

The complaint

Mr A has complained that Trading 212 UK Limited ('Trading 212') blocked him from buying GameStop ('GME') and other stocks on 28 January 2021. As a result, he has suffered a significant loss and would like for this to be put right.

What happened

Mr A says that on 28 January 2021 he had placed a limit order to buy GameStop ('GME') but was prevented from doing so. Trading 212 has said this was because of "highly unusual volumes" which Mr A says could be construed as market manipulation and which resulted in Trading 212 acting in an advisory rather than execution only role. Mr A didn't agree that the events were "unforeseeable" and as such Trading 212 couldn't rely on its terms (clause 25).

Mr A complained to Trading 212 who responded to his complaint. It said;

- On 28 January 2021 it made the decision to prevent customers purchasing GME and other stocks because of irregular volatility, the circumstances of which were outside of its control.
- Its own liquidity provider restricted access to GME which impacted on Trading 212's ability to offer GME for trading and as such referred to its terms and conditions (clause 25) as it wasn't liable for such force majeure events.
- It also referred to clause 5.12 of its terms to suspend trading at its sole discretion.
- It was able to take such action where it considered it would reduce market disruption and it was prudent for it to have done so.
- It wasn't obliged to continue to offer an investment for trading that was experiencing market volatility. And in line with its terms and regulatory guidance, and market practice it was able step in to prevent harm to its client and markets, so it had responded appropriately.

Not satisfied with the outcome, Mr A brought his complaint to the Financial Ombudsman.

Our investigator who considered the complaint didn't think it should be upheld. He said;

- In January/February 2021 the stock market was extremely volatile, caused by social media platform comments which increased interest in several companies including GME.
- The unprecedented market activity in GME caused an extreme strain on the entire trade execution ecosystem worldwide and effected almost all trading platforms.
- As examples, the impact of this were additional equity/liquidity requirements, FX providers exchanged large amounts of currencies, trading halts and market makers not willing to offer prices.
- Trading 212 was obliged to take reasonable steps to trade, but if its terms allowed, it had some discretion to not execute a trade. But this must be applied fairly.

- Trading 212 had said the outsized trading volumes in the shares “generated substantial risk exposures at firms that clear these trades”.
- Many execution intermediaries, including the business used by Trading 212, had to stop accepting buy orders until additional funds were cleared and transferred.
- The enhanced funding requirements were put in place by the regulator to ensure market stability as for settlement purposes, the broker had to have sufficient equity in place to support the trade.
- And this volatility could impact on a broker’s equity for all markets it was trading in and not just those shares.
- As trading 212’s execution intermediary couldn’t process buy orders because of the increased volatility, this meant it wasn’t allowing Trading 212 to trade either. At that time sales were allowed as they reduced equity requirements. There was little Trading 212 could do about it and it was outside of its control.
- Trading 212 didn’t have direct access to the market which meant it was reliant on a third party to execute trades on its behalf and it had an agreement with one execution intermediary.
- It would be unrealistic to expect Trading 212 to reach agreement with a different execution intermediary during this short period of time when such restrictions were in place. And as it was a worldwide issue, its unlikely trades could have been completed via a different execution intermediary in any event.
- It was Trading 212’s commercial decision about what intermediary broker or broker it chose to use.
- The investigator didn’t agree with Mr A’s assertion that Trading 212 was acting as a financial adviser. It wasn’t giving any recommendations or advising whether the transaction was suitable. It wasn’t giving advice based on Mr A’s own circumstances and objectives.
- Overall, the investigator couldn’t conclude Trading 212 had done anything wrong.

Mr A didn’t agree. He referred to Trading 212’s clause 5.14 about its ability to place a sell-only limit in certain circumstances which didn’t include being outside of Trading 212’s control. Force majeure wasn’t listed (clause 25) as a valid reason for placing a sell-only limitation on an instrument. But had been recently added in Trading 212’s latest agreement. He wanted clarification of which clause the investigator was referring to which would justify Trading 212 putting on a sell-only limitation.

Our investigator clarified how he had reached his conclusion and the terms he had considered. Whatever the terms were, the result would have been the same in that the purchase wouldn’t have completed. It wouldn’t have been fair to its customers if Trading 212 had removed GME from its platform completely as at that time sales were permitted. The investigator thought that any other options that were available to Trading 212 would have had a greater impact on more customers.

It was the execution intermediary that had to introduce restrictions due to the increased liability which was imposed on it by the clearing house. That amount of funds couldn’t be exchanged immediately so restrictions had to be imposed and which all came about because of the sudden and increased interest in a few shares. As such it was outside of Trading 212’s control which is why the investigator wasn’t able to conclude it had acted incorrectly.

Mr A sought clarity on force majeure and wanted his case to be considered based on what happened. The investigator clarified that force majeure could apply as the clauses didn't state they could only be imposed if another clause referred to them. He didn't agree there had been a breach of contract as he was satisfied the terms allowed Trading 212 to take the action it did.

