DRN-3851455

The complaint

Mr A complains that Plus500UK Ltd applied an unfair bid/ask spread to a Contract for Differences (CFD) options instrument in which held several positions on his trading account, leading to a margin call and a series of closures of related positions. He's also raised a secondary concern about Plus500 later pausing trading in another contract, leaving him unable to close the position and take a profit.

What happened

The background to both of Mr A's concerns is well-known to both parties, but I'll briefly summarise the circumstances.

- *Issue 1* – on 17 August 2021, shortly after the market opened, the spread applied by Plus500 to a Put 3800 |Aug| Europe 50 position on Mr A's account led to a margin call and the series of closures. Mr A feels that at the time what he refers to as a 'spread explosion' – an unexpected and short-lived significant widening between the bid and ask prices – occurred in the underlying quotes on which Plus500 bases its own spread. When it also then applied its adjustment, this led to an ask price that increased his margin requirement significantly and led to a margin call. Mr A feels that the closure of his positions was therefore unfairly forced by Plus500 applying a price that failed to reflect the underlying market and, further, included an unreasonable level of mark-up.

- *Issue 2* – some months later Plus500 paused trading in Put 130 | Nov | Apple contracts for three days shortly before expiry in November 2021. Mr A feels that the pausing shouldn't have happened as there was a consistent price feed available for the ask price, with no volatility, and he was unfairly prevented him from trading and taking a profit.

Mr A raised his concerns with Plus500, but it didn't uphold the complaint in respect of either issue. (Mr A has raised three complaints against Plus500 concerning similar and related issues. For clarity, this decision deals solely with the events in 2021, as noted above)

It said, in brief, that the buy rate on the Put 3800 |Aug| Europe 50 position that had prompted the margin calls reasonably reflected the situation in the market, which had been experiencing the high levels of volatility frequently seen at market opening. It explained that its prices were based on data obtained from a variety of sources with a spread adjustment then applied. It noted that its terms, to which Mr A had agreed, covered this scenario. And in support of its explanation, it provided information showing one of its liquidity provider's prices around the time in question as near, and occasionally above, the ask price it had applied.

In respect of issue 2, Plus500 again highlighted that its platform reflected market conditions and that the pause in trading of the Put 130 | Nov | Apple contract that Mr A experienced had occurred as result of low levels of trading in the underlying market. It noted that this type of situation was not uncommon and was also covered in its terms.

Unhappy with Plus500's response, Mr A referred his complaint to this service, but our investigator reached broadly the same conclusions.

In short, in respect of issue 1, she was satisfied the margin call triggered by the price change in the Put 3800 |Aug| Europe 50 position was fair and reasonable. She felt that the change in spread was broadly in line with the change in prices in the underlying market and the information being supplied by one of Plus500's liquidity providers.

In respect of issue 2, she was satisfied that the pausing of the Put 130 |Nov| Apple instrument a few days before its expiry date in November 2021 was reasonably linked to inactivity in the underlying market. She considered that information from the time showed low demand and low trading volumes for the instrument. She noted there'd been heightened periods of volatility for short periods during which a few trades took place. As such, she felt that in the circumstances it had been reasonable for Plus500 to pause trading in this instrument, in line with the terms of its User Agreement.

Mr A didn't accept the investigator's view. He provided further extensive submissions, focussing, in respect if issue 1, on Plus500's apparent use of a 120-second moving average as part of its price determination; differentials between the pricing information provided by Plus500 and that available directly from its liquidity provider; and, further, the failure of Plus500 to pause trading in light of the volatility that it has said led to the 'spread explosion' and ultimately the margin calls.

He also commented further on pausing in relation to issue 2, as he felt there was inconsistency in how Plus500 applied this mechanism. In short, he felt that if it had been applied in respect of issue 2, it followed that it should also have been applied in respect of issue 1, and that doing so would've prevented the margin call that closed his positions.

The investigator wasn't persuaded to change her opinion, so the matter was referred to me to 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.

As noted, I've summarised the issues and the arguments made so far in considerably less detail than the parties to the complaint, and in my own words. While I've given very careful consideration to everything that's been said and provided, the purpose of my decision isn't to address every single point raised.

If there's something I don't mention, it isn't because I've ignored it. Rather, I'm satisfied I don't need to comment on every individual point that's been made to reach what I think is the right outcome. No discourtesy is intended; our rules allow me to do this, and it reflects the informal nature of this service as a free alternative to the courts. Where matters are unclear or in dispute, I've reached my conclusions on the balance of probabilities – in other words, what I consider more likely than not to have happened based on the evidence available and the wider circumstances.

In reaching my outcome, I've taken into account relevant law and regulations; relevant regulators' rules guidance and standards; codes of practice; and, where appropriate, what I consider was good industry practice at the relevant time. But I think it's important to note that while I take all those factors into account, I'm ultimately deciding what I consider to be fair and reasonable in all the circumstances.

In respect of issue 1, the closures prompted by the margin call of November 2021, the key issue concerns the fairness of the spread and therefore the price that prompted the margin call. There's no dispute that the equity on Mr A's account fell below the required level. His concern is that the additional margin requirement stemmed solely from a price that shouldn't in his view have been applied by Plus500. That was because it didn't reflect the underlying market; the mark-up, or spread adjustment, applied by Plus500 was too high and, moreover, the 'spread explosion' was clearly temporary.

