

The complaint

Mr S complains that CMC Spreadbet Plc pressurised him into opening an account with them. In addition, he went on to state that CMC failed to show him how to use their system before his capital was put at risk.

Mr S also says that CMC told him that he wouldn't need to apply a 'stop-loss' to a transaction, and after taking that guidance, it resulted in him suffering significant capital losses. Mr S would now like CMC to reimburse him for those losses which, he says, amount to around £200,000.

What happened

In September 2021, Mr S says he was contacted by the account manager from his existing CFD and spreadbet provider (who I shall call Firm X), who explained to him that he had moved to a new employer, CMC. Mr S explained that he was then chased by that individual for several months, who was trying to encourage him to open an account with CMC.

On 26 November 2021, Mr S opened a demo spread betting account and 40 days later, on 4 January 2022, he also opened a demo CFD trading account. On 13 and 14 April 2022, Mr S decided to open 'live' accounts with CMC. During their earlier discussions on WhatsApp, Mr S and his account manager discussed applying for a Professional client account rather than a standard Retail customer account as that would give Mr S access to better terms with CMC and ones that matched or bettered Firm X's offering. After considering Mr S's application, CMC agreed to categorise him as a Professional client and shortly thereafter, he applied for a negative balance facility on his account of £100,000.

After opening the live accounts, Mr S asked his account manager to walk him through the functionality of the platform. Mr S's account manager explained that he was available that day, but despite that, Mr S explained that he would rather leave the system walk through until the following week.

Mr S then began executing orders on his live spread bet account on 14 April 2022. On 25 April 2022, CMC contacted Mr S to explain to him that his account had been liquidated. Shortly afterwards, Mr S decided to formally complain to CMC. In summary, he said that he'd been pressurised to open an account with CMC and had been provided with no guidance on how to use the account properly. In addition, Mr S went on to explain that he was incorrectly advised that there was no need for a 'stop-loss' to be placed on a transaction he was undertaking, but that subsequently transpired to be incorrect.

After reviewing Mr S's complaint, CMC concluded they were satisfied they'd done nothing wrong. They also said, in summary, from the point that Mr S was first introduced to CMC, he was provided with the tools to access their systems first, without risking his capital. In addition, CMC went on to say that as an elective Professional trader with significant experience of, and understanding of, leverage products, they didn't believe Mr S was unaware of the risks he was taking on. CMC went on to say that had Mr S wanted to add a

stop-loss order, he could have done so through their platform or he could have telephoned them if he was unsure about how to add one. Finally, CMC said that they didn't believe the conduct of Mr S's account manager had any impact on the losses that he had borne.

Mr S was unhappy with CMC's response, so he referred his complaint to this service. In summary, he repeated the same concerns that he had already set out to CMC. The complaint was then considered by one of our Investigators. He concluded that CMC hadn't treated Mr S unfairly because he'd seen no evidence to suggest that he'd been pressurised into opening an account. In addition, given Mr S appeared to satisfy the regulator's Professional client definition, he would've expected him to understand the importance of placing a stop-loss on his account and also, the continual monitoring of his transactions.

Mr S, however, disagreed with our Investigator's findings. In summary, he said that the account manager did everything within his power to open the trading account 'forcefully'. In addition, he felt that since CMC had since 'sacked' his account manager, and given that he had also been 'sacked' from his previous CFD provider (Firm X), Mr S wanted an Ombudsman to review the complaint and make a final decision. Mr S stated that he would also submit further evidence in support of his complaint, but despite being given the opportunity to do so, no new information was received.

Our Investigator was not persuaded to change his view as he didn't believe that Mr S had presented any new arguments that he'd not already considered or responded to. The case therefore comes to me for a 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.

