

## **complaint**

Mr R complains about Forex Capital Markets Limited's (FXCM) decision to close his account. At the time, Mr R had some floating losses on open positions. When the positions were closed this crystallised significant losses for him.

## **background to complaint**

Mr R opened an account with FXCM in 2011. When he opened his account he noted that his annual income was under £25,000, his net worth was between £50,000 and £99,999 and his liquid assets were between £25,000 and £49,999.

In January 2015 Mr R made a number of deposits on his account to cover the margin requirements of his positions. These deposits were made primarily through his credit cards. As the deposits were significant when compared with his stated income and net worth, they triggered an alert on the FXCM system.

FXCM wrote to Mr R asking for information about the deposits – this included an explanation of where the funds came from and bank and credit card statements.

Shortly after this FXCM concluded that the account was no longer suitable for Mr R. It wrote to Mr R at the end of April to explain that it would be '*terminating the relationship*' between him and FXCM. It gave Mr R ten days to close his positions.

Mr R initially asked for a review, and then involved his lawyers, in order to try and keep his account open. Between April and September FXCM allowed Mr R to keep the open positions on his account as he had sufficient margin to cover them. However, it didn't allow Mr R to open any new positions.

In September 2015 FXCM wrote to Mr R to explain that his losses were just under £95,000. It said that it had allowed Mr R to '*manage*' his positions as a courtesy. But it said that if his losses exceeded £95,500 FXCM would liquidate his positions.

A few days later Mr R's positions were liquidated.

Mr R complained. One of our adjudicators considered his complaint, but didn't think it should be upheld.

In summary, he said that FXCM was right to consider the appropriateness of the account for Mr G, given his stated income and the fact that he had made sizeable deposits with a credit card. He said that the action FXCM took was in line with the user agreement, which Mr R agreed to and was aware of.

Mr R didn't agree with the adjudicator's opinion. He said that he was well aware of the '*risks, rewards and complexities and mechanisms of the market*'. He said that he was aware of how to protect open positions and that in fact he had continued trading with another firm even after FXCM had closed his account.

Mr R also said that the reason he used credit cards to fund his account was because it was convenient, and because FXCM allowed him to do this. He said that if FXCM had told him at the time that the problem was the use of credit cards to fund the account, he would've been

able to consider whether he could continue funding his account with cleared funds. Or, alternatively, he could've chosen a 'favourable' time to close his positions.

He said that the adjudicator didn't talk about the fact that he had maintained sufficient margin on his account to avoid a margin call. He said that he had enough money in his account to cover his losses. And he said that he was determined to keep his position 'alive' for as long as it took to reduce the losses.

The adjudicator didn't think that the points raised by Mr R made a difference to his view, so the case has been passed to me.

### **my findings**

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 agree with the adjudicator and for essentially the same reasons.

I understand Mr R's frustration, and how strongly he feels that his positions were wrongly closed. But I'm afraid that I have very little to add to what the adjudicator has already said.

Mr R believes that FXCM was in breach of its own terms of business when it liquidated his positions despite the fact that he had sufficient funds to cover the margin. Mr R relies on clause 20.10 which says that when '*a margined position has been opened, the Company is not allowed to close the Margin Transaction at its discretion, but only at the Client's instruction or according to the Company's rights under these terms*'.

I note that FXCM has said that the user agreement allowed it to close Mr R's account because it deemed the account unsuitable for him. But FXCM weren't providing Mr R with an advisory dealing service, or a discretionary management service. And trading on his account wasn't being carried out using an automated management or advisory system developed by a third party. These are the instances when clause 22 of the agreement says that '*the company will assess the suitability of such instruments or service provided or offered to the client in accordance with the FCA Rules on assessing suitability*'. So I'm satisfied that this clause didn't apply in Mr R's case.

However FXCM did have the right to close Mr R's positions under clause 34.2 of the terms. This allowed FXCM to '*suspend or terminate these terms by giving five (5) Business Days written notice to the Client for any reason or no reason whatsoever*'. And '*the client agrees that at any time after the termination of the Agreement, the Company may, without notice to the Client, close out any or all of the Client's Open positions*'.

So the question is whether FXCM's decision to close Mr R's account was reasonable.

I've seen sufficient evidence that the reason Mr R's account was flagged up was because of the deposits he made in order to fund his account. And Mr R was making very substantial deposits with his credit cards. At the same time he was incurring significant losses which were well in excess of his stated income.

So in my view FXCM's decision to close Mr R's account wasn't unreasonable. From FXCM's perspective, it had a client that was losing a significant amount of money, while borrowing to keep the loss-making positions open.

It gave notice to Mr R that it would stop trading with him, and gave him ample time to manage his open positions. I note that the losses on Mr R's account increased from April to September 2015.

Mr R is right that FXCM had other options available to it, including simply blocking his credit card. But I don't think that the existence of alternative ways of managing Mr R's account means that the action FXCM took was wrong or unreasonable.

I understand Mr R believes that he would've kept the positions 'alive' until such time as he made his money back. But it was equally possible that Mr R would continue to incur further losses on his account.

FXCM had no obligation to continue to provide this service to him.

I should add that it wasn't FXCM's decision to close the account which caused Mr R financial loss – he had already incurred those losses. So even if I had considered FXCM's decision to close his positions unreasonable, it's unlikely that I would've asked it to repay Mr R's losses.

I do understand Mr R's disappointment. But I'm satisfied that FXCM acted fairly and reasonably, and in line with the terms of business, when it closed Mr R's positions.

### **my final decision**

For the reasons given, 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 R to accept or reject my decision before 25 January 2016.

Alessandro Pulzone  
**ombudsman**