

The complaint

Miss K has complained that Trading 212 UK Limited's ('Trading 212') trading app crashed, and her account was frozen. As a result, she suffered a financial loss which she wants put right.

What happened

Miss K had an investment 'pie' with Trading 212 which contained several instruments. On 28 January 2021 Trading 212's trading app crashed, and her account was frozen. The app just said 'calculating' for her pie and Miss K wasn't able to take any action with her investments.

Miss K said that usually when she moved her investments around on the pie it took a few minutes to rebalance. She referred to a particular shareholding – GameStop ('GME') – which had "skyrocketed" on the day and that she was aware other customers weren't able to use their app either. Miss K thought Trading 212 had frozen the app on purpose to stop people making a profit. She said this sounded like market manipulation by Trading 212.

Miss K didn't receive any response from Trading 212 when she made contact. The money she held was very important to her and the situation was very stressful, for which she wanted compensation for both.

In response to her complaint, Trading 212 said the following;

- When trading in stocks which were imported into her investment pie, the pie would need to be rebalanced – a process which submitted market orders to be executed. Those orders were executed according to market conditions which determined the time and order they would be executed if there was going to be a delay as well as the possibility that an order may be cancelled.
- It referred to clause 10.4 of its client agreement which referred to market conditions affecting the time it takes for orders to be executed.
- And it also referred to clause 10.9 where Miss K had acknowledged and accepted there may be a delay in order execution.
- Clause 10.15 explained that market conditions could cause temporary delays to the execution of orders. And that it would not accept any liability for potential or actual losses that could be suffered.
- When cancelling a rebalancing process of the pie Miss K had automatically submitted a request for all her filled orders to be cancelled. It referred to Clause 10.13 of its terms about cancelling the execution of an order.
- Miss K had agreed that Trading 212 wouldn't be liable for technical issues on its platform and referenced clause 25.1 for events beyond its reasonable control.
- The technical difficulties the app faced on the day didn't have any influence over the execution or cancellation of her orders. Her order had been filled and executed in accordance with market conditions and its legal obligations.

Our investigator who considered Miss K's complaint didn't think it should be upheld. She said;

- In January 2021 the stock market was extremely volatile in part caused by social media platforms citing interest in certain shares. This caused an extreme strain on the entire trade execution ecosystem worldwide and affected almost all trading platforms.
- Miss K had been trying to sell Naked Brand Group ('NAKD') shares but was prevented from doing so, and as evidenced by forum groups, so were many other investors.
- Trading 212 used an execution intermediary to trade and any orders Miss K placed were simultaneously passed to the broker and were executed in accordance with market conditions.
- When rebalancing her investment pie Miss K was placing trade orders in the underlying instruments and which was ongoing until all orders had been executed. Any cancellation/further rebalance would cause further delays.
- Miss K had tried to rebalance her investment pie on several occasions between 27 January and 2 February 2021 and her holdings were eventually sold on 2 February.
- The share price of NAKD on 26/27 January 2021 increased over 250% and the volume of trades was significant. These shares were very volatile at the time. And the overall volatility of the stock market would have impacted the trades being executed each time a rebalance/cancellation request was made. She didn't think Trade 212 had acted unfairly.
- Trading 212 had delayed in responding to Miss K. it explained that it had received over 20,000 similar queries over the two days which would have impacted on its normal service standard. In a conversation with Miss K Trading 212 had advised there was a risk of execution disruptions.
- Trading 212's execution intermediary was unable to process orders due to the increased volatility and which wasn't allowing Trading 212 to trade. This was outside of Trading 212's control.
- The investigator had checked Trading 212's terms and the regulator's statement and concluded that it had not breached its regulatory obligations and its own terms, and it did all it could for its clients.

Miss K didn't agree with the investigator. She thought that what Trading 212 had done was in its own interests and not in the interests of its customers. It was market manipulation and not free and fair trading. Its platform wasn't fit for purpose when the market was volatile, and it had clearly taken advantage of the situation.

Miss K's comments didn't cause the investigator to change her opinion. As the complaint couldn't be resolved it has been passed to me for a decision.

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.

