DRN-4845587

The complaint

Mr I complains that Capital Com (UK) Limited ("Capital") closed 16 of his open contract for differences positions without his knowledge or permission. He says the closures happened due to a technical problem with Capital's platform and that, after the positions were closed, market conditions improved.

He wants the losses resulting from the closures to be refunded, plus an additional 20% for the distress he's been caused.

What happened

Mr I opened a contract for differences ("CFD") trading account with Capital in January 2021. Mr I told us that he has experience and understanding of trading CFDs. He said he always transferred money into his account, or closed positions, to cover the margin requirement. But he told us that on 13 October 2022 he didn't have the information or tools to act because Capital's platform was down. And he didn't receive any notification before the positions were closed. He said he was previously able to open a position at the wrong price because of another glitch with Capital's systems.

Capital said its price provider suffered a systems outage for 15 minutes and it stopped receiving prices. Mr I had an open position in an index CFD, which I'll refer to as "T", and Capital didn't receive prices for T during the outage. But it says that the underlying index fell during the outage and, when systems were restored, Mr I's account margin was at 42%, so his positions were closed in line with the agreed terms and conditions.

It said the positions weren't closed because of the system problem; they were closed because the index fell sharply resulting in Mr I not having enough margin in his account. But it credited Mr I's account with £1,903.14 to reflect the price of T before the systems incident. And it offered to pay him £100 for the distress and inconvenience caused.

It said that, whilst it wasn't obliged to send margin calls to clients, it had emailed Mr I at 1.49am on 13 October 2022 with a margin call. And that it couldn't contact him before the positions were closed because of the speed of the fall in the market, which dropped 400 points in one minute.

Capital accepted Mr I had been able to open a position in August 2022 at the wrong price because of an incident with its pricing system. But it said it didn't make any adjustment to correct it because the price Mr I received was more favourable for him.

Our investigator thought Capital had acted fairly and reasonably in the action it had taken and the offer it had made. He concluded that the margin closure was fair and in line with the relevant regulations and agreed terms and that Capital's offer was fair. And, whilst there was an error in August 2022, this resulted in Mr I being able to secure an instant $500 profit on his position, so the investigator didn't recommend this part of his complaint should be upheld.

Mr I didn't agree. He didn't think the investigator had addressed the following points:

- That he wasn't given time to deposit funds when the platform came back to service to prevent positions being closed.
- The position opened in August 2022 wasn't opened by him; it was opened by Capital's platform.
- Outside of the terms and rules, the investigator didn't consider the "human" aspect of what happened here.

Our investigator thought he had already covered Mr I's point about him not being given time to deposit funds. With regard to the August 2022 position, he said it hadn't been clear that Mr I was disputing opening that position. But because any error didn't cause Mr I a financial loss, he didn't have anything further to add.

Mr I asked for his complaint to be decided by an ombudsman.

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.

Having done so, I find I have come to the same conclusion as the investigator for the following reasons:

Capital's price provider had a system problem for 15 minutes on 13 October 2022. I find that during this period, Capital received no prices for T and the underlying index fell sharply. This meant that when the price feeds restarted, the price of T had fallen by around 3.5%. This also meant that the equity in Mr I's account had fallen from £3,127.54 to £1,182.28 and that the margin in his account had fallen to below 50%.

As our investigator set out, the Financial Services Authority required Capital to ensure Mr I's net equity didn't fall below 50% of the margin requirement, to protect him from further losses. I'm satisfied that Capital acted in line with these regulatory obligations when it closed Mr I's open positions. I say that because his account equity had fallen to 42%.

I'm satisfied that the fall in price happened very quickly and that, had there been no problem with the price feed, Mr I would find himself in the same position.

Mr I complains that he didn't receive any warning that his positions were going to be closed. And that, because of the platform system issues, he didn't have the information or tools to mitigate his losses. In other words, he couldn't pay money into his account to increase the equity and he couldn't close out his positions before the price fell. I've considered this carefully, but I don't find Capital treated him unfairly because:

- Capital's Leverage and Margin policy which forms part of the agreed terms and conditions of the CFD trading account, says:

> *"A "Close Out" takes place when the client's Margin Level is at or below 50%, and the Company decides to exercise its right to liquidate client's open positions on a gradual basis subject to clause 5 below.*
>
> *If a sudden market movement causes the Margin Level to drop from above 100% to below 50% the Company may liquidate the client's open positions without sending a notification to the client that his/her Margin Level is at or below 100%."* (4.10)

There was a sudden market movement on 13 October 2022 which caused Mr I's margin level to drop from 108% to 42%. And I think Capital acted fairly and reasonably, and in accordance with this term, in trying to prevent Mr I from incurring further losses by closing his open positions without notifying him first.

- I'm satisfied that the platform's failure to display prices in T was due to a third party. And that Capital isn't liable under its terms for any subsequent losses caused – its terms say:

  > *"We do not accept any liability in respect of any delays, inaccuracies or errors in prices quoted to you if these delays, inaccuracies or errors are caused by third party service providers with which we may collaborate."* (9.2.2.1)

  But I would still expect Capital to treat Mr I fairly. And I think it has – because it calculated the difference between the loss Mr I made when his positions were closed with the loss he would have made if the positions had been closed before the system problem and credited his account with the difference - £1,903.14.

- I fully understand what Mr I has told us about the way he would usually manage his account – he would usually ensure he has sufficient margin at all times and proactively, or in response to margin calls, fund his account or close positions. And he wasn't given the opportunity to do this on this occasion. But I find this was due to the sharp fall in the markets, and in T, which didn't allow him the time to fund his account before his equity fell, and was not due to him not being able to see the price of T for 15 minutes when there was a problem with Capital's price feed.

Mr I mentions that the markets, and the price of T, recovered after the falls. But, overall, I'm satisfied that Capital acted in his best interests in closing the positions to prevent further losses. If it had waited for a recovery, it would have been in breach of the FCA regulations and if the price of T had continued to fall, Mr I would have been in a worse financial position.

As part of his complaint, Mr I referred to a position in T which was opened on 25 August 2022. The position was opened at a price of US$12,000, but T was trading at $13,000 at the time. Mr I benefitted from this error, so I don't find Capital needs to take any action to correct it now. In response to our investigator's view, Mr I said he didn't open the position. But I've not seen evidence to show that anyone else had access to his account, and Capital wouldn't open a position in his account without his instruction. Furthermore, if Mr I didn't open the position, I would have expected him to bring this to Capital's attention earlier than he did – he didn't mention it until two months later when he complained about the position closures.

In response to our investigator's view of his complaint, Mr I said there'd been no consideration for the "human" aspect of his complaint. My role is to decide whether Capital acted fairly and reasonably here, and in doing so I must take account of the relevant law and regulations. I've explained why I think Capital has treated him fairly. I understand Mr I's frustration, and I appreciate the closure of his positions resulted in a loss. But he will also understand the nature of the markets – which caused the sharp fall in price – and the highly risky nature of CFDs which can lead to losses.

Whilst I don't find Capital has done anything wrong, it offered Mr I £100 as a gesture of goodwill. I think it's fair that it honours that offer.

My final decision

My final decision is that Capital Com (UK) Limited should pay Mr I £100.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 12 July 2024.

Elizabeth Dawes
Ombudsman