DRN-3733079

The complaint

Mr R complains that CMC Spreadbet Plc took back profits he made on his positions causing a negative account balance and preventing him from making a profit by closing his open positions.

What happened

Mr R's position

He says between 11-14 March 2022 he made £59,000 in profit from trading in US NDAQ100-Sep 22 with CMC Spreadbet Plc (CMC). He complains they cancelled all his trades on 15 March 2022 saying these were executed at an inaccurate price but wasn't given enough information about which positions would be cancelled.

They took back his profits causing his account to go into negative balance and subsequently closed all his positions. If his positions on US NDAQ 100-June2 and US FANG Plus – Mar 22 were not forced to close, he says he would have made thousands in profits when the markets peaked at the end of March and early April 2022.

He incurred losses of £1798.50 because of the execution of an order which he says he didn't place. This was refunded to him.

He also raised some concerns around CMC's trading practices and that this "error" happened again on 16 and 17th March 2022.

CMC's position

They issued a final response to Mr R on 28 April 2022, saying the orders executed on his account were based on materially incorrect prices and this would be construed as an "error" under the terms of the account - the same terms also give them discretion to cancel any affected order. The say they met their obligations by communicating their intention to reverse the trades one hour prior to doing so.

The account margin requirements hadn't been met for the positions that remained and so these were closed in line with the terms of the account. They say the close out level was only triggered because Mr R had withdrawn £22,000 from the account which left his account in negative equity. He needed to pay approximately £20,000 to bring his account back to zero, but due to the negative balance protection rules set by the Financial Conduct Authority, CMC automatically refunded the negative balance and brought his account balance back to zero so that both parties' obligations had been met.
CMC refunded Mr R's losses of £1,798.50 when they closed the Buy order. They agreed to pay for losses incurred on positions closed that were not affected by the incorrect price, which they calculated at £5,965.91.

Unhappy with CMC's response, Mr R brought his complaint to this service. Our investigator considered the merits of the complaint and didn't uphold his complaint and for broadly the same reasons as CMC have noted.

Mr R didn't agree with the investigators findings and so this has come to me for a final 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.

Pricing error

I've started my investigation looking at how CMC define an "error" in their agreement. I've considered, in light of what CMC said, whether they've acted fairly by applying their policy and thereby voiding Mr R's trades.

On 14 March 2022, CMC identified trades on US NDAQ 100 – Sept 22 that were all executed at an incorrect price which was different from the underlying market trading prices. They say Mr R's trades were affected by this error caused by their safeguarding price controls and movements of the instruments. Having looked at the Bloomberg data on pricing, I can see there was a difference which wasn't reflective of the underlying market, and I am persuaded there was an error in the pricing which affected Mr R's trades.

The Financial Betting Terms of Business covers an error in pricing in Section 8. Mr R agreed he had read and understood these terms when he signed up to the account. These terms apply to each trade he placed with CMC. These terms also give CMC the discretion to cancel any order where there is an error found. This is covered under Section 8.3 "Reserved Action" and gives CMC discretionary power to cancel any orders affected by this error as well as any relevant consequences whether this is a profit or a loss. From what I have seen, CMC have been quick to act on this issue as soon as they became aware of it. They also notified Mr R via email an hour before the remedial action was taken, so I am satisfied they have met their obligations in this regard.

I appreciate Mr R feels strongly about this matter that CMC were unfair in their application of the right to void his trades, but I think it's important to point out, there is no specification that you had to have prior knowledge of the error for these terms to apply. Even if he had placed these trades in good faith, it would still be unreasonable to expect CMC to honour these at what was an incorrect price. As such, any trades impacted by the error in pricing would fall within the definition of an "error" in CMC's terms and they could apply their policy to this. So, I don't think CMC have acted unfairly by applying their error policy and in the way that they have, and I think their decision to void those trades is reasonable.

Access to funds

I've then considered the issue of the requested funds which CMC prevented Mr R from withdrawing. The withdrawal requests amounted to a total of £42,000 which were profits he had realised as a result of the pricing error above. A payment of £22,000 had already been released to him but after becoming aware of the pricing error, CMC were entitled to exercise their discretion to prevent further withdrawals.

As I've explained above, CMC were within their rights to void his trades. He had benefited from the pricing error and the terms outline what happens in this situation. Therefore, it's reasonable that he should have known he wouldn't be able to retain any of the profits. Ultimately, it wouldn't be fair for him to have had the benefit of these profits by virtue of this pricing error, so I think it was fair and reasonable under the circumstances that CMC did offset the £20,000 withdrawal he requested against the negative account balance of

£20,148.45. Given the circumstances, I am not persuaded that any wrongdoing on CMC's part has been established so I will not be asking them to do anything.

Margin call

I appreciate this situation must have been frustrating for Mr R, as he was expecting to make thousands in profits from his positions not affected by the pricing error, but the minimum account margin requirements were not met. The margin requirements are noted European Securities and Markets Authority (ESMA), Rule 22.5.13 of the COBs rules, and CMC's terms. As soon as the account fell below the required amount, CMC closed any positions to manage this. Given that Mr R had been trading with CMC for the length of time he had, I think it is reasonable to expect that he was aware of his obligations to maintain the account as well as CMC's right to close any relevant positions to maintain the margin requirements.

Putting things right

That said, CMC are aware that the positions in US NDAQ100-Sep 22 were the only ones directly linked to the error in pricing, but his other positions had also been closed. So, to put Mr R back in the position he would have been before the error occurred, they agreed to reopen his closed positions at the market prices and apply any credit difference between the original liquidation and the re-entry prices. This was on the condition that Mr R was to fund the account with the equivalent amount to maintain the margins for the closed positions. As he wasn't willing to do this, they offered to pay £5,965.91 which they calculated was what he would have made for the closed positions which were not part of the original pricing error.

I know Mr R will be disappointed with my decision, but I'm not persuaded he would have withdrawn £22,000 if it was not for the pricing error and so the other positions would not have closed when they did. The evidence I've seen shows CMC were within their rights to void the trades affected by the pricing error, take back the funds in his account and then deal with the account margin as they did. To put Mr R back in the position he would have been before the pricing error occurred, I am satisfied that CMC's offer of £5,965.91 is fair and reasonable and they should make this payment to him.

If Mr R continues to have concerns about the way in which CMC operate, I would suggest he takes his complaint to the regulator, The Financial Conduct Authority.

My final decision

For the reasons given above, I uphold this complaint against CMC Spreadbet Plc and they should pay Mr R £5,965.91.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 2 November 2023.

Naima Abdul-Rasool
Ombudsman