

The complaint

Mr W complains that TTT Moneycorp Limited pressured him into entering a forward foreign exchange contract and that it failed properly to explain the contract to him.

What happened

Mr W was buying a house abroad. He opened online accounts with three different foreign exchange services, including Moneycorp. He entered the approximate amount he would be sending abroad.

Moneycorp's dealer called Mr W to discuss his plans. A few days later Mr W used Moneycorp to exchange and send the deposit (10% of the property's purchase price) to his bank abroad.

The following week on 12 March 2024 Moneycorp's dealer called Mr W around midday, while he was at work. Mr W said he was not expecting a call. The dealer explained exchange rates had moved in Mr W's favour. Mr W said he was keen to secure a rate. He was expecting to speak to his mortgage broker the following day, after which he should receive the mortgage offer and have funds in around three to four weeks' time. Following this conversation Mr W sent Moneycorp an email instructing it to secure the agreed exchange rate for the balance of the property purchase price – an amount of approximately £330,000. Moneycorp sent Mr W the contract summary showing a forward exchange rate with a value date of 25 March 2024.

That evening Mr W exchanged emails with Moneycorp's dealer. Mr W thought they'd been discussing a "proposed" contract and that Moneycorp would send the contract paperwork through. Mr W didn't understand why Moneycorp's dealer would put a value date of 25 March 2024 (two weeks' time). They'd not discussed that date and Mr W had clearly said the money to settle the deal would not be available for three to four weeks.

Moneycorp's dealer said he could be "flexible" with the value date but that Mr W had entered into a binding legal contract to exchange money at the agreed rate. If Mr W did not want to proceed it would cost him about £5,444 to break the contract and Mr W should let him know by midday on "13th February 2024" if he did not want to proceed.

Mr W complained that he'd been pressured into the deal and Moneycorp had not explained to him that he was entering into a binding contract. He was confused by the date the dealer had quoted and, based on his concerns he asked Moneycorp to cancel the contract. The dealer did so but told Mr W he would have to cover the loss to it of £5,608.10.

The following week Moneycorp responded to Mr W's complaint. It said its dealer had followed its internal processes and Mr W had given its dealer a clear instruction to secure the agreed rate. Moneycorp accepted that its dealer had not explained the actual date of the transaction, but he had explained that the date was flexible.

As a gesture of goodwill, Moneycorp said it had removed its profit of £845.07 (due to market volatility) when closing out the trade and that it would round this figure up to £1,000. This

meant the loss reduced from £5,608.10 to £4,608.10 which it would recover from Mr W.

Mr W came to us. In summary, he said:

- Moneycorp's dealer knew it was his first time dealing with currency transactions but had failed to explain the legality of the contract to fix the exchange rate, having called Mr W while he was at work.
- He had told the dealer he would not know the exact date to complete the transaction until after the mortgage meeting the next day (13 March 2024). He made it clear that the date he would obtain the funds would be at least three to four weeks away. The dealer ignored that and entered a date into the contract that he knew Mr W could not meet.
- He'd felt pressured into securing a rate without an agreed date. His experience with Moneycorp contrasted with the service he received from a different foreign exchange service, who had taken a 10% deposit for the forward contract when he had a confirmed date that he would receive the mortgage money (in mid-April 2024) and explained the legality of the agreement.

Our Investigator did not uphold the complaint. In summary, he thought Moneycorp had made Mr W aware of the terms and conditions at the time he downloaded its online application. Our Investigator thought the pressure Mr W described was due to the exchange rate fluctuations and the amount Mr W needed to transfer, rather than pressure by Moneycorp's dealer. The dealer had told Mr W his three to four week timescale was fine and that Moneycorp could be flexible, but Mr W decided to cancel the contract.

Mr W strongly disagreed that Moneycorp had made him aware he was entering into a contract. Its dealer called him out of the blue while he was at work. Moneycorp knew he could not enter a contract until he'd met with his mortgage broker and he'd told the dealer he would come back to him the following day with the dates. But Moneycorp's dealer ignored that and inserted a settlement date into the contract that he knew Mr W could not meet.

I reviewed the complaint and issued a provisional decision saying that I intended partly to uphold this complaint. I said:

"What I've provisionally 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 intend partly to uphold this complaint. I will explain my reasons and in doing so I will focus on what I consider to be the key issues.

