

## The complaint

Ms B complains that Smart Currency Exchange Limited (Smart) hasn't located the funds she deposited with them in 2022. She would like Smart to return the £10,137 it deducted from her deposits when she cancelled the contracts so there's no financial loss to her.

## What happened

In order to buy a property abroad Ms B deposited £6,500 with Smart and later added £7,000. She didn't find a suitable property and rolled over the six-month contract each time it expired as advised by Smart. In October 2024 Smart told Ms B that due to currency exchange losses she now held only £2,362. Ms B said she had never been informed by Smart of the potential for loss and was devastated by the reduction of her deposit. Ms B complained to Smart.

Smart said Ms B's complaint concerns the cancellation cost. It said Ms B registered in February 2021 and accepted the terms and conditions which were sent with information explaining how Smart can assist clients to buy property abroad. Ms B entered a contract to buy a property in September 2021. Smart converted £65,000 to 74,150 Euros with Ms B's deposit. Smart said, as an execution only business, funds can only be used by its client, not transferred and this is why it requires a deposit before the client has paid the full balance.

Ms B's contract was due to expire in April 2022, but she wanted a reduction of 11,950 Euros as she intended to purchase a property of a lesser value. Smart said due to the movement in rates it requested she pay £475.39 to make up the shortfall. It said Ms B took a second contract in August 2022 to convert £70,000 to 80,850 Euros and paid a second deposit.

Smart said it remained in sporadic contact with Ms B, and the contracts were rolled over repeatedly at her request. It said this meant the 'value date' was extended until the balance of the contracts required settlement. During this time exchange rates moved against Ms B meaning if the contracts were cancelled at any time a loss would have been generated.

Smart said Ms B wanted to keep the contracts open to look for a property. On review in October 2024, it told Ms B that due to exchange rates there was a risk the deposits may not cover the risk of keeping the contracts open and gave her options. Smart said Ms B decided to cancel the contracts and use the deposit to settle cancellation costs. Smart sold Ms B's Euros with a loss of £10,137.09 and returned the remaining deposit of £2,362.91. Smart said it wouldn't refund the cancellation costs as it had acted in line with the terms and conditions.

Ms B wasn't satisfied with Smart's response and referred her complaint to our service. Our investigator said on the initial call Ms B said she wanted 'something safe' as a means to buy a property abroad for the first time. Smart reassured Ms B about the positive parts of a 'forward contract' but didn't mention any risks – especially concerning the deposit. Smart said the Euros would be in a separate account and she could keep her UK Sterling until making a purchase. Ms B asked if it's better to wait but Smart said 'the sooner, the better' in case the exchange rate drops and suggested locking the contract in for six months.

The investigator said there was no mention of what happens if Ms B cancelled the contract even though she explained her situation. And said sales tactics were used and Ms B should

have been given the options Smart offers with full explanations, and not doing so missed an opportunity to avoid the subsequent errors. On the next call in February 2022 Ms B said she couldn't proceed with the contract and Smart said it could be extended, although likely to cost £200-£250 more. The investigator didn't think potential losses were properly explained to Ms B. But on the next call Smart said it didn't want to extend the contract too much because the exchange rate may slide, and recommended September 2022 as the end date.

The investigator said it isn't clear why Smart thought the forward contract was suitable for Ms B's needs, particularly as she was still 'just looking' and buying a property by September wasn't achievable. The investigator said cancelling the contract completely at this point and subsequently should have been provided as an option to Ms B. She said it's evident Ms B was confused and didn't know what to do, which is why she asked Smart for advice.

Ms B spoke to Smart again in March 2022 and queried the difference of £1,000 in deposit. Smart set out the old and new figures and said as the UK Sterling sum had reduced, the Euros have reduced and £475.39 is the cost of the extension as previously advised. The investigator said this amount of loss wasn't previously advised and Ms B was asked to give authority to confirm the contract without exact figures, which was unprofessional and unfair.

The investigator said a full explanation was given in October 2024 when Smart suggested Ms B cancel the contracts, though it said this wouldn't cost her anything. Later, Smart mentioned a 'spot contract' (where Ms B can lock in a rate when she finally found a property). The investigator said this was the only time Smart suggested an alternative option.

The investigator said the explanation of losing £10,000 should have been given to Ms B in February 2022, and her loss could have been avoided. Nothing other than a marginal reference in the contract refers to the risk to Ms B's deposit. The investigator said the terms and conditions are unclear, full of jargon and difficult to understand.