I have summarised this complaint in less detail than Mr S has done and I've done so using my own words. The purpose of my decision isn't to address every single point raised by all of the parties involved. If there's something I've not mentioned, it isn't because I've ignored it - I haven't. I'm satisfied that I don't need to comment on every individual argument to be able to reach what I think is the right outcome. No discourtesy is intended by this; our rules allow me to do this and it simply reflects the informal nature of our service as a free alternative to the courts. Instead, I will focus on what I find to be the key issue here, which is whether CMC pressurised him into opening an account with them, whether they provided him with enough information to deal on his account and whether CMC provided misleading information to him about the need for a stop-loss.

My role is to consider the evidence presented by Mr S and CMC in order to 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. Where there's conflicting information about what happened and gaps in what we know, my role is to weigh up the evidence we do have, but it is for me to decide, based on the available information that I've been given, what's more likely than not to have happened. And, having done so, I'm not upholding Mr S's complaint - I'll explain why below.

I can well appreciate Mr S's concerns at losing such a large sum of monies, but when a consumer enters into a series of complex transactions of the nature such as the ones undertaken by Mr S, the regulator is very clear about the information that must be provided to consumers ahead of such undertakings and the fact that firms must satisfy themselves that the consumer has the capacity to understand those risks. And, having carefully

considered the evidence on the file, I'm satisfied that CMC did both. I'll expand on that below but for ease, I've tried to address Mr S's complaint in the order that he's presented it to this service:

Was Mr S pressurised into opening an account with CMC?

Mr S says that he was contacted by the account manager from his existing CFD provider (from Firm X), who explained to him that he had moved to a new employer, CMC. Mr S explained that he was then chased by that individual for several months, who was trying to encourage him to open an account with CMC. I think there's several components to this element of Mr S's complaint.

In his correspondence with this service, Mr S has explained that he wasn't happy that his personal and account information had been 'stolen' from Firm X by his former account manager to use it to encourage him to move to CMC. We are in certain circumstances able to consider issues around data handling. But in this case, as the allegation is focussed specifically on the individual and I've not seen evidence beyond Mr S's submissions, it would be better directed to the Information Commissioner's Office. So, I won't comment on that particular aspect any further.

I've looked very closely at the eight pages of around c200 WhatsApp messages that Mr S and his former account manager shared in the run up to the new accounts being opened at CMC and then the exchanges that immediately followed after the liquidation. The messages cover a wide range of topics from personal, family issues (the details of which were redacted prior to being submitted to this service), the economy and markets, through to the opening of an account at CMC. From what I've seen, I'm not persuaded that CMC pressurised Mr S into opening an account with them. It seems clear to me that both Mr S and CMC's account manager knew one another very well and the exchanges were of an informal and friendly nature. At no point during the detailed exchanges did Mr S suggest that he wasn't interested in opening an account with CMC, rather, his messages implied the opposite - that is to say, he was interested.

I've also given careful thought to CMC's actions in light of the regulator's publication, PS19/18: Restricting contract for difference products sold to retail clients. That directive required firms to stop offering current and potential customers cash or other inducements to encourage retail consumers to trade. Whilst Mr S ultimately ended up electing to be treated as a professional investor and that publication was focused on the protection of retail consumers, at that point Mr S was applying for his account with CMC, he was still considered a retail consumer and as such, I'm satisfied the conditions within that policy statement initially applied to him. I should also acknowledge that Mr S's complaint relates to spread betting, but he did also open a CFD account so for completeness, I have also considered the messages in light of the regulator's PS19/18 bulletin.

It's clear from the messages that CMC exchanged with Mr S that they were keen for him to bring his business to them. But importantly, from what I've seen, CMC didn't appear to offer any special terms to Mr S that weren't also provided to other consumers in his situation. In the WhatsApp message, CMC's account manager explains that he's able to match or beat any rates [Firm X] offer him. In addition, the account manager also explains that CMC would match the level of Firm X's liquidity/leverage offerings. However, I've seen no evidence that he was offered a financial incentive to open an account with them.

