

complaint

Ms M has complained to Gain Capital UK Limited (t/a Forex.com) about her online trading account.

She says it converted the currency of the funds she deposited into the account without her permission, and that the account should never have been opened as Forex.com is not appropriately regulated.

background

Ms M complained about the management of her account by Forex.com and that was considered by an ombudsman at this Service previously. A final decision was issued in 2017 and so this case does not deal with any of those issues previously considered.

In 2015 Ms M made a deposit of 10,000 EUR, but it was converted to US dollars ("USD") when credited to her account. Those funds were then used to trade on the account and were lost.

One of our adjudicators considered the complaint but recommended that it shouldn't be upheld. She concluded that it was reasonable for Forex.com to carry out the currency conversion under the account terms, and said it wouldn't be fair to compensate Ms M for funds that she's already had the use of.

Ms M was based in Greece, but the adjudicator explained the account had been opened on an execution only basis, and Forex.com was regulated in the UK.

Ms M disagreed with the adjudicator's opinion. She made a number of comments in response, but in summary said:

- She had made transfers through banks in Greece, but Forex.com is not regulated to operate in Greece.
- She'd been asked to give consent for currency conversions on other transactions she'd deposited to his account, and so should have been for this transaction also.
- Her funds should have been held in EUR in a suspense account until consent had been obtained.

She also made reference to issues relating to the third party broker that formed part of her previous complaint.

The adjudicator wasn't persuaded to change her view. She explained that although Ms M had processed the transfers to her account through a Greek bank, it was to another bank which then credited her trading account which is UK regulated. It's not necessary for Forex.com to be regulated in Greece.

She also said the account was set up for trades to be in USD and not EUR, and that as Forex.com couldn't contact Ms M, it couldn't hold the funds in a suspense account indefinitely.

As no agreement could be reached, I've now been asked to review everything afresh and make a decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I've reached much the same conclusion as the adjudicator and for broadly the same reasons.

Ms M has provided a large volume of information to be considered in support of her complaint. It's important for me to confirm that I've considered everything but am only referring in this decision to the issues which I feel are central to the outcome. I also note that Ms M has made reference to a number of points relating to her previous complaint that was reviewed in 2017. I'm unable to re-visit those issues and so I won't be directly referring to them here.

Ms M has expressed concerns that Forex.com is not regulated in Greece, but it does not have to be. It is registered and regulated in the UK, and provides an online trading platform. Provided the eligibility requirements are met, its customers can be from outside the UK – and that is allowed. Ms M said she processed the 10,000 EUR transfer through her Greek bank which Forex.com wasn't regulated for – but as the adjudicator explained, the payment was then processed through another third party bank before being credited to her trading account.

The Forex.com account was set up to enable trades in USD, and Ms M has previously transferred funds into the account which had been converted from EUR to USD with her consent. Whilst I understand that express authorisation to convert the currency had not been given for this transaction, it was clearly her intention to use the funds to trade. So I'm satisfied she would have consented and she ought to have reasonably expected a currency conversion would have taken place. I also agree that it wouldn't have been reasonable to expect that the funds could have been held in a EUR suspense account indefinitely.

If I were to uphold the complaint I would also have to consider how Ms M had been disadvantaged by the actions of Forex.com. It was clearly Ms M's intention to credit the trading account, and whilst it's disappointing her money was lost through subsequent trade positions, I can't hold Forex.com accountable for that.

From the large volume of correspondence Ms M has provided it's evident that many of her concerns still relate to the first complaint she referred to our Service, and there are ongoing issues and possible criminal proceedings relating to that. So although I realise Ms M will be disappointed, in this case, I can't reconsider those issues or reasonably say Forex.com has done anything wrong or treated her unfairly.

my final decision

My final decision is that I don't uphold Ms M's complaint against Gain Capital UK Limited (t/a Forex.com).

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 3 May 2019.

Ross Hammond

ombudsman