

## **The complaint**

Mr H has complained about the losses he suffered when trading foreign exchange contracts upon the advice of A.N. ALLNEW INVESTMENTS LTD ('LegacyFX').

## **What happened**

Mr H became a client of LegacyFX's services after opening his account in September 2020. He carried out trades and incurred losses so raised a complaint.

LegacyFX didn't agree that it had done anything wrong. It said;

- The market had gone against Mr H and experienced large market fluctuations resulting in his funds being affected.
- LegacyFX couldn't guarantee any sort of return for clients when dealing with markets which were out of its control.
- Any trading signals that it presents were not to be understood as advice.
- Carrying out trades in complex financial products that LegacyFX offers carries various risks that can result in loss of capital and its clients should fully understand those risks.
- It wasn't prepared to offer any compensation as Mr H hadn't been defrauded and its representatives made sure he was aware of the risks involved. All losses incurred were due to Mr H's own trading actions on his own account.

Remaining unhappy with the outcome Mr H brought his complaint to the Financial Ombudsman. Our investigator who considered the complaint thought it should be upheld. In his initial opinion he said;

- He explained he couldn't consider a complaint about trades carried out prior to 31 December 2020. After that date LegacyFX – which is based in Cyprus – had opted into the Temporary Permissions Regime ('TPR') applicable to the UK so he could consider trades carried out between 1 and 8 January 2021.
- The Financial Conduct Authority's ('FCA') register suggested that LegacyFX wasn't authorised to advise its customers about derivative contracts. But the investigator concluded that advice had been given after reviewing transcripts of messages between LegacyFX and Mr H.
- Mr H had incurred losses of around £13,000 and the investigator thought that should be repaid to him along with £300 for the distress and inconvenience he had suffered.

Mr H accepted the opinion of the investigator. LegacyFX didn't accept any wrongdoing but did offer Mr H £5,000, later increased to £6,500, as a gesture of goodwill to settle the matter but would require him to sign a letter of release form.

LegacyFX then offered Mr H £13,000 which the investigator thought was a fair reflection of the amount Mr H had lost but maintained that LegacyFX should pay him an additional £300 for the inconvenience he had suffered.

Mr H rejected the offer. In the investigator's second opinion letter to Mr H he clarified that the offer was fair – it represented the loss Mr H had suffered net of profits. He didn't think it was fair for Mr H to be paid compensation for the losses while also keeping the profits. LegacyFX shouldn't have given him any advice from the outset of his relationship. He also clarified with LegacyFX that Mr H shouldn't have to sign a waiver.

LegacyFX sent Mr H payment of £13,542.00 which was the overall loss he had suffered plus £300 for the distress and inconvenience he had been caused.

Mr H wasn't happy with the payment and he thought the investigator had changed his opinion when he issued his second view letter.

As the complaint couldn't be resolved, it was passed to me for a decision. I issued my provisional decision explaining that I intended on reaching a different conclusion than the investigator about how the matter should be put right but I asked both parties to give me anything further they wanted me to consider before I issued my final decision. Here's what I said;

"I have considered whether LegacyFX did provide Mr H with advice. Mr H has provided us with transcripts of some of the conversations that were held between him and a representative of the business. After reviewing them, I am of the opinion that LegacyFX did give advice to Mr H.

Because of that, the investigator concluded that LegacyFX had not acted in line with its terms and conditions and the FCA's register suggested it wasn't authorised to offer advice on derivative contracts in any event. And I agree that is the case. I note that in LegacyFX's 'Overview of Terms and Conditions' it states;

### **'Trading Signals**

The trading signals provided by the company are not, nor intend to be, an offer or solicitation to enter any forex transaction. It is solely the account holder's/client's decision to determine which, if any trading signals are to be used for trading on their account(s). The client understands that past performance associated with any trading signals, whether actual, hypothetical, or historically "back-tested" is neither necessarily indicative of nor a guarantee of future performance or success. Clients are aware that any trading signal may result in the total loss of funds deposited.

Please note that all suggestions, advice, or recommendations offered by the company's agents or contained on the trading signals offered, are not formulated by the company itself nor constitute any opinion or official call-to-action by the company. Instead they are derived solely from the current readings of the market from an independent third party, which is subject to change. Any information given should not in any way be construed, either explicitly or implicitly, directly or indirectly, as investment advice, recommendations, or be suggestive as an official investment strategy with respect to a financial instrument.'

