DRN-4552630

The complaint

Mr C and Mr H complain about the service provided by Smart Currency Exchange Limited (SCEL) while trying to convert and transfer around €400,000 from Italy to the UK.

What happened

Mr C and Mr H were selling their property in Italy. They spoke with one of SCEL's traders by phone on 1 June 2023 and agreed to use SCEL's services to receive the proceeds from their house sale in euros. The funds would then be converted to sterling and sent to Mr C's and Mr H's UK bank account. An exchange rate was agreed during the call which would give Mr C and Mr H around £340,000 once the exchange and transfer had taken place.

Unfortunately, Mr C and Mr H began to encounter problems with their Italian bank. The bank told them the funds couldn't be transferred to a third-party account due to anti-money laundering laws.

This prompted Mr C to contact SCEL on 9 June 2023 for advice on what to do next. SCEL said the Italian bank didn't have the authority to refuse to send the funds on. It explained that SCEL was regulated by the Financial Conduct Authority and followed anti-money laundering protocols, so the payment shouldn't have been a concern for the bank. It gave the option of opening a UK-based euro account to deliver the funds through.

Mr C and Mr H sold their property on 12 June 2023, but their issue with the Italian bank remained. Mr C emailed SCEL again on 15 June 2023 where a discussion about cancellation of the contract was had. SCEL explained that if the contract was cancelled, it would need to sell the currency it had secured for Mr C and Mr H back to the market, which would result in an invoice to them both for any loss. It encouraged them to call their bank and quiz it as to why the payment couldn't be made to the SCEL account.

Mr C and Mr H proceeded to cancel the contract and transfer the funds via other means. Mr C later received an invoice from SCEL. The invoice detailed the rate the sterling was initially purchased for and the rate it was sold at upon the cancellation of the contract. It said around €3,350 was now owed by Mr C to SCEL.

Mr C and Mr H didn't think this was fair and contacted SCEL on 20 June 2023.

SCEL took this as a complaint and issued its final response letter. In its response it said it had listened to the call recording from when the contract was entered into and it was comfortable with the contents. It felt the contract was sold correctly.

It highlighted terms of the account which related to cancellation of the contract. The terms explained that Mr C and Mr H would be liable for any losses incurred as a result of cancellation.

The response also addressed their belief that SCEL should have been aware of the potential issue before it arose and that it had sold a product which Mr C and Mr H felt was unsuitable. SCEL explained that it had received funds from a variety of Italian banks for many years.

And whilst it empathised with their situation, it didn't think it had any impact on the contract they'd agreed to.

On 31 August 2023, SCEL responded to further correspondence from Mr C and Mr H. It said it didn't think it was impossible for clients to send funds to SCEL as a third party as it frequently received funds from Italy. As a result, it didn't think there should have been any impediment to the contract. It went on to say it could have provided further documentation or supporting letters for the Italian bank, but wasn't given any opportunity to do so.

Unhappy with this, Mr C and Mr H brought their complaint to our service.

They said the trader told them SCEL's service would cost less than a direct bank transfer and would save thousands of pounds, but they ended up better off doing a direct transfer. They said their Italian bank wouldn't allow them to send the money from their account to a third-party account, so they had no choice but to cancel the contract. They said they were unhappy with the lack of support and advice from SCEL in facilitating the transfer.

Our Investigator didn't uphold the complaint. He didn't identify any issues with the sales call and thought SCEL had acted within its terms and conditions in holding Mr C liable for the loss it incurred by Mr C cancelling the contract. The Investigator explained that SCEL had bought the currency once the contract had been agreed. But the cancellation meant the currency needed to be sold back to the market and, due to market fluctuations, this meant a loss for SCEL – which they passed on to Mr C.

The Investigator also gave an answer on the issues Mr C and Mr H experienced with their Italian bank. He felt this was the main cause of the problems that followed, and not something he could fairly hold SCEL responsible for.

Mr C and Mr H weren't satisfied with this answer. They said they had more evidence to submit. They believed the sale would be considered by law as negligent misrepresentation. They also pointed out some of the statements made by SCEL during the sales process and aftersales support; in particular, that the Italian bank was obliged to follow SCEL's instruction and that the transaction would be considerably cheaper than Mr C and Mr H using their bank directly. They believed that as SCEL was the expert in the matter, it should have warned them about the potential problems they might face.

Mr C and Mr H also mentioned a friend who'd experienced similar issues in using a third-party currency provider with an Italian bank, which, they believed indicated the problem was fairly widespread. And they voiced their unhappiness that SCEL took their initial letter as a complaint, rather than trying to work towards a solution.

The Investigator said that Mr C's and Mr H's point about misrepresentation concerned the enforceability of a contract, and this was something for a court to decide. He noted there was no supporting evidence of an issue with the Italian bank to add weight to their testimony.

Addressing the lack of support from SCEL, the Investigator cited SCEL's comments around only being notified of the issue once the transaction had been completed, agreeing with SCEL that it hadn't been given a chance to help.

The Investigator also addressed concerns about SCEL's claim that its service would be cheaper than a direct transfer. He said the risks in rate changes had been discussed during the sales call, and that Mr C and Mr H had accepted the rate as they didn't wish to take that risk.

Finally, he answered their point around their contact with SCEL being treated as a complaint.

He said it wasn't for a dispute resolution service to recommend how a business should conduct or arrange its commercial operations.

