

complaint

Mr B complains that when a transaction he'd asked Mortgage FX Limited ("FX") to make for him was cancelled, he got less money back than he'd paid.

background

FX is a foreign exchange company. Mr B agreed that it would convert money for him, so he could complete a purchase for goods overseas.

The exchange rate was agreed at the time, and subject to Mr B passing all of FX's anti money laundering checks, the money would be converted and made available in an account to pay for the goods.

However, in the course of conducting these checks, FX wanted further information. Mr B had referred it to a third party, saying it would provide what FX needed. Some information was then given, but FX wanted more. As time was passing, Mr B was concerned to ensure he made his purchase on time. However, matters were further delayed with FX and the third party still discussing what information remained outstanding.

This led to Mr B asking FX what was happening, which in turn led to a conversation resulting in FX suggesting to Mr B that it would probably be best to cancel transaction.

Mr B was shocked and disappointed, but seemed to agree that this might be best in the circumstances. His concern was that he would get all of his money back. FX told him he wouldn't, as the exchange rate had changed. Mr B made it clear he wasn't happy about this. He said the transaction hadn't gone ahead through no fault of his; that he'd always been willing to provide any information FX wanted; and that it simply wasn't fair for him to walk away with less money than he'd paid in.

FX didn't agree. It stated that its anti money laundering procedures took precedence, and if they couldn't be completed properly, then it wouldn't be able to continue with the transaction. It said it couldn't take responsibility for the deal falling through, as it was only ensuring compliance with its legal and regulatory obligations, and that it was Mr B who'd held matters up and declined to provide the information FX needed. As the money had been converted when it was received, the loss had already been sustained.

Ultimately, the deal was cancelled and Mr B got his money back minus £3,784.15. He then went to his bank and completed his intended purchase that way.

He complained to this service.

Our adjudicator considered all of the evidence. He concluded that while FX couldn't be criticised for ensuring that all necessary checks were carried out before the transaction was completed, in light of the fact that completion never happened, and Mr B didn't get anything for his money, that it wasn't fair for him to have sustained a loss. So FX should give him the rest of his money back.

FX was very vocal in its disagreement. It said that was the way its business worked. Customers would agree an exchange rate, pay their money, the checks would then be carried out, and all being well the transaction would be completed.

It said that on this occasion Mr B, and/or the third party, had refused to provide information needed to complete these checks, and that when it became clear that the issue was unlikely to be resolved, the only alternative was to cancel. It didn't accept it was unfair for Mr B to leave with less money, as the money had already been converted and the loss incurred. It said in order to give him his full money back it itself would have to pay the shortfall, which was also unfair as it hadn't done anything wrong.

FX was keen to stress that its anti-money laundering checks were of the utmost importance, and that in no circumstances could these be compromised, and that in failing to cooperate in providing the information it asked for Mr B had contributed to his own loss. If he had the information, it didn't know why it wasn't given over.

As there was no agreement, the complaint has come to me for a final 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.

I can see valid arguments from both sides of this complaint. It's not black and white, and where there are some grey areas I have to consider what I think is most likely to have happened.

FX is quite correct to state that its anti-money laundering obligations are its priority, and I can't say it was wrong to ensure that it asked for, and obtained, all the information it judged was necessary to allow the transaction to be completed.

Clearly, it didn't get this.

Matters have now moved on from criticising the fact that the transaction didn't go ahead. The issue I need to deal with now is whether it was fair, on cancellation, for Mr B to get back less money than he'd paid in.

I've thought a lot about this, and I've come to the conclusion that I don't think it was.

I'll explain why I say this.

Mr B agreed with FX that it would carry out a fairly straightforward currency conversion for him so he could make his overseas purchase. I'm satisfied that he did this in good faith, and with no reason to think it wouldn't all proceed as normal.

I also don't think Mr B was obstructive with FX in its attempts to extract more information from him. Granted, as time went by and more and more information was being asked for, I've no doubt he started to become impatient and irritated at the lack of progress. However, I haven't seen any evidence of him being wilfully difficult, or refusing to co-operate. He even says that if FX had told him about the problems it was having with the third party he'd have spoken with them himself and sorted matters out.

