

## **The complaint**

Mr M complains that The Currency Cloud Limited (CCL) retained 'margin' monies when undertaking foreign currency trades on behalf of his company. Mr M says that margin money has never been refunded to his company following the completion of each transaction.

Mr M would now like CCL to refund all of the margin money that he says CCL have held back.

## **What happened**

Mr M is the director of a limited company whose business has a number of overseas suppliers, all of whom need to be paid in currencies other than pounds sterling (GBP). Between June 2019 and July 2022, Mr M's company used a broker, who I shall call Firm T, to purchase their foreign currency, through CCL on their behalf.

Mr M's company was introduced to CCL by Firm T, who was CCL's foreign currency introducer-broker. As part of their arrangement with Mr M and his business, Firm T was authorised to give CCL instructions to sell GBP and purchase foreign currency on his behalf so his suppliers could be paid in their relevant currencies.

In early 2022, Mr M says that his accountant noticed that CCL had been applying a margin to the foreign currency purchases he was asking his broker to undertake for him. However, his accountant explained that it appeared that margin had never been returned following the completion of each purchase.

Shortly afterwards, Mr M decided to formally complain to CCL. In summary, he said that he was unhappy they had retained the margin monies and wanted CCL to refund all of the monies he said that they'd held back. Mr M explained that his accountant believed CCL should refund him £21,753 that had been retained as a margin.

After reviewing Mr M's complaint, CCL concluded they were satisfied they'd done nothing wrong. They also said, in summary, that Mr M's account had always been credited with the full amount of the purchased currency and that the transaction was completed by CCL in accordance with the instructions given to them by Firm T.

CCL went on to say that they had become aware of Firm T's practice of including a 'spread', that is to say, a charge made by Firm T above CCL's market exchange rate in the pricing Firm T had given to customers for the purchase of currency. CCL stated that would likely explain why Mr M's charges might be higher than the charges made by CCL themselves.

However, CCL explained that they had identified a small number of transactions which didn't fit that pattern which they would refund to Mr M. Because of that, CCL explained that they were upholding his complaint in part.

Mr M was unhappy with CCL's response, so he referred his complaint to this service. In summary, he said that he considered CCL had kept hold of monies to which they weren't entitled and as such, wanted them to refund the £21,753 that Mr M said his accountant had determined belonged to his firm.

The complaint was then considered by one of our Investigators. She initially concluded that CCL hadn't treated Mr M fairly and asked them to review all of the transactions that Firm T had undertaken for Mr M and refund any monies that they had retained. However, after CCL provided further evidence that they hadn't retained a margin or deposit on Mr M's transactions, our Investigator was minded to alter her original thinking and explained that she didn't think that CCL had done anything wrong.

Mr M, however, was unhappy with that outcome, so he asked the Investigator to pass the case to an Ombudsman for a decision.

### **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 summarised this complaint in less detail than Mr M has done and I've done so using my own words. The purpose of my decision isn't to address every single point raised by all of the parties involved. If there's something I've not mentioned, it isn't because I've ignored it - I haven't. I'm satisfied that I don't need to comment on every individual argument to be able to reach what I think is the right outcome. No discourtesy is intended by this; our rules allow me to do this and it simply reflects the informal nature of our service as a free alternative to the courts. Instead, I will focus on what I find to be the key issue here, which is whether CCL have treated Mr M unfairly by withholding any of his monies.

My role is to consider the evidence presented by Mr M and CCL in order to reach what I think is an independent, fair and reasonable decision based on the facts of the case. In deciding what's fair and reasonable, I must consider the relevant law, regulation and best industry practice. Where there's conflicting information about what happened and gaps in what we know, my role is to weigh up the evidence we do have, but it is for me to decide, based on the available information that I've been given, what's more likely than not to have happened. And, having done so, whilst I'm upholding Mr M's complaint in part, I'm not going to ask CCL to do anything beyond what they've already proposed in their complaint resolution letter – whilst I appreciate that Mr M will be disappointed by my decision, I'll explain why below.

