

The complaint

Miss A complains about Smart Currency Exchange Limited's actions in relation to a currency exchange payment transfer she was looking to make to buy a property overseas.

What happened

Miss A was looking to buy a property abroad. She originally approached Smart Currency Exchange Limited ("SCEL") in September 2020 via an online property sales agent, as she needed to buy the property in local currency and transfer funds. Due to the Covid-19 pandemic Miss A postponed her plans, resuming them in 2022. On 20 May of that year, Miss A booked a forward dated currency exchange contract, which required her to pay £4,500 deposit to secure the rate.

The contract was scheduled for settlement on 17 June. But on 25 May Miss A contacted SCEL to say she'd been advised she needed a conversion certificate to support her property purchase. Earlier in the year there'd been a change to legislation in the destination country that made this a requirement for purchases made by foreign nationals. SCEL was unable to provide this certificate, which appears can only be issued by providers connected to the central bank in the intended destination country.

Miss A felt that, as SCEL held itself out as an expert in overseas property transactions, it ought to have been aware of this requirement and that it would be unable to fulfil it. She complained to SCEL, seeking the return of her deposit. SCEL declined to reimburse Miss A. It said it had performed similar transfers for other customers without difficulty, and that it had acted in line with its agreement with Miss A, which didn't include the provision of advice. SCEL told Miss A she was able to cancel the contract and that it would return her deposit less any costs.

The contract was cancelled on 9 June. However, due to currency movements these costs broadly amounted to the whole deposit. Miss A wasn't happy that SCEL wouldn't refund her in full, so she referred the matter to us.

Our investigator wasn't persuaded SCEL had acted incorrectly. It had followed Miss A's instructions and not undertaken to advise her on the purchase of property or overseas legislation. He considered those aspects to be the responsibility of the solicitor Miss A had appointed to deal with the purchase. The contract Miss A had agreed with SCEL permitted it to retain the money it had. So he didn't recommend that her complaint should be upheld.

Miss A didn't accept our investigator's conclusions. She believes SCEL to be in breach of relevant legislation, including the Consumer Rights Act 2015 ("CRA") and the Consumer Protection from Unfair Trading Regulations 2008 ("CPUT"), as well as other government guidance. The dispute has now been passed to me for review.

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, while I appreciate the amount in question represents a significant amount that Miss A is out of pocket, I'm not going to require SCEL to reimburse her. I'll explain why.

Miss A has referenced legislation that is incorporated into her agreement with SCEL, as well as government guidance on their application to foreign exchange providers. I don't find her arguments based on this to be sufficiently persuasive. That SCEL's website said it was a specialist in transfers for people looking to purchase overseas property is not the same as saying it held itself out as a specialist in overseas property purchases. While I accept that is how Miss A read it, I don't find it was a false or misleading statement such that it breaches CPUT provisions.

I am of course aware that Section 49(1) of the CRA provides that: *"Every contract to supply a service is to be treated as including a term that the trader must perform the service with reasonable care and skill."* But under that section, the service that must be provided with reasonable skill and care is the service that contract says is to be supplied.

The contract Miss A entered into with SCEL didn't include an obligation on SCEL to advise Miss A about the way in which she'd decided to undertake her purchase arrangements. Nor did it require SCEL to alert her to the possibility that she may fall foul of new legislation relating to those arrangements.

The legislation enacted in early 2022 was a few months before Miss A entered into the contract with SCEL. Miss A contacted SCEL in May 2022 to say she wanted to execute the currency exchange and onward transfer. It wouldn't be unreasonable for SCEL, in such circumstances, to expect that before giving her instruction Miss A had ensured she was complying with any relevant legislation or regulations relating to her planned purchase.

As has already been noted, she was receiving legal advice in respect of the property purchase. It doesn't seem to me right to say that SCEL was the cause of any loss she incurred due to being unable to comply with the legislation that was in effect before she instructed SCEL.

Taking all of this into account, I see no proper basis on which I could say that in accepting the contract and deposit, SCEL failed to perform its contracted services with reasonable care and skill. Further, Miss A agreed in section 9 of the contract that if SCEL accepted cancellation of her order it could offset any costs or losses it incurred in connection with the contract against her deposit. The loss due to currency fluctuation between the instruction and cancellation would fall into that category.

It's unfortunate that the currency exchange moved against Miss A during that time to such an extent. But that doesn't enable me to find SCEL to have acted unreasonably in declining to reimburse Miss A.

My final decision

For the reasons I've set out here, my final decision is that I don't uphold Miss A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 1 September 2023.

Niall Taylor
Ombudsman