

The complaint

Mr R complains that Spreadex Limited unfairly closed out a number of his positions because of a margin call.

Mr R would now like Spreadex to reinstate the positions at their original levels and have any resulting losses refunded.

What happened

Mr R has held a trading account with Spreadex since February 2023, after he was referred to them by a business that I shall call Firm Z. Firm Z is a separate legal entity from Spreadex who act as an Introducing Broker to Spreadex and who hold power of attorney on Mr R's Spreadex account. Given his extensive knowledge and experience gained through previous trading and his employment, Mr R was deemed to be an 'elective professional client'.

By Monday 13 March 2023, Mr R held a long position in Credit Suisse along with a number of other positions. Over the following week, Credit Suisse's share price declined following several news articles about the bank. Mr R decided to fund his trading account with £7,000 on Friday 17 March 2023 after having received a text message from Firm Z informing him that if he didn't credit monies, his positions would be closed due to a margin call.

On Sunday 19 March 2023, details emerged that Credit Suisse was being absorbed by rival bank UBS. On the evening of Sunday 19 March 2023, Mr R says that he spoke to an employee at Zodiac again to reiterate that on Monday 20 March 2023, he would be overseas and would be visiting an area with no Wi-Fi or cellular signal, but he knew that he would be contactable in the afternoon. Mr R states that he wanted assurance that any funding requirements in the morning of Monday 20 March 2023 could be deferred until he was contactable in the afternoon. Mr R says he was assured by the employee at Firm Z that Spreadex would be 'good' with such a request.

Prior to the markets opening on Monday 20 March 2023, Mr R states that he held a repeated conversation with the same employee at Firm Z about deferring any margin requirements until later in the day. Shortly afterwards at 07:33 the same day, Firm Z telephoned Spreadex and highlighted Mr R's unavailability and looked to understand if Spreadex could delay any margin calls, if needed, until he was contactable.

When the markets then opened, the price of Credit Suisse significantly reduced the equity in Mr R's account to around minus £39,100. After a failed attempt to contact Mr R, Spreadex decided that as Mr R wouldn't be contactable imminently, they would close his positions and by 08:48, all of his trades had been liquidated.

Shortly afterwards, Mr R decided to formally complain to Spreadex. In summary, he said that he felt it was unfair that his positions were closed in an unreasonable amount of time despite having made it clear to Firm Z that he wouldn't be available on the morning of Monday 20 March 2023. Mr R went on to say that as an experienced trader with considerable years of

spread betting experience under his belt, he felt that Spreadex had mismanaged his account and dealt with him in an unprofessional manner.

After reviewing Mr R's complaint, Spreadex concluded they were satisfied that they'd done nothing wrong. Spreadex also said, in summary, that given they had unsuccessfully tried to contact Mr R about the worsening financial position of his account, they considered it unlikely he would be able to fund the account in a timely manner to manage the margin compliance. Spreadex say that Mr R's positions were closed out correctly and in line with their customer agreement which also states, they said, that it doesn't require them to provide any warning that close out is imminent.

Mr R was unhappy with Spreadex's response, so he referred his complaint to this service. In summary, he said that Spreadex had acted unreasonably by closing his positions when he'd already made it clear that he would've been able to fund his account later that day. Mr R went on to explain that he'd already forewarned Firm Z that it was unlikely Spreadex would be able to reach him in the event of a margin call (on the morning of 20 March 2023) because he was travelling in an area with no cellular or Wi-Fi signal; he says that Firm Z assured him that message would be passed on to Spreadex yet despite knowing this, Spreadex still chose to close his positions.

The complaint was then considered by one of our Investigators. She concluded, in summary, that Spreadex hadn't treated Mr R unfairly and that having looked at their terms and conditions, it seemed that the positions were closed in line with those terms.

However, Mr R disagreed with our Investigator's findings. In summary, he said that an agreement had been reached that his positions could stay open until he was able to fund them, but it seemed that wasn't honoured.

Our Investigator was not persuaded to change her view as she didn't believe that Mr R had presented any new arguments that she'd not already considered or responded to. Unhappy with that outcome, Mr R 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 have summarised this complaint in less detail than Mr R 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 it was fair and reasonable for Spreadex to have closed Mr R's positions in light of what they knew about his circumstances.

My role is to consider the evidence presented by Mr R and Spreadex 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.