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 Mr A 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'm satisfied that Trading 212 acted fairly and reasonably in taking the action that it did in response to unprecedented circumstances during which the regulator issued a statement noting that firms were exposed to greater risk during such abnormal market condition and weren't obliged to offer trading facilities if it thought it necessary or prudent to do so and in line with its terms. I say this rather than concluding that Trading 212 took a course of action that was more convenient for it, or to its own advantage, it was permitted to do so in line with its terms and conditions. And I don't find that it resulted in Trading 212 acting in an advisory rather than execution only role as suggested by Mr A. 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 GME. NYSE halted trading in GME over 20 times on 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 the shares 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 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. 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 5.14. We reserve the right to place a Sell-only Limitation in the following cases, but not limited to:

- a. Where We have a suspicion of unlawful activity;
 - b. Where We have suspicions of restricted or abusive trading activity;
 - c. Where We have reasonable grounds to believe that allowing You to continue trading will be detrimental You as a client; or
 - d. Where You have not provided your express consent whenever we have requested such, including but not limited to, in the event that we need to obtain express consent in order to introduce new features on the Trading Platform.
- “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. In addition to and notwithstanding any of the above the Force Majeure definition shall include, but shall be not limited to any superior force, any event that encompasses acts of god (such as earthquakes or tsunamis, etc.), certain acts of man of a disruptive and unforeseeable nature, industrial action, epidemics, pandemics, actions by government agencies, or work stoppages, any material change in economic conditions or any other event, that is beyond the reasonable control and was and whose effects could not be avoided by reasonable measure.”
 - “Clause 25.2. Force Majeure shall include any of the following: the suspension or failure of any financial instrument, whether underlying or not, the suspension or closure of any markets, exchanges, the nationalisation and/or government sequestration, the failure of any of our suppliers, and if applicable our intermediate broker, agent or principal, dealer or any custodian, sub-custodian, clearing house or regulatory or self-regulatory organisation, for any reason, to perform its obligations. Whereas in any such event we will try to take reasonable steps to mitigate the effect of the said event in order to continue our operations and to continue to provide you with services and where we may therefore alter some of the (trading) terms and conditions as per this agreement.”

I've included clause 5.14 as it was referred to by Mr A with reference to Trading 212's right to place a sell-only limitation on an instrument. He said clause 5.14 didn't include force majeure as being a valid reason. Whatever Mr A thinks about those terms and Trading 212's right of implementation, in all practicalities, Trading 212 quite simply wasn't in the position to offer the instrument which was a situation outside of its control.

I explain in more detail further down but in conclusion, having reviewed those terms, I don't find that the action taken by Trading 212 was outside of those terms and conditions as on balance I think it's not unreasonable to conclude there was sufficient leeway in those terms for force majeure to apply. The terms are relevant insofar as they form the contract governing the relationship and they're something I must take into account. And Mr A agreed to those terms at the outset of his relationship with Trading 212. But my decision is based on what's fair and reasonable in all the circumstances. I think it was fair for Trading 212 to take the action it did bearing in mind the terms of the account. And more broadly, given what was happening – and what Trading 212 could and couldn't do – I don't think it was unreasonable.

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.”

And while it could be considered that Trading 212 was being “prudent” in not offering the GME shares for trading on its platform, I think in reality the cause was because its execution intermediary restricted its access to the shares, albeit the outcome being the same as referenced in the regulator’s statement – about being prudent – and in line with its own terms of business.

I think Trading 212 took all reasonable steps that it could and in the best interests of its customers. I say this because the unique, unprecedented interest and market activity in GME – and similar affected stocks – caused an extreme strain on the “entire trade execution ecosystem worldwide” and affected almost every trading platform. 27/28 January 2021 saw the most trading volume ever in the history of GME so overall, I don’t think it’s unreasonable to conclude that these were not normal market conditions.

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. Trading 212 didn’t have direct access to the market. And it was the execution intermediary that wouldn’t allow trading in GME (and other 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 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 issue 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 obligation under the force majeure clause and to take reasonable steps to mitigate the impact. Mr A has said the events weren’t unforeseeable and short squeezes weren’t “new or infrequent”. I accept that is his view, but I don’t think it alters the fact that the events, and the subsequent impact on Trading 212 being able to offer its service, was beyond its reasonable control.

I am satisfied that such market conditions were so unusual it satisfied the force majeure clause (25) and therefore Trading 212 wasn’t obliged to accept a deal instruction under clause 5.4 – whether that be to buy or sell. In any event Trading 212 was simply unable to trade in those shares on its platform but I am satisfied that the circumstances were such that Trading 212 has fairly applied its terms by not accepting Mr A’s dealing instruction.

Trading 212 used the services of one execution intermediary, which I am satisfied it was entitled to do as its own commercial decision. And bearing in mind the market turmoil on the day, I think it’s unlikely Trading 212 could have engaged the services of a different intermediary or that a different intermediary would have been more successful in trading during this time than the intermediary Trading 212 did use.

And while I accept that Mr A won’t be happy with the outcome. I am satisfied that his inability to trade in GME was outside of the control of Trading 212 who, in my opinion, didn’t act unfairly. The unprecedented volatility in the shares 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 the matter so I don't find that it is responsible for any losses Mr A says he incurred.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 19 December 2022.

Catherine Langley
Ombudsman