

## 1 Overview

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### 1.1 Dispute

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The dispute is about whether or not the FSP followed the applicant's instructions regarding an international telegraphic transfer (ITT):

- On 11 October 2016 the applicant, who was in the UK, entered into a foreign exchange trade with a UK broker to bring his AUD savings from Australia to the UK. The "Deal Confirmation" provided that the broker would convert 260,000 AUD to GBP at a rate of 1.6472 (contract).
- On 12 October 2016 the applicant's parents (acting under a Power of Attorney) attended an FSP branch to transfer the applicant's AUD to the UK broker.
- They gave the FSP teller a copy of the contract. She said that she could not give them the GBP rate stated on the contract.
- After some discussion and confusion, the applicant's mother signed an ITT form, instructing the FSP to transfer GBP 157,924 to the broker's account in the UK. The ITT form confirmed that the AUD equivalent was 260,000 based on an exchange rate of 0.6074 AUD/GBP for that day.

The applicant says that:

- The funds should have been sent in AUD, not GBP, so that the broker could convert them at the agreed rate. The teller told his parents this could not be done.
- The account the funds were sent to was an AUD account, not a GBP account.
- As the FSP converted the AUD into GBP before sending them, the applicant lost out on the exchange rate by GBP 3,110.63.
- He wants the FSP to reimburse him for the loss on the exchange rate, as they did not follow his parents' instructions to send the funds in AUD and misled his mother into signing the ITT.

### 1.2 Issues and key findings

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#### **Did the FSP follow the applicant's instructions on 12 October 2016?**

No – the FSP did not follow the applicant's instructions, because it did not give effect to the contract. However, both parties could have taken steps to avoid the mistake that was made.

### **Should the FSP pay the applicant compensation ?**

In the interests of fairness I apportion liability 80% to the FSP and 20% to the applicant.

The FSP should pay the applicant \$4,082.39.

### **1.3 Determination**

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This determination is substantially in favour of the applicant.

The FSP is to pay the applicant \$4,082.39 within 14 days of him accepting this determination and providing details of the Australian account to be credited.

## 2 Reasons for determination

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### 2.1 Did the FSP follow the applicant's instructions on 12 October 2016?

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#### The parties have conflicting recollections

The applicant's parents claim the teller misled them about how the payment could be made. The applicant's father says:

- They asked the teller to transfer 260,000 AUD to the broker's AUD account, based on the contract.
- The teller said she was unable to transfer the funds in AUD, the transfer had to be in the receiving country's currency – i.e. GBP.
- They challenged the teller, insisting that the transfer be in AUD, but the teller maintained that transferring funds in AUD was not possible.
- The branch manager confirmed what the teller said.
- They never mentioned GBP and insisted that the funds should be sent in AUD, at least ten times.
- The teller never told them the funds could be sent in AUD and never said that the broker may incur conversion fees if the funds were sent in AUD.
- There was no disagreement between them, only with the teller.

The teller says:

- The applicant's parents provided paperwork which contained an AUD amount and a GBP amount along with the broker's account details.
- She contacted the FSP's treasury department to book an exchange rate as the funds amount exceeded the FSP's branch limit for transfer requests.
- When she obtained the applicable exchange rate, she showed the applicant's parents the amount of GBP the broker would receive.
- The applicant's parents disagreed with the GBP amount as it did not match the GBP amount on the contract. The teller told them that exchange rates vary all the time.
- The applicant's parents disagreed about what should be done. They considered ringing the applicant, but did not do so because of the time difference with the UK.
- Following further disagreement from the applicant's parents, she told them the funds could be transferred in AUD but it was likely that the broker would incur conversion fees. The applicant's mother was adamant that she did not want this to happen.
- The applicant's parents never instructed her to send funds in AUD or told her that the broker's account was an AUD account. They continued to point to the GBP amount on the contract.
- The applicant's parents were arguing amongst themselves which made it difficult to understand what they wanted. The branch manager was in a meeting, so she was not able to consult him about the ITT.
- Once the details on the ITT form were completed, the teller asked the applicant's mother to check them. She was satisfied that the details were correct and signed the ITT form.

## What the documents show

The contract makes it clear that:

- On 11 October 2016 the applicant entered into a foreign exchange transaction with the UK broker:  
[Broker] confirms the following Foreign Exchange transaction with you...
- The applicant had to pay AUD 260,000 to the broker:  
Please pay Balance to [broker] on Oct 13/2016: 260,000.00 AUD
- An exchange rate of 1.6472 had been agreed.

