

The complaint

Mr R complains that Zodiac Partners Limited ('Zodiac') failed to pass on details of an agreement that he'd reached with them to a third-party broker about delaying the close out on his spread betting and futures positions in the result of a margin call.

Mr R would now like his closed positions to be reinstated at their original levels and have any resulting losses refunded.

What happened

Mr R has held a trading account with a business that I shall call 'Firm S' since February 2023, after he was referred to them by Zodiac, who are a separate legal entity from Firm S. Zodiac act as an Introducing Broker to Firm S and they hold power of attorney on Mr R's account with Firm S to execute transactions on his behalf in accordance with his instructions. 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. And, during a telephone call that day, Mr R says that he informed Zodiac that he would be overseas on Monday 20 March 2023 and knew that he would be uncontactable for a period of time. That's because, he says, he would be visiting an area with no Wi-Fi or cellular signal. Mr R was concerned that in the event of a margin call, he wouldn't be in a position to fund his account so wanted to know if he could delay any funding requirements until later, if that became necessary. Mr R says he was assured by the employee at Zodiac that Firm S would be as 'good as gold' with such a request.

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 S, 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. And, prior to the markets opening on Monday 20 March 2023, Mr R states that he held a repeated conversation with Zodiac about deferring any funding requirements until later in the day. Shortly afterwards at 07:33 the same day, Zodiac telephoned Firm S and highlighted Mr R's unavailability and looked to understand if Firm S 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, Firm S 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 Zodiac. 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 Zodiac that he wouldn't be available on the morning of Monday 20 March 2023. Mr R went on to say that he was unhappy that he'd been informed his positions couldn't be reinstated.

After reviewing Mr R's complaint, Zodiac concluded they were satisfied that they'd done nothing wrong. Zodiac also said, in summary, that Mr R was an experienced customer and well aware that his account would be subject to a margin call. Zodiac went on to say that they had tried to contact Mr R but had been unable to reach him when it became apparent that a margin call was inevitable. But Zodiac say it was Firm S who were the ultimate decision makers on his account and as such, it was Firm S who decided to liquidate Mr R's trades, not them. Zodiac also explained that Mr R had agreed to both theirs' and Firm S's terms and conditions, which gave them license to close out his positions when his account balance became negative.

Mr R was unhappy with Zodiac's response, so he referred his complaint to this service. In summary, he said that he'd forewarned Zodiac that Firm S would be unable 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 Zodiac assured him that this message would be passed on to Firm S in case there was a need to fund the account, yet despite knowing this, his positions were still closed.

The complaint was then considered by one of our Investigators. She concluded, in summary, that Zodiac hadn't treated Mr R unfairly and that having looked at both Zodiac's and Firm S's terms and conditions, it seemed that the positions were closed fairly. In addition, our Investigator also concluded that whilst Mr R may have held a discussion with Zodiac about needing additional time to fund his positions in the event of a margin call, no formal agreement was put in place.

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.

After carefully considering the complaint, I issued a provisional decision on this case as I explained that whilst I was minded to agree with the Investigator's initial view, I wanted to add wider context to why I was of the opinion that the complaint should not be upheld. This gave both parties the opportunity to provide any further evidence before I reached a final conclusion.

What I said in my Provisional Decision:

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.

My role is to consider the evidence presented by Mr R and Zodiac 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 carefully considered Mr R's complaint, I'm not upholding it - I'll explain why below.

Before I do, for completeness, I should explain that Mr R has also submitted a complaint to this service about the actions of Firm S which I have responded to under separate cover.

I've looked closely at the nature of the relationship that Mr R had with Zodiac. Mr R was an execution only client; that meant Zodiac was not responsible for advising him or managing his positions. Mr R alone was responsible for deciding how much money to deposit, when to open trades and on what markets, monitoring those positions, and when to close them. So, whilst Mr R may have expressed a preference during discussions with Zodiac that his positions shouldn't be closed out, the nature of the service that he was paying for from Zodiac, meant that it was his responsibility (and not Zodiac's) to ensure he was fully aware of the status of each of his trades and whether and when he needed to fund his account to maintain funding compliance.

As Zodiac act as an Introducing Broker to Firm S, Mr R is subject to customer agreements with both them and Firm S. In Zodiac's terms (section 1.2) it states:

"You have an agreement (a "Trading Agreement") in place with a third-party Underlying Broker (the "Underlying Broker") under which you have a trading account with that Underlying Broker which you use to enter into trades in various investments (a "Trading Account"). Before you read this Agreement, it is important for your own benefit and protection that you have read the Trading Agreement and clarified any points which you do not understand, because the services which we, Zodiac, provide to you under this Agreement relate to your Trading Account."

Zodiac's terms of business (in section 10.1) also set out to Mr R that it's his responsibility to continually monitor his positions and they're under no obligation to provide any ongoing notifications about his bets – that commitment rests solely with him. And, whilst Zodiac's terms state that they will make all reasonable efforts to contact the consumer in the event of a margin call by the underlying broker, they reserve the right to take action to reduce positions and the potential risk of default. This is covered in detail in Zodiac's terms, section 9.2. So, it seems that Zodiac did try to contact Mr R when Firm S alerted them to the perilous state of his positions but because Zodiac were unable to reach Mr R, Firm S were well within their rights to close his positions.

