DRN-3873004

The complaint

Mr M complains about the way some of his currency spreadbets were closed by CMC Spreadbet Plc. He says he wasn't allowed to close the trades when he wanted due to suspension of the market, and this caused him a financial loss.

What happened

Mr M opened his account in March 2021. In December 2021 he had some trades open on the USD/TRY and the EUR/TRY currency pairs. As a result of news announcements in Turkey, there was a sharp drop in value in USD/TRY between 18:00 and 18:30 – and CMC decided to halt trading in this market due to insufficient liquidity in the underlying market.

Mr M called CMC at 18:05 to ask for a price due to being unable to close his trade himself online. He was given a price of 15.1220 and told that the spread at the time was around 8000 points. At around 18:16 Mr M agreed to close his full position of £20 per point at a price of 15.1220, which CMC says was a guaranteed price. He was told that the request would be actioned, but as this was a manual trade it could take up to 20 minutes to be carried out.

At around 18:21 he called back to check whether the USD/TRY position had been closed, and to enquire about his EUR/TRY position which was also suspended. Mr M confirmed he still wished his USD/TRY trade to close as agreed and asked for a price for his EUR/TRY trade. He was quoted a price, but he declined it and chose to keep it open.

Shortly after this, at 18:36, Mr M called CMC again and requested to cancel the closure of his USD/TRY position. CMC confirmed that this meant he wanted to keep it open and no further action would be taken, and Mr M agreed.

Unfortunately at around the same time, CMC had lifted the suspension on these markets, and Mr M's account equity had fallen significantly. Mr M's losses were such that he accrued a negative balance of over £236,000 which was refunded to him as he was a retail client.

CMC initially made an offer of goodwill to Mr M, largely based on a mid-point price for his trades, but Mr M declined and referred his complaint to this service.

In his complaint, Mr M said that CMC suspended the price so he couldn't trade, and 'getting a price on the phone took too long as a result all my money in my account was liquidated'. He said that CMC was negligent in not responding promptly, and other companies did not restrict trading in the same way. He claimed he lost £467,458. He acknowledged CMC's initial offer, but said he wanted his 'account restored to the state it would have been if it had not been liquidated'.

He said he wanted calculations to be made so that he received the difference in price between when he was liquidated and the price of 18.07 for his USD/TRY trade, and 20.44 for his EUR/TRY, which was the price both currencies were trading at before the suspension. And he said he also wanted the losses from the other products he was trading to be refunded.

One of our investigators looked into Mr M's complaint. He received an amended offer of goodwill from CMC, but Mr M declined it on the basis that he felt entitled to all the compensation he had claimed. So the investigator looked into the matter, and concluded that Mr M's complaint shouldn't be upheld. In summary, he said that CMC had acted fairly and reasonably. He said:

- Mr M had previously queried CMC's prices and had already been told how the prices were created and that the particular currency market Mr M was trading on could be subject to suspensions in future. Mr M had therefore accepted the risk of this happening.

- The value of the Turkish lira was subject to significant volatility at the time caused by external factors which CMC had no control over. The investigator acknowledged that Mr M was unhappy with the amount of time it took to be given a price, but said that CMC did give him a price – so Mr M could've closed his trades if he wanted. Unfortunately, Mr M later changed his mind so that when the suspension was lifted, his unrealised losses were such that his account didn't have sufficient margin to keep those positions open.

- Ultimately CMC had acted in line with the terms of the account and its order execution policy, and therefore the investigator didn't think it had done anything wrong.

Mr M didn't agree with the investigator. In summary he said:

- He was told the reason for suspending the market was to protect him from large spreads, but in reality CMC caused the liquidation of all his money.

- He felt the possibility of suspending the market was not properly highlighted in the terms or specifically mentioned. He said whilst in the past suspensions had only been for very brief periods, this particular incident last for almost an hour and this was unprecedented.

- The suspension of the market constituted unfair competition. Furthermore, he said that when CMC decided to suspend the market other 'much smaller spreadbet companies were continuing to trade with the same product at the same time'. He said CMC clearly took deliberate action.

- He said he knew other investors who had received compensation under 'goodwill' payments, and their losses were returned. He said this didn't happen to him because of the sheer size of his financial loss, and this was unfair.

- Mr M also said that he never received the credit that amounted to the negative balance he incurred when his account was liquidated.

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 understand that Mr M has made a very significant financial loss on his trades, and I sympathise with his situation. However, my role requires me to decide what's fair and reasonable in the circumstances in an impartial manner, taking into account the terms of the service CMC was providing to him, the standards which the regulator expects firms like CMC to adhere to and the overall circumstances at the time.

Applicable standards

The Conduct of Business Rules (COBS) set out the Financial Conduct Authority's (FCA) rules that all regulated firms are expected to adhere to.

Of particular relevance to this complaint is COBS 11.2A Best Execution. This rule says that:

'(1) A firm must take all sufficient steps to obtain, when executing orders, the best possible results for its clients taking into account the execution factors.

(2) The execution factors to be taken into account are price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of an order'.

The terms of Mr M's account set out the contractual relationship he had with CMC. Of particular relevance to this complaint is section 8.3 '*Reserved actions'*.

