

complaint

Mr M complains about the way Forex Capital Markets Limited (FXCM) has operated his contracts for differences (CFD) trading accounts.

background

Mr M opened a CFD account with FXCM in early 2017. Later on he opened another account with the same firm. He traded for a while with some success, but his trading then started to lose him money. He added more money to his account but his losses continued to increase. In late 2017 Mr M complained to our service about how FXCM had managed his account.

While our investigator has been looking into things Mr M's complaint has broadened from the way he initially described it. Our investigator gave a number of assessments of the complaint but overall didn't think FXCM was responsible for Mr M's losses. For clarity, I'll summarise the things Mr M has complained about and our investigator's opinion.

Mr M has said:

- FXCM aggressively encouraged him to open an account and trade.
- It shouldn't have allowed him to open an account and didn't assess his circumstances properly.
- It gave him an account with more leverage than it should have, increasing the amount he lost on each trade.
- It breached the FCA's conduct of business (COBS) rules, particularly by advising Mr M about his trading.
- It manipulated the prices on its platform, causing Mr M to lose money and his trades to close.
- When the markets were busy it froze his account and he wasn't able to trade.
- It wouldn't let him deposit money into his account when he needed to, resulting in trades being closed.

Our investigator said:

- FXCM warned Mr M its services might not be appropriate for him, but he went ahead anyway.
- She didn't think there was anything wrong with the leverage Mr M's trades were carried out at.
- She didn't think FXCM had given Mr M advice about which trades to put on.
- FXCM processed Mr M's deposits in a reasonable amount of time.
- If there were issues with Mr M trading through the website he could have used other means like trading over the phone. She'd not seen anything to suggest Mr M had tried to trade over the phone but hadn't been able to.

Mr M didn't agree with our investigator's conclusions and asked for an ombudsman to decide the matter. I issued a provisional decision, in which I said I didn't think FXCM was responsible for Mr M's losses. My provisional findings are attached to, and form part of this final decision. FXCM responded to say it agreed with my provisional decision. Mr M said he didn't, and provided a detailed response. In summary he said:

- FXCM's own website said new traders would be given 50:1 leverage, not 200:1.

- I'd not considered that both his accounts were a 'dealing desk' account so he was trading against FXCM.
- I'd not considered the evidence he'd provided, particularly about when he couldn't access the platform.
- He'd always been able to deposit money straight away, when he couldn't do so FXCM delayed the payment on purpose to cause his account to fall into margin deficit.
- I'd not taken into account the regulator's rules about what FXCM ought to have done when opening his account.
- FXCM had given him trading advice.
- FXCM had been fined by UK and US regulators in the past for mistreating customers.
- I'd not taken into account the evidence Mr M provided about his ill health.

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've not been persuaded to depart from my provisional conclusions, and I'll explain why.

Platform access and price manipulation

I've thought about Mr M's submissions very carefully. I don't underestimate how strongly he feels about his complaint, and I can assure him I've considered the evidence and arguments he's provided in their entirety.

But I don't think the evidence Mr M has sent us shows what he says it does. He's said FXCM stopped him being able to access the platform and manipulated prices, to prevent him managing his trades and causing him losses. I'm not persuaded that's the case.

I can see there were times when Mr M brought up trade tickets which didn't have any information or allow him to enter orders. FXCM has said it wasn't aware of any issues with its services (save on one particular day). Had there been an issue I would have expected it to affect a number of FXCM's clients and I've not seen anything to suggest any other traders encountered the same problems. I find it unlikely that FXCM would specifically restrict Mr M's ability to use the platform at certain times.

It may be that there were times when there were connectivity issues at Mr M's end, or other reasons he wasn't able to access the trading platform. Where I can't say for certain what happened I have to decide on balance what I think's more likely to have happened. And for the reasons I've given I think it's unlikely FXCM deliberately prevented Mr M from trading.

Mr M also said FXCM manipulated prices, especially at the market close on a Friday evening. I've looked at a sample of his trades which closed at these times – for example on 23 February and 9 March 2018. Having considered the levels of the underlying markets at those times I'm satisfied Mr M's trades were closed at prices reflective of the underlying price and find no evidence FXCM manipulated prices to cause him a loss.

Mr M has sent videos demonstrating that at certain times at the end of the day he wasn't able to enter new orders or close existing positions, while the market continued to move and leave him at risk of having his trades closed. This was a feature of FXCM's dealing desk service and I'm satisfied information about it was clearly displayed on its website in the section explaining trading risks.

