

The complaint

Mr O complains that Forex Capital Market Limited acted unfairly when closed his trading positions – causing him losses – having not allowed him to make a deposit.

What happened

Mr O has a trading account with Forex Capital Markets Limited (“FXCM”). He has a trading strategy that involves holding positions on a long-term basis. He deposits money with FXCM from time to time, or trades out of some of his positions, in order to keep his positions open. He says he’s been able to keep positions open for long periods of time trading in this way.

Mr O has a debit card issued by a bank who I’ll refer to as “B” throughout the rest of this decision. He has a mobile phone and an email address and is able to get online without any difficulties. He used his card to pay deposits to FXCM, without any problems, up and until February 2022. Unfortunately, in February 2022, when trying to deposit money with FXCM in response to a margin call, his card kept on getting declined.

Mr O says FXCM sold his open positions because he wasn’t able to deposit money with them and that he made losses as a result. He complained to both businesses about his losses as he didn’t know who was to blame.

FXCM investigated Mr O’s complaint but didn’t uphold it saying that its margin call was valid and that B had declined his payments. Mr O complained to us about both businesses.

One of our investigators looked into Mr O’s complaint about FXCM but didn’t recommend it be upheld. They said that the deadline for FXCM implementing strong customer authentication hadn’t passed at the time of the payment, so FXCM hadn’t done anything wrong. And FXCM had suggested other ways he could make payment. Mr O disagreed and asked for his complaint to be referred to an ombudsman. So, I’ve looked into his 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.

Mr O wanted to make a payment to FXCM using his debit card which involved putting his card details into a website. In other words, an online payment. That’s the type of transaction which is now caught by new rules that require Payment Services Providers (“PSPs”) to apply more rigorous checks than the ones they’ve had to apply in the past. These more rigorous checks are more commonly known as strong customer authentication (“SCA”).

The Payment Services Regulations 2017 (the “PSRs”) implemented the EU Directive that introduced SCA, amongst other things. And the section of the PSRs relating to SCA came into effect in September 2019. But that didn’t mean that businesses had to have these new checks in place by then. The FCA gave PSPs until March 2020 to implement SCA for online banking and gave the e-commerce industry (including card issuers, payment firms and online retailers) until March 2022 to implement SCA for online payments. There was nothing

to stop firms bringing in SCA sooner than that, if they wanted to do so.

In this case, I'm satisfied that B had implemented SCA by February 2022 and that FXCM had methods of making deposits that involved SCA as well as methods of making deposits that didn't. I'm also satisfied that B had taken a decision to decline payments to merchants who hadn't processed those payments in accordance with SCA. That means that when Mr O tried to use his card to pay a deposit to FXCM – using one of the options that FXCM offered – those payments were declined because that particular option involved using a third-party payment vendor who didn't support SCA at the time. I'm satisfied that Mr O contacted FXCM and B to find out what was going on, and that when he did so FXCM suggested other ways that he could make the payment which should have gone through – either because they didn't involve SCA at its end or because the process was one that involved SCA. Mr O says that he tried to make the payment another way, but that this payment also failed. I can, however, see that he didn't go back to FXCM to let it know, and that FXCM also tried to contact him to discuss other options if needed but got no response. In the circumstances, I agree with our investigator, that FXCM didn't do anything wrong in this case as it had offered Mr O alternative ways of paying.

Mr O understands how trading on FXCM works, so I'm not going to get into the detail of how margin calls work or why FXCM would normally close an open position if a margin call wasn't met. But I do think it's worth adding that even if the payment had gone through, given the way the markets were moving, Mr O would have been asked to deposit another £3,200 – on top of the £1,000 payment he was trying to make – that day. And that his positions would have carried on making losses. That's another reason why I don't think it would be fair to tell FXCM to refund Mr O – he's asking for, in effect, the value of his holdings at the time.

My final decision

My final decision is that I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss E and Mr O to accept or reject my decision before 12 May 2023.

Nicolas Atkinson
Ombudsman