DRN-3848078

Financial Ombudsman Service

The complaint

Mr F is complaining about Capital Com (UK) Limited (CC) closing contract for difference (CFD) trading positions that he didn't want to close.

What happened

Mr F opened some long positions in a certain stock, A, in June 2021. He continued to trade in A over the following months. On 6 August 2021, Mr F wanted to open some short positions in A. He went on to the platform and clicked "sell", thinking this would open a short position. He confirmed the sale but when he checked his account, he couldn't see a short position, so he tried again. After the second attempt, he realised that instead of opening a short position he'd closed 200 units of his long positions.

Mr F was upset about this and contacted CC the next day. In response, CC told Mr F that the platform has two trading modes – a "normal" mode and a "hedging" mode. A customer has to use hedging mode to open a short position on a stock they already hold a long position on. CC told Mr F he should have seen an alert which would have warned him that the "sell" instruction would close his long positions. But Mr F said he hadn't seen any such notification.

After further investigation, CC apologised and said there'd been a problem with their systems at the time which had meant that the alert hadn't popped up. They offered Mr F a refund of £233.72 – an amount which represents the difference between the price at which he inadvertently sold the units and the price at which he bought 200 more of the same units (on 6 August and 10 August).

Mr F wasn't happy with CC's offer so he brought his complaint to our service. He was upset that he'd closed positions that he hadn't wanted to close and lost around £4,000 in doing so. He said all he wanted was for CC to re-open the positions he'd inadvertently closed and wasn't happy with the refund. He also said that CC had chosen to close the positions which would give them most profit – noting that he had other open long positions which would have left him with a smaller loss if closed.

Our investigator looked into the matter and said she felt CC's offer was fair. She said it was Mr F's responsibility to understand the features of his account. And she said it was difficult to say how things would have turned out if Mr F had been able to do things differently. Mr F disagreed with our investigator and asked for an ombudsman to look at the case – so it came to me.

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.

After reviewing the complaint, I didn't fully agree with our investigator. So I issued a provisional decision on 7 December 2022. In this I said:

*As CC have said, there should have been an alert when Mr F went to try to open short positions. It’s their fault that there wasn’t, and so I’ll think about what would have happened if things hadn’t gone wrong and the alert had appeared as it should have. The alert that should have appeared says: “*You have an open position on this instrument in the opposite direction. Selling it will close it in full or partially*”. I’m persuaded that Mr F didn’t want to close his open positions – and so, had there been an alert, I don’t think he would have done.*

I asked Mr F what he’d have done if he hadn’t inadvertently closed the long positions. He said he’d been planning to open a short position for at least the quantity of the long positions and then close the long position later. But he acknowledged that this was with the benefit of hindsight. He also said he thought he’d have still opened the additional long positions in A on 6 August and 10 August – saying they weren’t intended to replace the ones he’d inadvertently closed.

Looking at Mr F’s trading history, I don’t think he would have opened significant quantities of short positions if the alert had appeared. CC told Mr F the next day (on 7 August) that he needed to use hedging mode to hold opposite positions, and explained how to do this. So Mr F had all the information he needed at this point but didn’t open any short positions until January 2022. When Mr F did eventually open short positions in A in January 2022, he only held them for a day or two rather than waiting for larger market movements. So I’m inclined to say there’s no need to factor additional short positions into any potential redress.

Thinking about the inadvertent closure, I can see Mr F crystallised a substantial loss because of it. He sold 200 units for around 31.5 cents which he’d bought for nearly 58 cents – a loss of over $5,200 or nearly £3,800. However, although the unit price of A recovered a little later in the year, it dropped significantly from December 2021 onwards. Mr F still held over 1,700 open long positions in A when the account was closed in May 2022 – these were sold at a price of just 10.33 cents. So, if Mr F hadn’t closed the positions in August 2021, it’s likely they wouldn’t have been closed until May 2022. At that point the units would have lost a further 20 cents in value and Mr F’s total losses would have been even more.

*I’ve also thought about Mr F’s comment that CC chose to close the positions that gave them the biggest profit and himself the biggest loss. When I asked CC why this was, they said the platform follows a “first in first out” system unless the client selects the specific trade to be closed. This seems in contrast to the Execution Policy set out in CC’s terms and conditions which says: “*If there are no specific instructions from the Client on how to execute the order, we will consider several execution factors to ensure that we manage the order on terms most favourable to our Client.*”*

I haven’t looked further into this however, as a smaller loss on the closure of these positions would likely have led to a larger loss when closing other positions in A. By taking a first in first out approach, CC would at least have minimised the level of overnight charges paid by Mr F.

So, in summary, I’m inclined to say CC’s error (in not displaying the alert) hasn’t caused Mr F any financial loss – his losses might well have been larger had he not closed the positions inadvertently.

CC have offered Mr F £233.72. They explained this is effectively what it cost Mr F to replace the long positions he inadvertently closed. Although I appreciate Mr F’s said that wasn’t his intention in opening further long positions, I’m still inclined to say it’s fair for CC to pay this amount to Mr F - it reflects the fact that their error caused Mr F some

> *inconvenience and upset. I don't think they need to pay Mr F any more though – the matter was resolved quickly.*

CC accepted my decision but Mr F didn't. He explained that he didn't open any short positions until January 2022 because, having experienced problems when he first tried to open short positions, he was anxious that this might happen again. He reiterated that it had been his intention to open more short positions, and that this would have helped reduce his overall losses.

Whilst I can understand Mr F's nervousness, the email from CC on 7 August 2021 clearly explained what had gone wrong, and gave step-by-step instructions on how Mr F could open the short positions he wanted to. So I'm satisfied CC did everything they could to help Mr F get into the position he wanted to be in – it wouldn't be fair to ask CC to compensate Mr F further simply because he became nervous about trading.

Mr F also commented on CC's adoption of a first in first out approach – saying "*Based on your observation here, I would like you to request you to take a note that they have violated their terms… just because some other scenario caused me a smaller loss doesn't excuse this breach…"*

I can understand Mr F's view here, but I haven't investigated this matter in any detail so I can't say for sure that CC have violated their terms – I've just commented on what appears to have happened at first glance. That's because we're not a regulator and it's not our role to fine businesses – instead we focus on informal dispute resolution and putting consumers back in the position they would have been in if things hadn't gone wrong.

So Mr F's comments haven't changed my view, and my decision is the same as I set out in my provisional decision.

My final decision

As I've explained above, Capital Com (UK) Limited need to pay Mr F £233.72.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 5 January 2023.

Clare King
Ombudsman