

complaint

Ms M's complaint is about information and service provided by Gain Capital Forex.Com UK Limited ("Forex"). She says it did not protect the funds in her trading accounts, that it withheld some of her funds unduly and that it misinformed her about her funds.

background

Ms M had two accounts – an execution only master account within which trading took place and a sub account into which funds, to be used for trading, were deposited. Funds deposited into the sub account were liable to being transferred into the master account to support the trading activity.

A limited power of attorney, signed in Ms M's name and dated in May 2014, gave authority to a third party individual to manage and trade within the master account on Ms M's behalf. The document gave the third party the power to act within the account in all relevant ways except with regards to making withdrawals from the account. Responsibility for this arrangement, including the vetting of the third party, rested wholly with Ms M and it could be amended or revoked only in writing.

Ms M has questioned the validity of the signature within the power of attorney and she suggests that it was a forgery. However, she accepts that the arrangement allowing the third party to manage her master account was put in place with her knowledge and consent. Her relationship with the third party individual has since dissolved because she says he acted fraudulently and that he has been, and remains, elusive.

Ms M made four deposits into the sub account (held in USD) which are relevant to her complaint. They are:

- 8,000 EUR in May 2014 – which was converted into around 11,000 USD.
- 10,100 AUD in June 2014 – which was not converted.
- 10,000 EUR in December 2014 – which was converted into around 12,000 USD.
- 10,000 EUR in June 2015 – which was converted into around 11,300 USD.

In 2015, Ms M says she learnt, too late, about the third party's mismanagement of the master account, including misleading account statements she says he had been giving her. She contacted Forex directly to learn about the true state of her accounts and to stop the third party's access to them.

She says Forex gave her conflicting information about her deposits – including the impression that the second deposit had gone missing – and unclear information about all the funds in both accounts (especially about the state of profit, loss and equity in the master account). She completed a transfer process to redirect the sub account balance into a new "self-directed" account to which the third party would not have access. At the time she was told that only the fourth deposit remained in the sub account – the first and third deposits had been moved into the master account. The fourth deposit was transferred to the new self-directed account around August 2015.

Ms M was told that the balance in her master account could only be reached after she revoked the power of attorney in writing. Ms M says she was concerned about the risk of losses within trades that were open at the time and decided not to revoke the power of

attorney. She queried the missing second deposit. Eventually, this deposit was identified and, by early 2016, Ms M had managed to have it remitted to her personal bank account.

Around February 2016 Ms M complained to Forex about its failure to protect her account from the third party, about the missing deposit and delay in remitting her funds, about the level of service she was given and about her concerns that it might have withheld some of her funds.

Forex did not uphold the complaint. It referred Ms M to the power of attorney and to its terms and conditions, in support of its stance that it held no responsibility for the third party or for the management of Ms M's execution only accounts. Ms M referred the complaint to this service. Forex gave further explanations to us in relation to the chronology of the deposits, transfers and remittances it processed in Ms M's accounts.

One of our adjudicators considered the matter and concluded that Forex had done nothing wrong. She said the terms and arrangements for the account meant that Forex was not responsible for the third party or for management of the accounts. She noted that Ms M wilfully chose not to revoke the power of attorney – which could have given her control of her master account (and any balance of the first and third deposits within it) – and that Forex could not be held responsible for that.

With regards to the funds from the sub account, the adjudicator concluded that, overall, the second and fourth deposits were remitted to Ms M within a reasonable time and that there were no clear signs that further funds were owed to her.

Ms M tried to persuade the adjudicator in favour of her complaints – which, after the adjudicator's initial view, she narrowed down to the issues of being misinformed about the whereabouts of the second deposit and of Forex's handling of the transfer and remittance process. The adjudicator retained her initial views, which she explained further in subsequent correspondence, and the matter was referred to an ombudsman.

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 have reached the same conclusions as the adjudicator's for similar reasons.

Protection of Ms M's accounts

Presently, Ms M appears to have abandoned this element of her initial complaint. However, given that it has not been expressly withdrawn and for the sake of completeness, I will address it.

