DRN-2322116

The complaint

Mr K is unhappy with how CMC Spreadbet Plc handled one of his trades and has wider concerns about his spread betting account.

What happened

Mr K opened a trading account with CMC in 2012. Because of the products on offer, part of the online application process required Mr K to complete an appropriateness assessment. Amongst other things, the assessment gathered relevant information from Mr K in order to see whether he had the necessary knowledge and experience to understand the risks involved. Mr K passed the assessment and his account was opened. He says he didn't use the account much after 2012.

Earlier this year, Mr K wanted to trade again. CMC say he completed an annual review on 10 March, but Mr K disputes this was done.

Late on 15 March, Mr K opened a £2 per point Brent Oil buy bet. At the time, the underlying was trading at just over $32 a barrel. Thinking the price would rise, Mr K planned to take profit at around $35 a barrel.

Mr K says he tried to close his position around an hour and a half later, in the early hours of the morning on 16 March. He says he'd have been around £170 in profit then. But due to an issue with CMC's app on his phone, he wasn't able to.

During the day on 16, 17 and 18 March, Mr K made changes to level at which he would take profit from the trade – this reduced from the $35 figure, down to $33, $32 and $31.

At 4:26pm on 18 March, Mr K called CMC – he said he was having trouble using their app and couldn't amend his position nor could he fund his account. The adviser couldn't see any technical issues had been reported, but flagged his concerns with the relevant team. She offered to amend Mr K's position but he declined. She also offered to fund his account over the phone but Mr K's card was declined. Mr K made some comments around his disbelief that Brent Oil was trading so low.

At 4:46pm, Mr K closed his position – he'd lost just over £1,300. At 4:53pm, he called CMC to withdraw the remaining cash on account. He again commented on the loss he'd just incurred and his surprise at the price.

At 6:12pm, Mr K called CMC again. This time, he said he'd spoken to his bank about the money he'd lost and that they'd suggested he get in touch – he said he didn't really understand what he'd been doing as while he appreciated the concepts, he didn't realise things could move against him so quickly. He also said he wasn't in a position where he could afford to lose money. The staff member asked if he'd like his account closed, but Mr K said he was instead looking for some compensation.

CMC treated what he'd said as a complaint, but they didn't agree they were at fault for his losses. They said there hadn't been any technical issues, so they couldn't see Mr K would have been prevented from closing his position. Despite this, they said he ought to have used the web based platform or called them if there had been a problem executing trades on their app.

They also noted that when Mr K first called them on 18 March, he didn't initially mention anything about wanting to close his position or having trouble in doing so. Instead, the conversations were around amending the position and funding the account despite there being no margin call. So they didn't agree there'd been a problem with closing the trade for which they ought to be responsible for. CMC added that the account was execution-only and Mr K's appropriateness for this sort of trading had been assessed from the outset. But given what they had learned of his situation, they were going to close his account.

Unhappy with this, Mr K asked for our help. He told us he was a vulnerable customer and couldn't afford to lose money – at the time of the trade in question, he was financially unstable and unemployed. He also said it was wrong of CMC to allow him to fund his account with a credit card. Regarding the trade, he said that shortly after opening it he'd decided he didn't fully understand CMC's system and didn't want so much of his money exposed to one trade. But the trade wouldn't close on the platform, and CMC hadn't helped him with this.

One of our investigators looked at what had happened, but he didn't think CMC had done anything wrong. He said, in summary:

- when opening the account, Mr K had told CMC he had experience trading shares as well as spread betting and CFDs – so it was fair for them to allow him to open an account and begin trading
- the annual review completed in March confirmed Mr K was employed, earning money and had savings
- CMC weren't to know when he lost his job, but when they did hear more about Mr K's situation and understood his circumstances they closed the account
- it wasn't necessarily a problem he'd used his credit card to deposit funds
- losing money on trades wasn't enough for CMC to recognise Mr K was in financial difficulty or might have had a gambling problem
- and regarding the Brent Oil trade, he didn't think Mr K had been trying to close it as early as he said he had – that's because it was amended several times and the call recordings didn't reveal this was his intention either – so he didn't think CMC had done anything wrong here either

Mr K didn't agree – he said he hadn't completed the review in March and that the figures for his income, savings and investments weren't right. He also felt that CMC hadn't ensured their rules around funding had been followed. As this didn't change our investigator's mind, the matter was passed to me to decide.

