

The complaint

Mr A complains that Capital Com (UK) Limited:

1. Only paid him around half what he was due when it closed out his contract for differences positions.
2. Shouldn't have closed his positions at all because he had traded with 1:1 leverage.
3. Only paid him around half what he was due when it closed out his contract for differences positions.
4. Shouldn't have closed his positions at all because he had traded with 1:1 leverage.

What happened

Mr A opened a contract for differences ("CFD") trading account with Capital Com (UK) Limited ("Capital.com") in January 2021. He opened 10 CFD positions in a fund I'll refer to as "K". He said he was continually receiving margin alerts which didn't apply to him because he'd fully funded the transactions; in other words, the transactions weren't leveraged. But in September 2022 Capital.com closed all of his open positions in K.

Mr A complained that Capital.com didn't pay him the amount he was owed following the closure of his positions. He said that the full amount from the sales should be paid to him because he'd traded without leverage and therefore fully funded his positions.

Capital.com told Mr A it had closed his positions because his account equity had reduced to 49.9% due to the impact of foreign exchange movements – the currency of his account (£ sterling) was different to the currency of the positions he held (US \$). And that this realised a loss of £4,880.22. The value Mr A says he is owed is the volume of the sales, rather than the profit or loss from closing out the trades.

Mr A responded to say that Capital.com didn't have to close out his positions because there was no leverage and therefore no risk to Capital.com, and he held cash in the account. But Capital.com told him the 50% close out rule applied to him and was set out in its terms and conditions.

Mr A didn't agree and referred his complaint to us.

Our investigator didn't recommend that the complaint should be upheld. He thought Capital.com had acted in line with regulations and the agreed terms and conditions in closing Mr A's open positions in A when his account equity fell below 50% of the margin requirement. And, whilst Mr A had traded with 1:1 leverage, the investigator said he was still trading in CFD's, so the regulations and terms still applied to him.

Mr A didn't agree and asked for an ombudsman's decision. He also received copies of all his communications with Capital.com following a subject access request and he forwarded these to us.

My provisional decision

Overall, I thought Capital.com had acted in line with the agreed terms and conditions, but that it did give Mr A some wrong information and that he should be compensated for the resulting distress and inconvenience. I set out my conclusion in a provisional decision, which is reproduced here and forms part of this final decision:

The CFD positions Mr A opened weren't leveraged – meaning he didn't borrow any money to open them and instead he funded them fully with his cash deposit. But the trading account Mr A had with Capital.com did allow him to trade with leverage. So, whilst the trades Mr A is complaining about weren't leveraged, he could've opened other positions with leverage had he chosen to do so. This means that I find Mr A was still subject to Capital.com's rules for margin as set out in the customer agreement. These say:

“Capital.com will make adequate arrangements for Margin Close-Out Protection. The standardized margin close-out rule has been set at 50% of the total initial margin. The threshold has been set out in ESMA's mitigation measures to ensure an adequate common minimum level of protection for retail investors. A margin close-out rule is imposed on a gradual basis”.
(3.4.5(j))

Whilst the ESMA rules only apply to leveraged positions and were introduced primarily to protect retail consumers from having negative trading balances (as well as protecting businesses from credit risk), I don't find Capital.com is prevented from implementing a similar practice - because Mr A was still trading in derivatives and his account allowed a combination of leveraged and unleveraged positions.

In its final response to Mr A's complaint, Capital.com said *“the closeout took place at a level of 49.9% and as a consequence of FX impact”*. The foreign exchange impact was because Mr A had a sterling account, but he'd traded in US \$ CFDs. But more recently it said to us, *“we wish to confirm that the positions were not solely closed due to FX fluctuations, but were predominantly due to the running loss on the trade. Simply put, Mr A incurred running losses equating to over 50% of his total margin requirement”*.

Looking at the evidence Capital.com has provided, I can see that the positions were running at a loss. And that Capital.com acted in line with the agreed terms and conditions when it closed out the positions when the losses exceeded 50% of the margin requirement.

Whilst Capital.com did provide Mr A with some incorrect information, which I'll refer to later, I'm satisfied that, when Mr A received a margin call in August 2022, he was given the right information. On 29 August 2022 he was told that:

“In order to keep the position open, you can deposit more to maintain the margin requirement.”

So I'm satisfied that, from 29 August 2022 onwards, Mr A should reasonably have realised that his positions would be closed if he didn't deposit more money into his account.

Mr A says Capital.com should have advised him to trade US \$ CFDs in a US \$ account. But Mr A had an execution only agreement and it wasn't for Capital.com to

provide him with advice. In any event, as noted above, despite what Capital.com said in its final response to his complaint, the positions were closed largely because of the running losses, rather than due to fluctuations in the exchange rate.

Overall, I find Capital.com acted in line with the agreed terms and conditions by closing the positions when it did. And it potentially prevented Mr A from making larger losses if the positions had remained open.

I'm also satisfied that Capital.com doesn't owe Mr A any further money following the closure of his positions. Mr A was trading CFDs, rather than the underlying asset, so he was due the difference between the entry and closing prices. And, unfortunately, when the positions were closed, this resulted in a loss of £4,880.22.

Mr A says the Financial Conduct Authority ("FCA") should investigate what's happened. My role is to resolve complaints between individuals and businesses. If Mr A has more general concerns about the way Capital.com is operating, he is free to contact the FCA to raise those concerns.

Whilst I don't find Capital.com acted unfairly in closing Mr A's positions, I find it did give him wrong information. For example, when Mr A contacted Capital.com to ask why he was receiving emails about margin, he was told, on 26 February 2021, that:

"Your positions will start closing automatically if your margin levels fall down below 50%, however, this will not occur if you are trading with leverage 1:1 and on certain financial markets."

He was told he could ignore any margin calls because they weren't applicable to him and Capital.com apologised that it couldn't *"turn them off"*.

I think Mr A was reassured, based on what Capital.com told him, that the margin and leverage terms didn't apply to him and that his positions wouldn't be automatically closed.

Whilst he was later given the correct information, I think Capital.com should compensate Mr A for giving him wrong information. Whilst I don't find giving Mr A the wrong information has changed the overall outcome here – Capital.com still acted fairly and reasonably in closing his positions – its mistake did cause him some distress and inconvenience. In the circumstances I think £150 compensation is fair and reasonable.

Responses to my provisional decision

Capital.com agreed with my provisional decision.

Mr A responded to say that he was disappointed with my provisional decision but didn't provide any additional information. He said £450 was a fairer amount of compensation.

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.

Neither party has provided any additional information or evidence, so I don't find any reason to depart from my earlier conclusion that Capital.com acted fairly and in line with the agreed terms in closing Mr A's positions.

But, in view of Mr A's response to my provisional decision, I've reconsidered the amount of compensation he should be paid for the distress and inconvenience he was caused by Capital.com giving him the wrong information.

As I set out in my provisional decision, I don't find the wrong information changed the overall outcome here – because Captial.com acted fairly and in line with the agreed terms in closing Mr A's positions. And, whilst Mr A was given the wrong information, he was given the correct information in time to take action to prevent his positions being closed. In the circumstances, my conclusion remains that £150 is fair and reasonable.

My final decision

For the reasons I've explained, my final decision is that Capital Com (UK) Limited should pay Mr A £150.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 25 June 2024.

Elizabeth Dawes
Ombudsman