He suggested Mr C and Mr H contact their bank in Italy and complain about not being able to send their money to SCEL.

Mr C and Mr H replied. They said it wasn't correct that SCEL was only notified after the funds were sent. They provided copies of emails to support this and commented that SCEL had said it was aware some customers could encounter difficulties, so again asked why they hadn't been cautioned on that point.

The investigator noted Mr C's and Mr H's points, but said it wasn't unusual for payments of this amount to be questioned and further checks completed. He reiterated that the only evidence of the service not being useable was their verbal testimony.

Mr C and Mr H produced a letter from the Italian bank. It explained the bank had internal regulations for the purposes of complying with anti-money laundering legislation. It indicated the issue had been caused by Mr C and Mr H attempting to transfer the money to an account not held in their names.

The Investigator said he'd reviewed the letter, but it hadn't changed his view of the complaint. He explained that whilst the bank had said it couldn't send the money, it hadn't referred to any specific terms of the account. Nor had it provided evidence to support what it had said.

As no agreement could be reached, the case has been passed to me to decide.

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 won't be upholding this complaint. I realise this will be disappointing for Mr C and Mr H, so I've explained why below.

I don't think SCEL knew Mr C and Mr H would encounter the exact problem they did. I say this as I've seen no evidence that SCEL was aware of this specific issue – only that there were sometimes problems with transfers.

I've also seen no evidence that the issue they encountered was so widespread that SCEL should have known it was likely to occur. I note the Italian bank's correspondence with Mr C and Mr H. However, this letter only goes as far as discussing the bank's own *internal* regulations for the purpose of complying with legislation. It doesn't discuss the legislation itself, provide any evidence to support its statement, or comment on the wider business practices of Italian banks. And, of course, I can't be satisfied (and it isn't for me to say) that the bank itself hadn't made a mistake in its approach.

But even if SCEL *had* seen this issue before, it's important to note that the sale was conducted on an execution-only basis. That meant SCEL didn't need to advise Mr C and Mr H of the potential risks or issues that may be encountered from the wider Italian financial services. With that said, it *did* need to provide all the information required for Mr C and Mr H to make an informed decision.

I've listened to the call where Mr C and Mr H opted to use SCEL for the exchange and transfer of their funds. During that call – lasting around 21 minutes – Mr C and SCEL's trader

discussed the available rates, the timescales involved, and the procedure for sending the funds. Whilst these are all important elements for a satisfactory outcome, I might also have expected the trader to talk about liability in the event of Mr C and Mr H cancelling the contract. This wasn't done during the call I've listened to, so I've thought about whether not mentioning the cancellation terms made a difference overall.

Having thought carefully about this, I don't think things would have been any different had the trader told Mr C and Mr H about the consequences of cancellation during the sales call. I say this because Mr C and Mr H already had an opportunity to research and identify potential obstacles to the completion of the transfer, but hadn't found any which related to the issue at the centre of this complaint. So, as they didn't know about the problem they would eventually face, I don't think they would have had any reason to check with the Italian bank had they been told about the cancellation terms.

I've also thought about whether SCEL acted fairly when invoicing Mr C for its loss. The term SCEL has relied on in its final response to Mr C and Mr H is:

> *'15.2. In the event of termination of any Contract in accordance with or as a consequence of termination under any part of Clause 15.1 above the Client shall be liable for any losses which the Client and or SCEL incurs or suffers as a result of and or in relation to that termination.'*

One of the terms covered under clause 15.1, which clause 15.2 refers to, relates to any breach of any part of the terms and conditions or contract. One such breach, found in clause 7.6 states:

> *'Once a Contract has been made it cannot be withdrawn, rescinded or amended by the Client without SCEL's express consent in writing and at its absolute discretion.'*

It's not in dispute that Mr C and Mr H cancelled the contract with SCEL. So, as SCEL didn't consent to the cancellation of the contract, I think it was fair to have relied on its terms when invoicing Mr C for its loss. The loss itself seems to be due to market fluctuation, which, as the Investigator pointed out, was discussed during the sales call. I don't think it's unusual for a loss to occur in this kind of situation and so I won't be asking SCEL to do anything on this point.

I've thought about the other issues Mr C and Mr H have raised but I don't think they make any difference to the outcome of this complaint. I'll explain why.

Mr C's and Mr H's assertion that the contract isn't enforceable is for the courts – and not our service – to decide. With that said, as I don't think SCEL knew of an issue that would have prevented the transfer, or that it was obliged to advise Mr C and Mr H of the risks, I don't think it made an omission or misrepresentation which induced Mr C and Mr H to enter into the contract.

Mr C's and Mr H's complaint point about SCEL prematurely issuing a final response is a complaint point about complaint handling. This isn't generally something I can award compensation for in isolation. But even if I were able to award compensation on this point, I can't fairly say SCEL did anything wrong here. Where a business believes an expression of dissatisfaction has been made, it is obliged to treat it as a complaint. SCEL's final response letter gave instruction to contact our Service should Mr C and Mr H remain dissatisfied, and they were able to bring the complaint to our Service for consideration.

I know Mr C and Mr H will be very disappointed as I can appreciate this isn't the outcome they were hoping for, but for the reasons I've mentioned above I won't be asking SCEL to do

anything in relation to this complaint.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Mr H to accept or reject my decision before 17 May 2024.

James Akehurst
Ombudsman