

The complaint

Mr Z complains that LMAX Broker Limited took longer than necessary in updating their anti-money laundering (AML) records, which then prevented him from adding funds to his existing contracts for difference (CFD) account.

Mr Z says that because he wasn't able to fund his account, all of his open positions were forcibly liquidated by LMAX after they issued multiple margin calls, resulting in significant losses being crystallised.

Mr Z would now like LMAX to reinstate all of his original positions.

What happened

On 19 September 2022, Mr Z contacted LMAX to deposit some funds into his account in readiness for what he considered was going to be a very volatile week in the financial markets. After a number of interactions with LMAX, Mr Z was told that adding funds to his account had been disabled because they required updated 'know your customer' (or KYC) information from him. LMAX went on to explain to Mr Z that they needed him to complete a 'declaration of source of funds' or DSOF form before they could reinstate his ability to add funds to his account.

After requesting the DSOF form, Mr Z completed and returned it to LMAX on 20 September 2022. Three days later, Mr Z received an email from LMAX, explaining that his account had fallen below the margin notification level that had been set and asked him to either fund his account or cancel and/or reduce the size of his open trades.

LMAX reviewed Mr Z's submitted DSOF form and contacted him on 26 September 2022, asking for further information to enable them to satisfy their KYC rules. The same day, Mr Z then received multiple margin calls on his account that resulted in all of his positions being closed, resulting in significant losses to him.

Mr Z then contacted LMAX to explain his disappointment about the length of time it had taken them to process the DSOF form. In response, LMAX explained that as a goodwill gesture, they would like to credit his account with \$2,500, and in addition, they would also remove all commission charges for all instruments until the end of the year.

Given the size of his losses (which amounted to around \$48,000), Mr Z explained to LMAX that their proposed resolution was insufficient. In response, LMAX said that they would reinstate all the positions that they had liquidated during the margin close out at the same prices they were closed at, but, they said, they couldn't reinstate the positions that were closed by Mr Z. However, Mr Z stated that by reinstating a partial position, LMAX were forcing him to crystallise a substantial loss.

Shortly afterwards, Mr Z decided to formally complain to LMAX. In summary, he said that they had mishandled his account by taking longer than necessary to update the necessary KYC records and allow him to fund his account.

After reviewing Mr Z's complaint, LMAX concluded they were satisfied they'd done nothing wrong. They also said, in summary, that they had originally informed Mr Z of the need to complete a DSOF in September 2021, which wasn't then returned to them until 12 November 2021. As there was information that needed further clarification, LMAX contacted Mr Z with supplementary questions on 17 November 2021, to which, LMAX say, they never received a response to. Therefore, they were of the view that had he provided the earlier information, the events that followed some 12 months later could have been avoided. LMAX said that Mr Z's failure to provide satisfactory evidence of source of funds was considered as an event default.

Mr Z was unhappy with LMAX's response, so he referred his complaint to this service. In summary, he said that despite him having completed and returned the DSOF form promptly on 20 September 2022, LMAX had not treated him fairly by taking over a week to raise any questions on his form.

The complaint was then considered by one of our Investigators. He concluded that on balance, LMAX hadn't treated Mr Z unfairly because they had previously tried to update his AML records the year before, but Mr Z hadn't responded to their supplementary question. Had he done, our Investigator felt that the problems Mr Z encountered in September 2022 could have been avoided. In addition, our Investigator felt that when considering the time that LMAX took to process the AML paperwork, three business days didn't feel unreasonable.

Mr Z, however, disagreed with our Investigator's findings. In summary, he said that LMAX had been negligent in their dealings with him, which he didn't feel the Investigator had really considered. Mr Z went on to say that in his view, LMAX should have frozen his entire account in 2021 so the issue would have been brought to his attention sooner. Mr Z also felt that given LMAX had admitted that they had been slow to act, that therefore demonstrated they were at fault and as such, they should compensate him accordingly.