In deciding what's fair and reasonable, I must consider the relevant law, regulation and best industry practice, but it's for me to decide, based on the information and evidence that I have been given, what's more likely than not to have happened.

Having done so, I agree with the investigator's conclusion for broadly the same reasons. Based on the evidence I'm unable to agree with Miss K that Trading 212 acted unreasonably. I'm satisfied that it behaved fairly and in accordance with its own terms and conditions and in line with the regulator's statement issued at the time.

And after consideration, I don't find that Trading 212 acted in a way that was more convenient for its own rather than its clients' interests, or to its own advantage. Trading 212's obligation to act in its clients' interest is something I've taken account of, but my findings are going to be about whether Trading 212 treated Miss K fairly in the context of the particular orders she is complaining about. I'll explain why.

As a background to the events, during January 2021, and 27/28 January in particular, the stock market was extremely volatile in certain stocks including NAKD. The NYSE halted trading in NAKD six times on 27/28 January 2021 on the 'limit up limit down' basis in order to prevent share price volatility from reaching extreme levels. There had been considerable and unprecedented interest generated in several instruments caused by social media platforms and, as I understand it, as share prices increased, short sellers had to close their positions in order to prevent bigger losses – a so-called 'short squeeze'. Overall, I'm satisfied that these were volumes and market conditions that were outside of Trading 212's control.

As such, I've reviewed Trading 212's 'share dealing service – terms of business' to consider how Trading 212 can act when matters are outside of its control and which potentially caused system failures. Below are what I consider to be relevant to this complaint, but not limited to;

- "Clause 5.4. We shall not accept Instruction to Deal when: the relevant market is closed for trading; or you do not have enough money in your account to execute the Transaction; or there are events described as "Force Majeure" in Clause 25."
- "Clause 5.12. We shall have the right to introduce new Financial instruments and Market Hours for trading at the Trading Platform and to suspend and/ or remove from the Trading Platform any Financial instrument and Market Hours at our sole discretion."
- "Clause 10.4. Market conditions can affect the time it takes to execute Limit Orders, Stop Orders and Market Best Orders and all orders are executed in due turn. We cannot guarantee that a Limit Order or a Stop Order will be executed even if the limit or stop price is reached. We do not accept any liability for any actual or potential loss you may suffer if there is a delay in execution. Market conditions may result in the execution of a Stop Order being at a price above or below the stop price. We may also introduce restrictions on a temporary basis regarding a certain type of Order (e.g. Limit Order, Stop order and/or Market Best Order) in certain or all Investments."
- "Clause 10.9. You acknowledge and accept that there may be a delay in the execution of an order because all orders are executed strictly by reference to time of receipt. In particular, an order received when the relevant exchange is closed or not on a Business Day will not be executed until after it next re-opens. We will present that Order for execution when the exchange next reopens or, if a large number of orders have been received while the market is closed, as soon as reasonably practicable after the exchange next re-opens."
- "Clause 10.13. Neither of us can cancel the execution of an Order if the Order is executed at a valid quote price and you have confirmed that you want to "buy" or "sell" the desired quantity of the relevant Investment."
- "Clause 10.15. Market conditions can cause temporary delays to the execution of

Orders. It is the client's obligation to make sure that any earlier pending Order(s) is/are cancelled before placing a new Order in the same Investment. We do not accept any liability for any actual or potential loss you may suffer if this occurs."

- "Clause 25.1. Whilst we endeavour to comply with our obligations in a timely manner, we shall incur no liability whatsoever for any partial or full default of our obligations by reason of any cause or event beyond our reasonable control, including but not limited to any communications, systems or computer failure, market default, suspension, failure or closure, or the imposition or change (including a change of interpretation) of any law or governmental or regulatory requirement and we shall not be held liable for any loss you may incur as a result....."

