" to which SC then told her she was entering into a legally binding contract. There was no discussion from either party about what would happen if the sale fell through.

So, I was satisfied it was Mr and Mrs F's decision to fix the exchange rate on the sale date and that they entered into a contract with SC to do so. I was also satisfied that SC didn't provide advice on that decision but simply told them the exchange rate may not be as favourable (on the sale date) which I thought was common sense. As I was satisfied that SC was not providing advice to Mr and Mrs F then I didn't think it should have done more to ensure they were aware of the implications if the property sale fell through. And I thought it ought to have been reasonably clear that if SC was "locking in the currency" and the money was not needed that there would be a cost involved in selling back the currency.

I appreciated Mr and Mrs F didn't anticipate the property sale would fall through but I thought that was the cause of the problems here and not the currency agreement. I said I can't fairly hold SC responsible what took place. And thought it likely that even if Mr and Mrs F realised there was a potential cost if the property sale fell through that they may well have still agreed to fix the rate due to its favourable position. I didn't think Mrs F told SC about any concerns she had that the sale would fall through and that she anticipated it would proceed.

Overall, my provisional view was that Mr and Mrs F entered into an agreement to fix a currency exchange rate. When that agreement didn't proceed through no fault of SC, I thought it was entitled to pass the exchange rate difference onto Mr and Mrs F when it sold back the currency in line with agreed terms and conditions. I appreciated Mr and Mrs F will be disappointed by my provisional decision, but I said I have made clear that the ultimate decision to proceed with locking in the rate was made by them on a non-advised basis.

Mr and Mrs F do not agree with my provisional view and have sent a detailed response. In summary they say that terms and conditions ought to have been given to them but were not. They say SC's website says it does provide advice and says it recommended as well as advised the rate be locked in. Mr and Mrs F say they were coerced into locking the money and would not have done so if appropriate advice was given.

What I've decided – and why

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 have come to the same overall view that I reached in my provisional decision and for the same reasons.

I have listened again to the telephone calls between the parties and am satisfied that Mrs F told SC that "everything was going through". I am also satisfied that whilst SC says it may give advice about certain issues, that it did not do so during the call and that it was Mrs F that instructed it to lock in the rate. I have made clear that I'm satisfied there was a clear contract agreed to by Mrs F. I appreciate Mr and Mrs F maintain they didn't receive a copy of the account terms and conditions, but SC says they were agreed to when the account was first opened. In those circumstances I have to consider what I think is more likely to have taken place. Having done so think on balance the terms and conditions would have been agreed to and available when the account was first opened. I also think for the reasons I

have explained that during the telephone call it was Mrs F that instructed SC to lock in the rate and agreed to a contract. And that she ought to have been reasonably aware that if the contract was broken then there would inevitably be a cost in selling the currency, that was agreed to be bought, back.

I have made clear that I think the problem here was caused not by SC but by the buyer pulling out of the purchase which at no stage did Mr and Mrs F ever raise with SC as a possibility. It follows that I don't think Mr and Mrs F were "coerced" into the agreement and made the decision themselves.

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 Mr F and Mrs F to accept or reject my decision before 12 September 2023.

David Singh
Ombudsman