Advice and pressure

Moneycorp says that Mr W agreed to its terms and conditions when he opened his account with it on 26 February 2024. Mr W has disputed that he was aware of the terms and conditions, but I think it likely that he did – as Moneycorp says – agree to them when opening the online account. For certainty, I invite Moneycorp to provide our Investigator with the relevant section of its online process showing Mr W's acceptance of its terms and conditions.

The terms and conditions included the following provisions:

"2.3 Whilst Moneycorp may provide the Client with information about foreign exchange markets and related matters, Moneycorp does not provide advice. Any

decision the Client makes to enter into a Transaction is made on the Client's judgement alone. It is the Client's responsibility to familiarise itself with the foreign exchange products or services the Client is buying and Moneycorp will assume that the Client has done so."

I don't consider that Moneycorp's dealer gave Mr W financial advice or that he pressured Mr W into the foreign exchange transaction. Having listened to the first call on 12 March 2024, I've heard that the dealer: explained the current market conditions affecting the exchange rate; gave Mr W information about historical exchange rates and the conditions that might mean the rate moved in Mr W's favour or against him; and quoted Mr W a rate that was lower than the spot rate he'd received for the deposit payment on 4 March 2024.

Understandably Mr W wanted to achieve the best rate for the much larger transaction of sending the mortgage money abroad. As he says, the dealer called him unexpectedly and discussed securing a rate. But having listened to the call I don't consider the dealer gave Mr W advice or placed him under any undue or unreasonable pressure to go ahead.

The value date

Moneycorp has referred me to clause 4.1 of its terms and conditions:

"4. MAKING A CONTRACT TO CONVERT THE CLIENT'S CURRENCY

4.1 The Client...may telephone (or email) Moneycorp during Moneycorp's business hours to request a quotation for a Transaction. On receipt of the Client's request, Moneycorp may (at its absolute discretion) provide the Client with any relevant non-binding foreign exchange rate quotations and details of charges. The Client...may then use such quotation to place an Order with Moneycorp for the Transaction ('an Offline Order'). Moneycorp may (at its absolute discretion) accept or reject the Client's Order in whole or part. If Moneycorp accepts the Client's Order, the client cannot (subject to 4.4) cancel, rescind or amend it without Moneycorp's express Written consent and (subject to Manifest Error and clause 4.4) a binding contract will be created between Moneycorp and the Client to buy or sell the relevant foreign currency in the relevant amount at the quoted foreign exchange rate for the relevant Value Date on and subject to the legal terms and conditions of this Agreement (an 'Offline Contract')."

Moneycorp defines "Value Date" as "the date when a Contract matures and the foreign currency or Pounds Sterling the Client buys is ready for delivery or transfer."

In this case, Mr W did not request a quotation. Rather, Moneycorp contacted Mr W. But Moneycorp said that Mr W's email of 12 March 2024 asking Moneycorp to secure the rate amounted to a legally binding order. It then accepted the instructions and issued the contract documentation to Mr W.

Moneycorp said that as set out in clause 4.1 if it accepted the order (as it did here), the client cannot, without Moneycorp's express consent, cancel amend or rescind the order and a binding contract shall be created between Moneycorp and that client to buy or sell foreign currency at the amount agreed on the agreed date.

So, Moneycorp says a binding contract was created between it and Mr W to buy foreign currency at the amount agreed on "the agreed date". But I think the key issue here is that there was not an "agreed date". In these circumstances, I don't consider it fair or reasonable for Moneycorp to hold Mr W responsible for its exchange rate loss when he cancelled the contract. I say this for the following reasons:

Mr W told Moneycorp that he would be meeting with his mortgage broker the following day. The dealer asked Mr W if the mortgage transaction would definitely go ahead, and Mr W said “yes, absolutely”. But Mr W also explained that the timing (that is, receiving the mortgage money) was “out of my hands” and that he would get an offer after meeting with his mortgage broker the following day. Mr W said it was likely to be three to four weeks before he received the mortgage money.

Moneycorp’s dealer did not explain to Mr W what he was doing by securing the exchange rate; that is, that Mr W was entering into a binding legal contract for a forward foreign exchange contract with a value date of 25 March 2024. Indeed Moneycorp itself accepts that the dealer did not discuss the value date.

The dealer said he could “work with” a rough date. After Mr W entered the contract Moneycorp said it could be flexible with the date. But the contract summary included the following information:

“Failure to provide cleared funds before the value date may result in additional charges, which you will be liable to pay and/or it may result in your contract being cancelled. You will then be liable for any resulting loss, in accordance with our terms and conditions.

On 12/03/2024 at 12:30 you entered into a legally binding contract with TTT Moneycorp Limited, the details of which are set out below. Please see our terms and conditions for any more information...”