The investigator said Smart didn't make clear to Ms B that all of the currency bought was at risk, not just the deposit. Smart took a sales approach from the start and as the contracts were agreed verbally, this crucial information should have been explained to Ms B. The investigator said Smart didn't provide Ms B with 'something safe' and had it given proper explanations Ms B would have done things differently. She said Smart should reimburse Ms B the £10,137.09 loss she incurred and the initial £475.39 she lost due to the first contract change. And Smart should confirm the deposit amounts and calculate interest at 8% on them from the dates received, to date to ensure Ms B hasn't suffered further financial loss.

Ms B agreed, but Smart did not, and requested an ombudsman review the complaint. Smart said its staff behaved appropriately on all calls and provided all relevant information to Ms B including its terms and conditions. Smart said these set out very clearly its right to cover risk in the event of default, which occurred here. Smart said it doesn't offer advice, but Ms B had months to familiarise herself with the options. It said Ms B had set funds for a property purchase, but as there was no immediate requirement for the funds, the alternative of a spot contract, which is completed typically in five days or less, wouldn't have been appropriate.

Smart said there's no regulation to prevent the utilisation of sales tactics where appropriate. Smart said there was no pressure selling or other misconduct to invalidate the contract or disadvantage Ms B. As Ms B said she intended to go through with a property purchase at a later date, it extended and partially cancelled contracts to ensure her needs were met. Smart said it purchased the currency at a fixed rate and date of maturity and so an extended contract means Smart bears the risk post maturity date.

Smart said a loss only exists when a contract is cancelled and funds are sold for less than purchased. Smart couldn't predict how many times Ms B would request contract extensions.

Information was provided to Ms B but the decision was her's alone. Smart said there was no way for either party to know in March 2022 that she wouldn't be in a position to proceed in September. Smart said the comment on a call to which the investigator referred about there being no cost at cancellation of the contract was taken out of context. The cost was explained and would be taken from the deposit so that no additional payment was needed.

### **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 was sorry to learn how Ms B suffered distress, panic and confusion when she realised the extent of her losses and the impact this has had on her wish to buy a property abroad.

Smart contracted with Ms B to facilitate her purchase of a property abroad. Smart is an authorised payments firm and does not engage in speculation or allow clients to engage in speculation. Smart explained that when a contract is agreed the full amount of funds the client is buying is immediately purchased by Smart.

Smart said it continually trusted that Ms B would fulfil the agreed contract and complete the purchase of Euros. I can see that Smart has followed Ms B's instructions on how to proceed with her contract and that it hasn't profited from the loss of her deposit as this was due to currency exchange movements. And so, the question is, did Smart provide a fair and reasonable service to Ms B.

In assessing whether Smart acted fairly, I've taken into account the relevant rules and guidelines along with good industry practice. There are general principles that say financial firms should conduct their business with due skill, care and diligence and pay regard to the interests of their customers.

More specifically, firms are required to provide consumers with appropriate information so they can make effective, timely and properly informed decisions. The rules relating to 'Consumer Understanding' say that information must be provided before a product is bought and at suitable points throughout the lifecycle of the product. The Financial Conduct Authority has set out some guidance about how to ensure communications are effective and the information customers are given is clear, fair and not misleading – and understood.

As previously stated, Smart's view is the contract was entered into correctly, and the risk of cancellation costs would have been evident from the previous partial cancellation. The Consumer Duty requires firms to provide information on a timely basis – both before the purchase of a product and at suitable points throughout the product's lifecycle – so they can make informed decisions.

I've looked closely at the terms and conditions provided to Ms B and the communications between the parties, and the information and general advice provided to her by Smart.

The terms and conditions explain that a deposit is required at a margin Smart will determine for forward contracts and this will be held until Smart incurs costs or losses such as on the purchase of currency or from the termination of the contract. The investigator thought this to be a significant term but lost to Ms B amongst the other terms. She said as a significant term it should be in bold, highlighted in a clear and concise way, that Ms B could understand.

We do expect firms to highlight significant terms to consumers within a contract and to ensure understanding within their communications. From the initial calls I haven't found that the first contract was very carefully explained so that the future implications of Ms B not

purchasing a property would have been understood. Smart's member of staff explains the benefit of the contract as avoiding currency fluctuations and trying to avoid the loss of the customer's deposit, which is what happened anyway. I haven't heard any greater explanations on the calls that accompanied the rolling over of the contracts.

I agree with the investigator that there's no clear explanation of the risks the falling exchange rate posed to Ms B's deposit each time she rolled over the contract before October 2024. Smart's staff give careful explanation of the contract benefits and currency sums, with nothing regarding the risk to her deposit. As the investigator has said, these were missed opportunities to explain how the process works and the potential risks.

