

The complaint

Mr B complains about the way that Smart Currency Exchange Limited handled his currency contract.

What happened

In 2021 Mr B decided to sell his home in France. He wanted to transfer the money to his UK accounts and so he was in need of a currency exchange service. He was introduced to Smart Currency Exchange Limited (SCEL) by his estate agent and he opened an account with it on 16 November 2021.

On 23 November 2021, during a call with SCEL, Mr B agreed to convert €500,000 to GBP with SCEL. At the rate SCEL was offering that day, Mr B was told he would get £410,375. This agreement formed a contract with SCEL and it proceeded to purchase the GBP that day. This ensured that the rate of exchange on that day was secured for when the sale of Mr B's house took place over the following weeks or months – this was a 'forward' contract. Mr B was then required to pay SCEL a £25,000 deposit.

However, in the days that followed this call Mr B began to have concerns about the contract, SCEL's sales tactics and the exchange rate he'd been offered.

Mr B refused to pay the deposit and complained to SCEL. He said he'd been persuaded to commit to the contract urgently by SCEL. He said he felt bullied, harassed and thought SCEL had taken advantage of his vulnerability; Mr B noted that he was in his 70s and had a wife who was terminally ill (which is what had prompted the sale of the property in France). Mr B also didn't feel he'd been offered a fair rate.

SCEL provided a response to the complaint on 24 December 2021. It didn't uphold Mr B's concerns noting he'd agreed the exchange rate during the call on 23 November 2021. It said it would take on board Mr B's feedback regarding pressurised selling as it felt Mr B could have been given more time prior to the booking of the contract but SCEL disagreed that it had taken advantage of his vulnerability.

On the same day, 24 December 2021, Mr B rang to cancel the contract. The difference in exchange rate on the day the contract was cancelled meant that SCEL lost €13,762.17. SCEL advised Mr B that he was liable for this loss and asked him to pay this amount. Mr B remained unhappy and on 20 July 2022 he brought his complaint to our Service.

Our Investigator looked into the merits of the complaint but didn't uphold it. They noted Mr B had agreed to the contract and didn't think the evidence showed Mr B was pressurised into doing so. Mr B disagreed with our Investigator and so the complaint was passed to me to consider.

I noted that the complaint had been brought to our Service over six months after SCEL had responded to Mr B and I considered whether our Service had jurisdiction to look into this complaint. After doing so, I was satisfied that SCEL's response didn't meet the requirements of a final response letter as outlined in the rules that the Financial Ombudsman Service must

follow, known as the Dispute Resolution ('DISP') Rules. For this reason, I decided I could look into the merits of the complaint which I've gone on to consider below.

When considering the case, I asked SCEL for more call recordings so I could get a complete picture of the sales process. I also asked Mr B for more information about when and why he developed concerns about the contract. Mr B told me that in the conversation with SCEL on 23 November 2021 when he agreed to proceed, he was feeling very uncomfortable with the situation and wanted time to take further advice from the estate agent – something he told SCEL. Mr B said he had a creeping sense that he was not dealing with people advising him in his best interests and that his vulnerability and anxiety were being taken advantage of. Mr B explained that he later sold the house and didn't book a forward contract but purchased a SPOT trade which better suited his requirements and offered better value for money. Mr B felt this contract offered poor value for money, something he noted the FCA were to tackle with the Consumer Duty.

I then shared my provisional findings with both parties so they had the opportunity to make any comments or provide further evidence before a final decision was reached. In brief, my provisional findings said that SCEL had acted fairly in the circumstances and I was satisfied the calls didn't indicate SCEL bullied or harassed Mr B.

SCEL didn't make any further comments in response to my provisional findings.

Mr B stressed that he had been treated unfairly in this matter. Mr B made a number of points including:

- In other types of transaction there is a cooling off period and said he was not aware or given any warning in previous discussions that the currency would be bought immediately.
- If he'd been given more time to refer to more knowledgeable people (as requested), he would not have continued with the contract.
- Mr B was being polite and would use phrases like wanting to speak to the estate agent to try to gain space to take advice.
- He did not take advice and then change his mind as suggested in my provisional decision – he said he did not want to proceed as he felt he was being bullied by SCEL.

Whilst Mr B recognised that he must accept a certain responsibility for his actions, he was of the view that SCEL were to blame for their 'bullish behaviour' and not giving him time to reach a proper decision. So he felt a fairer outcome to the complaint would be a compromise.

