

complaint

Mr B complains that he is unhappy with the service provided by CMC Markets UK Plc ("CMC") while trading contracts for difference (CFDs).

background

I issued my provisional decision in June 2019 which is attached and forms part of my final decision.

In this I set out why I didn't think Mr B's complaint should be upheld. And I gave both parties an opportunity to make further comments or send further evidence before I reached my final decision.

Mr B said that, although he was disappointed, he accepted my decision. CMC Markets said it had no further points to add on the matter.

my findings

I've considered all the available evidence and arguments from the outset to decide what's fair and reasonable in the circumstances of this complaint. But as neither party has provided anything new, I see no reason to change my conclusions.

my final decision

For the reasons I've explained, I don't uphold Mr B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 17 August 2019.

Anne Muscroft
ombudsman

copy of provisional decision

complaint and background

Mr B complains that he is unhappy with the service provided by CMC Markets UK plc ("CMC") while trading contracts for difference (CFDs).

In October 2013, Mr B opened a CFD account with CMC. He applied for the account online. He paid funds into the account and began to trade.

Mr B says that he incurred losses through trading and got into debt as he'd used his credit card to fund many of his trades. In November 2016, Mr B informed CMC that he had a gambling problem and closed his account.

Mr B has complained that:

- CMC allowed him to open a trading account without completing a credit check.
- That CMC allowed Mr B to continue trading despite it being largely funded by credit cards.
- That account reviews did not take into account Mr B's financial situation.
- That the trading fees were not made clear.
- That CMC did not send daily or monthly statements to him.
- That it allowed Mr B take positions (including 'squared positions') that resulted in increased trading fees where there was no effective trade in play.
- That he was persistently targeted by CMC's sales team – including being contacted after he'd informed it he had a gambling problem.

CMC didn't uphold Mr B's complaint. It's said that:

- It was under no obligation to carry out a credit check as it wasn't a credit provider.
- When Mr B opened his account he confirmed he'd read a risk warning document that informed him he should not finance his trades on credit.
- Mr B confirmed his financial position with it at the time of application and at each annual review.
- The trading fees were made clear on its website and platform and Mr B was sent his account history and statements.
- Mr B's account history was available online at any time. Alternatively it says Mr B could have called its client services team at any time if he'd wanted a hard copy statement.
- As an execution-only provider of CFDs, it does not offer any financial advice and any decision to trade was Mr B's.

Our investigator looked into Mr B's concerns but didn't think his complaint should be upheld. Mr B disagreed with this and referred his complaint to an ombudsman for a decision.

An ombudsman issued a provisional decision saying that she wasn't minded to uphold Mr B's complaint. She gave both parties the opportunity to provide further comments or evidence they wished her to consider before she reached her final decision.

Mr B disagreed with the ombudsman's findings and he made a data subject access ("DSAR") request to CMC. The information from the DSAR was subsequently sent to our service to be reviewed. As the ombudsman who issued the provisional decision to Mr B has since left the service, Mr B's complaint has been passed to me.

my provisional findings

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

Having done so, I don't currently intend to uphold Mr B's complaint. And I'll explain why.

I'm aware that the Financial Conduct Authority ("FCA") is taking steps to change the rules applying to CFD providers. But to be fair to CMC, I need to consider the rules in place at the time of the events Mr B is complaining of.

Opening of account

CMC says it provided the CFDs to Mr B on an 'execution-only' basis. This means that CMC carried out transactions at Mr B's request without giving any advice. Having reviewed the documentation, emails and phone calls provided, I'm satisfied that what CMC has told us about this is correct.

As it wasn't giving Mr B advice about the trades, CMC didn't need to check that they were suitable for Mr B. But it needed to give Mr B clear information about how CFD trading worked, and what the risks were, to allow him to make an informed choice

CFDs are classed as complex instruments by the FCA. This means that CMC had an obligation to assess whether the investment was appropriate for Mr B. The rules regarding this can be found in the FCA's Conduct of Business Sourcebook COBS 10.2.

COBS 10.2.4R says '*A firm is entitled to rely on the information provided by a client unless it is aware that the information is manifestly out of date, inaccurate or incomplete.*'

COBS 10.2.6G says '*depending on the circumstances, a firm may be satisfied that the client's knowledge alone is sufficient for him to understand the risks involved in a product or service. Where reasonable, a firm may infer knowledge from experience*'

This doesn't mean that Mr B needed to have traded CFDs before he opened his CMC account. But CMC needed find out about Mr B's knowledge, experience and understanding of the risks involved before allowing him to do so.

CFD has sent us a copy of the application form Mr B completed online when he opened his CMC account. In this Mr B said that he was employed in '*financial services*', his annual income was from £20,000 - £49,000 and he had £1 – £19,999 of savings and investments.