I will not consider or comment upon any suggestion of forgery within the power of attorney document or fraud within the management of Ms M's accounts. Evidence has not been presented for these purposes so I consider such suggestions beyond Ms M's complaint about Forex – especially as the suggestions have not been made against Forex. As such, I am proceeding on the premise that the limited power of attorney was signed by Ms M. I have compared the signature in that document with Ms M's signature in a withdrawal request form she completed and, at face value, I am satisfied that they do not amount to a mismatch.

The terms of the power of attorney are reasonably clear with regards to Forex bearing no responsibility for Ms M's accounts following the third party's appointment and bearing no responsibility for the third party himself. The relevant terms have been quoted sufficiently by Forex and the adjudicator, so I do not propose to do the same.

Forex provided an execution only service and it was entitled to rely upon the signed and dated power of attorney. Thereafter, the third party was responsible for activity within the accounts, Ms M was responsible for monitoring his actions and Forex's role was to execute the relevant trades. Overall, I am not persuaded that Forex was responsible for protecting Ms M's account as she says. I am also mindful that Ms M had the opportunity to revoke the power of attorney (and the third party's access to the accounts) but she chose not to.

Transfer and remittance of deposits

By the time the need to withdraw Ms M's deposits arose, she could access the first and third deposits only if she revoked the power of attorney and took control of the master account. As I said above, she chose not to do that and her decision meant there was no effort to stem any losses in the master account. Had any such losses been stemmed she might have recovered some of her initial deposits, or if she took control of the master account when the balance was positive she might have recovered her deposits and gains on top of them.

In any case, Forex bears no responsibility for what happened to the first and third deposits. They were made into the sub account in 2014 and appear to have been moved into the master account. It had no obligation to question any of these events and they occurred in line with the processes within Forex's accounts (as defined by its terms and conditions). In 2015 Forex discharged its obligation to help Ms M access the remnants, if any, of both deposits when it reminded her about her right to revoke the power of attorney and explained to her that the revocation was required before she could take control of the master account.

The fourth deposit appears to have been quickly identified as a result of Ms M's enquiries in July 2015 and by August 2015 it was transferred to the new self-directed account. I am satisfied that Forex conducted itself reasonably in this respect. Identification and treatment of the second deposit appears to have been less straightforward.

First, fortunately for Ms M, it appears that the second deposit did not reach her sub account in June 2014 – when it was made – or thereafter. Forex says it sought but did not receive further communication from Ms M at the time in order to process it further and Ms M disputes that. I do not consider it necessary to determine where the merits rest in that debate, especially as the outcome appears to have been favourable to Ms M – if the second deposit had reached the sub account around June 2014 it is unlikely that it would have remained there until July 2015 when Ms M began her quest to recover the deposits.

I also do not consider it necessary to focus on Ms M's persistence in getting Forex to identify the second deposit. I understand her strength of feeling in this respect as much as I understand that the Forex official she spoke to at the time could do no more than report the information provided within its system. Due to the second deposit being essentially homeless between 2014 and 2015 I can also understand why information about it was not readily available within its system.

Ms M's queries about the second deposit were in late July 2015, it was later identified and in late October 2015 she started the process, with Forex, to have it remitted to her personal bank account. That was eventually done in January 2016. I note this delay in the process, as

experienced by Ms M. However, there is evidence of Forex experiencing a delay of its own, caused by its bank. On balance, I am not persuaded to blame Forex for the delay.

I have not seen evidence of any additional deposits or funds within Ms M's sub account or outside her master account that have not been identified, transferred or remitted to her.

Service

Overall, on balance and for the reasons given above, I am not persuaded that Forex deprived Ms M of the level of service she was entitled to. The bulk of her complaints appear to relate much less to Forex than they do to the third party who managed her account.

Forex gave Ms M the information she needed to regain control of the master account. Forex appears to have shared information with her as was available at the relevant times and, given the execution only basis of the account, I do not accept that it was obliged to go beyond that by "advising" her on what to do. The delay in identifying the second deposit lasted about a month or two, after Ms M's enquiries in July 2015. Given the deposit's unusual journey from June 2014 such a delay could have been expected and I do not consider that it created a service failing on Forex's part.

my final decision

For the reasons given above, I do not uphold Ms M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 5 June 2017.

Roy Kuku
ombudsman