

## The complaint

Mr E says CMC Markets UK plc ('CMC') failed to safeguard his trading account, leading to a fraudster's unauthorised access into, and fraudulent withdrawal of £50,000 from, the account on 20 May 2019.

## What happened

CMC investigated the events leading to, and including, the withdrawal on 20 May. Based on its findings, a summary of key events is as follows:

- 17 May – CMC received a request to reset Mr E's trading account password. This happened at 03:01 and it sent, to his registered email address, a link to do so. At 15:08 it received an email from the same address with a request to register new bank account details for the trading account. It executed the request – based on verification of Mr E's name on the bank statement for the new bank account that was submitted – and it says it promptly thereafter sent emails to Mr E and to his Introducing Broker ('IB') confirming registration of the new bank account details unto the trading account. Mr E and the IB have both confirmed that neither received this email.
- 20 May – At 11:48 the request to withdraw £50,000 (for remittance to the new bank account) was made, and CMC executed this on the same day.
- 21 May – Mr E and the IB both reported, to CMC, the unauthorised withdrawal of £50,000 from the trading account.

CMC does not dispute that the withdrawal was fraudulent and that it was made without Mr E's knowledge. However, it disputes responsibility for his loss. It says his email account appears to have been compromised on (or around) 17 May, hence the opportunity for the fraudster(s) to request the change of password and then to access and use the link sent to the email account to complete the password reset. It also says it complied with its due processes for addressing password resetting requests and for the withdrawal request. As part of its concluding remarks in its final response to Mr E's complaint, CMC said –

*"CMC is not obliged to compensate you. For ease of reference, we provide a link to our CFD Terms of Business (January 2018 ), which you agreed to be bound by when you opened your CMC Account ... In accordance with clause 3.5.1 of those Terms of Business, we are entitled to treat any activity on your CMC Account as having been authorised by you. We are also entitled to hold you liable for such activity up to the point that you notify us that someone else has accessed your CMC Account without your permission. In the absence of such notification, we were entitled to rely on the request to register the bank details that were sent from your registered email address on 17/05/2019 and to action the request made to withdraw funds from your CMC Account on 20/05/2019."*

One of our investigators looked into the complaint and disagreed with CMC's position. He concluded that the complaint should be upheld and he found, mainly, as follows:

- He acknowledged the terms about CMC's exclusion of liability for a client's loss, but he also quoted the following from its terms – *"You can withdraw funds from your account online by clicking on the 'Payments' icon and then selecting the 'Withdrawals' tab. Alternatively, you can use chat (Live help) or call our client management team for assistance. Please be aware that for your protection, we may request additional information and/or proof of identity before processing the withdrawal request. We do not transfer funds to a third-party account so please ensure that the bank account is in your name"*. He emphasised the provision to request additional information and/or proof of identity before executing a withdrawal.
- He also referred to the regulator's Systems and Controls rule at SYSC 3.2.6, which states the requirement (with guidance) that firms must have in place systems and controls for countering the risk of financial crime; to the code of practice from the British Standards Institution ('BSI') which states something similar and which refers to applying identity checks in response to requests to change personal or account details and in response to payment requests; and to examples from the BSI of suspicious activity.
- The investigator considered that the events leading to the fraudulent withdrawal from Mr E's trading account – that is, the reset request, new bank account registration and withdrawal request happening in close proximity, and the account logins taking place from different devices and locations – were comparable to the BSI's examples of suspicious activity and that they ought reasonably to have been indicators for CMC to note. He also considered that CMC ought reasonably to have conducted further checks and identity checks for the same reason(s). He looked into CMC's claim about email notices sent to Mr E and the IB on 17 May. Both confirmed that they received no such email/notice.
- He concluded that the fraud would probably have been avoided, but for CMC's failure to note the suspicious activity and failure to conduct additional checks, so the complaint should be upheld and CMC should cover Mr E's £50,000 loss.

Mr E welcomed this outcome, but CMC did not. It disputed the investigator's findings, it did not consider that the events were as close as he concluded, it did not agree that there were indicators of suspicious activity and it maintained its position about the emailed notices sent to Mr E (and the IB). The matter was referred to an ombudsman.

### **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, I have reached the same conclusion as the investigator's for broadly the same reasons he expressed. I endorse his findings, which were well reasoned, detailed and clearly set out within his view. For these reasons, and because both parties appear to understand his findings, I do not repeat those details. However, both parties are entitled to a reasoned outcome in this decision, so I provide one below – beginning with a summary of the relevant regulatory context.

Before doing so, I should note that this decision (above and below) refers to the £50,000 withdrawal from Mr E's trading account as a *fraud* and a *fraudulent event* unknown and

unrelated to him. This is done because the parties agree the same and there is no dispute about it. For the sake of clarity, it is not done because of any finding of fraud in criminal law. Such a finding is distinctly beyond this service's remit.

### Regulatory Context

Article 40 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (the 'RAO') defines the regulated activity of *Safeguarding and Administering Investments*. The regulator's Handbook assists further by summarising the definition as follows:

"... *the safeguarding of assets belonging to another and the administration of those assets*  
..."