Having reviewed those terms, I don't find that the problems and delays Miss K experienced were outside of those terms and conditions. And Miss K agreed to those terms at the outset of her relationship with Trading 212. The terms, clause 10.4, makes clear that the execution of orders can be subject to delays caused by market conditions. And those market conditions were undoubtedly very volatile at the time. When cancelling an order – in this case a rebalancing process of the pie – Miss K automatically submitted a request for all her filled orders to be cancelled. And it referred to Clause 10.13 of its terms about cancelling the execution of an order if that order has already been executed. This suggests to me that if Miss K was rebalancing the pie, and not all of the underlying instruments' orders had been completed, if she then cancelled that rebalancing request any underlying orders that had been executed would need to be unwound by further trades. And overall, I think the circumstances at the time gave risk to clause 25.1 and the events were beyond Trading 212's reasonable control.

I also note that in response to stock market turbulence, on 29 January 2021 the regulator, the Financial Conduct Authority ('FCA') issued a statement which said;

"Broking firms are not obliged to offer trading facilities to clients. They might withdraw their services, in line with customer terms and conditions if, for instance, they consider it necessary or prudent to do so. Firms are exposed to greater risk and therefore more likely to need to take such actions during the periods of abnormally high transaction volumes and price volatility.

We will of course take appropriate action wherever we see evidence of firms or individuals causing harm to consumers or markets."

Miss K experienced delays and restrictions in her ability to rebalance and trade on her account. This must have been frustrating and upsetting for her when not being able to take the action she wanted. But I think in reality the main cause was because of the stock market turbulence, unprecedented trading volumes and to some extent Trading 212's execution intermediary's own ability to trade and in certain cases its execution intermediary restricting its access to particular instruments.

At the time there was unique, unprecedented interest and market activity in certain instruments – including NAKD – which caused an extreme strain on the "entire trade execution ecosystem worldwide" and affected almost every trading platform.

27/28 January 2021 saw record trading volumes in the stock market, so overall, I don't think it's unreasonable to conclude that these were not normal market conditions, and which would impact on a firm's ability – including its app facility – to provide its usual services.

Bearing this in mind, Trading 212 used the services of an execution intermediary and was reliant on that service in order for it to trade. It didn't have direct access to the market. And it was the execution intermediary that wouldn't allow trading in certain stocks that had been subject to extreme volatility until its own capital adequacy and other issues were resolved.

Additional collateral was required by the US clearing houses in order to ensure firms had sufficient liquidity to settle trades which took place two days after the actual trade date. This along with high market volume inevitability impacted on its timing and ability to process trades in all areas it traded.

This requirement tallies with Trading 212's comment that the outsized trading volumes in the shares "generated substantial risk exposures at firms that clear these trades". Trading 212 has given us a copy of its conversation trail with its execution intermediary which makes clear it repeatedly made contact to try and resolve the issues after it was made aware there was a problem. And I am satisfied this is an example of Trading 212 taking reasonable steps to execute trades and in my opinion, is consistent with its contractual obligations. Trading 212 was simply unable to trade in certain instruments on its platform and the overall market conditions impacted on the timing and execution of trades.

Miss K has said that Trading 212's platform wasn't fit for purpose during the volatility of the stock market. But it was unprecedented, and I think evidenced by the over 20,000 customer enquiries Trading 212 said it received as a result. And we know that several of the more volatile stocks' trading was interrupted on several occasions which would have impacted on trading in those instruments. In the particular circumstances here, I'm satisfied that the terms provided for a situation where Miss K wouldn't always be able to trade or complete orders as and when she chose. Given the wider circumstances and the restrictions, on and put in place, by Trading 212's execution intermediary and in some instances the NYSE, I don't think it would fair and reasonable to say it ought to have executed every trade Miss K wanted immediately. I'm satisfied it was that volatility that caused the delays and failures and not any particular shortcomings with the platform.

And while I accept that Miss K won't be happy with the outcome. I am satisfied that her inability to trade as she wanted and the delays she experienced, were outside of the control of Trading 212. The unprecedented volatility in the instruments and the impact of that on trading was, in my view, one of the vagaries of stock market investment and is one of the risks that an investor takes when investing in the stock market.

On balance, I am satisfied that Trading 212 did all that it reasonably could to mitigate the position but the situation was outside of its control, and it probably had very little practical choice in and control over the matter, so I don't find that it is responsible for any losses Miss K says she incurred.

My final decision

For the reasons give, I don't uphold Miss K's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss K to accept or reject my decision before 27 December 2022.

Catherine Langley
Ombudsman