I've considered these further comments and I'm now in a position to issue a final decision on this complaint.

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.

I'd like to reiterate, as mentioned in my jurisdiction decision, that I empathise with the incredibly difficult position Mr B and his wife found themselves in around the time of this complaint.

Before I begin, I note Mr B has made reference to the Consumer Duty, which is a standard introduced by the Financial Conduct Authority (FCA) which sets clear and high standards of consumer protection across financial services, requiring businesses to put customer needs

first. The Consumer Duty applies to open products and services from 31 July 2023 onwards and it is not retrospective. Which means that I'm not able to apply this principle to Mr B's complaint. That being said, I have still considered whether SCEL acted reasonably and fairly in all the circumstances, taking into account Mr B's vulnerability at that time.

Mr B signed a contract with SCEL. According to the terms and conditions of that agreement SCEL was entitled to charge Mr B for the losses it incurred when he failed to pay the deposit and wanted the contract cancelled. Mr B doesn't dispute that he agreed to the contract and asked for it to be cancelled. However, he feels SCEL bullied and harassed him into committing to the contract in the first place, taking advantage of his vulnerability. So, Mr B doesn't think it's fair that he's charged for this loss – if SCEL hadn't pressurised him, Mr B doesn't feel he'd have committed to the contract and so no loss would have occurred.

So, I've listened to the calls that Mr B had with SCEL – including the call on 23 November 2021 when the contract was agreed ('the contract call') and the calls in the days leading up to this. Having done so I'm not persuaded that SCEL bullied, harassed or attempted to take advantage of Mr B's vulnerability. I'd firstly note that in none of the calls I've heard was SCEL told the full details of Mr B's circumstances. But even if SCEL was aware of Mr B's vulnerability, whilst I'd expect it to be sensitive to this, I wouldn't expect it to make assumptions about Mr B's needs or prevent Mr B from proceeding if he wished to do so.

The contract call took 27 minutes. In advance of this there were a further three telephone calls between SCEL and Mr B or his wife over the course of a week. In these calls the services that SCEL offered were discussed and Mr B and his wife had the opportunity to ask questions and go away and discuss things. Given this, I don't think the sale was rushed and I'd describe the overall tone of all of these calls as conversational.

Within the contract call Mr B indicated that in principle he wanted to go ahead with the deal and the SCEL advisor again gave Mr B multiple opportunities to ask questions about the contract. At no point in the call did the advisor stress the urgency of the deal or suggest that Mr B would lose out if he didn't conclude things that day. There was discussion between Mr B and the advisor about the market trajectory being adverse for Mr B's purposes but also discussion about the fact this wasn't guaranteed. Indeed, Mr B was the first to raise the issue of the downward market trajectory during this call and he indicated that his wife had done some research on how previous reported rises in interest rates had impacted the performance of GBP. The market trajectory was also discussed in earlier calls and it's clear that SCEL was the first to suggest that this could be adverse for Mr B's purposes. But I'm satisfied that SCEL explained the facts behind this opinion and made clear to Mr B that the market was unpredictable. The advisor suggested Mr B go away and look at the charts himself and Mr B's comments in the later contract call indicate his wife did exactly that. So, I'm not persuaded the advisor placed undue pressure on Mr B or provided unfair or misleading information. Whilst it's clear from the call Mr B hadn't ever used a service like this, he also asked questions and left the impression that he understood what he was agreeing to as he was able to accurately summarise the crux of the agreement to his wife in the background during the call where the contract was agreed.

That being said, during the contract call Mr B did raise the fact he'd like to speak to the estate agent helping him with the sale of the property before going ahead. This was raised three times during the call. Given Mr B's concerns about this, I've considered the nature of these exchanges.

The first time Mr B explained he didn't get a chance to speak to the estate agent prior to the call and said he wanted to touch base with her to understand timeframes. Mr B also said '*I don't suppose that really affects this...but from our point of view we're also interested in knowing the timeframe.*' The advisor then explained that with the forward contract the

timescales don't matter too much as they could extend the contract, so there was no rush on contacting the estate agent.

The second time the estate agent was brought up by Mr B was following a discussion about how much money they wanted to exchange. Mr B explained the sale cost of the house included selling and notaries fees, so these would need to be deducted and he wasn't sure about precise amounts. The advisor suggested working on an amount of €500,000 and said that if it was less, SCEL would cancel this off at zero cost to Mr B and if it was more, he could book a separate contract. Mr B then said that the estate agent *'needs to be rowed into all this because she's the only one that really knows...the timing of it all, but if we're saying that actually we don't think that's particularly relevant anyway to that unless we had to restart with somebody else and go on and then maybe in the spring the whole market could be different, quite radically different.'* The advisor then said Mr B should be okay on it as if the contract needed extending, SCEL could do so at zero cost.