What I've decided – and why

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, and while I recognise this will be very disappointing for Mr K, I agree with what our investigator said for similar reasons.

opening of the account

CMC say they didn't give advice to Mr K, instead the relationship was formed on an 'execution-only' basis. From what I've seen, including CMC's terms of business, I'm satisfied this was the case. As a result, CMC weren't under an obligation to determine if the account was suitable for Mr K. But as a regulated firm, they were however required to check that the account was appropriate for him – the conduct of business (COBS) section within the regulator's handbook is what's relevant here.

COBS 10 required CMC to assess Mr K's appropriateness for opening a spread betting account. To do this, they needed to gather relevant information from Mr K in order to decide whether he had the necessary knowledge and experience to understand the risks involved.

Looking at the answers Mr K provided, I can see that he was employed, earned £35,000 a year and had £10,000 in savings. And with regards to his investment experience, he said he traded shares 'regularly', dealt in spread bets and contracts for differences 'occasionally' and traded other derivatives 'rarely'. The answers given passed CMC's appropriateness assessment and he was deemed eligible to open the account.

CMC needed to check that Mr K had relevant knowledge or experience to understand the risks involved in spread betting. And given his answers to their questions, I am satisfied that the account opened in 2012 was properly assessed as appropriate for him. I appreciate Mr K now says that he didn't understand what was happening to his money, but it was fair for CMC to rely on the answers he provided and for him to establish his comfort and confidence in trading thereafter.

appropriateness thereafter and using credit

Mr K says that he lost his job earlier this year, so this sort of trading wasn't something he ought to have been doing. He says his financial situation means he's a vulnerable customer and CMC shouldn't have let him fund his account with £2,000 from his credit card.

CMC told us Mr K completed an annual review on 10 March. Mr K disputes this happened, along with the figures provided. But I've reviewed what CMC have on file and can see that Mr K's details were indeed updated on 10 March. What's recorded was that he was employed and earning between €25,000 and €59,999 and had savings and investments worth between €60,000 and €119,000.

I don't see any reason to dispute these details and I think it was fair for CMC to rely on what Mr K told them. So I don't think CMC ought to have prevented Mr K from trading at that point.

I also don't think CMC ought to have intervened when Mr K used his credit card to add funds to his spread betting account. I take his point in that the Gambling Commission rules now prevent this from happening, in the hope of protecting vulnerable gamblers from putting more money at risk than they can afford to. But as our investigator said, CMC's regulator's rules aren't the same for this sort of account.

CMC's risk warning applicable at the time did say "*You should not finance your Bets…with us on credit*." But given the differing rules, it was for Mr K to follow this guidance, rather than for CMC to refuse to accept the funds. It is often that individuals may use a credit card rather than a debit card, yet they are still spending money within the limits of what's affordable for them. So it isn't automatically the case that spending money, or funding an account, using a credit card ought not to be allowed. Mr K should only have put money at risk he could afford to lose.

the Brent Oil position

I can see from the trade history that Mr K opened his Brent Oil position at 11:35pm on 15 March 2020. Just under an hour later, at 12:24am, he amended his take profit order from $35.40 to $35.30. He then says he tried to close the position around 1am. Of course, there's no record of this on the trade history given the technical problems Mr K says he had.

But from all I've seen, I'm not persuaded Mr K did have the intention to close the trade when he says he did. He amended his take profit order seven times on 16 March. He also amended his stop loss that day too. On 17 March, he amended his take profit order another six times. And another three times on 18 March too.

So I'm not persuaded Mr K was looking to close the position early on 16 March – he amended his take profit order at 12:24am and again at 6:36am that day. I think if he'd had an issue with closing the position and still wanted to, it's not unreasonable to have expected to see him reach out to CMC for help first thing in the morning – I can't see that he did. He kept his position open for three days, making multiple changes to it. It wasn't until his call to CMC after he'd closed the position that he raised the concerns brought to us now.

I sympathise with Mr K's position – I can see he's lost money and I don't underestimate his strength of feeling about his complaint. But his losses flow from his speculation on the oil price during an incredibly volatile time. His comments on the call recordings highlight his disbelief at the prices he was seeing – quite simply, the impact of the pandemic affected oil demand, and therefore oil prices, more than he thought it would. So while I appreciate this was a very disappointing trade for Mr K, his losses are attributable to movements in the underlying market, not CMC. So for the reasons I've explained above, I don't think Mr K's losses are something for which CMC ought fairly and reasonably to be held responsible for.

My final decision

For the reasons given above, I don't uphold Mr K's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 1 January 2021.

Aimee Stanton
Ombudsman