

The complaint

Mr F complains about not being permitted to trade shares using his Trading 212 Limited share trading account. As a consequence, he says he's suffered significant financial losses.

What happened

Mr F says that on 28 January 2021, he couldn't access his account which prevented him from trading on GameStop (GME). This resulted in him being unable to buy and sell GME shares on the specific days, which meant he lost out financially.

Trading 212 explained that there was a period of downtime on the trading platform, for some users on 27 January 2021. This was due to 'unprecedented' demand on the service corresponding with the opening of the US market. This particularly effected GME (and AMC) shares.

Trading 212 also explained that on 28 January 2021 it made the decision to prevent clients from purchasing and selling GME shares (and some other instruments) which were experiencing 'irregular volatility'.

It said these actions had to be taken due to reasons outside of its control. It doesn't accept that it had breached its terms and conditions, and it wasn't the only business taking this sort of action either.

Mr F still feels that Trading 212 have acted against the industry regulator – the Financial Conduct Authority (the FCA) – regulations, and that it doesn't have the right to mitigate consumer risk. To put things right, Mr F would like compensation for losses arising from his inability to trade.

One of our investigators considered the complaint but didn't think it should be upheld. In summary, she said:

- Mr F would've agreed to Trading 212's terms and conditions before setting up his account.
- In January 2021, several social media platforms cited high interest in certain shares, in particular GME (and AMC), which resulted in the stock market being extremely volatile.
- The unprecedented interest in GME caused an extreme strain on the entire trade execution ecosystem worldwide and affected almost every trading platform.
- Trading 212 has an obligation to its clients to take reasonable steps to execute orders. It has some discretion – subject to terms and conditions – not to execute orders but it must apply this fairly.
- Trading 212 explained that outsized trading volumes in shares like GME (and AMC) "*generated substantial risk exposures at firms that clear these trades.*" Many big brokers, including Trading 212's execution intermediary had to stop accepting "buy" orders until additional funds could be cleared and transferred. This means that Trading 212 was restricted from accessing shares by its liquidity provider, and therefore was unable to offer these shares on its platform.

- Based on evidence supplied by Trading 212, it seems there was a period of around five hours on 27 January 2021 when it couldn't trade on behalf of its clients. The business (repeatedly) contacted its liquidity broker to try and resolve the issue after it was made aware. Trading 212 took reasonable steps to execute trades – so meeting its obligations to its clients – but there was nothing more it could do.
- On 28 January 2021, due to increased capital requirements of the broker, it informed Trading 212 that GME shares would be restricted to sell only.
- The evidence provided by Mr F included a spreadsheet which shows he bought GME shares on 25,26,27 and 29 January and then sold some of these shares, but not until 5 March 2021. Mr F also sent screenshots of the Trading 212 app showing GME in reduce mode only, and the business advising that new positions couldn't be opened and that only reduce or closure was possible. This confirms that the sell only restriction applied at the time.
- The terms and conditions show how Trading 212 can act when matters are outside of its control:
 - Clause 5.12 states: "*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 5.4 states: "*We shall not accept Instructions 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.*"
- Trading 212 also provided a statement from the FCA, published on 29 January 2021, which said: "*Broking firms are not obliged to offer trading facilities to clients. They might withdraw their services, in line with customer term 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 periods of abnormally high transaction volumes and price volatility*".
- Trading 212 suspended trading of all specific shares due to unforeseeable and volatile market conditions. The business hasn't breached its regulatory obligations and customer terms and conditions and did all it reasonably could for its clients.

Mr F disagreed with the investigator's view and asked for an ombudsman's decision. In summary, he made the following key points:

- It's a shame that the FCA is in on it, along with the "broker".
- If 'broking firms' aren't obliged to offer trading facilities to clients, what's the point of them?
- Just because the business has terms and conditions allowing them to suspend their service, whenever it's convenient to them, doesn't make it legal. Especially when it only suspends part of its service.
- He wouldn't have a problem if Trading 212 suspended all of its service and restored his buy/sell ratio. Instead the business suppressed all buying power, rather than stop all trading until normal market conditions were restored.
- He's lost 'tons of money' and doesn't believe the business has acted in his best interest.
- A similar case that went to court was upheld against the broker. His case is identical to that case apart from the trader being Trading 212.

As no agreement has been reached the matter has been passed to me for review.

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 agree with the investigator's conclusion for substantially the same reasons. The view covers all the pertinent points leaving little for me to comment upon. I'm not going to uphold this complaint.

On the face of the evidence, and on balance, despite what Mr F says, I'm unable to safely say that the business behaved unreasonably. In other words, in the circumstances, and on balance, I'm satisfied that it behaved fairly, in accordance with its terms and conditions, and in line with the FCA statement issued at the time.