The Value Date was 25/03/2024 and the note underneath said:

“This is the earliest date we will transfer your purchased currency. If you wish to change this date please contact us on the number above. Please note that amendments may incur an administration charge and the rate of exchange could be affected.”

Moneycorp was aware that Mr W did not have a mortgage offer and did not have a firm date for when he would receive the mortgage money. Mr W did not discuss with the dealer or agree a value date of 24 March 2024. Indeed, it was clear that Mr W would not have been able to meet that date. While Moneycorp said it could be flexible, this is not what the contract said – it said that Moneycorp could apply additional charges or cancel Mr W’s contract if he did not provide cleared funds before the value date, with Mr W being liable for any resulting loss.

Within a few hours of the dealer’s call the “resulting loss” was over £5,400 and that figure increased further by the following day. So I can see that Mr W would have been very concerned about his potential liability to Moneycorp. I don’t think the dealer’s later emails about flexibility was enough to reassure him, where he had been told by Moneycorp that the contract was legally binding. I consider that Moneycorp should reasonably have discussed and agreed the value date before Mr W entered the contract.

I am aware that the exchange rate moved in Mr W’s favour after he asked Moneycorp to secure the rate. That of itself would clearly not be a valid reason for Mr W to be released from a contract. But I think the main issue here for Mr W and the driver for his complaint is that he had entered into a contract to provide Moneycorp with a substantial amount of money by a date which Moneycorp itself had inserted in the contract without Mr W’s agreement and which Moneycorp was aware that he could not meet.

I consider the fair and reasonable outcome in the specific circumstances of this complaint is

for Moneycorp to stand the exchange rate loss and not to recover its loss of £5,608.10 (which it later reduced to £4,608.10) from Mr W. Moneycorp should also allow Mr W to withdraw the amount remaining in his Moneycorp account without any additional charge. It should add to that amount interest at the simple rate of 8% from 13 March 2024 to the date it confirms to Mr W that his account is no longer frozen and he can withdraw the money. This is in line with our usual approach where a consumer has been deprived of the use of their money.”

Responses to my provisional decision

Mr W responded to say that he was satisfied that all information had been correctly considered and with the provisional decision.

Moneycorp responded in detail to say that it did not accept my provisional decision. Moneycorp included some of the evidence that it had previously provided to us: the contract summaries, its terms and conditions and the two calls of 12 March 2024. I will summarise its new comments below.

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 have carefully considered all the additional evidence that I have received. Having done so, I still intend partly to uphold this complaint for the reasons given in my provisional decision and below. I will again focus on what I consider to be the key issues.

Moneycorp says that Mr W gave it both a verbal and written instruction to “*secure the rate*”, and so it disagrees with his assertion that he believed he was discussing a proposed contract with Moneycorp.

I don't think there is any dispute that Mr W instructed Moneycorp to secure the rate. But for the reasons I have already given I don't think Moneycorp gave Mr W sufficient information to explain he was entering into a binding legal contract by instructing the dealer to secure the rate.

Moneycorp refers me to a document that it says shows Mr W agreed to its terms and conditions. I am grateful for that, but to be clear I have decided that Mr W accepted the terms and conditions when opening his online account.

Moneycorp disagrees with Mr W when he said it was his first time dealing with currency transactions. It refers to the foreign exchange transaction (for the deposit) completed on 4 March 2024. I see its point, but I think he was referring here to the overall transaction to buy the property abroad and, in doing so, dealing with the currency transactions. But in any event the 4 March 2024 contract was a spot rate deal where Mr W had the money available to him to complete the transaction. That wasn't the case for the 12 March 2024 transaction, which was a forward foreign exchange deal with a value date that Moneycorp did not discuss or agree with him.

Moneycorp has explained that its service includes updating clients with market fluctuations in the knowledge that Mr W needed to pay the balance to buy the overseas property. It notes that I accepted that its dealer did not provide advice or pressurise Mr W. I acknowledge its point here. I don't consider its dealer provided advice or pressurised Mr W.

Moneycorp accepts that Mr W did not specifically request a quotation from it. But Mr W said

“yeah absolutely, can I do that please” in response to the dealer telling him about the market fluctuations and rate change and potentially securing a rate. Moneycorp says Mr W then instructed it to place the order and Moneycorp accepted the instructions. It issued contract documentation (the contract summary) and, under clause 4.1 of its terms and conditions Mr W could not cancel the contract without Moneycorp’s consent.