Our Investigator was not persuaded to change his view as he didn't believe that Mr Z had presented any new arguments he'd not already considered or responded to. Unhappy with that outcome, Mr Z then asked the Investigator to pass the case to an Ombudsman 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 want to acknowledge that I very much appreciate Mr Z's strength of feeling about this matter – I've looked closely at all of his (and LMAX's) submissions and I very much gained a sense of how upset he is about the events that unfolded and which he has complained about. I have summarised this complaint in less detail than Mr Z 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 LMAX acted fairly and reasonably in their dealings with Mr Z when trying to resolve the block that they had placed on his account to stop monies being deposited.

My role is to consider the evidence presented by Mr Z and LMAX 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 Z's complaint – whilst I appreciate that Mr Z will be disappointed with my decision, I'll explain why below.

The crux of Mr Z's complaint is that LMAX took too much time completing their AML checks, resulting in the block that they had placed on his account stopping any funding being added. That meant when Mr Z's positions failed to maintain margin compliance, he wasn't able to add extra monies to stop LMAX liquidating those positions. So, given the nature of Mr Z's complaint, I've looked closely at the timeline of events in this case.

LMAX first contacted Mr Z on 7 September 2021 to alert him to the fact that they needed to update their anti-money laundering records and enclosed a DSOF for him to complete. As they didn't receive a response, LMAX disabled Mr Z's ability to fund his account on 20 October 2021. However, from what I've seen, at that point, LMAX didn't inform Mr Z that they would be doing so.

Mr Z then returned the DSOF form on 12 November 2021, but it didn't include all of the information that LMAX needed to satisfactorily mark their records as complete, so a follow up query was raised with Mr Z on 17 November 2021, but it seems that LMAX never received a response to those questions. However, Mr Z has explained that he never received LMAX's email requesting further information. Having seen the email that LMAX sent to Mr Z on 17 November 2021, they appear to have used the same email address that was used when they originally sent their first request to him on 7 September 2021 (which is also the same email address that he has used in his complaint to this service).

So, it would seem Mr Z has not changed his email address. I therefore think it was reasonable for LMAX to conclude that Mr Z had received their follow up email. In any event, I think LMAX missed an opportunity to also highlight to Mr Z that they had blocked his ability to fund the account; their email of 17 November 2021 only asked for additional information and didn't explicitly set out the impact of not providing it.

I appreciate Mr Z says he doesn't ever recall seeing LMAX's email from November 2021, and, whilst I can't be totally sure what happened to that message, I think on the balance of probabilities, it's more likely than not that he did receive it and it was either overlooked or deleted in error. I say that because I think it's unlikely he would receive one message and not another addressed to the same email inbox.

On 14 July 2022, Mr Z contacted LMAX asking them how he could deposit funds into his account and LMAX responded with screen shots explaining the process. But at that point, LMAX didn't highlight to Mr Z that they were still waiting for the additional information that had been requested in November 2021. Importantly though, it seems that Mr Z didn't then make a deposit and I think had he done, it would have come to light that he was unable to do so because LMAX were still waiting for the additional AML information from him and in any event, they had blocked the funding ability in the previous October.

I've thought about whether LMAX should have reminded Mr Z at that point that they were still waiting for the supplementary information which they had requested eight months earlier. Looking at the specific nature of the query raised by Mr Z, he asked LMAX a generic question to which LMAX provided a generic response in return, so I think it's more likely than not that LMAX didn't review Mr Z's account but rather, they simply provided screenshots to help address his question. I've reached this conclusion because I think that had the LMAX colleague looked at Mr Z's account at that particular point, it would have been fairly obvious that they were awaiting further information from him – so, there would have been no reason why LMAX wouldn't have flagged that outstanding information to him at that time.

It wasn't until 19 September 2022 that Mr Z decided to try and add further monies to his trading account in readiness for what he says, was likely to be a volatile week on the investment markets. It was at that point that he discovered he couldn't and the reason why. Mr Z promptly completed LMAX's form and returned it to them the following day and then, on 23 September 2022 at 12:46, he chased LMAX for an update. The same day (23 September 2022), Mr Z was forewarned that his account had fallen below the margin notification level that had been set and asked him to either fund his account or cancel and/or reduce the size of his open trades.