For FX's part, as I've already remarked, it was quite correct to carry out whatever levels of checks it deemed necessary to satisfy itself of its compliance with the relevant laws and regulations. And for the most part this worked in its dealings with Mr B information was requested, and then provided.

However, by FX's own admission, it became concerned about the source of the funds, and started to want more provenance. Again though, I haven't seen where either Mr B, or the third party to whom he gave authority to liaise with FX on his behalf, ever actually refused to give this.

I do think that the introduction of the third party confused matters. It ought not to have done, but it seems that it did. And I think this meant that all three entities involved in the discussions may at times have not been entirely clear about what the others' respective positions were.

I say this because I've seen a letter from Mr B where he suggests that his approach to FX to find out where matters stood, and to speed things up, was "denied". And I have a submission from FX that suggests its approach to the third party for more information was also "denied".

I'm not sure we'll ever know for certain exactly what happened between all three, and I don't think we need to. What I think I can say is that nobody involved acted in bad faith, or was deliberately obstructive.

Notwithstanding that though, it's clear that the relationship between Mr B and FX started to break down, and once this happened it was always going to be very difficult to get it back on track. This is why when it got to a point where Mr B was so frustrated at the lack of progress, that FX made the suggestion that the arrangement simply be cancelled, saying the case was "in limbo".

This arguably wasn't the right thing to do, but I can see why it was suggested. And for Mr B, already feeling like he was trying to co-operate, but getting nowhere, I can see why he will have felt by this point that FX didn't actually want to help him anymore, and he was effectively being asked to take his business elsewhere.

This he did, and via his bank the transaction went through.

FX argues that because the money Mr B deposited was converted into foreign currency before the checks were done, the loss was sustained at that point. I asked why it was necessary for the money to be converted right away, rather than to wait until the checks were complete, and thereby avoid any risk of exchange rate loss, but I'm not convinced I was given a proper answer. It may well be that it's industry practice to do it this way, but I wanted to know whether there was an alternative. Because, ultimately, by doing it the way FX did with Mr B's deposited funds, and him losing money right away as he did, I'd expect it to be even more important that FX then did everything it could to ensure the transaction went ahead.

However, I'm not sure that FX did do this. While I can see why it was concerned, and then frustrated, when it didn't get all the subsequent information it asked for, I still feel that in the face of Mr B's money already having been converted, FX didn't have the same vested interest in ensuring matters completed.

Despite the fact that things hadn't gone smoothly, I still feel FX was too quick to suggest throwing in the towel. While it will argue that Mr B willingly cancelled, I'm not convinced he had much of a choice. He was trying to work with a business that was clearly not very keen on working with him. And, rightly or wrongly, whom he sensed was being obstructive to him.

I think that if relations hadn't soured in the way they did, and FX hadn't adopted such a non-conciliatory tone with Mr B, that any confusion as to what info remained outstanding and what the third party's involvement in this was, could have been avoided, or cleared up.

I get the impression that FX had simply had enough, and in the face of that Mr B didn't have much choice but to agree to cancel the transaction. However, he made it clear from the outset that he would be expecting his full money back.

I don't think, standing the fact that Mr B himself was always willing to co-operate, and only agreed to cancel on FX's strong suggestion, that it was fair for him to not receive his full funds back. I think there's a good chance the loss could have been avoided if FX had taken a different approach with him, and the transaction would ultimately have gone through, as it subsequently did with his bank.

For this reason, I think FX should pay him back the shortfall between what he originally paid, and the refund he received.

Having said all of this, I don't think FX should pay Mr B any additional compensation. I say this because while I accept he wasn't ever wilfully obstructive, it takes two parties to make a relationship deteriorate as it did, and I suspect there was more he could have done to clear up the confusion between himself, FX, and the third party at the crucial time.

my final decision

My final decision is that to resolve this matter Mortgage FX Limited should pay Mr B £3,784.15, plus interest at 8% simple from 3 September 2015, until it's repaid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 11 April 2016.

Ashley L B More
ombudsman