

The complaint

Mr A is unhappy that Tor Currency Exchange Limited (trading as TorFX) caused delays in sending the US Dollars he'd purchased and with the customer service he received.

What happened

On 23 June 2022, Mr A agreed a 'spot contract' with TorFX. This gave Mr A the option to make a fast transfer which involved him sending TorFX £40,770.56 and they'd in exchange transfer \$49,630 to the recipient account which is an account in Mr A's own name.

Mr A contacted TorFX for updates after he transferred the Pound Sterling amount on 23 June 2022. TorFX sent Mr A proof of the payment being sent on the same day at around 3.30pm.

The following day, the funds hadn't yet credited the recipient account so Mr A chased TorFX again. TorFX told Mr A that they'd raise a query with their bank which is the sending bank and asked Mr A to also present the proof of payment to the receiving bank.

Mr A got in touch with TorFX again asking for an update on 27 June 2022 as the payment still hadn't been credited to the recipient account. He also explained that the receiving bank weren't able to locate the payment with the details they'd supplied and asked for a Unique End-to-end Transaction Reference (UETR).

TorFX told Mr A that they'd placed a trace on the payment and gave him a PET reference to provide to the receiving bank. Mr A contacted the receiving bank again, but he said the receiving bank requested for the UETR again as the PET reference didn't provide the level of detail required on the transaction.

TorFX said they'd request the UETR from the sending bank and then forwarded the details they'd received to Mr A. He then contacted the receiving bank again, but he said that the UETR provided by TorFX didn't work.

Mr A said that the receiving bank used the PET reference and informed him that the payment was cancelled by the sending bank, but they couldn't provide the reasons for cancellation. Mr A asked TorFX to contact the sending bank for an explanation of why the payment had been cancelled and asked them to initiate a new payment as a priority.

TorFX said that it was unusual for the funds not to be returned straightaway with an explanation for why they weren't accepted. But in this instance, they hadn't heard anything. They said they'd follow it up with the sending bank and had also queried the UETR match.

On 29 June 2022, TorFX forwarded the message with questions they'd received from the intermediary bank. They explained the delays were due to compliance reasons. Mr A responded to these questions on the same day.

Mr A continued to chase TorFX for updates on 30 June and 1 July. He asked TorFX to speak to a point of contact at the sending bank that manages the relationship. TorFX

responded explaining they'd chased it up but had been informed the intermediary bank could take up to three working days to action the information sent to them.

On 5 July 2022, Mr A still hadn't received the funds, so he contacted TorFX for an update again. TorFX explained they still hadn't heard back from the intermediary bank and sent another chaser.

The following day Mr A asked TorFX for the UETR again. TorFX provided the same number previously provided which hadn't worked. They said they'd also send a request to the sending bank to query whether the UETR was correct.

Mr A said he'd spent over half hour on the phone with the receiving bank and they couldn't trace the payment using the UETR provided. He expressed his frustration and asked TorFX to give him a specific timeframe. TorFX explained that the sending bank were still waiting for a reply from the intermediary bank.

On 7 July 2022, Mr A chased TorFX again as the payment still hadn't been credited into his account. TorFX explained they couldn't provide a timeline as the intermediary bank weren't replying and the matter had been escalated which they hoped would speed things up.

Unhappy that the funds still hadn't credited his account on 8 July 2022, Mr A asked TorFX to return the Pound Sterling to him. He explained that the US Dollars had strengthened so this should allow him to purchase the foreign currency from another provider.

TorFX explained they'd need to wait for the intermediary bank to return the US Dollars to sell into Pound Sterling before they could return it to Mr A. They said they couldn't give a timescale as the funds were still held by the intermediary bank.

Mr A said he'd spoken to the receiving bank again and the UETR provided still didn't work. But using the PET reference, they were able to inform him that the sending bank had sent incomplete information and that the payment had been cancelled.

He was also unhappy that TorFX were asking him to wait until they receive the US Dollars back from the intermediary bank. He felt they were protecting their financial interest but disregarding his which he thought was unfair. He asked TorFX to return the Pound Sterling back to him straightaway and not wait until the US Dollars were returned to them.

TorFX explained that the delays weren't their fault and they'd sent the funds as instructed. They said that the intermediary bank had asked for compliance information which suggested that the instruction they'd sent was correct. And if the instruction was incomplete, then the intermediary bank would've rejected the payment instead.