I've also thought carefully about Mr R's statement that he understood from his discussions with Zodiac that he'd made a firm agreement with them that despite what happened on the markets on 20 March 2023, his positions wouldn't be closed out.

It seems that Zodiac were informed of Mr R's travel plans as early as 13 March 2023 when he spoke to his account manager on the telephone. Whilst the conversation about his plans were brief, Mr R did tell Zodiac that he would be travelling on 20 March 2023 and that he "may be out of contact for up to 48 hours or more" due to not having a cellular signal. In response, Zodiac stated that Firm S were "as good as gold with stuff like that, leave it with us and we'll go into bat for you". I've thought very carefully about Mr R's background – he's an experienced trader (with some 30 years under his belt) and has worked in the financial services industry for a number of years, so it's safe to conclude that he well understands the risks of the endeavours he was undertaking. But, Mr R had also only held his account with Firm S at that point for little over a month, so Firm S had no knowledge of Mr R's track

record and whether commercially he could be relied upon. Yet, despite knowing full well that he'd be uncontactable for potentially several days, Mr R was asking Zodiac to facilitate a grace period that I think on balance, many businesses would more likely than not find problematic – and Mr R should have known that. So, whilst Zodiac did state that Firm S were “as good as gold with stuff like that”, they didn't provide Mr R with confirmation that Firm S would accept his proposal, only a commitment that they would “go into bat” for him.

There's no doubt that Firm S were informed about Mr R's travel plans for the morning of Monday 20 March 2023 - that's because Zodiac telephoned Firm S before the markets opened that day. But, immediately before that discussion took place, Mr R spoke to Zodiac. Mr R also spoke to Zodiac over the weekend (18 and 19 March 2023). A recording of those conversations isn't available because the discussions seemingly took place on WhatsApp. Mr R has placed a great deal of emphasis on what was agreed between himself and Zodiac during those telephone calls – and that was principally that Zodiac gave him an assurance that he could fund his account later in the day once he returned to his hotel and would have a signal. Zodiac, however, have stated that Mr R's suggestion that there was some form of agreement in place which would somehow enable Zodiac to override another regulated firm's decision making is categorically incorrect and not plausible.

As we're an evidence-led service, it's difficult to conclude what was and wasn't agreed during those unrecorded discussions, but in any event, I think it's most likely that Zodiac committed to telephoning Firm S, which is what they did. We know that because this service has been provided with a copy of the recording from that discussion where Zodiac explained that Mr R wouldn't be contactable, and they then asked Firm S to apply some discretion that day if a need to fund his account arose.

I've listened to the telephone recording of that call where both Firm S and Zodiac colleagues discussed Mr R's account - Zodiac did ask Firm S 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'. Firm S committed to Zodiac 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, Firm S gave Zodiac no warranties that they would keep any of his positions open if the markets deteriorated.

From what I've seen, Firm S 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 in the near term, there had to come a point at which Firm S was compelled to draw a line in the sand to protect both themselves and their 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 Firm S weren't required to provide notice of their plans to close Mr R's positions, they sent a message to Zodiac forewarning them but with Mr R unreachable at that time, I think Firm S were left with little choice but to close the positions (which by 08:48, they'd done so). Arguably, if Firm S 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 Firm S.

In my response to Mr R's complaint about Firm S, I found that as 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 was satisfied that it was fair and reasonable for Firm S 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 Zodiac 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 chose 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.

Summary – *whilst Mr R may have thought that he had a firm agreement from Zodiac that his positions would have been kept open by Firm S, I've seen no evidence of any warranties having been provided to Mr R that Firm S would be happy to wait until the afternoon of 20 March 2023 to allow him extra time to bring his account back into funding compliance. I appreciate that Zodiac stated that Firm S were as "good as gold with stuff like that", but they only agreed to "go into bat" for Mr R, and that wasn't confirmation that Firm S had agreed to anything. And in any event, from what I've seen of the terms and conditions that formed the basis of the relationship between Mr R, Zodiac and Firm S, the latter were well within their rights to make the margin call when they did because neither Firm S nor Zodiac had agreed to waive their terms for Mr R.*

As an elective professional client, Mr R would have been well aware of the risks of failing to maintain an effective cash account to prevent his positions from closing. And, with no agreement in place to increase the level of credit that Mr R had with Firm S, Mr R should have known that there was a high likelihood that Firm S would close his trades without the necessary funding being in place. And, despite what Mr R may have said to Zodiac about his predicament on the morning of 20 March 2023, given he was an execution only client, he couldn't delegate the monitoring of his portfolio to Zodiac as only he was able to fund the account to prevent it from going negative. I'm satisfied that Zodiac spoke to Firm S to set out Mr R's circumstances but ultimately, the decision to close his positions rested with Firm S, which as I've already explained, was done so in line with the terms and conditions that Mr R agreed to when he opened his account.