I've looked very closely at all of the submissions presented to this service and I wanted to reassure Mr R that I very much gained a sense of how upset he is about this matter. But, for me to make an award, I have to conclude that Spreadex have done something wrong and from what I've seen, I've not been persuaded that they have and as such, I'm not upholding Mr R's complaint - I'll explain why below.

There's no doubt that Spreadex were informed about Mr R's travel plans for the morning of Monday 20 March 2023. Spreadex have acknowledged that they received a call from Firm Z before the markets opened on 20 March 2023, who explained that Mr R wouldn't be contactable and had requested Spreadex apply some discretion that day if additional funding was needed to keep his positions open.

I've listened to the telephone recording of that call where both Firm Z and Spreadex colleagues discussed Mr R's account - Firm Z did ask Spreadex to try and be as 'lenient' and as 'sensible' as possible before deciding whether to close any of Mr R's positions. Both colleagues agreed that in light of what was happening in the broader markets along with the fact that Mr R was uncontactable, the situation was 'difficult'. Spreadex committed to Firm Z that they'd watch the account closely once the markets opened to see what happened to Mr R's positions and then make a judgement call on what action to take. Importantly though, aside from stating that they would monitor Mr R's trades, Spreadex gave Firm Z no warranties that they would keep any of his positions open if the markets deteriorated.

And, it seems that Mr R never received any personal warranties from Spreadex either that they would keep any of his trades open beyond their normal terms. In correspondence with this service, Mr R has stated:

"My only point of contact for the account in question was [Firm Z]. I have never spoken to anyone at Spreadex, nor was I either expected or asked to do so. If [Firm Z] either exceeded its mandate with Spreadex, or did not confirm with Spreadex the arrangement that had been agreed, then that is a matter for [Firm Z] to resolve."

And

"It is correct to say that I have never spoken to anyone at Spreadex; however I do not know whether or not [Firm Z] communicated the agreement that we had made between us to Spreadex. What is absolutely clear in any event is that [Firm Z] should have informed Spreadex of the agreement."

In shaping my decision, I've also given careful thought to the predicament that Spreadex faced when the markets opened and the value of Mr R's positions started to decline. From what I've seen, Spreadex wanted to provide some degree of flexibility to Mr R, but knowing full well that he wasn't available and as such wouldn't be in a position to fund his positions, there had to come a point at which Spreadex was compelled to draw a line in the sand to protect both themselves and the consumer. The evidence presented to this service shows that a little more than 15 minutes after the market opened, Mr R's account had a balance of minus c£37,000 and moments later, it had fallen by another £2,000. Whilst Spreadex weren't required to provide notice of their plans to close Mr R's positions, they sent a message to Firm Z forewarning them but with Mr R unreachable at that time, I think Spreadex were left with little choice but to close the positions (which by 08:48, they'd done so). Arguably, if Spreadex didn't act when it did, it's entirely possible that Mr R could have faced larger losses than the amount that he currently owes Spreadex.

I've looked at the terms and conditions that form the basis of the relationship between Mr R and Spreadex. I'm satisfied that part '30 The Close Out Level' covers in detail Spreadex's approach to customer accounts when their aggregate available balance is a negative figure:

"(1) For Professional Clients, if your aggregate Available Balance (as defined in Rule 27), taking into account all Accounts held by you, is a negative figure, all of your Accounts will be treated as having reached the Close Out Level. For Retail Clients, if your aggregate Available Balance on all Accounts held by you on which you are able to place Financial Spread Bets or CFD trades is a negative figure, these Accounts will be treated as having reached the Close Out Level.

(2) If your Account has reached the Close Out Level, we shall immediately have the right, but not the obligation, to close out all or any of your open Spread Bets and Transactions, in whole or in part (whether they are winning or losing) at our prices (or, if none, at a price that is fair and reasonable), without giving you prior notice.

(3) It is your responsibility to monitor your Account at all times. You should be aware that the profits and losses on open Spread Bets and Transactions will be constantly changing. You can monitor your Account online or over the telephone.

(4) Where you maintain Transactions and/or Financial Spread Bets in a currency other than your Base Currency your Trading Ledger may reach the Close Out Level as a result of adverse currency fluctuations, notwithstanding that there has been no change in the value of the Instrument/Index on which the Transaction or Financial Spread Bet is based. See Rule 42(11) below.

(5) You should not rely on us to close your open Financial Spread Bets and Transactions or any of them if your Account reaches the Close Out Level, and you will be liable for losses sustained after, as well as before, your Account reaches the Close Out Level.

