DRN-4729882

The complaint

Mr F complains that Trade Capital UK Ltd ("TCUK"):

1. Didn't provide him with information about a corporate action which affected one of his contract for difference positions.
2. Tried to defraud him by paying him less than he was entitled to receive.
3. Closed his open position, resulting in a loss.
4. Caused him to close other open positions to avoid a margin call. He says he could've made a high profit on these positions if he'd not felt forced to close them when he did.

What happened

Mr F has an execution only trading account with TCUK for trading contracts for difference ("CFD's") and spread bets.

Mr F had a CFD for a company which I'll refer to as "A".

At the beginning of August 2022, A announced a special dividend, payable on 19 August, with an ex-dividend date of 22 August, of one preferred unit for each A share held. Shortly after the announcement, Mr F contacted TCUK to ask for more information about the corporate action and how it would affect his CFD position. He was told he would receive more information nearer to the ex-date. But, by 22 August, Mr F had still not received any information. He contacted TCUK and was told that he would be receiving a cash adjustment and US$2,252.50 was added to his account shortly afterwards. He queried this amount and how it had been calculated, but TCUK told him it was correct. He says that, when the US markets opened, TCUK closed out his position in A causing a loss of £7,263.67. He was worried about the impact on his other open positions, and he says he panicked and closed three CFD positions, which I'll refer to as "R", to prevent other positions being closed due to a margin call.

He phoned TCUK wanting to know how the cash amount he'd received had been calculated because it didn't seem to be enough to compensate him for the movement in the underlying share price. He says he felt ridiculed for raising his concerns. But later that day TCUK contacted him to say a further payment was being made to his account of US$14,875.37.

Mr F feels the additional payment wouldn't have been made if he hadn't contacted TCUK and that TCUK had tried to defraud him, by paying him less than what he was entitled to, because he was new to trading.

TCUK said its Liquidity Provider ("LP") didn't offer quotes and trading in the new preferred units so, likewise, it was unable to. This meant anyone holding an open position received an equivalent sum in cash. The amount due to Mr F was calculated by the LP, based on the price of the units published on a financial data vendor's site. I'll refer to that data vendor as "B". B didn't publish the information needed by the LP to complete the calculation until after the US markets had opened. The LP therefore completed an adjustment calculation using estimated figures. Once the new units started pricing, the correct adjustment was calculated.

Before the second payment was made to Mr F's account, his CFD position was closed by TCUK due to insufficient margin. TCUK offered to reinstate his position, but Mr F declined.

Our investigator thought the adjustment Mr F had received was correct, but he thought TCUK should have provided better information about the corporate action before the ex-date. And he thought TCUK should have looked into the concerns Mr F raised, rather than dismissing them during his phone call. The investigator thought TCUK should pay Mr F for the distress and inconvenience he'd been caused.

TCUK said it did its best to provide relevant information and take the necessary action, but it was reliant on the information being provided by the LP. But it accepted what happened would have caused some distress and inconvenience to Mr F and it agreed to pay him the recommended £200.

Mr F didn't agree with our investigator's conclusions. He said, in summary, that:

- If there was a delay in receiving the correct figure from the LP, it must be fraudulent for TCUK to use a "made up" figure, especially at the expense of his account equity.
- He closed three open positions because he was worried he wouldn't have enough margin and other positions would be closed. He hadn't planned to close his positions in R and only closed them to avoid a margin call. He would like the positions reinstated, or compensation based on the current value.
- The compensation of £200 recommended by the investigator isn't enough. He made every attempt in advance of the ex-date to get information about the corporate action and how it would affect his account, but his requests were ignored meaning he wasn't in a position to avoid any losses.

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.

The cash adjustment

I'm satisfied that TCUK was reliant on the information provided by the LP, who was in turn reliant on the information displayed by B. As part of the investigation into Mr F's complaint, the LP explained what happened; it said:

"*Early on 22 August 2022, B had not published an adjustment factor for the Spin-off. Based on all the information reasonably available to [the LP] and in order to provide the adjustment on TCUK's account pre-market open, [the LP] made a market assessment of the cash adjustment and applied a factor of 0.95. At this point an amount of USD2,252.50 was applied to TCUK's account*."