The ITT form provides that:

- GBP 157,924.00 (AUD equivalent 260,000 at exchange rate of 0.6074) is to be transferred to the broker's account at R bank.
- The applicant's mother has signed the form below an acknowledgment which states:  
I request the issue of a Telegraphic Transfer and accept that [FSP] is not liable for any consequences arising from any circumstances whatsoever beyond its control....

The applicant says that his parents gave the teller a copy of the contract so she could give effect to it and relied on the FSP to know how to do that. The FSP says it relied on the applicant's parents to give clear instructions on his behalf and the teller confirmed that the funds were to be sent in GBP before the applicant's mother signed the ITT form.

The FSP agrees that the applicant's parents gave the teller a copy of the contract. I accept that it is more likely than not that they provided this to the teller with the instruction that they wanted an ITT completed to give effect to the contract. It would not make sense for them to give the teller a copy of the contract unless this is what they wanted her to do.

The teller says it was difficult to understand what the applicants wanted. It is apparent that there was some confusion and a breakdown in communication between the applicant's parents and the teller regarding the ITT. It seems that neither party was entirely clear on what needed to be done to give effect to the contract. I accept that the teller discussed GBP exchange rates with the applicant's parents and that they were confused regarding why she was referring to different rates from that stated on the contract.

Against this background of confusion, the teller gave the applicant's mother the ITT form to sign. The ITT form makes it clear that GBP 157,924.00 is being transferred, not AUD 260,000. It does not give effect to the contract. The applicant's mother has signed the ITT form, relying on the teller to follow their instructions to give effect to the contract.

Usually a party will be bound by what they signed, whether they have read and understood it or not. By signing the ITT form the applicant's mother was confirming that the instructions on it were correct.

Whether or not the applicant's or the teller's recollection is correct, on the teller's version of events it was apparent to her that the applicant's parents were not sure what to do. It therefore should have been apparent that they were relying on her to know what she was doing and to follow their instructions to give effect to the contract. It would have been reasonable for them to do so.

The contract is clear and does not seem difficult to understand. However, if the teller was unable to do so and, in circumstances where, on her own recollection, it was apparent that there was some confusion over what needed to be done, it would have been reasonable for her to consult someone within the FSP who could understand it or could seek clarification. It was not reasonable for the teller to go ahead with the ITT, especially if the applicant's father clearly disagreed and left the branch (though he says he was clear AUD should be sent and did not leave). The teller says the manager was in a meeting (although the applicant's father says the manager confirmed that the funds could not be sent in AUD), which shows that she thought about consulting someone more senior. I accept that the teller was trying to help, but she should have waited until a senior staff member was free to discuss how she could give effect to the contract and should have refused to complete the ITT until she was sure of what needed to be done.

I do not accept that the applicant's mother would explicitly have told the teller to convert the funds to GBP before sending them, as this does not fit with the applicant's father's or the teller's other recollections of their interaction, which clearly demonstrate that she was not sure what needed to be done.

Given the circumstances above, I do not consider that it would be fair for the applicant to be strictly bound by the ITT form signed on his behalf.

## **2.2 Should the FSP pay the applicant compensation?**

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This appears to be a case where both parties are at fault. Both could have taken action to prevent the incorrect ITT being made – the teller by consulting with someone within the FSP who would know what to do and the applicant by making it clear to both parents exactly what he needed. Both parties say that the other seemed confused about what should be done and therefore both could have taken more care to avoid the mistake that was made.

In the interests of fairness, it is my view that liability should be split 80% to the FSP and 20% to the applicant. I consider the loss was primarily caused by the FSP.

I note that the FSP seeks to rely on the acknowledgment in the ITT form to avoid liability (see page 4 above). Even if I accepted that the applicant is bound by the ITT form (which I do not), given the background, the loss he suffered did not arise from circumstances beyond the FSP's control.

The applicant has provided details from the broker of the loss incurred:

- The broker was able to stop the GBP 157,924.00 being credited to its AUD account (which would have resulted in another currency exchange).
- The amount of GBP 157,909 was credited to the broker's GBP account (fees presumably accounting for the difference).
- However, the cost for the broker on 12 October 2016 to buy back the 260,000 AUD sold for the applicant on 11 October 2016 was GBP 160,954.24 (at a rate of 1.615366).
- As the exchange on 11 October 2016 was at 1.6472, this left a shortfall of GBP 3,110.63 (taking fees into account).

The applicant had to reimburse the broker for the shortfall. GBP 3,110.63 equates to around \$5,102.99 at today's rates (1 GBP = 1.6405 AUD). Eighty percent of this equates to \$4,082.39.

The FSP should therefore reimburse the applicant \$4,082.39 within 14 days of the applicant's acceptance of this determination. The applicant needs to provide details of the Australian account to be credited.