

complaint

Mr R complains that Plus500UK Ltd ("Plus500") has withheld profits he made on his trade account. Mr R says Plus500 has no grounds to do this and wants his profits paid to him.

background

Mr R opened a trade account with Plus500 in November 2016. In January 2017, he made a significant profit of around £32,000 from a trade in a market based on Apple shares.

Plus500 says it detected that another account linked to Mr R placed a trade in the same instrument and at the same time as his trade, but in the opposite direction. It said this followed a similar pattern of an earlier trade that Mr R had placed in November 2016.

The trade in the other account closed with a loss equivalent to around £37,000. However, it benefited from Plus500's *negative balance protection policy*. This policy meant that an account holder could only lose the positive balance in the account and that any loss beyond that was written off by Plus500. As such, the other account holder only lost around £8,000 – which was the balance in the account – and the remainder of the trade loss (around £29,000) was written off.

Plus500 concluded that Mr R and the other account holder had "acted in concert" to abuse its negative balance protection policy. Specific terms within its user agreement prohibited platform manipulation by traders and permitted Plus500 to recover losses and close trading accounts for such reasons.

On that basis, Plus500 did the following:

- it reversed the negative balance protection in the other account;
- it seized the profit made by Mr R in his account;
- it applied Mr R's profit towards the trade loss it had written off in the other account;
- it closed Mr R's account and invited him to withdraw what it called the *legitimate balance* remaining in his account (around £14,000).

Mr R wasn't happy with this and complained to Plus500. He said he hadn't acted in concert with the user of any other account and should be paid the entirety of the profit he made on the January 2017 trade. In summary, he said:

- Plus500 had initially said he'd used a "connected account" and then failed to produce any compelling evidence that he had acted in concert with others.
- The November 2016 trade had been investigated at the time and Plus500 had taken no action. In fact, his account had actually been upgraded to a "Gold member" status.
- He had undertaken other Apple trades before the disputed trade in January 2017 and there was no suggestion of him acting in concert with others in relation to those trades.
- Plus500 had been inconsistent in their initial response and had given him different figures for the legitimate profits that it said it would allow him to withdraw.

When Plus500 rejected the complaint, Mr R referred the matter to our service.

One of our investigators then considered the complaint. He looked at all the evidence and was satisfied that there was a basis for Plus500 to draw the conclusion it had reached that Mr R had acted in concert with another user. So, he said that Plus500 had acted fairly when applying its terms and conditions in withholding profits from Mr R's trade.

Mr R didn't agree with the investigator and has now asked me to make a final decision on his complaint.

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 want to begin by saying that I know that it is frustrating for Mr R that we've only summarised the evidence that Plus500 has provided to us rather than give him copies. But, as our investigator has explained, we are entitled to do this where we think it appropriate to do so. And I think it's fair to do so in this case as the documents show internal systems for Plus500 which they've said are sensitive.

the relevant contractual provisions

There's no dispute that Mr R's contract allows Plus500 to withhold profits in cases where customers are "acting in concert". Nevertheless, I think it's worth setting out the relevant terms:

"25.1.5. You will not enter into transactions or combinations of transactions such as holding long and short positions in the same or similar instruments at similar times either by you or by you Acting in Concert with others, possibly Connected Accounts, including between accounts held with different entities within the Plus500 group of companies, which taken together or separately are for the purpose of manipulating the Trading Platform for gain, irrespective of how the accounts have been funded, for example but not limited to: personal deposits and bonuses. Such activity shall be subject to our right to seek reasonable reimbursement for all resultant losses from you or any of the Connected Accounts, and/or the voiding of all trades (and associated profits), and where relevant the withdrawal of bonus."

Under definitions it's explained that:

"Acting in Concert – Persons "acting in concert" are acting together, sometimes secretly, whether due to any personal relationship or as apparently unconnected individuals co-operating together with a common policy."

"Connected Accounts – "A customer account which is related to other customer accounts by any one or more of the following similar criteria: IP address; name, address; country of registration; password; machine identity; remittance source."