Mr A felt that he was being penalised due to TorFX's banking partners. He explained that since he entered into the contract with TorFX, he could only seek redress from them. He didn't feel that he should be penalised since he didn't have any control over who TorFX chose to partner with. He felt he'd done more than expected by spending hours on the phone to the receiving bank trying to trace the payment when he'd been given UETRs that didn't work.

TorFX explained they weren't liable as the failure appeared to be at the intermediary bank who weren't their banking partner. They said they didn't know why the intermediary bank were holding the funds for this length of time, as they hadn't released the funds to the recipient account, nor had they returned the funds. But TorFX said they'd met their obligations as far as they were concerned.

Mr A contacted the receiving bank again. He says they'd informed him that the payment had been on hold as they hadn't received the instruction to credit the recipient's account (MT202) and that the payment had been cancelled.

TorFX confirmed that they hadn't received the funds back. Mr A asked TorFX for a copy of the MT202. TorFX provided Mr A an update from the sending bank to confirm that they'd requested the recall of the funds on 11 July 2022, and they were waiting for a response from the intermediary bank.

Mr A asked TorFX to send a copy of the MT202 again. TorFX provided Mr A with a copy of the SWIFT message sent by the sending bank (MT119COV and CHIPS/SWF message). The sending bank said they had nothing else to provide.

Following another conversation with the receiving bank, Mr A got in touch with TorFX again. He said that the receiving bank told him that the intermediary was acting on behalf of the sending bank and therefore should be able to escalate the issue and deal with them directly.

He asked if TorFX had spoken to the sending bank. He felt the matter should be raised with someone more senior as sending messages wasn't helping. TorFX explained that the sending bank only communicates with intermediaries using SWIFT. And they confirmed that the intermediary bank wasn't acting as an intermediary for the sending bank. They also provided Mr A with a copy of the message they'd received from the sending bank which confirmed that they used a different intermediary bank and the intermediary bank holding the funds was the intermediary bank of the receiving bank. They also provided Mr A with a copy of the MT202.

There were further emails exchanged between Mr A and TorFX between 12 July to 14 July 2022 chasing for updates. Mr A also raised a formal complaint with TorFX on 14 July 2022. Following this, Mr A sold some of his shares to purchase US Dollars from another financial institution as he required the funds to complete on a property purchase.

On 25 July 2022, TorFX received the US Dollars back from the intermediary bank. They told Mr A that they'd transferred the Pound Sterling to his account. Mr A confirmed receipt of the payment into his account on 27 July 2022.

TorFX issued a final response letter in response to Mr A's complaint. They said that they sent the US Dollars to the recipient as per Mr A's instructions. And from their perspective, the transaction was complete. They explained they rely on the global banking systems to convey the money to the recipient account and once it's left their bank account, they have no control over the payment.

They explained they used their best endeavours to ascertain the whereabouts of the funds and to understand the reason for the delay. And they rely on third parties to provide the information Mr A required.

They said they followed the correct protocol to trace the payment using SWIFT to communicate with the intermediary bank who were holding the funds for compliance checks. And despite the sending banks messages, the intermediary bank didn't respond. They said they did everything they could to expedite matters, but since they weren't provided with an

expected resolution date, they couldn't advise Mr A of one.

They explained that they couldn't return the funds back to Mr A until they'd received them from the intermediary bank because they weren't in possession of the funds and any separate payment may have been in breach of regulations. They said they returned the

funds to Mr A as soon as they received them.

Unhappy with TorFX's response, Mr A referred his complaint to our service. He explained he found it difficult to believe that TorFX didn't have a relationship manager appointed to resolve operational issues and that they could only communicate via SWIFT. He explained he spent hours on the phone to the receiving bank to trace the incoming payment. But he was twice supplied with an invalid UETR by TorFX.

Mr A also said that he discovered that the sending bank had received the MT103 but not the MT202 which was causing delays in the payment being applied to the account. He explained that he asked TorFX for a copy of the MT202 and was initially provided with the MT119COV and CHIPS/SWF which he was told was sufficient, and that they had nothing else to provide.

But later the same day, they sent him an email containing the MT202. He explained that the quality of communication and contradictory messages had caused him to lose all trust in TorFX and their banking partner.

To put things right, Mr A asked that he's compensated for the loss of reputation and embarrassment he was caused by the non-receipt of his funds as he was unable to fulfil a third party obligation. He explained he'd made TorFX aware of the purpose of purchasing the US Dollars and that it was critical for him to receive the funds on time. He explained he's lost credibility as he was unable to tell the third party when he'd be able to make the payment.