(6) You may control the risk of your Account reaching the Close Out Level by (i) depositing additional cash into your Trading Ledger and/or (ii) closing some of your open Financial Spread Bets and Transactions and/or (iii) if you are classified as a Professional Client, placing stops on some or all of your open Financial Spread Bets and Transactions. Whether you choose to take these steps is a matter for your decision, but we recommend that you should particularly consider taking one or more of these steps in times of market volatility or if you are going to be unable to monitor your Account for any period of time or to cover adverse movement overnight. In relation to adverse movement overnight, you should ensure that any funds that you deposit with us are cleared prior to the markets re opening.

(7) We will not be treated as having failed to exercise our right under this Rule to close all of your open Financial Spread Bets and Transactions merely because there has been a delay in our closing any Financial Spread Bet or Transaction of yours that is more than four times' Exchange Market Size.

(8) We may, but are not obliged to, give you notice (i) that your Account is in danger of reaching the Close Out Level and/or (ii) that your account has breached the Close Out Level and/or (iii) before taking any action under this Rule 30. You should not rely upon us to give you any such notice or infer from the fact that we have done it on any given occasion that we will do so again in future.

(9) If your Account reaches the Close Out Level our right to close them under this Rule 30 will apply to all of your Financial Spread Bets and Transactions that are open at that time, for as long as they."

So, given Mr R's available balance became negative almost immediately from the point that the markets opened on 20 March 2023, despite allowing a small amount of additional time, I'm satisfied that it was fair and reasonable for Spreadex to have exercised their right to bring Mr R's positions to a close when they did.

I've also thought about the chain of events that led up to the markets behaving in the manner they did on the morning of 20 March 2023 and more specifically, the timeline of the Credit Suisse / UBS deal. It was evident from as early as 15 March 2023 that things might not be quite right at Credit Suisse and I think it's clear that Mr R was well aware of this heading into the weekend because he funded his account with an additional £7,000 on Friday 17 March 2023. Mr R also spoke to Firm Z prior to the markets opening on Monday 20 March 2023 and asked for some tolerance to be applied to his positions. It seems clear to me that Mr R suspected that markets would be choppy on Monday 20 March 2023 and would need to fund his account at some point to keep his positions open. But, despite knowing that he would be visiting an area where he would have no Wi-Fi or cellular signal, Mr R choose not to add funds to his account prior to going on his break. Whilst I accept that pre-funding the account may have seemed like a haphazard approach, particularly when Mr R wouldn't have known precisely how much to have credited, it would have provided his positions with additional cushioning in light of what was expected to be a volatile day in the markets.

In his complaint to this service, Mr R has stated that he holds trading accounts with other firms who, when advised about his travel plans for Monday 20 March 2023, provided him a period of grace instead of closing out his positions. Mr R explained that he felt Spreadex were being inconsistent with those other providers in the market. However, I don't think it's that simple and that's because each business is free to set its own criteria on the terms that it offers its consumers which will be driven by a number of factors. So, just because Spreadex wouldn't defer making a margin call until later on in the day (on 20 March 2023), it doesn't necessarily follow that they've done something wrong.

I've listened to the telephone call that Mr R had with Firm Z on 21 March 2023 after Spreadex had closed his positions the previous day. Mr R explained that he didn't think it was reasonable that Spreadex could close out his positions with only 10 minutes' notice. However, I don't agree and that's because I think it's clear from Spreadex's terms that they don't need to provide any minimum notice period before acting (see term 8 above). The financial markets on 20 March 2023 were reacting to a number of pieces of news (the Credit Suisse deal being one of them) and as such, many financial instruments that day were extremely volatile. So, given Spreadex had already applied some discretion before closing Mr R's positions, in light of what was happening elsewhere, I don't think that they acted unreasonably by closing the trades when they did.

Summary – whilst Mr R may have thought that he had a firm agreement that his positions would have been kept open by Spreadex, I've seen no evidence of any warranties having been provided to Mr R that Spreadex would be happy to wait until the afternoon of 20 March 2023 to allow him extra time to bring his account back into margin compliance. And in any event, from what I've seen of the terms and conditions that formed the basis of the relationship between Mr R and Spreadex, the latter were well within their rights to make the closure call when they did. So, whilst I appreciate that this will come as a disappointment to Mr R, for the reasons that I've set out above, I'm not upholding his complaint.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 8 September 2024.

Simon Fox
Ombudsman