

complaint

Mr W complains about losses of \$21,800 he has suffered on a CFD trading account in his name with GKFX Financial Services Limited ("GKFX").

background

Mr W complains that the trading account in his name wasn't opened by him but opened by a third party (who he believes is/was employed by, or an agent of, GKFX). And that this third party traded through this trading account not him. He also says that since losing him \$21,800 the third party has disappeared.

On 28 August 2017 GKFX opened a trading account in the name of Mr W.

Between 29 August and 11 October 2017 nine deposits totalling \$22,800 were made to the trading account from Mr W's bank account.

On 11 October 2017 one withdrawal totalling \$1,000 was made from the trading account.

Between 29 August and 13 October 2017 approximately 500 CFD positions (mainly in forex-pairs) were opened and closed. Most of these positions were held open for only a few minutes or hours.

Since 13 October 2017 there has been no further positions opened (or closed) through the trading account.

This complaint was considered by one of our adjudicators who concluded that it shouldn't be upheld. In summary he said:

- GKFX would have had no reason to doubt that it was Mr W who had asked for the trading account to be opened, especially given the details it was provided with (including identification documents for Mr W and his bank account details).
- Based on information GKFX says it was provided, information Mr W doesn't dispute was provided, a CFD execution only trading account didn't appear to be inappropriate for Mr W.
- He was satisfied that the third party referred to by Mr W was neither an employee nor an agent of GKFX.
- If Mr W had allowed a third party to open a trading account in his name and trade then that was a breach of the trading account terms and conditions.
- If Mr W had allowed a third party to open a trading account in his name and trade through it, then he was responsible for that not GKFX.
- Notwithstanding a third party might have opened a trading account in Mr W's name and traded, it was Mr W who funded these trades having made nine deposits of \$22,800 over a six week period.
- Mr W has provided no documentary evidence of any pricing errors or poor pricing execution by GKFX.

- GKFX did nothing wrong in closing Mr W's trading account, if indeed that is what it did.

Mr W didn't agree and so his complaint has been passed to me for review and decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

When considering what, in my opinion, is fair and reasonable in the circumstances of a complaint, I'm required by DISP 3.6.4 of the FCA Handbook to take into account:

(1) relevant:

- (a) law and regulations;*
- (b) regulators' rules, guidance and standards;*
- (c) codes of practice; and*

(2) (where appropriate) what [I] consider to have been good industry practice at the relevant time.

I would also add that where the evidence is incomplete, inconclusive or contradictory, I make my decision on the balance of probabilities - that is, what I consider is most likely to have happened given the evidence that is available and the wider surrounding circumstances.

It's clear Mr W has very strong feelings about this complaint. He has provided detailed submissions in support of his view which I can confirm I've read and considered in their entirety. However, I trust that Mr W will not take the fact that my findings focus on what I consider to be the central issues, and that they are expressed in considerably less detail, as a discourtesy. The purpose of my decision isn't to address every point raised. The purpose of my decision is to set out my conclusions and reasons for reaching them.

Having considered what Mr W has said and provided, I'm satisfied that it's quite possible that the trading account in his name was opened by a third party.

However, I'm satisfied that this third party isn't in anyway connected with GKFX. If it was, I might have expected Mr W to have provided more than he has, for example a business card, a letter of appointment or terms of business, but he hasn't.

I'm also satisfied that if the trading account in Mr W's name was opened by a third party then this was done with Mr W's full knowledge, cooperation and consent. In other words Mr W was fully prepared to be bound by anything that third party said, did, or agreed to in opening this trading account.

I say this in part because of the substantial amount of personal information that was required to be submitted to GKFX for this trading account to be opened, what documentation needed to be provided (including identification documents) and the checks and systems that were in place.

I've also seen nothing that was submitted as part of the trading account opening process that would have caused GKFX to question whether it was Mr W applying to open a trading account or a third party or that such a trading account would be inappropriate.

Furthermore I find it difficult to reconcile this aspect of Mr W's complaint with other aspects of it. For example he says he didn't open the trading account himself but complains there were pricing errors or poor pricing execution by GKFX.

So in summary I'm not persuaded GKFX did anything wrong in opening the trading account that it did in the name of Mr W.

It's my understanding that Mr W says all the trades placed through the trading account in his name were placed by the third party that opened it. Again I don't dispute this is a possibility. But I'm not persuaded these trades would have been placed without Mr W's full knowledge, cooperation and consent. Indeed Mr W accepts that it was he who funded the trading account (from his bank account) for these trades to be placed and that he did so on not just one occasion but on nine occasions over six weeks.

But even if I wasn't of the above view I can't see how GKFX could have been expected to have known it was somebody other than Mr W trading.

So in summary I'm not persuaded GKFX did anything wrong in allowing the positions to be opened and closed that it did, or in holding Mr W liable for the resultant losses.

If Mr W's trading account has been closed by GKFX as he submits then I'm satisfied that this was something it was entitled to do. But in any event, I can't see that closing Mr W's trading account has in itself caused him a loss. What caused Mr W his loss were the positions that were opened and closed, not the trading account being closed, and if Mr W wants to trade CFD's in the future he is free to do so by opening a new trading account.

Finally I would add that I've seen nothing that would persuade me that there was any pricing errors or poor pricing execution by GKFX.

my final decision

My final decision is that I don't uphold this complaint.

I appreciate Mr W will be disappointed by my conclusions. My final decision, however, represents the last stage of this service's dispute resolution procedure. Mr W doesn't have to accept my decision and if he doesn't do so, he will be free to pursue legal action against GKFX Financial Services Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 11 February 2019.

Peter Cook
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