CCL explained that because of a complaint they received from a different consumer about Firm T (several months prior to Mr M's complaint), they took the decision to suspend Firm T's ability to place orders on their systems. CCL went on to say that their investigations concluded that Firm T had been acting in a manner that was not transparent with CCL and its clients and more broadly, acting in ways not authorised under their terms and conditions. CCL explained that to mitigate against the risk of any future misconduct of Firm T manifesting itself into consumer detriment, they had taken the decision to terminate their relationship with Firm T.

From what I've seen, CCL didn't charge Mr M a margin, rather, Mr M's firm placed deposits with them for five of their specific forward trades. CCL have explained that as Mr M's firm didn't have enough monies credited with them for a number of other forward trades, they asked Firm T to approach Mr M to fund his balance to cover the deposits on his other

forward positions. It seems that a margin would only be necessary when the customer plans to undertake a number of *general* forward trades. As Mr M's firm didn't have any trades that fell into that category (only *specific* forward trades – for which a deposit would be payable), CCL didn't require a margin from Mr M. Importantly though, a large number of Mr M's deals were spot trades, of which CCL don't require either a margin or a deposit for.

However, I can see why Mr M may have thought CCL was applying a margin to his account. As part of his complaint, Mr M has shared various pieces of correspondence that he exchanged with Firm T and that does make reference to a margin being necessary. However, it would seem that a margin, or spread, may have been applied by Firm T, rather than CCL. I say that as, having looked closely at the statements that CCL provided of Mr M's account, I can see no evidence of a margin being applied. However, on the statement that Firm T has provided to Mr M, there is evidence of margin being levied which, in their correspondence to him, they've explained would be used to offset future trades. Mr M explained that he didn't have access to an online portal during his relationship with Firm T and they sent limited information to him following his instructions, and he says that by and large, the relationship was conducted over the telephone. It therefore seems to me that likely obscured Mr M's understanding of what was happening with his transactions and the charges Firm T were applying.

CCL say that they don't charge account fees, only payment fees such as SWIFT charges. Mr M's broker, Firm T, makes its own separate charges, and they were agreed and levied between him and Firm T (I've seen evidence that Firm T offered Mr M rebates on rates and offered discounts of 20 to 40% on some of his trades).

As part of their complaint investigation, CCL also investigated the trades that Mr M had queried. CCL explained that in each of the instances, they had booked the trades that Firm T had instructed (as Mr M's authorised broker) and placed them in their system. They went on to invite Mr M to provide them with any evidence if he had not instructed those trades, or if he believed that he agreed a different rate with them.

CCL explained that the transfer ending XVT was an overfunded deposit which Mr M had already paid the deposit for the trade. CCL stated that they have already refunded £1,600 in respect of that transaction. In addition, CCL said their investigations showed that Mr M was overcharged by \$1,149.21 on trade ending YCG, and that they had identified an amount of \$7,076.03 which did not appear to be a spread charged by Firm T, so they would credit his USD account with an amount of \$8,225.24. From what I've seen, these amounts look fair and reasonable.

I think it's important to be clear here about the relationship between the respective parties. Whilst Firm T may have introduced Mr M to CCL, it was Firm T who Mr M used to relay his orders to CCL and acted as his approved person. That means, CCL treated Firm T's orders as having come from Mr M. And, from the evidence I've looked at, CCL processed the instructions that they received. Given Mr M placed no restrictions on the actions that Firm T could undertake on his account, it seems entirely reasonable for CCL to conclude that any instructions provided by Firm T to transfer monies were coming from Mr M given the client-broker relationship.

I've seen no evidence that CCL improperly held back any of Mr M's monies over what was required to be placed on deposit for specific forward trades and beyond what's already been identified in the complaint resolution letter. So, whilst I'm upholding Mr M's complaint in part, I don't require CCL to take any further action beyond what they've already proposed in their complaint resolution to him of 11 November 2022.

### **Putting things right**

I require The Currency Cloud Limited to refund the two amounts that was set out in their email to Mr M of 11 November 2022 if they've not already done so. The refund should be made to Mr M's company, rather than him personally.

### **My final decision**

The Currency Cloud Limited has already made an offer to pay £1,600 and \$8,225.24 to settle the complaint and I think this offer is fair and reasonable in all of the circumstances.

So, my decision is that The Currency Cloud Limited should pay these amounts to Mr M's company if they've not already done so.

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

Simon Fox  
**Ombudsman**