Before I explain why this is the case, I think it's important for me to note I very much recognise Mr F's strength of feeling about this matter. He's provided submissions to support the complaint, which I've read and considered carefully. However, I hope he won't take the fact my findings focus on what I consider to be the central issues, and not in as much detail, as a courtesy.

The purpose of my decision isn't to address every single point raised. My role is to consider the evidence presented by Mr F, and Trading 212, and reach what I think is an independent, fair and reasonable decision based on the facts of the case.

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 available information I've been given, what's more likely than not to have happened.

On the face of the evidence, and on balance, I'm satisfied that the business behaved in the way that it did, in response to what could only be described as 'unprecedented circumstances', during which even the FCA issued guidance permitting business's like Trading 212 to act in the way that it did – rather than it behaving in a way that was merely convenient to it, because it was permitted to do so by the virtue of its terms and conditions.

I note that the unprecedented interest and market activity in GME caused an extreme strain on the 'entire trade execution ecosystem worldwide' and affected almost every trading platform. I note Mr F concedes it was two days with the most trading volume 'ever in the history of GME', so I'm sure he'll agree that the circumstances were far from 'normal market conditions'.

I note Trading 212 explained that outsized trading volumes in shares like GME (and AMC) "generated substantial risk exposures at firms that clear these trades" (my emphasis). So that many big brokers, including Trading 212's execution intermediary, had to stop accepting "buy" orders until additional funds could be cleared and transferred. This means that Trading 212 was restricted from accessing shares by its liquidity provider, and therefore was unable to offer these shares on its platform. I appreciate that Mr F doesn't necessarily agree with this, but this explains why the business behaved in the way that it did, rather than this being just a whim of its own.

I aware that Mr F has his own theories about why the FCA was involved, and why Trading 212 set GME to close (sell) only. I'm mindful he probably thinks that it was done to try and deliberately reduce the share prices for two days (or some other way to influence the GME share price) thus affecting the value of his own portfolio – but that's not something I am able to comment upon in this decision. Given the unique and unprecedented set of

circumstances, I can't see how the FCA, as the industry regulator, couldn't have got involved and issued an urgent statement in January 2021.

I note Trading 212 has an obligation to its clients to take 'reasonable steps' to execute orders, but I don't think its actions in this instance contravened that obligation. In other words, I'm satisfied that Trading 212 did what it reasonably could to try and carry out its customers' instructions, but due to circumstances outside of its control, simply couldn't fulfil them. In the circumstances I can't blame Trading 212 for this.

I note that as result of the restrictions on 27 January 2021 (mentioned by the investigator above), Trading 212 repeatedly contacted its liquidity broker to try and resolve the issue after it was made aware. This is an example of Trading 212 taking reasonable steps to execute trades – and in my opinion meeting its obligations to its clients – but there was nothing more it could do.

I also note, Trading 212 didn't guarantee that it will execute every order, under all circumstances, so it hasn't done anything wrong by not being able to do so in this instance. As long it has acted fairly, which I'm satisfied it has, I don't think Trading 212 has done anything wrong. Besides, its terms and conditions, which it's entitled to set and which Mr F agreed to at the outset, allowed it to suspend trades.

I note Mr F is unhappy that the business suspended only part of its service, removing the ability to buy GME shares. Firstly, I think that's a decision that the business is entitled to make, in the reasonable exercise of its legitimate commercial judgement. It's not something that I can get involved in. Secondly, and in any event, I think Trading 212 probably had very little practical choice in the matter in this instance, as it was reacting to an unprecedented global event which was outside of its control.

I'm mindful that many big brokers, including Trading 212's execution intermediary had to stop accepting "buy" orders until additional funds could be cleared and transferred. This means that Trading 212 was restricted from accessing shares by its liquidity provider, and therefore was unable to offer these shares on its platform.

I appreciate what Mr F says about the question of 'legality', I'm aware of the case link that he's provided. I note that case was decided through by the Financial Industry Regulatory Authority – through arbitration and mediation – in the USA against a different broker, applying a different set of rules and regulations, which isn't something I'm bound by.

Regardless of what that panel found, I'm not specifically looking at the legality of the business's actions, in the same way that a court or arbitration panel might. As an informal service which is an alternative to the courts, we decide what is fair and reasonable based on all the circumstances.

I'm aware Mr F says that the basis of his complaint is that no broker should be able to make the decision to remove just one side of the trading process (buying or selling). But despite what he says, in the circumstances, and on balance, I'm broadly satisfied that the business acted reasonably and in accordance with its terms and conditions. On balance, I'm not sure that it could've done things differently.

I appreciate Mr F will be thoroughly unhappy that I've reached the same conclusion as the investigator. On the face of the available evidence, and on balance, I'm unable to uphold this complaint and give him what he wants.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 14 October 2022.

Dara Islam
Ombudsman