Mr A also told us about the stress he was under and found himself logging on to his online banking every hour throughout the period in the hope that his funds had arrived. He also wants TorFX to cover the extra cost he incurred when he purchased the same amount of US Dollars from another supplier, and he lost the opportunity cost of having to sell his shares.

He asked our service to independently assess if the intermediary bank was provided with all the necessary information accurately to process the payment. Our investigator looked at the complaint, but wasn't satisfied that TorFX were at fault for the delays. He thought TorFX used their best endeavours, but they didn't have control over the process involving third parties.

Mr A disagreed and asked for an ombudsman to review his complaint. He explained that he tried to chase the receiving bank, but TorFX gave him the incorrect payment tracking information twice and this didn't help the stress he was already under.

He also explained that he was told that he'd need to wait for the refund from the intermediary bank and he'd be exposed to the exchange rate risk during this period. He was unhappy that US Dollars had appreciated, but he didn't receive the upside. He feels if the US Dollars had depreciated, then the resulting loss would've been passed on to him.

My provisional decision

I issued a provisional decision on 21 May 2024, and made the following findings:

"I've looked at the payment flow and I'm satisfied that TorFX and their sending bank processed the transfer to the recipient account as per Mr A's instructions on 23 June 2022.

I've checked with the receiving bank, and they've confirmed that on 24 June 2022, they'd received the payment information but not the funds to credit the account. So, I'm satisfied that TorFX had provided all the necessary details for the payment to be

processed. And the receiving bank wasn't able to credit the recipient account as they hadn't received the funds. If there were any issues with the payment details, such as TorFX sending incomplete or incorrect information, I would've expected to see this noted within the messages between the sending and receiving banks.

The messages between the sending bank and the receiving bank shows that the sending bank told the receiving bank on 28 June 2022 not to act on their instructions to credit the receiving account until they'd received the funds, which had been held by the intermediary bank for their compliance screening. This explains why the receiving bank told Mr A they hadn't received the instructions from the sending bank to credit the account.

It doesn't mean that TorFX or the sending bank hadn't processed Mr A's instructions correctly. They couldn't reasonably give authority for the funds to credit the receiving account due to the funds not being released by the intermediary bank.

Having looked at all the available evidence and on balance, I'm satisfied that the reason for the delay was that the funds were held by the intermediary bank for their compliance screening.

The terms and conditions that apply to Mr A's transaction explain that TorFX can't be held responsible for the delays caused by third parties. I'm satisfied the intermediary bank weren't acting for or on behalf of TorFX or the sending bank. And since the delays here weren't caused by TorFX, the sending bank or the intermediary for the sending bank, I can't fairly hold TorFX liable for the financial loss Mr A says he's suffered or for the distress and inconvenience he was caused by the delays in the transfer.

The intermediary bank asked the sending bank for further details regarding the transaction on 28 June 2022. TorFX promptly forwarded these questions to Mr A on 29 June 2022 and then sent his answers to the intermediary bank the same day.

The SWIFT messages also show that TorFX was actively chasing the sending bank to request updates on the payment from the intermediary bank. Unfortunately, it appears the intermediary bank didn't provide any responses.

Whilst I appreciate the lack of meaningful updates and estimated timescales were frustrating for Mr A, it appears there were no responses from the intermediary bank which meant there were no updates or timescales for TorFX to share with Mr A. So, I can't fairly say TorFX are to blame for this.

I appreciate Mr A's frustration that there wasn't a human point of contact or relationship manager at the sending bank for TorFX to liaise with, to help expedite the payment rather than relying on sending messages.

As an informal service, it isn't our role to interfere with the commercial judgement of businesses on how they run the day-to-day operations. This includes telling a business they should appoint a relationship manager or use a specific system to deal with international transfers as these are legitimate commercial decisions which they're entitled to make.

I understand TorFX have said that their account manager was in touch with their payments and operations team who liaised with their relationship manager at the sending bank. But the funds weren't held up by TorFX or the sending bank – so the sending bank would've had to contact the intermediary for the receiving bank using

SWIFT.

I don't think using SWIFT was unreasonable, as it's a secure messaging system commonly used by banks and other financial institutions to communicate with each other when sending and receiving international payments.