From what I've seen, it's clear to me that Mr S is a very experienced investor. According to the FCA register, he's worked in the financial services industry for many years. And, I well suspect, as a manager within that firm, he regularly receives unsolicited advances from other businesses trying to sell his company products or services. From the WhatsApp messages

I've read, it therefore seems to me that Mr S was attracted to CMC's proposition and the better terms they were offering (over his existing provider – Firm X) because, I don't doubt that given his background, he would've been more than capable of simply declining CMC's advances if he wasn't interested.

It therefore follows that I'm not persuaded that Mr S was pressured into opening an account with CMC and I'm not upholding this element of his complaint.

Did CMC do enough to show Mr S how to use the trading facilities?

Mr S says that, had CMC provided better guidance to him, he would've understood how to use their platform more effectively.

After opening the live accounts, Mr S asked his account manager to walk him through the functionality of the platform. Mr S's account manager explained (on 14 April 2022 at 13:58) that he was available all afternoon that day, but despite that, Mr S explained that he would rather leave the system walk through until the following week. CMC's account manager then followed that message up by asking Mr S if he wanted him to 'send anything through about (the) platform, examples of how I have workspace set up etc?'. But despite this, Mr S explained that he'd already set up a small number of positions (14 April 2022 at 15:13) to see how the system worked and to gain a better understanding of the features of the platform. Mr S's account manager then contacted him again on 19 April 2022 (at 09:39) to see if he wanted to 'catch up on the App' but Mr S responded, explaining 'I think I'm getting the hang of it'.

On 20 April 2022, CMC's account manager again approached Mr S, saying 'lets catch up tomorrow when you get a sec would love to hear your thoughts on app etc now you've had a few trades on!'. Mr S responded, saying 'thanks just still playing around with small trades atm (at the moment)'.

So, it seems to me that CMC contacted Mr S on multiple occasions offering to walk him through the features and functions of their live platform but despite this, Mr S chose not take advantage of CMC's offer of help. In addition, CMC also provided Mr S access to their 'demo' trading account back in November 2021, which he decided not to make use of. Despite the spreadbet and CFD accounts going live on 14 April 2022, I can't see any evidence that CMC placed any pressure on Mr S to start trading; it seems to me from the WhatsApp discussions that Mr S decided to start transacting on his own accord, despite the very high-risk nature of the deals he was entering into.

And, despite what Mr S has said in his exchanges with CMC, I'm not persuaded that he was under any misapprehension that the account he was trading on wasn't 'live'. I say that because as I've already explained above, Mr S explained to his account manager that he was only undertaking a number of small trades initially to get the hang of the system. I think it's more likely than not that had Mr S been of the belief that he was only transacting on a demo system, he would've been more ambitious with those earlier initial trades, but he wasn't.

So, having carefully considered this element of Mr S's complaint, I can't agree that CMC didn't do enough to make Mr S aware of the functionality of their trading facilities, so I'm not upholding this part of his complaint.

Did CMC give Mr S incorrect information about the need for a 'stop-loss'?

Mr S also says that CMC told him that he wouldn't need to apply a 'stop-loss' to his transactions, and after taking that guidance, it resulted in him suffering significant capital

losses. Mr S went onto explain that he'd agreed with his account manager that 'if we break 1.2820 call me so we can make a decision'; he also stated that his account manager told him that he was 'watching the level' and at no time did he say there was a need to put a stop-loss on. I think it's important to be really clear at this point about the level of service that Mr S had entered into with CMC. Having looked through the client agreement that Mr S signed up to with CMC, it's clear to me that CMC weren't required to, and weren't offering to, provide any advice to him. CMC provides an execution only service; that means the consumer is responsible for any decisions that take place on the account and CMC have to act in a timely manner to execute any instruction provided by Mr S.

This means that CMC also doesn't provide a service where they individually 'monitor' customers' accounts for them. Whilst Mr S may have thought that by having his own personal account manager, this might have been the case, it wasn't. I've not been provided with any recorded telephone calls, emails or WhatsApp messages that demonstrate CMC offered any warranties to Mr S about entering into such an undertaking, so I think it's more likely than not that such 'monitoring' wasn't offered. I say that because by its very nature, spread betting can be volatile and also fast moving. It's therefore not feasible or practical for firms to offer such a monitoring service (especially given the availability of 24 hour betting) – and that's why they offer features such as stop-losses.