So, the crux of this complaint is whether Plus500 has acted fairly in relying on these provisions and taking the action it did. And having looked at the evidence, I think it did act fairly. And this is why.

the November 2016 trade

Plus500 has provided evidence that Mr R and another account holder (account holder A) opened their Plus500 accounts within a very short period of time of one another. They each deposited £5,000 into their accounts. On 2 November 2016, Mr R opened a position on Facebook Put 120. On the same date account holder A opened a position on Facebook Call 130. These positions were both opened within a short space of time of each other and were effectively opposing trades.

Plus500 says Mr R made a significant profit on the Facebook trade. But account holder A's loss was only £5,000 after Plus500 had made a negative equity adjustment of approximately £16,500 due to its negative balance protection policy.

I appreciate that the trades in November 2016 were different. Mr R's transaction was for Put 120 and account holder A's transaction was for Call 130. But the instruments were of a very similar nature – something that is captured in the contract provision I've quoted above which refers to trades of the *"same or similar instrument at similar times"*.

I also know that Plus500 upgraded Mr R's account status a short time later. But this appears to have been an automated process – so I don't think it's right to draw any meaningful inference from that.

Plus500 has said that it didn't have enough evidence at the time to conclude that Mr R and account holder A had acted in concert. So it didn't take steps to withhold Mr R's profits on that trade. It's also worth making clear that Plus500 isn't trying to claw back Mr R's profit from the Facebook trade now either. Instead, it's used this as evidence to justify the action it took in January 2017. I think that is reasonable.

the January 2017 trade

Plus500 did take action when it noticed more irregularities in January 2017. It has provided evidence that shows that on 31 January 2017 Mr R opened three sell positions in Put 120 Apple; two small positions and one large position of 20,000 options. Within a short space of time on the same day, another account holder (account holder B) opened 9 buy positions in Put Apple 120. Eight of these trades were small positions but one of them was a large position of 20,000 options.

Plus500 says Mr R made a significant profit on the Apple trade. But account holder B's losses were only approximately £8,000 after Plus500 had made a negative equity adjustment of approximately £29,000 due to the negative balance protection policy.

Plus500 has provided evidence showing that account holders A and B are linked. Their surnames begin with the same letter (Plus500 has redacted the full name), they appear to have traded from the same machine and live on the same street.

I appreciate that Mr R did conduct some trades that were not linked to other account holders. And the evidence provided doesn't suggest that a "connected account" (as defined in the terms and conditions) was used. But, overall, looking at the patterns of trading in November 2016 and January 2017, I think it was reasonable for Plus500 to conclude that Mr R and account holders A and B were acting in concert. That's because I think it would be a very unlikely coincidence for Mr R to otherwise have made such similar trades on the same day with persons living at the same address both in November 2016 and January 2017.

The result of this this, in conjunction with the negative balance protection policy, meant that there was certainty over the extent of loss that could take place in the accounts. In contrast, if the market moved in favour of the respective trades, the potential profits in the account were unlimited. Either way, a substantial net profit appeared to be guaranteed.

I'm satisfied that such an arrangement abused Plus500's negative balance protection policy and that this was a manipulation of the trading platform. Plus500 is entitled to recover "*resultant losses*" in this scenario. In January 2017, Plus500's losses would have been the trade loss it wrote off for account holder B. This was around £29,000. As such, I think it was fair for it to recover that amount from Mr R's profits.

Mr R has said that there were differences in the closing of the trades both in November 2016 and January 2017. He's said that account holder A's trade was closed on margin whereas he closed his trade manually. And he's said that he tried to close his Apple trade on 1 February 2017, but was unable to do so because Plus500 froze its system. But, like our investigator, I don't think it's relevant whether trades were manually closed or on margin or even when they were closed. The key issue here is not how the positions were closed but whether it's fair to say opposite positions were opened – which I'm satisfied they were.

I know that Plus500 told Mr R that the remaining "legitimate profits" that he was entitled to following the closure of his account was around £17,000. But it later amended this figure to around £14,000 taking into account the recovery of Plus500's loss on account holder B's account. I've looked at the closing balances. And although it was unfortunate that an incorrect figure was given initially, I'm satisfied that the amended figure of £14,000 is accurate.

I know Mr R will be disappointed with my decision. But, overall I think Plus500 has treated him fairly and reasonably. So, Plus500 is entitled to recover the losses it incurred on account holder B's trade from the profits made by Mr R in January 2017.

my final decision

I don't uphold Mr R's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 19 January 2018.

Abdul Hafez
ombudsman