Section 8.3.1 says:

'If we are required to do so under Applicable Law or a Specified Event or Circumstance Outside Our Control occurs, or is reasonably likely to occur, or we have valid reasons for doing so, we may in our sole discretion take any action, including the following Reserved Actions that is fair and reasonable in the circumstances:

[…]

(k) suspending the generation and/or quotation of Prices and/or the execution of Orders on our Platform in respect of any Product;'

CMC also has a Best Execution policy that formed part of Mr M's arrangement with it. This policy sets out how CMC will execute client orders. In relation to the prices it offers, section 4 says:

'4.1 The best possible result when executing your Order will be determined in terms of the total consideration (i.e. the price of your Order and costs related to execution).

4.2 The Prices of Products are generated electronically by our Platform. These Prices will take into account market data from various sources, in order to enable us to check whether our Prices are fair and we are delivering on our best execution obligation. However, Prices may not match prices that you see elsewhere (including prices quoted on Trading Venues or by other providers). Prices include our reasonable margin.

4.3 Market fluctuations and technical conditions, in addition to Circumstances Outside of Our Control, may mean that the Prices you see on your device and/or (which you are provided by our client management team when you place an Order, may not be identical to the Price at which the Bet is executed. If changes occur in the applicable Price between the time an Order is placed by you and the time the relevant Order is received by us or the Order is executed by our Platform, the Order is generally executed at (or by reference to) the Price applicable when the Order is executed by our Platform. This may either be to your advantage or disadvantage.

4.4 There will be times when circumstances may prevent our Platform from generating

Prices or affect the Prices being generated. Please refer in particular to clauses 4.2.1 ("Accessing our Platform") and 8.2 ("Circumstances Outside Our Control") as well as paragraph 10 of Schedule 1 ("Corporate Actions, Adjustment Events and Insolvency") of our Financial Betting Terms of Business for more information.

4.5 Please refer to the 'Our Pricing' section of the Website for further information on pricing.'

My findings

Mr M has said that he doesn't agree CMC's ability to suspend markets was sufficiently highlighted to him at the time he opened his account. But I'm satisfied that the ability to do this is common in the industry and, furthermore, is something which is clearly laid out in the terms – as I've set them out above.

The basis of Mr M's relationship with CMC was that this was an execution only account for which he alone bore ultimate responsibility. Furthermore, I'm persuaded by the evidence that CMC has provided that Mr M had already experienced suspensions of this same market in other previous circumstances, and therefore was well aware that this was a recurring risk with this particular currency.

Nevertheless, the key issue in this case is not just the suspension – but what impact this had on Mr M and whether he was treated unfairly.

CMC has explained that the wider circumstances affecting the underlying market and trading in TRY was the reason behind its decision to suspend the market. I've seen evidence from the prices it was receiving, as well as general news and other information relevant at the time, that demonstrates that the Turkish lira was indeed affected by significant events, which created volatility and a large swing in its value. In my view, the fundamental reasons for the losses on Mr M's account are these financial circumstances and, crucially, the trades he placed on the price USD/TRY, and not something CMC did or didn't do.

Furthermore, the evidence I've seen shows that Mr M had the opportunity to close his USD/TRY trade at a much better price than was eventually achieved. The price he was quoted on the phone, and which he temporarily accepted, would've significantly reduced his losses. Having looked at the overall market conditions on the day, I'm satisfied that price was broadly reflective of the market at that moment in time – although I acknowledge that the significant volatility in USD/TRY means there was a range of possible prices available.

The key issue in my view is that whilst CMC had suspended the market, Mr M did have the opportunity to close his trades – and he initially took that opportunity. Mr M has said it took too long, but I'm not persuaded the length of time is key here – and in any event, having eventually obtained a quote, he then called back to cancel his instruction, so I'm not persuaded obtaining a quick quote or closure would've made much of a difference to Mr M at the time.

In my view Mr M's actions demonstrate that he was considering the likelihood of the markets moving in his favour – in such a way as to either make his trades profitable, or reduce his losses. And he took a view that the quote CMC offered him, which with hindsight was better than the subsequent prices he received, was not acceptable to him. In other words, he took the risk by declining that quote that the lira would continue to drop in value, increasing his losses – and he took this risk for the possibility that the opposite would happen.

As I've said above, this is a decision that Mr M was responsible for making and not something CMC had any control over, or any obligation to mitigate for him.

And to be clear, I'm satisfied the prices Mr M was eventually closed out at when CMC lifted the suspension were fairly reflective of the underlying trading in USD/TRY and EUR/TRY.

Finally Mr M has claimed that he wasn't afforded negative balance protection, but the investigator has clearly explained and demonstrated that he was. Negative balance protection doesn't mean a positive credit on his account – it is a protection against owing the broker any money.

In this case, Mr M's trades lost so much that once liquidated he had a nominal debt of over £200,000. CMC proceeded to cancel this debt, as it was required to do, and I'm satisfied this happened.

For all these reasons, whilst I sympathise with Mr M and the losses he faced at the time, I'm satisfied that CMC was not responsible for causing those losses – and I'm satisfied it treated him fairly at the time.

I note that it has made offers to him as goodwill gestures. As I'm not making any award, I cannot comment on whether those offers are fair nor whether CMC is still willing to honour them.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 29 February 2024.

Alessandro Pulzone
Ombudsman