Whilst not the same as a stop-loss, Mr S was asked as part of the account opening process (on 14 April 2022 at 13:31) the point at which he wanted the platform to 'flash up and tell you you're close to liquidation'. Mr S asked for it to be set at £50,000. That meant, CMC's platform would provide a margin call banner if the equity on his account went to £50,000 as a reminder of his closeout level. As the markets turned against Mr S, on 18, 19, 21, 22 and 24 April 2022, CMC emailed him warnings that he should consider reducing his positions to avoid a liquidation (or he should add further funds). Even though Mr S made a deposit of £75,000 on 22 April 2022, it shouldn't have come as a surprise to him when on 25 April 2022 his account manager WhatsApp'd him, asking if he'd seen that his account had been liquidated. It therefore seems to me that Mr S was provided with ample opportunity to 'stop the rot' and close his trades out as his positions worsened but he chose not to.

Whilst I accept that Mr S may not have been familiar with CMC's trading platform or functionality, having seen a screenshot of how a stop-loss could be added to a transaction, I think even a consumer with a limited grasp of trading would be able to understand how to add that function to their bet. From what I've seen, there's a '+ Stop Loss' button directly above the '+Take Profit' button. In any event, from what I've seen of CMC's website, it appears they have a telephone helpline available for customers to call 24 hours a day, five days a week, so if Mr S did want to add a stop-loss, I don't doubt CMC's helpline would've been able to walk him through that process. So, I'm not persuaded that someone with Mr S's significant experience of spread betting, wouldn't have been able to grasp how to apply that function had he wished to add it.

As part of the account opening process, Mr S elected to be treated as a Professional consumer. That meant, he had access to better terms than those typically offered to normal retail consumers, but it also meant that it came with greater risks for Mr S. However, this wasn't Mr S's first venture into spread betting; he'd previously been an elective Professional consumer at his last spread betting provider (Firm X). And, as I've already explained above, Mr S works in regulated financial services and has done so for many years; he also holds a number of 'Senior Manager Functions' as part of his role. Looking closely at Mr S's background and experience, I'm satisfied that he meets the regulator's minimum criteria to be classified as an elective Professional client under COBS 3.5.3R. So, I think it's reasonable to conclude, given Mr S's extensive prior trading experience, that he would've been fully aware of the significant implications of failing to place a stop-loss on any of the bets that he made.

Whilst I can't be certain if Mr S chose to read the terms and conditions of his account prior to opening it, he did agree to CMC's terms of business and Order Execution Policy, which does cover stop-losses in detail on page 29 and in section 2.7 respectively. In any event, I'm satisfied that Mr S understood the nature and benefits of utilising a stop-loss on his account given his experience (which I've already set out above).

Having looked at the bets Mr S placed, it seems that the price of GBP/USD in which Mr S held his largest position, had fallen considerably since CMC liquidated his position on 25 April 2022. Had his position remained open, I well suspect his losses would be much higher than the £100,000 margin he was originally provided with. It therefore seems reasonable to me that CMC took the action that they did. As I've seen nothing that makes me think that CMC treated Mr S unfairly, I'm not upholding this element of his complaint.

Summary

Spread betting by its very nature is complex and high risk; most consumers who engage in it typically end up losing money. Trading on margin increases both profits and losses so comprehensive risk management is essential. And, as I've already explained, Mr S has significant experience in undertaking transactions of this nature, so I can't reasonably conclude that he didn't understand the implications of failing to either place stop-losses on his bets or failing to monitor his transactions closely enough. Given the significant size of Mr S's losses, I do appreciate how disappointed he'll be with my decision, but I've not seen anything to persuade me that CMC has done anything wrong.

My final decision

I'm not upholding Mr S's complaint and as such, I'm not instructing CMC Spreadbet Plc to take any further action.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 28 April 2024.

Simon Fox
Ombudsman