

The complaint

Mr K complained that CMC Markets UK plc ('CMC') wrongly closed all the positions in his spread betting account. He says that caused him a loss.

What happened

Mr K had a spread betting account with CMC which he opened in August 2010.

In September 2023 CMC sent Mr K a '*Low Account Revaluation Amount Notice*' on several occasions. It said that, due to a low level of funds in his account, the account was approaching the close-out level, but Mr K could avoid having his positions closed out if he closed some of them himself or added funds to the account.

On 29 September 2023 a stop loss was triggered on Mr K's account. In accordance with the stop loss CMC closed the related position. As a result Mr K's bet size increased and so his account value fell below the 50% margin requirement. CMC then closed all of Mr K's positions. The closures crystallised a combined loss of nearly £16,000 for Mr K.

On 13 October 2023 Mr K complained to CMC. He said CMC should've contacted him before closing out his positions, to give him a chance to rectify things before it took action. CMC didn't think it had done anything wrong. In summary it said the following:

- Execution of trades on CMC's platform was fully automated, with no manual intervention.
- CMC's liquidation policy was in place to help reduce losses and prevent customers reaching zero balance.
- When liquidation was triggered CMC couldn't delay giving effect to it, regardless of individual circumstances.
- CMC was required by the Financial Conduct Authority (FCA) to liquidate positions when Mr K's account revaluation amount fell below 50% of his total margin.
- It wasn't obligated to contact Mr K when the margin requirement was breached.
- Between 26 and 28 September 2023 CMC sent Mr K three '*Low Account Revaluation notices*'. They made Mr K reasonably aware that action was needed to prevent liquidation ('*account close-out*'). CMC tried to send such warnings wherever relevant, but it wasn't always possible.
- Mr K could change the close-out method on his account. It was his responsibility to familiarize himself with the features of the platform and ensure his account was set up in a way that aligned with his trading strategy. Details of the close-out process were readily available for Mr K on the platform at all times and formed part of CMC's terms which Mr K acknowledged having read and accepted upon opening his account.

- Mr K's positions were liquidated on valid price movements and in accordance with the terms of Mr K's account.

Mr K wasn't satisfied with CMC's response. So he referred his complaint to this service. In summary he said the following:

- CMC should've contacted him when the margin requirement was breached. If it had, he would've either added more money to the account or managed it by reducing his position size.
- CMC shouldn't have closed all his positions – it could've closed just one position to bring the account back within the margin requirement.
- Before complaining to CMC he hadn't known he could change the close out method. It wasn't possible to be familiar with CMC's entire platform and all terms and conditions.
- CMC should've educated Mr K because he'd lost a similar amount some years before when his positions were closed due to having insufficient funding and because the way Mr K was managing his account showed he was under strain. CMC should've told him he could change the close out method.
- On another occasion CMC allowed Mr K to make a bet it would've known could only result in a loss. He made a bet to buy GBP/YEN if the price hit a point slightly lower than the current price with a stop loss. CMC would've known that the spread on open widened so much that the buy bet and the stop would trigger simultaneously.
- Mr K had lost nearly £16,000 and suffered stress. He wanted CMC to reimburse his loss and compensate him for stress.

One of our Investigators looked into Mr K's complaint. She didn't think CMC had done anything wrong. In summary she said the following:

- Mr K had agreed to CMC's terms and conditions when he opened his account.
- CMC provided an execution-only service. So it wasn't CMC's role to tell Mr K if a trade was suitable for him, or to tell him how to trade. And it wasn't CMC's role to train or educate him, although it made helpful tools and information available online.
- CMC's terms and conditions said Mr K was responsible for managing his positions. And CMC would attempt to notify him if his account value fell below 50% of total margin requirements but that was a courtesy and Mr K couldn't rely on it.
- The 50% level was set by the FCA which required CMC to close out positions if Mr K's value fell below 50% of the margin needed.
- Mr K was responsible for managing his account. Even so, CMC sent him multiple warnings about his account value between 20 and 28 September 2023. The warnings were clear and were sent almost daily in this period.
- Mr K had substantial trading experience and was familiar with the above process through actively managing his account.
- Records from CMC showed that on the morning of the day his positions were closed out Mr K logged into his account and actively traded. His log-in history (including on

the day of liquidation) showed Mr K had the opportunity to manage his positions and (from the warnings) was aware his account was close to breaching the margin requirement.

- Mr K had disabled the account netting option in his account. This showed he knew the consequences of not managing his account.
- The terms and conditions clearly said CMC wasn't responsible for warning Mr K when his account was likely to breach margin requirements, let alone to telephone him as well as sending email alerts.
- The close-out process CMC had followed was automatic. This service doesn't expect close-out to be done manually by an execution-only service.
- CMC closed positions at the first available price until the account revaluation increased above the close-out level. This was industry standard.

Mr K didn't agree with the investigator's view. In summary he said the following:

- Mr K's account had been '*wiped clean*' three times. The 50% margin rule was designed to protect customers, but it had failed to protect Mr K on these occasions.
- He hadn't traded continuously since opening the account in 2010. On at least two occasions he'd lost all the money he'd deposited and had then taken a break from trading for some years.
- It couldn't be fair that CMC could offer a product that was certain to result in a loss, such as the GBP/JPY trade Mr K had mentioned making.
- After receiving the warnings in September 2023 Mr K had deposited money. On 29 September 2023 he'd been actively trading, but then had to take a friend to hospital. While he was doing that his account revaluation fell below 50% and the liquidation began. Because CMC didn't notify Mr K when his revaluation fell below 50% he was denied the opportunity to manage and preserve his positions.
- Mr K hadn't disabled account netting. He wasn't even aware of the feature. It was only when he called CMC to complain that he discovered he could change the close-out method. CMC should've made account netting a default feature – if it had Mr K's positions wouldn't have been liquidated. CMC was trying to avoid acting in Mr K's best interests.
- Because Mr K deposited money with a credit card CMC should've looked at his account and stopped him from losing borrowed money.