Mr B said that he didn't have experience in '*exchange traded derivatives*' but he'd '*occasionally traded in*' '*shares*' and '*OTC derivatives*'.

For the question on '*professional/educational details*' Mr B said he held '*other professional or academic qualifications in a numerate or financial services-related field*'.

Mr B also answered 'yes' to all five questions in the section '*understanding features and risks*'.

I'm satisfied that CMC did what it was required to do to determine if it was appropriate for Mr B to be allowed to trade CFDs. And I can see that Mr B passed CMC's appropriateness check based on the information he'd given it.

I've also considered if CMC gave Mr B clear enough information about how CFDs work and the risks involved. CFDs are leveraged products where consumers can lose more than their initial deposit. And CMC needed to give Mr B clear warnings about this.

When he opened his account Mr B had to agree to CMCs '*CFD Terms of Business*' and '*Risk Warning notice for CFDs*' documents. These documents explain how CFDs work and the associated risks.

The terms of business document begins with the wording:

'A CFD is a contract for difference. Investing in CFDs or other financial derivatives products carries a high level of risk to your capital. The prices of CFDs may change to your disadvantage very quickly. It is possible to lose more than your initial investment and you may be required to make further payments. These products may not be appropriate for all investors. Therefore, you should ensure you understand the risks involved and seek independent advice if necessary.'

Section 5 of the risk warning notice also explains how *'you may lose more than your deposit'*.

I can see that CMC also gave Mr B further risks warnings after he'd opened his account. In the footer of its emails it says that CFDs are *'... leveraged products and carry a high level of risk to your capital as prices may move rapidly against you. It is possible to lose more than your initial investment and you may be required to make further payments. These products may not be suitable for all clients therefore ensure you understand the risks and seek independent advice'*.

Mr B has complained that CMC didn't do a credit check before allowing him to open his account. But CMC had no obligation to do so. As an execution-only provider of CMCs, its obligations were to assess appropriateness and provide clear information about how CFDs worked and the risks involved. And for the reasons I've explained, I'm satisfied that CMC met these obligations when opening Mr B's CFD account and allowing him to trade.

Use of credit cards

Mr B says that, having opened his account, his main source of funds was from his credit card. And the fact that CMC allowed him to use his credit card to fund his transactions in this way is at the heart of his complaint.

In the other ombudsman's provisional decision of February 2019, she referred to wording in the risk notice document Mr B confirmed he'd read when he opened his account which says:

'If you fund your trades with us using credit (e.g. a bank loan or credit card), your risk will be significantly increased, and if you make a loss using that money, you will still have to repay your borrowing including interest. Therefore, you must not rely on being able to redeem borrowed funds with any profits from trades with us.'

My colleague said that if Mr B had informed CMC that the source of his funds would be borrowing it would have led to Mr B's automatic rejection and she hadn't seen anything to make her think this would not have been the case. She went on to say that she didn't think it would be fair to hold CMC responsible for Mr B acting in breach of the terms and conditions of his agreement with CMC.

Mr B disagreed with this in his response to the provisional decision. He says that CMC would have known he was depositing money into his trading account via credit cards. And he's questioned why it wouldn't have closed his account if he'd been in breach of CMC's terms and conditions.

I haven't seen anything to suggest that CMC would've been aware that Mr B intended to use borrowing to finance his trades when his account was opened.

But I have a different interpretation of the wording in the risk notice to that of my colleague. I don't think that it implies that a customer wasn't allowed to use their credit card or would be in breach of CMCs terms and conditions if they did so. Rather it's a warning that a consumer was at risk of getting into debt if they chose to use credit to fund their trades.

The *'CFD Terms of Business'* document confirms that trading using a credit card was allowed. Clause 5.3.7 says *'if you make a payment by debit card or credit card and/or withdraw money from your Account, we may charge an administration fee to process your payments.'*

While CMC might have been aware that Mr B was using his credit card to pay into his trading account, it wouldn't have had access to information regarding Mr B's credit card balance – or indeed other information regarding Mr B's financial situation such as savings he might have had. The fact that Mr B was using his credit card to make deposits into his trading account, wouldn't necessarily indicate that he was having to borrow money to finance his trades. He could have been using his credit card for convenience and paying off his balance each month.

So I don't think that CMC did anything wrong in allowing Mr B to use his credit card to pay into his trading account. And I also don't think that his doing so would have made CMC aware that Mr B was getting into financial difficulty.

Fees and costs

Mr B says he believes there was a lack of transparency around trading fees and costs. He says that if every cost had been visible to him via the mobile app and he'd received regular statements he would have managed his account differently (incurring less costs) and maybe even closed his account sooner.