I've borne this in mind when considering the complaint and when reviewing the transcripts of the messages between Mr H and LegacyFX. The business has said any trades are solely at the discretion of the customer. But from the transcripts I've seen I am satisfied that during conversations with Mr H the representative went beyond just giving information for Mr H to decide whether he should act upon it. I think advice was given and as a result Mr H acted on that advice. Samples from some of the transcripts of the calls are;

06.01.21 - LegacyFX: "sell 1 lot more gold  
now  
so we can full[y] hedge it"

07.01.21 – LegacyFX: "we must unhedge at the right time  
and buy if we get a green light"

07.01.21 - Mr H: "I need to chat about the sell stop. So many  
questions...."  
LegacyFX: "When you have time we will speak"  
Mr H: "I think it kicked in"  
LegacyFX: "close now  
as it's profiting  
and price is consolidating  
and set up one at  
1909"

08.01.21 - LegacyFX: "we will put some other limits just in case  
market will take care of itself"

I know it's hard, but....Must trust this one  
we have the same goal there at the end"

Mr H: "Ok that's my last 3k.....this has got to work..."

The above suggests to me that Mr H was reliant on LegacyFX and that it gave him advice in order for him to trade. So overall, I'm satisfied that advice was given and LegacyFX needs to put the matter right as concluded by the investigator as it was acting outside of its regulatory permissions and its own terms and conditions.

To put the matter right, I note that LegacyFX has already paid Mr H £13,542.22 which represents the overall loss Mr H made while he was trading with LegacyFX plus £300 for the distress and inconvenience that Mr H suffered. But I don't think that sum is correct.

I say this because The Trade History Report provided by LegacyFX for when Mr H was trading shows that overall Mr H made a gross profit of £18,057.10 and a gross loss of £31,299.32 leaving a net loss of £13,242.22. Mr H wants the profit of £18,057.10 paid to him as well as the net loss. But that is for the whole of the time Mr H was trading, and not just for the trades that took place between 1 and 8 January 2021.

When we uphold a complaint, we look to put the complainant back in the financial position they would have been but for the actions or inactions of the business. So, the customer shouldn't be any worse or better off after the matter has been put right. In this case however I have to consider the Financial Ombudsman's jurisdiction to

look into a complaint as the rules within which we abide by don't allow us to consider all complaints.

As explained above, I can't consider any trades that were carried out prior to 11pm on 31 December 2020. After that date LegacyFX – which is based in Cyprus – had opted into the Temporary Permissions Regime ('TPR'). As a result, we can consider a complaint about trades carried out between 1 and 8 January 2021.

To explain further, the TPR was part of the UK's preparations for Brexit and was established for firms based in the EEA to transition to the UK full regulatory regime. But before 31 December 2020, because of where it is based, LegacyFX wasn't within the jurisdiction of the Financial Ombudsman so I can't consider anything prior to that date.

So, this will have an impact on the redress that is due to Mr H as I can only award redress for the period from 1 to 8 January 2021. For those trades The Trade History Report shows Mr H suffered a loss of £20,212.07. He didn't make any gains during that time. And in any event, I wouldn't award any profits as well as losses. This is because I am of the opinion that LegacyFX shouldn't have been giving any advice to Mr H at all – not just for the advice given which incurred losses.

### **Putting the matter right**

My provisional decision on how LegacyFX needs to put the matter right is to pay him for the losses incurred on his account between 1 and 8 January which looks to amount to £20,212.07.

LegacyFX has already paid for the loss of £13,242.22 so it has to pay the difference between that figure and the losses Mr H incurred between 1 and 8 January 2020.

It has already paid the £300 for the distress and inconvenience as awarded by the investigator so it doesn't need to pay anything further.

With regards to any trades carried out prior to 1 January 2021, if Mr H wanted to make a complaint about those, he would need to raise that with the Cyprus' own ombudsman."

In response to my provisional decision Mr H agreed with it. And LegacyFX said it also agreed with it.

### **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.

Because Mr H and LegacyFX agreed, I see no reason to depart from my provisional decision. So, I confirm those findings and reiterate how LegacyFX should put the matter right.

### **Putting things right**

LegacyFX needs to pay Mr H for the losses incurred on his account between 1 and 8 January which looks to amount to £20,212.07.

LegacyFX has already paid for the loss of £13,242.22 so it has to pay the difference between that figure and the losses Mr H incurred between 1 and 8 January 2020.

It has already paid the £300 for the distress and inconvenience as awarded by the investigator so it doesn't need to pay anything further.

I understand that LegacyFX is already in the process of paying the redress to Mr H.

### **My final decision**

My final decision is that I uphold Mr H's complaint and A.N. ALLNEW INVESTMENTS LTD should put the matter right as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 8 June 2023.

Catherine Langley  
**Ombudsman**