At this point, as Mr Z wasn't able to add further monies to improve his margin position, his only option was to reduce or close his existing positions. However, it seems that after receiving LMAX's 23 September 2022 email at 12:46, rather than closing any positions, Mr Z opened eight new GBP/USD positions that same day. Whilst Mr Z closed those eight positions later that weekend, despite being given the opportunity to do so, he didn't limit his exposure and reduce any of his other existing positions as he had been forewarned to do so. Given the subsequent market conditions that followed, LMAX had no choice but to liquidate Mr Z's remaining open positions as a consequence of his margin covered percentage falling below the margin close out level.

Whilst I'm mindful of LMAX's regulatory responsibility to hold up to date and complete anti-money laundering records for its consumers, the onus is very much on Mr Z to return any forms that LMAX have issued to him to ensure that he can continue to fund and trade on his account. And, it's LMAX's responsibility to ensure that they don't accept any new monies from the consumer until such time as they satisfy themselves that the source of the consumer's funds is acceptable – which is what LMAX did.

It seems to me that at one point, LMAX conceded that they could have acted more promptly when they undertook their regulatory checks in September 2022. They've said as much in their email to Mr Z of 27 September 2022 (at 14:59), where they explained: *"Thanks for your feedback, it is duly noted and we understand that you should not have had to wait 1-2 days for a response, particularly with the market volatility as it was"*. In addition, Mr Z has referred to a telephone call that took place between himself and a LMAX colleague where, he says, they admitted liability for the delay. However, it seems that LMAX don't have a recording of that telephone call, but they have agreed that a call did take place on WhatsApp. So, whilst I can't say conclusively what was agreed on the call, I think it's fair to conclude that it would have been along the same lines as the email that LMAX sent to Mr Z on the same day (at 14:59), which was, that they could have responded sooner. But, despite what Mr Z says, I'm not persuaded that LMAX suggesting that they could have acted more promptly is enough for me to uphold his complaint and I'll explain why.

That's because in his 'online chat' with one of LMAX's representatives on 20 September 2022, they explained to Mr Z that typically, their AML checks take one to two business days. But, they also said that *"it depends case to case as our compliance team will review the document and get back to you"*. So, I don't think Mr Z was given any warranty that his AML paperwork would be wrapped up and completed in the two days as he says he was.

What's not in any doubt here is that when Mr Z returned LMAX's form to them on 20 September 2022, they needed more information to enable them to mark their records off as complete and re-enable his account funding. So, I've thought about what's likely to have happened had LMAX responded to Mr Z *before* Monday 26 September 2022 (when they closed out his positions because of a margin call). And, I think on balance, the result would have been no different. I say that because had LMAX replied to Mr Z within two days, it's likely that they would have contacted him on Thursday 24 September 2022, requesting the further information. I then think it likely Mr Z would have responded the following day with the information that LMAX needed – so, Friday 23 September 2022. LMAX would then have needed to review that additional information and completed any follow up checks, which I'm of the view would have happened on Monday 26 September 2022. As such, I'm not persuaded that Mr Z would have been in a position to stop the margin call on his positions.

In shaping my decision, I've thought carefully about Mr Z's previous actions. Whilst I accept that Mr Z returned LMAX's form promptly on 20 September 2022, I'm mindful that his previous interactions with LMAX haven't been as instantaneous. As I've already explained above, when LMAX sent Mr Z the original DSOF in September 2021, it took him nearly two months to respond. And, on 26 September 2022 at 13:58, LMAX contacted Mr Z, explaining that they needed further information about his address and employment, and from what I've seen, even by 8 December 2022, Mr Z still hadn't submitted the information that LMAX had requested from him. So, when I've considered what would have happened had LMAX actioned Mr Z's form sooner, I think it's entirely plausible that those dates may have some additional stretch in them.