Smart said to facilitate one of the roll overs of the contract for Ms B, it required additional deposit funds to cover adverse currency movements. Smart's view is that by making this payment she would have been aware of the potential for further loss at the conclusion of the rolled over contract/s. However, as the risk was not made clear to Ms B from the outset I don't think the payment of £475.39 caused her to be aware that a further currency shortfall could cause a far greater loss. And the payment of £475.39 followed a suggestion of Smart's that this 'interim' loss would be about half of this sum.

Over time Ms B reached several value dates for her contract and requested extensions after discussing her situation with Smart. Ms B said she was advised by Smart to roll the contract over as she still hadn't found a property to buy. Smart enquired if the contract was still required and said it felt assured by Ms B that this was the case. Ms B asked Smart's member of staff in March 2022 'what shall I do' and he responded, 'Let's do September'.

Smart said it doesn't provide advice, but it's clear from the phone calls that Ms B relied on the judgement of its staff. So, although Smart is correct to say it repeatedly enquired if Ms B still required the Euro funds and if a property purchase would progress. And correct that at the value date of the contracts Ms B had the choice to cancel but requested extensions, I think this was due to her unawareness of the risks and trusting Smart's expertise.

Ms B contacted Smart in October 2024. Smart enquired about Ms B's intended property purchase and she said it would be unlikely that she would be in a position to view properties until early 2025. Smart said given that a property purchase was very unlikely in the near future the risks of the contract were 'outlined in full' to Ms B.

Smart said that when this was explained Ms B was given the option to either continue with the contract (and accept the potential risk of further losses) or to cancel and accept the loss as it was at that time. Ms B instructed Smart to cancel the contract. Smart then followed its process of selling the Euro sum to its counterparty at the rate on that date and settling the loss from the sum of Ms B's deposit and returning to her the balance.

I'm pleased this conversation took place and can see Smart charged Ms B in accordance with the terms and conditions of the contract. However, the contract had been in place for over two years by this time and the exchange rate had moved further against Ms B meaning a significant loss would be incurred at cancellation. Smart said it became concerned about the financial risk to Ms B but I'm unsure why this took so long to manifest itself and why Smart waited so long to review Ms B's account and alert her to the potential loss. It may have been because by October 2024 Smart feared that a further adverse rate movement would require a further deposit from Ms B to keep the contract open. Once the risks were highlighted to Ms B she immediately cancelled the contracts to avoid further losses.

This explanation of the risks 'in full' went further than previous conversations and is the likely explanation as to why Ms B didn't cancel the contract and mitigate losses when previously

re-funding her deposit. I don't have the impression Ms B knew why she was paying £475.39 out of the deposit or why she received a refund following her reduction of the contract sum.

I thought, when read as a whole, the terms and conditions made reference to the significant points of relevance to Ms B's complaint but without highlighting them as might have assisted her understanding.

In conclusion, I think Smart was over-reliant on the terms and conditions at the start of the contract to highlight risks and didn't support this in the initial calls when the contract was established. I found the information provided to Ms B by Smart in the subsequent calls to be incomplete. Smart's staff wouldn't necessarily have been aware that the contracts would be rolled over at the start (although Ms B said she just wanted to be in a position to buy if she did see anything), but I don't think the roll overs would have been unique to Ms B and so the risks of losing her deposit should have been explained to her.

I understand why Ms B was confused and very concerned after a full explanation of the risks in October 2024. From the evidence provided, I think it likely Ms B would have ended the contracts a long time before she did, had she been made aware of the risks to her deposit. This means that the poor and at times misleading information from Smart directly influenced Ms B's decisions and it follows that it would be fair and reasonable for Smart to compensate Ms B for her related financial loss. I agree with the investigator's assessment of the fair and reasonable compensation in the circumstances of Ms B's complaint.

Our service investigates the merits of complaints on an individual basis and that's what I've done here. I think it's important to say that my decision is final. I realise that Smart will be disappointed by the outcome, but I hope they appreciate the reasons why it had to be this way.

### **My final decision**

For the reasons I have given it is my final decision that the complaint is upheld. I require Smart Currency Exchange Limited to reimburse Ms B the £10,137.09 loss she incurred on her deposit and the initial £475.39 she paid at the first contract change. And Smart should confirm the deposit amounts and calculate interest at 8% on them from the dates received, to date and pay this to Ms B to compensate her for the loss of the use of her funds.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 13 May 2025.

Andrew Fraser  
**Ombudsman**