I've thought about TorFX's explanation for not returning Mr A's funds to him before receiving it from the intermediary bank. Having done so, I don't think they acted unreasonably or unfairly here.

They weren't in possession of Mr A's funds as they'd executed the transaction as per his instructions, so I don't think it was unreasonable for them to wait for Mr A's funds to be released by the intermediary bank before returning them to him. Even if it was as Mr A has suggested, to protect their own financial interests.

And given that Mr A's transaction was held up for compliance screening, as TorFX have explained, it may have caused them to be in breach of other rules and regulations. So, I can't say TorFX have done something wrong by not returning the funds to Mr A until they'd received them from the intermediary bank.

I'm also satisfied TorFx didn't cause any delays in returning the funds to Mr A. I can see TorFX acted swiftly on Mr A's instructions to recall the payment. And they promptly returned the funds to Mr A as soon as they'd received it from the intermediary bank.

I've looked at the terms and conditions that apply to Mr A's transaction. Specifically, section 10.9 (b):

"The Client will be liable for all of the costs, expenses and losses (and interest at the rate referred to in Clause 25 on any such sums) that TorFX may incur (including any action it may take or have taken to cover or reduce its exposure) as a result of TorFX entering into such FX Contract with the Client (including the actual or hypothetical costs of unwinding any hedging arrangements which are referable to such FX Contract). Any excess amount held by TorFX in respect of an FX Contract shall be returned to the Client after deducting all other sums due to TorFX."

From my interpretation of the above, Mr A is liable for all the costs, expenses and losses incurred in cancelling the transaction. However, if there are any excess amounts held by TorFX in respect of this transaction, then it should be returned to Mr A after deducting any costs, expenses and losses they've incurred.

TorFX returned £40,770.56 to Mr A which is the amount he paid for the US Dollars – so I don't think there was a loss of funds from changes in exchange rates as I'd have expected TorFX to deduct this from the amount returned.

I understand from Mr A that the US Dollars had appreciated in value when TorFX exchanged these funds back to Pound Sterling to return to him. If TorFX received any excess funds from exchanging the US Dollars back to Pound Sterling, then this should be returned to Mr A, less any costs, expenses and losses.

TorFX should also provide a breakdown to Mr A which includes the details of the excess funds, as well as any costs, expenses and losses deducted from this amount. Since Mr A has been deprived of these excess funds for a significant amount of time, TorFX should also add 8% simple interest per annum on the refund amount from the

date Mr A received his funds (27 July 2022) until the date of settlement.

The email exchanges between TorFX and Mr A show that he wasn't provided with an accurate UETR which the receiving bank could use to trace the payment. I think TorFX should've done more to obtain these details for him and sooner. Mr A also wasted time speaking to the receiving bank without an accurate UETR which meant the information he received was limited. I agree this would've been frustrating and unnecessarily added to the stress Mr A was under.

I also think TorFX should've done more to clarify the points Mr A had raised when he told them that the receiving bank had informed him that they hadn't received their instructions to credit the receiving account. I think this would've helped reassure Mr A during an already stressful time.

Taking into account the impact these issues had on Mr A, but also bearing in mind that TorFX aren't responsible for the distress and inconvenience Mr A was already experiencing due to the delays in the funds reaching the receiving account, I think TorFX should pay £150 compensation to Mr A."

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 asked both parties to respond to my provisional decision and provide further evidence or arguments they want me to consider.

TorFX have accepted my provisional decision. Mr A hasn't responded with any further points or evidence.

Since there aren't any new points or comments from either party, there isn't anything else for me to consider. I'm satisfied with the findings I reached, and I see no reason to deviate from the outcome I explained in my provisional decision.

As a reminder to put things right, TorFX should:

- Calculate the excess funds received from exchanging Mr A's US Dollars to Pound Sterling (if any),
- Deduct any costs, expenses and losses from this amount (if any),
- Refund the difference to Mr A,
- Add 8% simple interest* per annum on this amount from 27 June 2022 until the date of settlement,
- Provide a breakdown of the excess funds and the deductions made to this amount (costs, expenses and losses),
- Pay £150 compensation.

* If TorFX considers that they're required by HM Revenue & Customs to deduct income tax from the interest, they should tell Mr A how much they've taken off. They should also give Mr A a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons explained above, my final decision is that Tor Currency Exchange Limited trading as TorFX should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 8 July 2024.

Ash Weedon
Ombudsman