

complaint

Mr S has complained that FXCM charged a fee on his share-holding account. He says FXCM didn't tell him about the fee.

The account was with FXCM Securities. It's now called Walbrook Capital Markets Limited. But I will call it FXCM.

background

Mr S opened an account with Sharewatch and held shares in a single company in it. He didn't trade on his account for several years. After a series of takeovers the Sharewatch account became an FXCM account.

FXCM introduced a quarterly inactivity fee. According to Mr S, he wasn't made aware of the fee until a letter reached him demanding payment of £700 from FXCM. He then contacted FXCM to complain about the demand.

FXCM says it told Mr S about all of these events and changes. Also that its terms and conditions allow it to tell Mr S about the changes by email and that's what it did. FXCM sold the shares held in the account and used the funds to pay towards the debit balance on the account.

The adjudicator thought the complaint should be upheld she said:

Although FXCM's terms and conditions allow it to vary the contract, the introduction of a fee would have to be explained clearly and fairly. As required by the obligations outlined in the Unfair Terms in Consumer Contracts Regulations, Principle 6 and 7 of the FCA rule book and COBS 2.1.1 R.

FXCM set out its reasons for introducing an inactivity fee. FXCM's email addressed 'Dear Trader' goes on to talk about '*exciting news abounds*' and improvements to its trading platform. This couldn't be described as exciting news to Mr S who didn't trade on his account. He only used it to hold his shares bought years before. FXCM ought to have known this.

FXCM was announcing changes that were introduced to affect customers like Mr S but it wrote in a way that was unlikely to attract their attention. The letter was addressed to 'Dear Trader' but Mr S was really just an account holder. He just wanted to hold his shares for the longer term. It seems likely that Mr S if had received it would read such an upbeat and salesman-like letter as a marketing communication.

FXCM had a responsibility to make its communication clear and it failed to do so. FXCM's objective appears to be to nudge people to start trading or to close their account. And if the client didn't get the hint or act on the nudge FXCM would make a charge to cover the cost it says it incurs of £300 a year. Also FXCM introduced the charge and did nothing to collect this until it had reached nearly £700. Mr S's shareholding wasn't large and it wouldn't have made economic sense for him to pay £300 a year to continue to hold shares to do nothing with them. FXCM should've known this.

She didn't think how the fee was implemented was fair and FXCM ought to have made sure the customer - Mr S - was treated fairly and that it was acting in the best interests of its

client. FXCM had a responsibility to go about things in a fair and reasonable way and it failed to do so.

Her conclusion was that FXCM hadn't treated Mr S fairly. It imposed a charge unfairly and in doing so caused him trouble, frustration and annoyance.

To put things right she said FXCM should return the shares to Mr S and write off any remaining negative balance. Any dividend or other income Mr S would have received from the shares should be paid to him. Mr S should also be allowed to transfer his holding to another broker free of charge, should he choose to do so. FXCM should also pay Mr S £200 compensation for the trouble and upset it has caused him.

FXCM agreed to pay this. The offer was put to Mr S. Mr S didn't agree with the adjudicator about how things should be put right. Mr S pointed out that the shares held in the account had been the subject of a takeover. He said that if he had known this he would have sold the shares immediately before the takeover completed. He said he wouldn't have wanted shares in the new combined entity.

The firm didn't think this was fair. It said it was going to make some further comments but didn't do so.

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 agree in general with the arguments put forward by the adjudicator about how FXCM has dealt with the introduction of inactivity fees. I'm therefore satisfied that the way FXCM introduced the activity fee wasn't fair on Mr S.

However, in the particular case of Mr S I think the situation is slightly different to the rest of the firm's clients.

Mr S has said that both the email address and the postal address that the firm held for him were not correct. His email address had been cancelled and he moved house around ten years ago. He does not appear to have told FXCM. Therefore, however FXCM tried to contact Mr S it would have been unsuccessful. The criticisms of the way FXCM told its clients about the introduction of inactivity fees remain valid.

I'm satisfied that the firm knew or ought reasonably to have known that they had lost contact with Mr S. The email address wasn't valid and would have presumably generated some form of undeliverable notice. Similarly post would have been returned unread. In this situation I don't think it would have been reasonable to introduce the inactivity fee. This would have led to the inevitable build up of fees, the sale of the shares and ultimately a zero account value for Mr S. If it did this I don't think the firm would have treated Mr S fairly.

I don't agree with Mr S's suggestion that it should be assumed he would have sold the shares immediately before the takeover. This was a dormant account and Mr S appears to have either lost track of it or forgotten about it. Therefore I don't think he should be able to in effect sell shares he had lost track of.

To put things right I agree with the adjudicator's original suggestion. The firm should reinstate the shares to Mr S's account. This would be in shares in the new company post the takeover of the original holding and the holding should reflect the terms of the takeover. Any dividends or other distributions that Mr S has missed out on should also be paid back to him. If Mr S wishes to move the shares to a different broker the firm should arrange this free of charge. In addition the firm should pay Mr S the sum of £200 for the inconvenience caused.

my final decision

I uphold the complaint and order Walbrook Capital Markets Limited to pay the redress set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 1 March 2017

Michael Stubbs
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