

The complaint

Ms K complains about the advice received from Smart Currency Exchange Limited ("SCEL") regarding the use of its services for transferring money internationally. Ms K believes the exchange rate SCEL offered was unfair and says she didn't authorise it to cancel the contract and as a result of its actions has made a loss of over £4,000.

What happened

Ms K was looking to buy a property abroad so signed up to SCEL's website to gain more knowledge on transferring money internationally. Ms K understood from this that if purchasing a property abroad it would be best to lock in on an exchange rate.

Ms K spoke to an advisor at SCEL on 9 June 2023 and explained she was buying a property and understood the GBP was in a good position and that she wanted to do a forward contract. The advisor agreed with this and explained how it worked in that they buy the full EUR needed by Ms K straight away and that Ms K would put a deposit down to secure the rate and funds and provided 3 quotes for different locking in timescales. Ms K confirms she wanted to lock in a rate until December 2023 "to be on the safe side".

The advisor offers to reduce the deposit needed from 10% to 7.5% payable within three days and confirms it is a legally binding contract and runs through the contract locking in an exchange rate of 1.1350 exchanging £137,004.41 to EUR 155,500 which Ms K agrees to. The advisor confirms this will be confirmed by email in a contract note within a few minutes.

Around a month later on 10 July Ms K decided that the contract wasn't right for her and emailed SCEL stating:

"...on reflection, I would like to cancel the contract as I feel the advice I was given was not in my best interests. Could you please confirm the cancellation cost (if any) to cease the Forward Contract..."

Ms K goes on to again ask that the contract is cancelled and to come back to her as soon as possible with assurances that this will be actioned and that any payments made in terms of deposit payment and fees will be returned in full.

SCEL trader responded to her email and asked if she could discuss this over the phone. Ms K replied saying "I would like to proceed in the way described in my previous email."

Unfortunately, during this period of discussion the markets continued to move against Ms K's position. SCEL interpreted Ms K's response that she wanted to cancel and responded by email on 11 July confirming the buy back rate for GBP of 0.85426 and costs and that they will be taken from the deposit held. Ms K then raised a complaint and SCEL - as it believed Ms K would no longer fill the obligations of the contract - then cancelled the contract sending an invoice showing a loss/cancellation cost of £4,469.98.

Ms K says the contract was cancelled without authorisation, the rate offered was unfair and that SCEL had made a profit from this.

SCEL didn't uphold Ms K's complaint, it says the product and contract Ms K entered into was at her request and that the contract was also cancelled at her request. SCEL say that the cancellation amount is solely calculated from the sale of EUR back to GBP and therefore only returns it to the position from when the original contract was booked. SCEL says it provided Ms K with copies of the terms and conditions which outlined cancellation costs when Ms K applied for an account online and that a welcome pack was sent following this including this and other information.

As a resolution SCEL offered to restore the contract under the agreed terms following the cancellation up until 9 August and then after - due to exchange rate fluctuations - at a revised rate. But Ms K refused these options and brought her complaint to this service. She wants SCEL to refund the whole amount plus interest.

One of our investigators looked into Ms K's concerns but thought its rates were reasonable and that Ms K wasn't forced into agreeing the exchange rate on the spot and didn't think it had done anything wrong. They thought that she had agreed to purchase a set amount of currency at a specific time when she entered the contract and that SCEL's terms and conditions explains that SCEL aren't liable for costs relating to forward contracts and didn't think it fair to hold SCEL liable for costs for the cancellation of the contract.

Our investigator thought SCEL provided a fair solution to Ms K by agreeing to reinstate the agreement so as to put Ms K back in the position she would be in prior to cancelling the contract.

Ms K disagreed and asked for an ombudsman's decision.

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.

It might help if I explain here this service doesn't supervise, regulate or discipline the businesses we cover - that's the role of the regulator, in this case the Financial Conduct Authority (FCA). And as we are not the regulator, I cannot tell SCEL what exchange rate it must offer or the terms and conditions of its services – these are commercial decisions and not something for us to get involved with.

We do take however, relevant law and regulation into account when arriving at our decisions, but I should point out that The Consumer Duty is a new standard introduced by the FCA and came into effect on 31 July 2023, and as such it doesn't apply to acts or omissions that occurred before this time and so I won't be looking at this in regard to Ms K's complaint – but rather the principles laid out by the FCA at the time Ms K entered into a contract with SCEL.

The FCA doesn't tell businesses what exchange rate they must offer either and so when coming to my decision I haven't looked at whether the rate of exchange on offer was fair. Instead, I've looked at whether the information SCEL provided Ms K before entering into a contract with it was clear, fair and not misleading and whether a reasonable person in her position would've understood what she was agreeing to. And having listened to the phone call – the important bits of which are outlined in the background above – I think it was clear what the contract was for and that Ms K wanted to go ahead.

I accept that Ms K might well have been able to get a better rate elsewhere, but that doesn't mean it automatically follows that SCEL have mislead Ms K or treated her unfairly. I think

most would understand that to continue to provide a viable service a business needs to ensure it covers its costs as well as making a profit and as markets fluctuate it can't simply offer the market rate when locking in an exchange rate.

Furthermore, I think it is noteworthy that it was Ms K who instigated the request for a forward contract and it was over a month following Ms K entering into the contract with SCEL before she contacted it expressing her dissatisfaction and asking to cancel the contract. If Ms K had had any doubts whatsoever about the contract she'd entered into and the exchange rate she'd locked in, I would've expected her to contact SCEL sooner than she did. So overall, I don't think SCEL did mislead Ms K or treat her unfairly when she entered into a contract with it to lock in a rate to buy EUR to purchase a property.

I now need to consider whether SCEL actions were unreasonable when cancelling the contract with Ms K or treated her unfairly during this process.

I think this is less clear. Ms K did state that she wanted to cancel the contract on more than one occasion and wasn't willing to discuss her intentions over the phone. But she had also asked for further information regarding cancellation costs. But after considering all this I don't think I need to make a definitive finding on this point because SCEL offered to put Ms K in the position she be in if it hadn't cancelled the contract by offering to reinstate the agreement up until 8 August where it had to withdraw this offer due to market fluctuations. Which I think was a fair and reasonable way to put things right for Ms K.

However, Ms K didn't want to accept this – she didn't believe the exchange rate was fair and despite it being her instigating the request for a forward contract, she believes she was pushed into accepting this. Ms K wants SCEL to refund her deposit in full plus interest and for it to bear the losses resulting from the cancellation of the contract and the fluctuations in the exchange rate.

My understanding is that SCEL haven't profited from its position, and I don't think it would be fair to punish a business for offering to honour the contract I've found Ms K agreed to and which she denies she gave authorisation to cancel. And nor do I think it would be fair to offer to reinstate the contract indefinitely.

So after considering everything – and I know this will come as a huge disappointment - I don't think SCEL mislead Ms K or treated her unfairly when entering a contract to exchange her GBP into EUR and I think what SCEL offered to do by reinstating the original contract was a fair and reasonable way to settle Ms K's complaint.

It is unfortunate that Ms K didn't accept this offer and due to market fluctuations SCEL is no longer in a position to do this and as a result Ms K has lost out - which I do sympathise with. But I don't think it would be fair or reasonable to penalise SCEL by asking it to compensate Ms K for the losses due to fluctuations in exchange rates outside of its control and so it follows that I do not uphold this complaint.

My final decision

For the reasons I've explained I've decided not to uphold Ms K's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms K to accept or reject my decision before 23 May 2024.

Caroline Davies
Ombudsman