

complaint

Mr M complains that GAIN Capital UK Limited ("Gain Capital") shouldn't have allowed him to reactivate his spread betting account because of his gambling problem. And in allowing him to do so, Gain Capital has caused him to suffer 'unaffordable' losses. He also complains that Gain Capital incorrectly priced an index in which he held an open position.

background

Mr M says he has a gambling problem and that he 'self-excluded' himself from being able to trade with Gain Capital in 2011.

Gain Capital accepts that Mr M self-excluded himself in 2011. But it says that there is only so much it can do to prevent customers who self-exclude from trading, especially those who do their utmost to 'beat' the processes it has in place.

Mr M also says that Gain Capital manipulated the price of an Index in which he held an open position.

This complaint was considered by one of our adjudicators who came to the view that it shouldn't be upheld. In summary he said he was satisfied that Gain Capital:

- Had done all it reasonably could to prevent Mr M from trading.
- Hadn't acted unfairly in setting the price of the index in which Mr M held an open position.

Mr M didn't agree so the matter 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.

I know Mr M has very strong feelings about this complaint. I want to stress that I've read and considered everything he has provided, but I won't reply at similar length. I don't intend any discourtesy by that; it simply reflects the informal nature of our service. In summary I've reached the same conclusions as the adjudicator and for broadly the same reasons. There is also very little I can add to what has already been said.

It isn't in dispute that Mr M asked to be self-excluded from further trading with Gain Capital in 2011. But this isn't in itself sufficient for me to be able to conclude that Mr M's complaint should succeed.

It appears that Mr M tried to open a new account, rather than reactivate his old account, on more than one occasion between 2011 and 2015, but was unsuccessful. This was because his self-exclusion came to light as part of Gain Capital's 'know your customer' ("KYC") checks. But in April 2015 Mr M was successful in reactivating his old dormant account. Gain Capital says that Mr M was successful in being able to reactivate his old dormant account because, amongst other things, KYC checks aren't carried out in such circumstances, the customer already being known to it.

I also note that during the call to reactivate his dormant account Mr M made no reference to having a gambling problem or having previously self-excluded himself.

Ultimately, and in my view quite reasonably, self-exclusion can only work up to a certain point and there will be occasions when customers who would like to be prevented from trading aren't.

Therefore although I sympathise with the position Mr M now finds himself in, I'm not persuaded that Gain Capital has done anything wrong in this particular case, or that it would be appropriate to require it to make good Mr M's claimed losses. In my view Gain Capital did enough to try and prevent Mr M from trading.

With regards to Mr M's second complaint I can confirm, having considered both parties' submissions very carefully, that I'm satisfied that Gain Capital did nothing wrong in its setting of the price of the index Mr M has complained about and in which he held an open position.

my final decision

For the reasons given above, I don't uphold this complaint.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 7 January 2016.

Peter Cook
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