I find it was the LP who decided on the adjustment factor and passed it onto TCUK. I've not seen evidence to show whether the LP made it clear to TCUK that this was based on its own assessment and might change. The LP says it discussed matters with TCUK via Skype, but there's no record of exactly what was discussed. The LP told TCUK what to tell Mr F and TCUK simply passed the information onto him. I don't find it unreasonable that TCUK relied on the information it was given, and I don't think it reasonably would have been aware that a further adjustment would take place. I say that because, when the US market opened, the price of A shares plummeted due to reasons completely separate from the corporate action. So it seemed to TCUK at the time that Mr F had received the correct amount to cover the adjustment in share price caused by the corporate action.

The LP explained what happened when the US market opened. It said:

"*Later that day, B published an adjustment factor of 0.6198031 at which time a second adjustment was made to TCUK's account…..of USD 14,875.37.*"

Overall, I find the adjustment calculation and the amount Mr F received was decided by the LP, and not by TCUK. TCUK simply passed the cash amount, and the explanation it was given, onto Mr F. In doing so, I can't find it made a mistake and I don't find, as Mr F suggests, that TCUK "*made up*" the figure. Its communications with Mr F could have been clearer, but I will consider this in more detail later.

Mr F says TCUK tried to defraud him by paying him less than he was entitled to. I've already explained that TCUK simply passed on the information it was given by the LP. And I don't find, as Mr F suggested, that the second payment was only made after he queried the amount he'd received. Mr F did ask how the figure had been calculated and questioned its accuracy, but the additional sum was paid to him because B later published the adjustment figure; not because Mr F had questioned the amount he'd received.

The closure of Mr F's position in A

Unfortunately the first cash adjustment wasn't enough to compensate for the price decrease in A which led to the value of the equity in Mr F's account falling below 50% of the initial margin requirement and led to the closure of Mr F's position in A. This realised a loss of US$7,263.

TCUK offered to reinstate Mr F's position. As noted above, TCUK had acted on the LP's instructions and credited the payments it received to Mr F's account when it received them. And it acted in line with its terms and conditions in closing the open position in A. But, in the circumstances, I think it was fair and reasonable for it to offer to reinstate that position.

Mr F chose not to accept TCUK's offer, so I don't find there's any obligation on it to reinstate it now.

The closure of Mr F's positions in R

On 22 August the price of A shares plummeted. This was partly to adjust for the corporate action, but there was also adverse news from a competitor which led to a price decrease. Mr F says that he panicked and decided to close three of his open positions in R to prevent other positions being automatically closed because of a margin call. The closures realised a loss for one contract and gains for two contracts, resulting in a net gain of £2,275.40.

Mr F says he intended to hold these positions for the longer term and would have closed out at a much higher profit. So he wants compensation.

But I can't find TCUK responsible for Mr F closing his positions in R. I say that because:

- The price of A was falling for reasons other than the corporate action. So it's quite possible Mr F would have faced a margin call, irrespective of the cash adjustment not being fully received until later in the day.
- TCUK wasn't responsible for the cash adjustment not being fully received until later in the day on 22 August. As already noted, it was dependent on the LP, who in turn was dependent on B.

Communication about the corporate action

TCUK doesn't appear to have communicated with Mr F about the corporate action until 22 August, despite him contacting TCUK when the corporate action was announced earlier that month. I think TCUK should have been in a position to tell Mr F what was going to happen before 22 August. It's possible that, had Mr F received communication earlier than he did, he may have been able to plan for events on 22 August, avoiding his panicked closing of positions. But the plummet in the price of A shares on 22 August couldn't have reasonably been predicted and I think it was likely to have had a sizeable impact, alongside the corporate action, on the level of the account equity.

And I agree with our investigator that TCUK could've provided better customer service when Mr F phoned it to discuss the corporate action and the first payment he'd received. Whilst the member of staff reasonably didn't appreciate that a further payment would be made, he didn't take the time to listen and understand what Mr F was saying, often talking over him. I don't think the member of staff's language or attitude was intended to ridicule Mr F, but I appreciate this is how it made him feel. In the circumstances, I agree with our investigator that £200 is fair and reasonable compensation for the distress caused. I say this taking into account that very shortly after the phone call, as Mr F had requested, TCUK confirmed the second cash adjustment amount and the offer to reinstate his closed position in A. So Mr F wasn't left with uncertainty about what was going on for very long.

My final decision

My final decision is that Trade Capital UK Ltd should pay Mr F £200.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 7 May 2024.

Elizabeth Dawes
Ombudsman