CMC says that account history and daily/monthly statements were available for Mr B to access online and he could also have requested hard copies from its client services. It says fees and costs are displayed on its website, the platform and specific to the trade, on the order ticket.

Mr B has said that he could only access information from the mobile app as he didn't have access to a PC. But from the emails and call recordings, I can see that Mr B asked CMC for further information regarding his account (including about costs and fees) on several occasions. And CMC always responded promptly with the information he'd asked for. So I do believe that if Mr B had asked for more regular statements to have been sent to him, CMC would most likely have done so.

Trade positions

Mr B has complained that CMC allowed him to square off his losing positions resulting in the doubling of trading fees where there was no effective trade in play.

CMC says that as an execution-only provider of CFDs, it did not offer any financial advice and any decision to trade was Mr B's own. It says Mr B confirmed that he understood the risks involved in this type of trading when he opened his account with it.

I've already said above why I believe CMC was an execution-only provider of CFDs. This means that it didn't give Mr B any advice regarding the suitability of his trades. If CMC *had* given Mr B advice, it would be responsible for ensuring the transaction was suitable. But having reviewed the email correspondence and listened to the phone calls between Mr B and CMC, I haven't found any evidence that CMC gave Mr B advice about his trades.

I can also see that the risk warning Mr B agreed to having read when he opened his account says:

'We do not provide investment, tax, regulatory or financial advice relating to investments or possible trades in investments. Any information we provide to you is purely factual and does not take into account your personal circumstances (for example information about trading processes or minimising potential risks.) Therefore, you may wish to obtain independent professional advice from a suitably qualified advisor on any investment, financial, legal, regulatory, tax or similar matter before trading with us.'

So it was up to Mr B to decide for himself whether or not his trades were right for him. And I can't say that CMC did anything wrong in allowing him to make trades that might not have been suitable for him.

Sales team actions

Mr B has complained that he was persistently targeted by CMC's sales team who wanted to retain him as a valued customer and did their utmost to drive sales. He says that CMC sent him daily emails about trading opportunities and he was closely monitored by CMC's sales team who invited him to drinks parties and hosted sporting events. He's told us that one of the drinks party invitations was emailed to him after he closed his account.

CMC has told us that the daily emails Mr B has referred to was an opt-in service that he specifically requested. It says Mr B could have disabled this or requested not to be contacted.

I can see that the majority of the emails sent to Mr B were '*price alert*' emails saying that his '*price alert has been triggered*'. This does seem to suggest that Mr B requested these emails be sent to him. So I think CMC is likely to have stopped sending these if Mr B had requested it to. And I haven't seen anything to suggest that he did.

From the call recordings, I'm aware that Mr B was offered hospitality tickets for a tennis tournament. Mr B said he couldn't attend but he'd be very keen to be invited to any future events near where he lived. There's also an email from Mr B to CMC from August 2015 where he says; '*If any free stuff comes up in the north west give me a shout. Gutted I couldn't make the tennis event the other month*'.

I can also see that an email was sent to Mr B in January 2017 (around two months after he closed his account) referring to a gift CMC had sent just before Christmas and reminding him he could get in touch if there was anything CMC could assist with.

CMC has told us that the reason for this is that Christmas gifts are arranged months in advance and a bulk delivery had been organised before Mr B had closed his account. The email in January was a follow-up to all clients who'd had a delivery sent to him. It's also said that Mr B had been placed on a restricted list – meaning that he would never have been able to trade through CMC again – when he closed his account.

I appreciate that it might have been distressing for Mr B to receive an email from CMC after he'd closed his account. But I've no reason to doubt CMC's explanation for this or what it's said about refusing to allow Mr B to trade if he had wanted to do so. And although CMC offered Mr B a couple of gifts to thank him for his trade, I don't think it did anything to pressure Mr B to continue trading.

I've also listened to the recording of when Mr B phoned to close his account. In this Mr B says he wants to close his account and the CMC representative answers '*yes of course, I can process that now*'. Mr B then asks for a blocking exclusion because he realises he's a problem gambler. And the CMC representative replies that he'll put that on and it means Mr B won't be able to open an account in the future because he'd be on a restricted list.

So I don't think CMC applied any pressure on Mr B to continue trading, bearing in mind that it agreed to close his account even before he'd mentioned his gambling problem. And it took appropriate action once Mr B had made him aware of it.

I'm very sorry to hear about Mr B's financial and personal difficulties. And I wish him all the best as he attempts to get his finances back on track. But having considered all of his points very carefully, I haven't concluded that CMC did anything wrong. It follows that I don't intend to uphold Mr B's complaint.

my provisional decision

For the reasons I've explained, I don't intend to uphold Mr B's complaint.