Guidance, at PERG 2.7.9 G of the regulator's Perimeter Guidance Manual, says *safeguarding* is about a firm's role as *custodian* of the customer's property – such property including money. This covers the £50,000 *money* fraudulently withdrawn from Mr E's account.

The safeguarding responsibility also made the following Principles – from the regulator's Handbook – relevant:

- Principle 2 – a firm's duty to conduct its business with due skill, care and diligence.
- Principle 3 – a firm's duty to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
- Principle 6 – a firm's duty to pay regard to the interests of its customers.
- Principle 10 – a firm's duty to arrange adequate protection for its clients' assets when it is responsible for them.

In addition, I echo the investigator's reference to, and quotation of, SYSC 3.2.6. As stated above, this provides that firms must have in place systems and controls for countering the risk of financial crime.

### Findings

CMC's key failing was its omission of a process, based on personal contact, that verified/checked Mr E's identity at the point of the new bank account registration and/or, at the very least and latest, at the point of the withdrawal request.

I can understand why it could have considered that such a check was not necessary when treating the password reset request. It reasonably sent the link to Mr E's email account, it did not know the email account had been compromised and it expected that account to be accessible only by him.

However, the two events that followed were events inherently vulnerable to fraud and, as a regulated firm operating in the financial services sector, CMC ought reasonably to have known this. One of the overarching purposes of regulation is to achieve protection for customers – including protection from fraud. Indeed, it is CMC's implicit evidence that it was aware of such vulnerability, hence its reference to having a check – for the new bank account registration – mainly based on verifying a statement from the new bank account and checking that it was in Mr E's name. Mr E has explained how this should have been an additional indicator to CMC because he has a jointly named bank account and has no account solely in his name. I understand his point, but I am not satisfied that CMC should

have known this.

However, I am satisfied that CMC limited its checks unreasonably at the point of registering the new bank account. It goes without saying that registration of a new bank account within a trading account automatically creates access to money within the trading account. By creating such access without speaking, even briefly, to Mr E and to do so in the age of sophisticated online and electronic fraudulent techniques, CMC fell short of discharging the safeguarding, SYSC and Principles based responsibilities it was required to discharge in this event.

I am not persuaded that there was any value in emailing Mr E *after* the new bank account registration request had been granted. In the alternative, and because no personal contact had previously been made with him, I consider that there could have been some value in such notification if it required personal contact from Mr E in order for him to confirm (or reconfirm) agreement with the registration – but this did not happen. Furthermore, available evidence appears to call into question CMC's claim about the email notice. Both Mr E and the IB have confirmed to this service that no such email was ever received.

I consider that verification based on personal contact at the point of the new bank account registration would have defeated the fraud attempt before the fraud was committed, as Mr E would have confirmed that neither the new bank account nor the registration request was his.

CMC compounded the above failing by, seemingly, applying no meaningful safeguarding checks at the point the £50,000 was withdrawn. Having created new access to money in the trading account, with inadequate checks, it was a significant failure to remit a considerable sum like £50,000 without a basic personal contact verification. It is not uncommon for firms in the investment and trading sector – and even banks in the retail banking sector – to apply telephone verification, as a minimum, in such withdrawal related circumstances. I acknowledge that CMC is not bound by other firms' practices and I do not suggest that it should be, but I also consider that such minimum telephone verification is an objectively credible form of personal contact verification that CMC could and should have used.

Had telephone verification been applied by CMC before allowing the withdrawal, the attempted fraud would have been detected and, again, defeated before the fraud was committed. Mr E would have confirmed that he did not make the withdrawal request. Upon such confirmation, no withdrawal would have happened. I also consider that CMC should have been more compelled to conduct such verification at this point given its knowledge at the time that the withdrawal was the first being remitted to the new bank account and that it had not conducted any personal contact verification with Mr E about the new bank account.

Overall, on balance and for the reasons given above, I uphold Mr E's complaint.

### **Putting things right**

Fair compensation for Mr E is to put him back into the position he would be in if CMC had taken steps to prevent the preventable fraud, as it could and should have done. In straightforward terms, this means compensating Mr E for his loss of £50,000. There is no dispute that this was the sum fraudulently withdrawn from the cash in his trading account, so this is the lost sum he is entitled to compensation for.

I order CMC to pay Mr E £50,000 in compensation for his loss. I also order CMC to pay Mr E interest on this amount at the rate of 8% simple per year from the date of this decision to the

date of settlement, if it does not pay the compensation to him within 28 days of being informed about his acceptance of this decision. This interest award is to compensate Mr E if CMC unduly delays in paying him redress.

I have considered the idea of also applying interest from 20 May 2019, when Mr E's fraudulent loss happened. I am not persuaded such an award will be fair. The fraudulent withdrawal was made from an active trading account, so it cannot be said with certainty (or probability) that, but for the fraud, the £50,000 would have remained untouched and would have been earning interest to date. Instead, it is arguable that it could or would have been traded, with different outcomes, at a point in time. As I cannot determine, on balance, what would have happened with this sum from 20 May 2019 onwards, I do not consider that I have a basis to award interest from that date.

### **My final decision**

For the reasons given above, I uphold Mr E's complaint. I order CMC Markets UK plc to pay him compensation as set out above, and to give him a simple and clear calculation of the compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 25 June 2021.

Roy Kuku  
**Ombudsman**