As is common with this type of trading, where Plus500 was acting as counterparty – the other side – to the transactions carried out by Mr A on its platform, it was setting its own prices. This was covered in the User Agreement Mr A accepted when he began trading with Plus500. At paragraph 15.6 the agreement says –

'You acknowledge that whilst the Prices displayed on our platform will take into account market data from various sources, they are not taken directly from any one source, and therefore may not match prices that you see elsewhere (including prices quoted on stock exchanges). You further acknowledge that the triggering of your Transaction is linked to the prices we quote on the Trading Platform, not the prices quoted on the relevant Exchanges...:'

It's apparent from reading his submissions that Mr A is clear on this point. The arguments he's made are based on his belief that Plus500's own prices, in particular the price that prompted the November 2021 margin call, need to reflect the underlying market fairly and reasonably, and in the event they do not, then there's flexibility within Plus500's user agreement to pause trading.

So, I'm deciding whether it was fair and reasonable for Plus500 to apply the spread, and as a result, the ask price at which Mr A's positions were closed on the morning if 17 November 2021. And in the context of what was set out in User Agreement and the specific circumstances I think it was.

Trading in Plus500's CFDs on options opens ten minutes after market opening. It has explained that this is a measure put in place to avoid the highest levels of volatility commonly seen immediately after market opening. But there is, or course, still volatility experienced after this, and I think in this case this is shown by the evidence provided by Plus500 indicating that its liquidity provider was showing rates around the time Mr A's positions were liquidated that were in line with the Put 3800 |Aug| Europe 50 price that triggered the margin call. That being an ask price of 1.55 at 08:11:24 – the liquidity provider had shown rates as high as 1.60 around this time.

I appreciate that Mr A feels that his own analysis of the market situation, trading levels and volatility from that morning suggest a narrower spread, and lower ask price, should've been applied, or failing that trading should've been paused. But to be clear, I'm not considering what other approaches to pricing could've been taken. I'm considering whether the approach taken by Plus500, the party with which Mr A had agreed to carry out his transactions, was reasonable on this occasion. And I think, on balance, that it was. I've seen nothing that persuades me that the price it applied was a result of a manifest error or that it was so far out of line with the underlying market that it was unreasonable for Plus500 to use.

CFDs are volatile products, those based on options even more so. And options pricing is, in itself, complex, influenced by a variety of factors, including, but not limited to, time to the expiry of the contract and implied volatility. Couple this with an admittedly somewhat opaque approach taken by trading platforms (although I acknowledge there is a commercial discretion element to this) increases the degree of uncertainty involved.

But I think this is an unavoidable feature of this type of high-risk trading. Mr A has highlighted that, when providing its explanation of how its prices were influenced on the day in question, Plus500 referred to its use of, among other factors, a two-minute moving average when determining spreads. For clarity, that's an average spread rather than price and I don't find it questionable, particularly where it was made clear that a dynamic spread (one that's continually adjusted) was being applied, that a rolling average formed part of the basis for the spread determination.

I note Mr A's point that generally if a business sets a price at what might be considered an 'unreasonable' level (and for clarity, as explained, I don't think this was an unreasonable level), then a customer has the choice not to trade at that price. But in this type of situation, where a position has already been opened, trading at an unreasonable price can effectively be forced upon a customer, as Mr A feels was the case here.

But the margin call closures could've been avoided had the equity on his account been maintained at a higher level. I understand his point that in theory it would need an infinite margin level to protect against what could be an infinite spread explosion. But in practice I think it's more the case that at times of heightened volatility, such as near market opening, with a high level of exposure to a particular underlying asset, there's simply a greater need for margin to be managed effectively.

I accept that the same principle doesn't quite apply in the case of the situation that prompted issue 2 – not being able to close at a price Mr A feels should have been available because Plus500 had paused trading. There's no equivalent way to potentially protect from this situation. If Plus500 pauses trading, there's simply no way of closing the position until such time that it is resumed.

But again, the potential for this to happen is covered in the User Agreement at paragraph 13.7 -

'*You acknowledge that the trading of certain instruments on the Trading Platform may become volatile or illiquid without warning. In such circumstances, it may not be possible to immediately execute orders on your behalf and trading will resume as soon as we receive a reliable price feed, particularly in the period shortly before an expiry, usually for Futures contracts and Options... (...).*'

Again, Mr A feels that his own analysis of the market situation, trading levels, volatility, etc for the period in question in November 2021 when trading in the Put 130 | Nov | Apple contracts was paused suggests that it wasn't reasonable for Plus500 to do so. And while I accept that the relevant data could be used as the basis for an argument that a different approach could've been taken, again I'm considering whether Plus500's approach on this occasion was unfair or unreasonable, in the context of the flexibility provided for by its terms.

If the pausing had occurred at a time when there was no obvious reason or cause for such action, I might be more inclined to question the situation. But this was in the final days shortly before expiry of the contracts when increased volatility is to be expected. Plus500 has explained that it has pre-determined tolerance levels that, if breached, will lead to trading being paused. I appreciate that this could be seen as simply another element of the opaque approach to pricing that I mentioned previously. But again, I'd stress that there are a variety of factors at play here.

I note Mr A's concerns about a potential conflict of interest as Plus500 took the other side of the trades in question, so it effectively 'won' in these situations. I accept that's the case, but it is in the nature of the arrangement and clearly set out in the terms and explained in the summary order execution policy.

While I appreciate many of the points put forward in his submissions, it strikes me that Mr A is in many respects attempting to find a level of certainty in an environment where, by its nature, that is unlikely to be the case. The type of explanation that he is seeking would depend upon the sharing of commercially sensitive information concerning the tools used by Plus500 to determine its prices. I appreciate there needs to be a degree of transparency provided to customers using Plus500's system. But ultimately, I don't think it's reasonable to expect it to provide any greater level of detail or granularity than it has already, not when, as I've said, the prices/spreads in question were being provided during periods of increased volatility and illiquidity.

My final decision

For the reasons given, my final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 24 May 2024.

James Harris
Ombudsman