So, in these two initial interactions Mr B explained he wanted to contact the estate agent to understand the timings of the sale and the advisor explained that timings wouldn't affect the contract they were arranging. And each time Mr B acknowledged that timings didn't affect or weren't relevant to the contract and the conversation moved on. I don't think the information the advisor was providing Mr B was inaccurate and I don't feel pressure was placed on Mr B – had he still wanted to contact the estate agent prior to agreeing the contract he could have done so.

The last time the estate agent was discussed was toward the end of the call where the requirements and rates had been agreed and the advisor had read out the terms of the agreement and was asking whether Mr B agreed to proceed. Mr B then said he'd like to speak to the estate agent over the phone to check she had no objections. The advisor then said that Mr B could do that, but he'd then have to go through the agreement again and set up a new contract as the rates were constantly changing. The advisor said they were partnered with the estate agent's organisation so she was aware. Mr B explained he didn't want to talk about the deal but to check there hadn't been any changes in relation to the house sale. Mr B said he can't imagine that any objections would be raised given the estate agent had put them in touch. The advisor said *'it's up to you guys, I don't want to put any pressure on you or anything, I'm just conscious that we'll have to go through this process all over again when the contract's ready.'* The advisor then said that he'd suggest getting the contract in place, he'd email it across and then Mr B could email it straight to the estate agent as this is the usual process. Mr B then agreed.

I don't think the advisor pressurised Mr B in the last interaction, but I do think he left Mr B with the incorrect impression that emailing the estate agent after agreeing the contract was the same as speaking to her beforehand. And of course it's not, as the contract couldn't be cancelled without the possibility of incurring costs. So, I think he could have been clearer here. That being said, I've not seen any evidence that persuades me that speaking to the estate agent would have changed things for Mr B in any event. As the advisor correctly observed, the estate agent introduced Mr B to SCEL. I've also seen no evidence to suggest the estate agent was providing Mr B advice on the currency exchange options available to him; what Mr B wanted to discuss was timescales for the sale and I've seen no evidence to suggest there were developments here that would have impacted the currency exchange contract. Given this, I don't think it's likely she'd have had any concerns about the contract or its suitability.

I'm conscious that in response to my provisional decision, Mr B has said he'd use phrases like wanting 'to speak to the estate agent' as a way of trying to gain space to take advice because he was feeling bullied. And of course, if Mr B wouldn't have ever spoken to the estate agent, then it doesn't matter whether she'd have changed his mind. Mr B's argument

here seems to be that if he'd been given more time to speak to the estate agent, he actually would have used this time to reflect and seek financial advice from elsewhere. And this means he wouldn't have proceeded with the contract.

But I think there were points in the contract call where Mr B could have paused the process if that's what he really wanted to do – for example when the advisor said *'it's up to you guys, I don't want to put any pressure on you or anything, I'm just conscious that we'll have to go through this process all over again when the contract's ready.'* If what Mr B really wanted was time to seek further advice, I think he had opportunities to do this. So, I'm not persuaded by Mr B's testimony here.

Mr B also told us he was not aware or given any warning in previous discussions that the currency would be bought immediately. However, I have heard that SCEL told Mrs B this in the call on 17 November and Mr B was told this on the call on 22 November – in both of these calls SCEL explained how the forward contract would work. So, I'm satisfied Mr B was made aware of this at that time, even if it's something he cannot now recall.

Finally, I think it's important to highlight here that this wasn't an advised sale by SCEL. SCEL offered Mr B two types of currency exchange contract. Its role wasn't to provide advice to its customers on what type of currency exchange option, out of all the options available on the market, would best suit their circumstances and purposes. So, what I'd have expected SCEL to have done is to have clearly explained the nature of the contract it was offering Mr B – to provide information that was clear, fair and not misleading. And based on the evidence I've seen I think SCEL did this.

For all of these reasons, I'm not persuaded that SCEL has done anything wrong here. Which means I won't be asking it to do anything differently.

My final decision

For the reasons outlined above, 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 B to accept or reject my decision before 5 January 2024.

Jade Cunningham
Ombudsman