

complaint

Mr K complains about the prices at which Swissquote Ltd executed his contract for differences (CFD) trades.

background

Mr K had a CFD account with Swissquote. He had a number of short positions on the Euro/Hungarian Forint (EURHUF) currency pair. So he'd profit if the value of the Euro fell, and lose if it went up.

On the morning of 23 July 2018, the EURHUF moved up and Mr K's account fell into margin deficit. This meant he no longer had enough money deposited to support his positions, and Swissquote closed them.

Some of Mr K's trades were closed at a price of just over 333, and he complained - saying the market price of EURHUF at the time was in fact around 326.

One of our investigators looked into things and didn't think Swissquote had done anything wrong. He said Swissquote had set prices based on rates it received from its liquidity provider and other third party sources. And he said currency prices can vary from provider to provider, so overall he didn't think the prices Mr K had received were unfair.

I issued a provisional decision saying I thought Mr K's complaint should be upheld. I said:

Mr K was trading CFDs based on the EURHUF currency pair. This allowed Mr K to speculate on movements in EURHUF, but the CFDs themselves were provided by (and the prices of them set by) Swissquote.

Swissquote says it gets its prices from one liquidity provider, its parent company which I'll call S. In its terms of business it says of the way it prices CFDs:

"The prices that we quote are determined by us and usually represent a mark-up or mark-down on inter-bank dealing or market rates (consequently our prices may not be the best available at the time you place an order with us)".

I've thought very carefully about the price Swissquote provided to Mr K, and at which it executed his trades. I think this case is finely balanced.

I'm satisfied Swissquote (or S) would be setting the price on which Mr K would be trading, and that its price might be different to prices available elsewhere. Swissquote does indicate this price would generally reflect the market rate, allowing for a mark-up. The size of that mark-up may vary for a number of reasons.

But there's a potential for a conflict of interest inherent in an arrangement where Swissquote and its parent company set the prices at which it will trade with Mr K, and take the other side of those trades. So I think it's particularly important for Swissquote to be able to demonstrate it has managed that conflict by offering prices that fairly reflect those in the underlying market.

Establishing the 'market rate' for a currency pair isn't quite as straightforward as it is for some other financial instruments. The currency markets aren't centralised and

there's no accepted single trading venue where transactions take place. But I don't think that means any price Swissquote offered would be fair. As I've mentioned, given the nature of the relationship between Swissquote and Mr K, Swissquote was in a position to both set the prices to be traded at and also to potentially profit from its dealings with Mr K. So I think it needs to be able to demonstrate it has offered Mr K a fair price and has paid due regard to his interests and treated him fairly.

At its broadest, the underlying market could be said to be made up of all other market participants trading a particular security. And I've not seen anything to suggest anyone – be they a CFD provider, inter-bank dealer or other financial institution – was trading EURHUF at prices above about 326 when Swissquote executed Mr K's trades.

As I've said, establishing the 'true' market price for a currency pair isn't an exact science. But in considering what the market rate for EURHUF was that day I've given particular weight to the prices traded in the inter-bank market – where a significant proportion of spot foreign exchange trading is carried out.

The highest price recorded for EURHUF that day in the inter-bank market was 326.345. Allowing for a modest mark-up and Swissquote's latitude to set its own prices for its CFDs, I'm not persuaded a price of 333, above the highest rate traded in the inter-bank market, was fair.

I acknowledge that the difference here is a matter of a few percentage points. But at the time it executed Mr K's trades the spread between Swissquote's EURHUF bid and offer prices was particularly wide. And the eventual execution prices were higher – albeit not by much – than any other quotes I've seen for this currency pair at that time.

For the reasons I've explained above, I think it is important Swissquote can demonstrate why its prices are different (and, for Mr K, worse) than those in the underlying market. But it hasn't been able to describe how much of the spread was made up of its own mark-up, what sources it or S use to arrive at the prices it quoted, or provided any other third party evidence to explain why the prices it was quoting were fair.

While I accept that S (the source of Swissquote's price feed) is a separate entity, Swissquote's obligation is to Mr K and I think it ought to be able to demonstrate that it has treated him fairly and ensured it hasn't put its or S's interests ahead of Mr K's. At the moment I'm not satisfied it's done so. Specifically, I'm not currently persuaded quoting prices higher than 326.345 (the highest quote in the inter-bank market) was fair or paid sufficient regard for Mr K's interests.

So I think Swissquote should credit Mr K's account as if all those trades it closed at prices higher than 326.345 had closed at that price. Mr K has said that he's also suffered consequential losses because he wasn't able to open new trades due to the size of his losses on these positions. I don't, however, think Swissquote needs to compensate him any further for these potential losses. The currency markets are volatile. And I can't say for sure how much, if anything, Mr K might have made on any subsequent trades. It's quite possible he would in fact have suffered further losses had his bets on the market direction proved incorrect.

Having said that, I'm satisfied that suffering larger losses than he ought to have done, and the impact that had on his account, will have been troubling and upsetting for Mr K. So I think Swissquote should pay him a further £100 in light of that.

Mr K replied to say he accepted my provisional decision. Swissquote responded and said:

- While Swissquote executes its trades with its parent company, S itself has a panel of liquidity providers from which it sources its prices. Swissquote independently monitors the prices it gets from S to ensure they're fair and compares them to a third party pricing stream.
- Swissquote is required to take reasonable steps to obtain the best possible result when executing orders. It isn't required to obtain the best price compared to other providers. Providing such a guarantee isn't possible, and isn't something the regulator requires it to do.

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 not been persuaded to depart from my provisional conclusions, and I'll explain why.

I've considered the points Swissquote has made carefully. And I agree that it wouldn't be reasonable to expect it to match or better the prices other providers offer. But what it does have to do is take reasonable steps to ensure it gave Mr K the best result, and demonstrate that it's done so. It also needs to take account of Mr K's interests and treat him fairly.

In my view, Swissquote still hasn't shown it put Mr K's interests ahead of its own (or S's) and that it gave him best execution as set out in the regulator's rules. I accept that it's possible Swissquote's price may have been higher than other providers, but it hasn't persuaded me that the prices it gave Mr K were a fair reflection of the underlying market at the time.

What I have seen is that this was an arrangement where there was the potential for Swissquote and S to gain from Mr K's losses. And that the price it executed his trades at was above the prices quoted or traded by any other market participant that I'm aware of. Swissquote has detailed the steps it takes to ensure its prices are fair, but it hasn't explained or evidenced that the prices it used to close Mr K's trades in particular were fair. Overall I remain of the view that Swissquote hasn't been able to show it treated Mr K fairly in the way it executed his trades, and so it should compensate him for that.

my final decision

My final decision is that I uphold this complaint. Swissquote Ltd must:

- Credit Mr K's account to put it in the position it would have been in had any EURHUF trades which closed on 23 July 2018 *above* 326.345 instead been closed at exactly 326.345.
- Pay him £100 for the trouble it's caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 12 April 2019.

Luke Gordon
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