CMC provided the following further comments:

- Mr K's account showed continuous trading since 2011. Certain periods showed reduced activity, but there were no complete breaks for two years or more.
- CMC had robust systems and controls in place to ensure its prices and spreads were a fair reflection of the underlying markets (where relevant) and that any orders that might breach best execution practices were reviewed and corrected accordingly.
- CMC didn't offer products knowing they'd make a guaranteed loss. CMC couldn't identify the GBP/JPY trade Mr K had mentioned. Mr K had executed more than 100

bets in that product and made a net profit of nearly £6,000.

- Whether account netting was enabled or disabled wouldn't have affected the fact Mr K's account fell below 50% of the required margin.

Because no agreement could be reached, this complaint was passed to me to review afresh and make 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.

Having done so, I'm not upholding the complaint. I'll explain why.

The purpose of this decision is to set out my findings on what's fair and reasonable, and explain my reasons for reaching those findings, not to offer a point-by-point response to every submission made by the parties to the complaint. And so, while I've considered all the submissions by both parties, I've focussed here on the points I believe to be key to my decision on what's fair and reasonable in the circumstances.

Under the terms and conditions of the account Mr K had – which he had agreed to on opening his account - CMC was entitled to close his open positions when the account revaluation amount fell below the close-out level. And, under the terms and conditions, it could do so automatically and without notice to Mr K.

As it happened, CMC did send Mr K a number of warnings in the days preceding the day of liquidation. Mr K said he'd been managing his positions in response to those warnings. So I think he must've known his account was close to falling below the close-out level. Mr K thought that when his account did fall below that level CMC should've waited before closing his positions and should've made contact with him to give him an opportunity to rectify things before it took any action. But the terms and conditions clearly didn't require that. As I've said, the terms said CMC could close out positions in these circumstances without delaying and without notifying Mr K.

I find it was fair and reasonable for CMC to have acted in line with its terms and conditions in the circumstances of this complaint. The rules of the regulator, the Financial Conduct Authority (FCA), required at COBS 22.5.13R that CMC closed out positions when Mr K's net equity fell below 50% of the margin required to maintain his positions. And CMC had to do that '*as soon as market conditions allow*[ed]'.

I understand Mr K says that – on the day of liquidation – he was trading in the morning but was unavailable later in the day due to taking a friend to hospital. I sympathise with Mr K's experience, having been unable to attend to his spread betting account while he was busy with his personal commitment. But I can't say CMC has done anything wrong by carrying out its usual processes, whether or not Mr K was available to actively trade in his account, and irrespective of the reason he was unavailable. Although Mr K was unhappy that his positions were closed, it wouldn't necessarily have been in his interest for them to have been kept open.

Mr K has acknowledged he received warnings about his account revaluation amount. He's said he was managing his positions to avoid close-out. So I'm satisfied Mr K understood that he was required to manage the revaluation amount in his account to avoid close out. And I'm satisfied he knew how to manage his positions. The fact Mr K was unavailable to manage

his account at the time the close-outs happened is unfortunate for him, but it doesn't indicate any wrongdoing on CMC's part.

The fact Mr K's positions had been liquidated on occasions in the past doesn't mean CMC was wrong to liquidate his positions on this occasion. If Mr K was unhappy with the terms under which CMC allowed him to trade, he could choose not to trade with CMC. Similarly, any decision by Mr K to take a break from trading in the past didn't mean CMC shouldn't have liquidated his positions on this occasion. Mr K has said CMC should've been aware he was struggling to manage his trading. From what I've seen Mr K hasn't complained specifically to CMC about that. As a reason for CMC to refrain from closing out his positions when his account breached the revaluation requirement, I don't find Mr K's comments about this compelling. So long as he continued to trade with CMC, it was fair that the terms and conditions of the account should continue to apply to him.

Mr K mentioned a bet he'd made with CMC which he thought afterwards had been certain to fail. Again, it appears Mr K hasn't complained specifically about this matter to CMC. I've considered whether Mr K's comments about that bet give me reason to uphold this complaint and I've found that they don't because they're not relevant to the particular incident Mr K has complained about. And I'm not persuaded they show a pattern of unfair behaviour by CMC.

Mr K has disputed CMC's assertion that he disabled account netting on his account. I'm satisfied that whether or not he disabled account netting CMC was entitled to carry out its usual close-out procedures on this occasion. And I don't see that having account netting enabled would've saved his positions from close-out. So I make no finding about whether Mr K disabled account netting. And irrespective of whether he did that, it was his responsibility to understand how to manage his account. I haven't seen that CMC made that unreasonably difficult for him.

Overall, I'm sorry to disappoint Mr K, but I haven't found that CMC has treated him unfairly or unreasonably in the circumstances of this complaint. So I'm not requiring CMC to do anything.

My final decision

For the reasons I've set out above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 21 April 2025.

Lucinda Puls
Ombudsman