So, whilst I appreciate that this will come as a disappointment to Mr R, I can't conclude that Zodiac have treated him unfairly.

Responses to my Provisional Decision:

After reviewing my provisional decision, Mr R responded, explaining that he didn't agree. He said, in summary, that the defining factor in the complaint is what was agreed between Zodiac's representative and himself on the morning of 20 March 2023, before the market opened. Mr R went on to say that during that discussion, a specific and unambiguous arrangement was made that he would fund his account with what was required when he came into signal or by the latest, that afternoon when he would reach his accommodation.

In addition, Mr R said that he wasn't to know this was not acceptable to Firm S. Mr R also said that despite his original comments that he may "be uncontactable for potentially several days" this was never the case. He also said that the timeframe was only ever going

to be hours at most, and in actual fact, from the call he had with Zodiac's representative when they telephoned to advise of the closure of his positions at 09:35, the time elapsed was in fact only around two hours. Mr R said that the account could have been funded then.

After reviewing my provisional decision, Zodiac didn't have anything further to add.

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've already explained that there's little doubt that Firm S were informed about Mr R's travel plans for the morning of Monday 20 March 2023 – we know that because Zodiac telephoned Firm S before the markets opened that day. And, before that conversation took place, Mr R spoke to Zodiac which is what I suspect prompted Zodiac's call to Firm S.

In his response to my provisional decision, Mr R asked me to listen again to the telephone conversation that he had with Zodiac on Monday 20 March 2023 at 09:35, where he was advised that his positions had been closed out by Firm S. Mr R says that discussion corroborates his version of events, which is, that he was provided with an assurance that Firm S would be willing to defer any liquidations until later in the day when he would be in a position to fund his account when he knew how much would be required. But, as I've already explained, Zodiac have stated that they provided no such assurance to Mr R, and only gave a commitment to speak to Firm S.

For completeness, I have listened to that call again. And, I think it's clear that an agreement was made that Zodiac would speak to Firm S, which is what they did. But, as I've already explained, the call that Mr R had with Zodiac before the markets opened wasn't recorded so we don't know what warranties, if any, were given to Mr R. However, given Mr R was going to be travelling that day, and without WiFi and cellular signal, he was placing a large amount of faith in Zodiac that they could convince Firm S to provide him with a 'grace period' if the markets were to turn against him. And, even if Zodiac had suggested that Firm S had in the past typically been flexible, given the conversation took place prior to the markets opening, Mr R was taking a considerable risk that Firm S would agree to such a request because if they wouldn't, Zodiac wouldn't then be in a position to let him know. Zodiac did agree to some flexibility in deferring the close out of Mr R's positions though, but given the movements within the market and the extent to which Mr R's positions fell, they were left with little option but to liquidate them.

Mr R is a professional client who, by definition, understands the risks of investing. Given the news over the weekend of 18 and 19 March 2023 about Credit Suisse and Switzerland's national bank having to step in to broker a rescue deal, Mr R ought reasonably to have known that there was a very high likelihood that markets would be more changeable than normal on 20 March 2023, and that his positions would, on balance, need additional cushioning. But, rather than choosing to either close out a number of his positions or add funds when he did have access to WiFi, Mr R elected to wait until later in the day. But, as an execution only client, he alone was responsible for monitoring his positions and ensuring he maintained a sufficient cash balance to cushion any market movements.

Ultimately, Firm S had to make a judgment call to protect both themselves and Mr R – they didn't have the benefit of hindsight, so they had no way of knowing what was likely to

happen if they kept his trades open. The regulator expects firms to act with due skill, care and diligence so, had they not closed Mr R's positions when they did (after allowing for a period of grace), he could've found himself nursing losses far greater than the £37,000.

I'm satisfied that Zodiac honoured their commitment to speak to Firm S to set out Mr R's circumstances, and Firm S provided some additional time to Mr R before closing his trades but ultimately, the decision to close his positions rested with Firm S, which as I've already explained, was done so in line with the terms and conditions that Mr R agreed to when he opened his account and it's for those reasons and the explanation that I've set out above why I'm not upholding his complaint.

In his response to the provisional decision, Mr R also raised the issue of the debt that remains outstanding with Firm S as a result of his positions (above) being closed. Mr R says that he was advised by them that whilst his complaint was awaiting a decision from this service, no interest would be applied to that debt. But, having looked at his online account, it would seem that Firm S have applied interest of around £8,000, bringing the outstanding balance to around £45,000. As this decision relates to the actions of Zodiac and I've already dealt with Mr R's complaint about Firm S under separate cover, Mr R should first approach Firm S to understand if they are willing to honour any earlier commitments made.

Whilst this issue (of interest being applied to the outstanding debt) is indirectly linked to Mr R's original complaint, it would be considered a new issue, so only after Mr R has exhausted Firm S's complaints process (if he decided that was a path he wished to follow) could this service consider that particular point.

My final decision

I'm not upholding Mr R's complaint and as such, I won't be instructing Zodiac Partners 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 5 October 2024.

Simon Fox
Ombudsman