

The complaint

Mr M complains about the way CMC Markets UK plc changed its method for pricing certain Contracts for Difference (CFD) that he'd invested in. He says the changes caused him a financial loss for which he'd like to be compensated.

What happened

Mr M had a CFD trading account with CMC and, in April 2020, had a number of long oil CFDs open. The pandemic had caused widespread disruption to a number of commodity markets, and for the first time oil pricing was negative. This caused significant volatility in the market.

CMC priced its cash oil contracts on the nearest most liquid futures contract – in April 2020 this would've been the Crude Oil West Texas May 20. However, the exceptional circumstances surrounding oil in April 2020 meant that when CMC was about to switch from the May 20 to June 20 futures, it decided instead to switch to Crude Oil West Texas - December 20 futures.

CMC emailed Mr M on 21 April 2020 and explained that it had decided to price its Crude Oil West Texas – Cash instrument from the December 2020 contract. It set out the holding charges that would apply from 21 April 2020, and invited Mr M to trade futures in order to avoid the 'unusually high holding costs. On 23 April 2020 CMC sent Mr M a further email setting out more detail about its decision. It explained the reasons why it was using the December 2020 futures to price its Crude Oil West Texas – Cash instrument, and how this had changed from the way it usually priced it. It also set out some additional restrictions and changes to its oil instrument as a response to the widespread volatility that the market was experiencing at the time.

Mr M continued to trade the same instrument until May 2020 when his open trades were closed by CMC due to Mr M having insufficient margin on his account. Mr M complained – he said that he never agreed to such high holding charges, and didn't agree to the pricing change. He said that he felt CMC had defrauded him and he asked for compensation.

CMC looked into Mr M's complaint, but didn't agree it had done anything wrong. In short, it explained how its automated pricing worked, and how it derived prices for its oil cash contracts. It also explained how the widespread volatility in the market at the time meant that it had to adapt its processes for generating a price, and it gave its reasons for doing so. It gave a detailed explanation about how it calculated holding charges, and explained why they were so high in May compared to the previous month.

Mr M remained unhappy and referred his complaint to this service. One of our investigators looked into Mr M's complaint. He concluded that CMC's terms entitled it to make the changes that it did to the way it priced its oil CFDs. He considered that the oil market at the time was affected by exceptional volatility, and he thought that CMC's decision was a reasonable one to try and mitigate the impact of this volatility on its customers. He acknowledged that the change in the way the contracts were priced was fundamentally different to the product Mr M had originally invested in, given how far in the future the price

was based on, so he concluded that Mr M ought to have been properly notified of that change.

But the investigator said that once the situation had been properly explained to Mr M on 23 April 2020, it was his decision to either close out his open trades or keep them open. As he decided to keep his trades open, the investigator didn't think it would be fair and reasonable to ask CMC to compensate him for any losses he incurred after that date. However, he did award compensation for the period 21 to 23 April 2020.

Mr M didn't agree. He said:

- The price CMC was quoting for his oil cash positions had no relation to the original market price. Further, he said that it 'no link to the oil market or its prices'.
- He said that initially the holding charge to keep his trades open was 23.5%, but this then changed to over 225% and this wasn't fair.
- His positions were closed at around 9 cents, but the market prices were over \$30 at the time.

As agreement couldn't be reached, the case 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.

I've considered Mr M's reasons for disagreeing with the investigator, but I'm afraid I don't have much to add to what the investigator has already said.

The terms of Mr M's account allowed CMC a wide discretion in relation to how it generated the prices for the markets it offered on its platform:

- The terms clearly explained that CMC quoted prices that were not intended to be 'identical' to prices for similar financial instruments or their underlying quoted on a trading venue or by other providers.
- Prices were generated electronically by the platform. Prices took into account market data from a variety of sources, to ensure they were delivering fair prices and best execution, but the terms said clearly that these prices may not match those seen elsewhere.
- The terms gave CMC the right to change prices through the platform 'in real time'.

In looking at the way CMC applied the terms in Mr M's case, I've taken into account the explanations it has provided, as well as the wider market turbulence that was being experienced at the time.

Looking at the widespread coverage of negative oil pricing, and the effect this had on the market, I'm satisfied it was entirely fair and reasonable for CMC to use the discretion it had under the terms to amend the way that it priced this particular instrument. The investigator and CMC have already explained in detail the reasons why it did this and precisely what actions it took – and I'm satisfied that none of these actions caused Mr M to be treated unfairly.

It isn't this service's role to step in and indicate to a firm how it should price its instruments, or what actions it should take in such challenging circumstances. Instead my role is to look at the changes CMC made, and decide whether it fairly and reasonably applied them and, most importantly, whether Mr M was given sufficient opportunity to understand the changes and decide whether he wanted to accept them or disinvest – bearing in mind that he had already accepted, in the terms, that he'd be trading CMC's own price.

In this regard, I agree with the investigator's conclusions that it was only on 23 April 2020 that Mr M was fully aware of the changes to the oil market he had open positions on. And as a result, it was only from this point onwards that he had enough information to decide for himself whether this was a market that he continued to want to be invested in, bearing in mind the changes to how the price was being quoted.

It therefore follows that losses which were incurred after 23 April 2020 were trading losses which Mr M took the risk of incurring. If he felt the market was no longer being priced in the way he thought it would be when he first opened positions on it, he should've closed his trades on 23 April 2020. By keeping his positions open, he accepted the changes CMC had made.

I agree that CMC's email on 21 April 2020 was not detailed enough to fully explain to Mr M why the changes were being made, and what impact these would have on his positions. However, I do note that this email did clearly explain what futures contracts the price would now be based on, and how much the holding charge would be.

In terms of the closure of Mr M's positions, the evidence I've seen from CMC shows that Mr M did not have sufficient margin to keep his trades open at the time. I appreciate Mr M disputes the price that his trades were closed at, but as above, comparing the price his trades were closed at with the price of oil in the underlying market at that time was not the way his positions were being valued – and it was not the price he had been trading on. In addition, Mr M's comparison of the price of oil in May 2020 and the price his trades were closed at ignores the reduction in holding charges which he benefited from by virtue of CMC's decision to change how it priced this instrument.

As I've said above, Mr M had known about this for almost a month, but chose to continue trading on that price – so I'm satisfied that he wasn't treated unfairly when his account, valued in accordance with the price CMC was quoting, no longer had sufficient margin to keep his trades open.

Putting things right

As a result, I agree with the investigator's proposal for putting things right:

- Compare the losses on Mr M's account between the moment in changed how the Crude Oil West Texas – Cash market was priced, to the moment it properly informed Mr M of this change on 23 April 2020.
- Pay Mr M £200 for the trouble and upset it caused by making such changes without fully explaining them to him at the time.

My final decision

My final decision is that I uphold Mr M's complaint, and award compensation as above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 15 September 2023.

Alessandro Pulzone
Ombudsman