I don't agree with Mr Z's view that LMAX should have just suspended all ability to trade on his account until such time as they received the information about his source of funds. I think had they done so and prevented Mr Z from transacting, it may have led to other unintended consequences such as wider losses; it would also have prevented him from undertaking the trades he carried out between 23 and 25 September 2022. Importantly, the focus of LMAX's latest AML exercise was to validate Mr Z's source of funds for *new* monies he wished to add to his account, not his *existing* funds.

AML controls form a very important part of making sure that only legitimately held monies find their way into the financial markets and institutions. And, whilst there's absolutely no suggestion that Mr Z's monies weren't appropriately acquired, LMAX is legally obligated to ensure that it has systems in place to ensure its checks are completed to a robust standard, and that often means further information is required which can delay signing off cases. I've looked at LMAX's terms and conditions - they set out that they reserve the right to request suitable evidence from consumers about their account funding and importantly, will not allow trading to be undertaken with those monies until such time as their checks have been satisfied. So, I don't think LMAX have acted unreasonably in asking Mr Z for the additional information and putting a block on the adding of new funds until that had been received.

I've also thought very carefully about LMAX's initial response to Mr Z's concerns, where they explained that as a goodwill gesture, they would like to credit his account with \$2,500, and in addition, remove all commission charges until the end of the year. In response, Mr Z stated, in summary, that it didn't go far enough to put things right for him.

So, LMAX explained that they would reinstate all the positions that they liquidated during the margin close out at the same prices they were closed at, but, they said, they couldn't reinstate the positions that were closed by Mr Z. However, Mr Z said that by reinstating a partial position, LMAX were forcing him to crystallise a substantial loss.

Given I'm not upholding Mr Z's complaint, I'm not going to instruct LMAX to re-table that or any other offer that they made to him in the course of this complaint process. In any event,

LMAX have explained that this was a limited time offer that is no longer available to Mr Z because, they say, given the nature of his investments, they couldn't practically reimplement this. From what I've seen, the offers that LMAX made were in recognition of the value of the relationship that they had with Mr Z rather than any admission of liability. Whether LMAX still wish to offer the \$2,500 is a commercial decision between themselves and Mr Z and one which I will not comment on further.

Summary

I think there were gaps in LMAX's communication with Mr Z. When they switched off his ability to fund his account in October 2021, I'm of the view that they could have expressly set this out to him. But instead, Mr Z found out by accident nearly a year later. LMAX's email message chasing up the missing information in November 2021 (which Mr Z says he didn't receive), also failed to set this out to him. But, as I've already explained, I think on balance, it's likely that Mr Z did receive LMAX's chaser email at that time because he had (and has since) received all other correspondence from both LMAX and this service at the same email address.

Therefore, Mr Z was already on notice that LMAX needed more information about his account back in November 2021. Even though I'm of the view that LMAX's communication with Mr Z could have been clearer, I also think that Mr Z could have been clearer with LMAX too. Whilst he chased LMAX for an update on his AML form on Friday 23 September 2022, he didn't expressly set out that the issue was urgent and, he didn't do so in his 'online chat' with LMAX's operative earlier in the week either. I well suspect that had Mr Z set out his concerns to LMAX about the volatility in the markets over the coming days, it's likely that they would have expedited his paperwork.

And, despite being given the opportunity to reduce his positions and limit his losses over the weekend of 24 and 25 September 2022, Mr Z chose not to do so and increased his exposure without increasing his cash deposits.

But, in any event, as I've already explained, LMAX are obligated to complete AML checks and sometimes, these take more time than consumers (and businesses) would typically hope. Finally, I've not seen any evidence to persuade me that LMAX liquidated Mr Z's positions inappropriately so I'm not upholding his complaint.

My final decision

I'm not upholding Mr Z's complaint and as such, I won't be instructing LMAX Broker Limited to take any further action.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Z to accept or reject my decision before 11 June 2024.

Simon Fox
Ombudsman