

The complaint

Mr C on behalf of Mrs C complains that Convera UK Financial Limited ("Convera") failed to make them aware of the consequences of not following through with a transaction. Mr C says had he'd known they'd be liable for any losses they wouldn't have set the rate and waited for a time when they were ready.

What happened

Mrs C held an account with Convera. Mr C and Mrs C wished to exchange their euros for pounds. Mr C spoke with an agent of Convera on 5 October 2023. The agent explained Mrs C had provided Mr C's number regarding booking in a rate to exchange their euros into pounds. Mr C explains they want to exchange 160,000 euro into pounds and wants the best rate and for the agent to speak to a manager to ensure this happens. The Convera agent messages treasury and offers a rate of 1.17 which would give them £136,752. The agent confirms that is the best rate and although Mr C is hesitant he says "All right, Well, it'll will have to be then".

The agent confirms bank details and Mr C confirms they'll transfer the funds over by bank transfer as is normally done. The agent again confirms the euro's being sold and pounds being bought and the exchange rate and that the payment will be made once funds are received from Mr C.

Confirmation of the payment was sent by email directly following this. The outgoing confirmation payment confirms the transaction entered into during the phone call. There is no reference to the terms and conditions of the transaction or otherwise.

Mr and Mrs C decided to use a different company to exchange their euros which gave a slightly better rate and so never transferred the funds to Convera.

Convera sent a reminder email on 12 and 16 October informing Mr and Mrs C that there was an outstanding balance that it hadn't received within this email it said:

"...in accordance with the current Terms & Conditions, all settlements should be received within 5 days of booking. If we do not receive a response within 7 calendar days, any booked deals will be automatically cancelled. Please be aware that dependent on any rate movement since the booking date, you will become liable for any resultant losses when the deal is cancelled."

Mr C responded to this on 19 October saying "I thought that if I didn't react the rate would lapse." And that his wife chose not to go ahead.

Convera then cancelled the transaction which resulted in the loss of euro 3,819.10 which Convera say Mr and Mrs C are liable for under its terms and conditions.

Mr and Mrs C complained. Convera didn't agree it had done anything wrong. It says Mr C provided instructions to book the payment and entered into a legally binding contract. Due to a non-receipt of the settlement payment and Mr C advising they'd used an alternative

provider it cancelled the transaction which resulted in a loss that Mrs C is liable for under the terms and conditions. Convera says by signing the Consent document they confirmed that they understood both parties duties, rights, roles and responsibilities.

Mr and Mrs C were dissatisfied by this and so Mr C brought a complaint to this service on Mrs C's behalf.

Our investigator looked into Mr C's concerns and although they thought it was clear that a rate had been booked, they agreed the cancellation terms weren't made clear at the time. But as Mr and Mrs C had made several transactions before with Convera they thought that it wasn't unreasonable to assume that they'd have been aware of the process and thought they understood that the deal had been booked and so were required to make payment for currency they'd agreed to and as such they were liable for the losses as per Convera's cancellation terms.

Mr C disagrees. He says until they raised a complaint they were never provided with a copy of the terms and conditions and have never been told they would be liable for any losses previously if the transaction was cancelled. Mr C believes because he wasn't fully informed of consequences of not going through with the transaction that they shouldn't be liable for the loss and has asked for an ombudsman's decision.

I issued my provisional decision on 12 June 2024. In my provisional decision, I explained why I was proposing to uphold Mr and Mrs C's complaint. I invited both parties to let me have any further submissions before I reached a final decision and although Convera offered some further thoughts and Mr and Mrs C accepted my decision, neither party have added any new information I haven't seen or considered.

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.

In my provisional decision I said that:

"It might help if I explain here my role is to look at the problems Mr and Mrs C experienced and see if Convera has done anything wrong or treated them unfairly. If it has, I would seek – if possible - to put them back in the position they would've been in if the mistakes hadn't happened. And I may award compensation that I think is fair and reasonable.

And after considering everything and listening to the phone call where the exchange rate was booked, I'm currently intending to uphold Mr and Mrs C's complaint.

When entering into a contract I would expect that certain important terms are made clear so that the customer is in a position where they can make an informed decision about proceeding.

It is not disputed that both Mr C and Convera understood the exchange rate that was being offered and what Mr and Mrs C would receive in GBP for their euros. Nor is it disputed what Mr and Mrs C needed to do to fulfil their part of the contract. Indeed, this is important information Mr C needed to know before he went ahead.

But I also think understanding the consequences of what would happen if Mr and Mrs C didn't fulfil their obligations under the contract – in other words the cancellation terms - is an important term they needed to understand especially considering the not insignificant amounts involved.

Our investigator didn't think the cancellation terms were made clear and I agree. I've not seen anything to show me that Mrs C had received Convera's terms and conditions before the transaction was entered into. And it certainly wasn't discussed during the call where the rate was agreed and contract entered into.

I appreciate Mrs C signed a Consent document around a year earlier. But this doesn't show me she'd been provided with a copy of the terms and conditions or that she understood she was liable for any losses if she cancelled the contract. I also note this document was signed by Mrs C – being her account – and not by Mr C who entered into the transaction.

I appreciate Convera feel that because Mr and Mrs C had entered into these transactions before they were aware of the process. But this doesn't mean they understood the consequences of what would happen if the transaction didn't complete – as this had never happened before. And I think that the important terms and conditions should be agreed and discussed with every contract or transaction entered into individually. I don't think it would be fair to expect or assume the customer understood based on their previous transaction history.

So taking all of this into consideration I don't think Convera has acted fairly in holding Mrs C liable for the losses resulting from it cancelling the transaction because I don't believe Mr C entered into the transaction fully informed of all the important terms he needed to make that transaction. I think it's likely if Mr C had understood the cancellation terms he wouldn't have cancelled the contract or agreed to book in the rate at that time.

And so on this basis, I'm currently intending on upholding this complaint and I don't think Mrs C should be liable for the losses as a result of cancelling the contract with Convera."

Convera say that when Mrs C registered an account with it in 2022 there was a hyperlink to its terms of service and that a customer couldn't have proceeded to create their account without confirming they have read, understood and agreed to the terms and conditions of service. But I don't think a hyperlink is sufficient or shows me that Mr and Mrs C were fully informed of the consequences of what would happen if they didn't fulfil their part of the contract.

Convera also refer to the fact that previously the ombudsman have ruled in favour of the business based on the customer's historical trading. But our job is to make a decision on what is fair and reasonable based on the individual circumstances of each complaint. And having reconsidered everything, and as neither party has provided any further new evidence or arguments for consideration, I see no reason to depart from the conclusions set out in my provisional decision. It follows that I uphold this complaint and that being the case have decided that Mrs C shouldn't be liable for the losses suffered as a result of cancelling the contract with Convera.

My final decision

For the reasons I've explained, I uphold Mrs C's complaint against Convera UK Financial Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 19 July 2024.

Caroline Davies
Ombudsman