

The complaint

Mrs H complained about London Capital Group Ltd (LCG). She said it voided trades she made and then informed her it was closing her account. She said it was unfair of it to do this.

Mrs H would like LCG to return the profit she made on the voided trades, pay interest, and allow her to continue to trade.

What happened

Mrs H opened a contracts for difference (CFD) trading account with LCG in December 2022. She said she did well trading on her account and made a profit of around £5625. She said LCG then contacted her and said it was removing the profit she had accrued and was closing her account down. Mrs H said it did this, even though it was unable to provide any satisfactory proof to corroborate its claims that she was behaving unfairly and in breach of the terms given for her account. She complained to LCG about this.

LCG said in response that it found Mrs H was engaging in unfair and improper practices by taking advantage of a time delay in the transmission of price quotes, often called latency arbitrage.

LCG said it reviewed Mrs H's trading activity and said it was evident to it that she had breached the terms and conditions that govern her account. It said in particular she had breached term 32.1 *"you agree to use our services in good faith and not take unfair advantage of our services or are otherwise act in an unfair manner or abusive manner in respect of our system"*. It said to rectify the breach it felt Mrs H had made, it followed its terms and treated the transactions she made as void. So, because of this, it removed the profits she made and then closed her account. It said it wouldn't uphold Mrs H's complaint.

Mrs H was not happy with LCG's response and referred her complaint to our service.

An investigator looked into Mrs H's complaint and issued his first view in April 2023. He said the terms and conditions she agreed to, allowed LCG to remove profits if it determined they had been generated from unfair and improper practices. He concluded LCG were entitled to do what it did and so he didn't uphold her complaint.

Mrs H was not in agreement with the investigator's view. She gave examples where she felt the prices that her trades were filled, were valid and available with other brokers. She provided screenshots of the same trades that she took out at the same time with different brokers. She said the examples she gave proved she was not engaging in unfair or improper practices, and she should have her profits reinstated.

The investigator then went back to LCG and asked it to explain how Mrs H was breaching the terms and conditions of her account. LCG responded in May 2023 and said it didn't prohibit robotic or automated trading tools, something Mrs H was using, but in its opinion, she used a dealing strategy that aimed to manipulate and take unfair advantage of its services. It said Mrs H's trading tool was programmed to take advantage of slow price feeds and place trades in advance. It went on to say that she opened and closed a large number of

trades within seconds consistently before pricing gaps, generating an unfair profit without taking market risk. It concluded that around 90% of Mrs H's trades were profitable, whereas usually 70% of investor accounts lose money when trading CFD's with LCG.

The investigator went back and asked Mrs H about her automatic trading tool. She said it was developed by her husband and uses news trading signals to enter trades when the macroeconomic data deviates enough from the estimates. She didn't think she was doing anything wrong.

LCG said in response that in Mrs H's case it was evident to it that she had a trading tool that initiated trades using latent prices and then closed them at similar times, within a few seconds. It reiterated that Mrs H's trading strategy was unfair and improper practice.

The investigator issued a second view in May 2023, because both parties provided further evidence. He concluded that using an electronic algorithm to identify price latency gave Mrs H an unfair advantage. He said LCG provided evidence that this was more likely the case and concluded she had broken the terms provided with the account. He concluded he wouldn't be asking LCG to do anything further for this reason.

Mrs H responded and said the prices she took on her trades were valid and that her strategy was highly accurate. She said that doesn't make what she is doing wrong.

As both parties are not in agreement, Mrs H's complaint has been passed to me, an ombudsman, to look into.

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 independently reviewed Mrs H's complaint and have arrived at the same outcome as the investigator, for broadly the same reasons. I will explain why.

It is not in dispute between the parties that Mrs H used an automatic trading tool on her account, to make trades. Mrs H said she did, and it was developed by her husband. LCG said it doesn't prohibit robotic or automated trading tools in general. The fact Mrs H used an automatic trading tool was not on its own, the reason LCG said it took the actions it did.

What is in dispute and is the crux of Mrs H's complaint as I see it, is whether it was fair and reasonable of LCG to take the action it did. This being that it voided transactions carried out by Mrs H, through her automatic trading tool and then that it went on to close her account. I have considered this.

LCG said Mrs H used a dealing strategy that aimed to manipulate and take unfair advantage of its services. It said it acted against this and did so in accordance with the terms and conditions relating to Mrs H's account. I have looked into the terms and have read the following that I think is relevant here, are stated under section 32 unfair and improper activities:

"32.1 You agree to use our services in good faith and not to take unfair advantage of our services or are otherwise act in an unfair manner or abusive manner in respect of our systems, platforms or accounts."

LCG then lists out specific behaviours. Of relevance I think to Mrs H's complaint are:

“32.1.1 using any electronic device, software, algorithm, or any dealing strategy that aims to manipulate or take unfair advantage of our services.

32.1.4 using trading strategies designed to return profits by taking advantage of latencies in a platform, delayed prices or through high volumes of transactions opened and closed within an unusually short period of time....”

LCG has then listed what it can do if it considers unfair and improper activities are taking place:

“32.3 if you carry out any of the behaviour in clause 32.1 in respect of any transaction, or we have reasonable grounds to believe you have done so, it will constitute a breach of the agreement.....We may:

32.1.4 treat the transaction as void if it is a transaction under which you have secured a profit....

Also, elsewhere in the terms and conditions, LCG has written terms around termination. This is in section 26:

“26.2 We may, at any time, close your account immediately, whether or not you are in breach of the agreement.”

Mrs H said the prices she took on her trades were valid and gave examples of how she had traded with the same or similar prices elsewhere. But LCG has not given price validity as a reason as to why it voided transactions and then subsequently closed her account. It said it did this because it thought she was engaging in unfair and improper practices by taking advantage of a time delay in the transmission of a price quote.

In relation to LCG's actions, I have needed to consider whether what it did was fair and reasonable when it voided trades and closed Mrs H's account. It points to its own terms, and I have provided what I think are relevant terms above.

Mrs H was using an electronic device and had a trading strategy that returned an unusually successful rate of profitability compared to the average experience of LCG's clients. I can also see from Mrs H's statement that transactions were, with regularity, opened and closed within an unusually short period of time, usually within a few seconds. When I look at this and compare Mrs H's activity to the terms I have highlighted, I don't think LCG has been unfair to her when it gave the reasons why it needed to take the action it did, this being voiding her trades, based on the information it would have had in front of it. I consider that LCG wasn't being unreasonable on this occasion, when it exercised its discretion based on a detailed trading analysis that suggested to it some sort of system was being used to take advantage of pricing latency. I consider that it was acting within the terms and conditions, that Mrs H signed up to, when it did this. So on balance, I don't think it has done anything wrong here.

Finally, I can also see that LCG was acting within the terms and conditions when it then went on and closed her account too. It has stated within its terms that it can do this at any time, regardless of whether someone has breached the account agreement. Even with this being the case, I have considered whether it treated Mrs H fairly here. LCG had concluded that she had carried out unfair and improper activities on her account, and I have concluded it wasn't unfair of it to do this. So, it is not surprising that LCG chose to invoke 26.2 of the terms given with Mrs H's trading account and chose to close it, as it has stipulated in its terms that it can do. So, with what I have concluded in mind, it follows that I don't uphold Mrs H's complaint.

I appreciate that my decision will be disappointing for Mrs H. But based on everything I have read and the findings I have given, I don't uphold her complaint.

My final decision

My final decision is that I do not uphold Mrs H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 27 June 2024.

Mark Richardson
Ombudsman