Moneycorp says the “value date” is the date the forward foreign exchange contract is paid and settled. Although Moneycorp put the rough date of 25 March 2024 on the contract summary, this date was a flexible one as discussed during the 12 March 2024 calls and emails. The “agreed date” is the date the foreign exchange rate was secured and a legally binding contract was entered into – being 12 March 2024.

Moneycorp refers to several of our Investigator’s conclusions in support of its position and restates that it had offered flexibility in the value date. I appreciate Moneycorp agreed with our Investigator’s assessment of the complaint. But this complaint was referred to me for a decision and I have reached different findings for the reasons explained in my provisional decision and here.

Moneycorp’s comments don’t persuade me to change my mind. I remain of the view that Moneycorp didn’t do enough to explain to Mr W the nature of the contract he was entering into or what it meant to him to secure the rate. Importantly, Moneycorp knew that Mr W did not have the money to complete the deal and did not have a mortgage offer at that point. The contract summary did not suggest flexibility around the value date. For ease I will repeat the wording below:

“Failure to provide cleared funds before the value date may result in additional charges, which you will be liable to pay and/or it may result in your contract being cancelled. You will then be liable for any resulting loss, in accordance with our terms and conditions.

On 12/03/2024 at 12:30 you entered into a legally binding contract with TTT Moneycorp Limited, the details of which are set out below. Please see our terms and conditions for any more information...”

The Value Date was 25/03/2024 and the note underneath said:

“This is the earliest date we will transfer your purchased currency. If you wish to change this date please contact us on the number above. Please note that amendments may incur an administration charge and the rate of exchange could be affected.”

The dealer’s comments on the 12 March 2024 call and the emails that evening suggested flexibility. But it was not until after the 12 March 2024 call that Moneycorp told Mr W that he’d entered into a legally binding contract. And the contract summary said if Mr W did not provide money by the value date then he would be liable for any resulting loss. Any change to the value date would incur an administration charge and the rate of exchange could be affected.

Moneycorp was the expert in this transaction and I remain of the opinion that it did not explain to Mr W the nature of the contract he was entering into. Moneycorp inserted a date into the contract that it had not discussed or agreed with Mr W. It did not explain to him that under the contract terms he would be required to provide the funds for the transaction by the value date despite being aware he did not have the funds and might not have them for several weeks.

I have acknowledged the exchange rate moved in Mr W's favour after he instructed Moneycorp to secure the rate. But I also consider the main driver for the complaint was that Mr W did not have the funds available to him as set out and required in Moneycorp's contract summary. The loss was over £5,400 by the evening of 12 March 2024 and so he cancelled the contract. I don't consider Moneycorp's emails were enough to reassure him given its clear position in the contract and I still think the fair and reasonable outcome is for Moneycorp to stand the exchange rate loss in full.

Moneycorp says that I have not awarded Mr W compensation but rather I have said that Moneycorp does not recover its loss from him. As such, it has asked me to review my interest award because I have not awarded compensation. It says that the cancellation of the contract resulted in a loss, which meant Mr W's account showed a negative balance. As such, his account was restricted until he made payment to clear the negative balance.

I seek wherever possible to put consumers in the position they would have been in had the act or omission not happened. In this case, I don't consider it was fair for Moneycorp to hold Mr W responsible for the exchange rate loss for the reasons I've explained. This means that Mr W should have been able to withdraw the balance remaining in his Moneycorp account on 13 March 2024, but instead it restricted the account. As such he was deprived of the use of his money.

To be clear I am not requiring Moneycorp to pay interest on top of a compensation award. Rather I am requiring Moneycorp to pay Mr W interest as part of my award because he has been deprived of the use of the money held in his Moneycorp account. So I also consider that it's fair that Moneycorp pay Mr W interest on the amount held in his Moneycorp account that he has not been able to use.

There is further information about our approach to interest awards on our website.

My final decision

For the reasons given in my provisional decision and above, my final decision is that I partly uphold this complaint. I require TTT Moneycorp Limited:

- Not to recover the exchange rate loss of £5,608.10 (which it later reduced to £4,608.10) from Mr W; and
- Allow Mr W to withdraw the amount remaining in his Moneycorp account. It should add to that amount interest* at the simple rate of 8% from 13 March 2024 to the date it confirms to Mr W that his account is no longer frozen (or 'restricted') and he can withdraw the money.

**If Moneycorp considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr W how much it's taken off. It should also give Mr W a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 1 August 2024.

Amanda Maycock
Ombudsman