The relevant section said that FXCM's dealing desk would close on Fridays at 4.55pm Eastern Time. It went on to say orders could still be filled until 5.00pm and that traders should *"use caution when trading around Friday's market close"*. So I think Mr M was aware of the impact this could have on his ability to manage his positions at those times and any losses he suffered as a result aren't something FXCM was responsible for.

Account leverage

For the reasons given in my provisional decision I remain of the view FXCM acted fairly and reasonably in allowing Mr M to trade using the leverage it did. Mr M has referred to information on FXCM's website which says new traders would only be allowed to trade with 50:1 leverage. But this version of the website was from April 2017, shortly after Mr M opened his first account. I'm satisfied that the website as it was at the time Mr M opened his account specified that all accounts of the type Mr M opened would have 200:1 leverage. I appreciate this policy changed shortly after Mr M's account was opened. But firms are free to take decisions about the way they offer services and I don't think it was unfair of FXCM to allow Mr M to trade with the leverage he did.

I think the conversation Mr M had with FXCM about his account leverage is also relevant. He had the option to switch between different types of account offering different leverage. He made it clear to FXCM he was keen to take advantage of the greatest leverage possible, and so I think it's likely that he'd have attempted to do so whatever the initial account leverage he'd been given.

Making deposits

Mr M has said he'd made multiple deposits previously without any issues, but only on occasion would he be prevented from having money credited to his account straight away. As I explained in my provisional decision, I'm satisfied FXCM processed his deposits fairly, and made Mr M aware it could take up to a day for them to show on his account. Where payments did take some time, I find that this was due to the application of systematic rules and processes FXCM and its third party payment company had in place to ensure payments were legitimate and protect clients. I've seen nothing to suggest FXCM took specific decisions not to allow Mr M's payments to be made outside of the processes it had in place.

Was advice given?

This question is relevant as – if FXCM had given Mr M regulated advice about any of his trades – the relevant regulations and obligations on it would be different. But from everything I've seen I'm still not persuaded FXCM advised Mr M.

The terms of Mr M's agreement with Mr M say that dealings between them will be carried out on an execution-only basis unless otherwise agreed in writing. I've not seen anything to suggest FXCM ever wrote to Mr M to say it would advise him. That's not to say FXCM mightn't have given advice without having agreed to do so. And I've not been able to listen to every conversation Mr M had with FCXM.

But from the correspondence I have seen Mr M gives the impression he's clear about how he wants to trade and his strategy. There are conversations about his view on the market and when it might turn, and these don't give the impression of someone expecting to be advised on which trades to take out. Mr M also traded extensively and in great volume over

a long period of time. The number of trades he carried out far exceeds the number of times he spoke to FXCM. Taking all this into account, on balance I think it's more likely than not that Mr M himself picked which trades to enter into and FXCM didn't advise him.

Opening the account and relevant regulators' rules

I'd like to clarify to Mr M that when I considered the way FXCM had dealt with his request to open his account I had regard to the relevant regulators' rules as I'm required to do. As Mr M points out of particular significance are the rules setting out FXCM's obligation to assess whether the account was appropriate for him (COBS 10) and its overarching responsibility to have regard for Mr M's interests and treat him fairly (FCA Principle 6).

Mr M has questioned whether the account was appropriate for him given his financial circumstances and health issues. But it's important to note that FXCM didn't think the account was appropriate for Mr M to begin with either. It wrote to him to say so, and recommended he reviewed the educational materials it provided and practiced trading using a demo account first. I'm satisfied this complied with the relevant COBS rules at the time.

Mr M said he wanted to open an account and trade anyway. COBS 10.3.3G gives guidance for what firms should do in this situation. It says if it's warned the client and he wants to go ahead with a transaction, it is for the firm to consider whether to do so having regard for the circumstances.

FXCM emailed Mr M to find out more about his circumstances. He replied to say he would begin trading with a relatively small sum and would build his confidence as he went. He said he'd go elsewhere if FXCM didn't let him trade.

Bearing in mind FXCM's responsibilities under Principle 6 and the guidance in COBS 10.3.3G I don't think it was unfair or unreasonable for it to allow Mr M to trade. He'd expressed a clear desire to do so and had explained the way he was going to begin trading with an affordable sum.

Dealing desk accounts

Mr M's said that the nature of his accounts meant FXCM were taking the other side of his trades. In other words, if he won, FXCM would lose and vice versa. He says it had a direct financial interest in his trading being unsuccessful.

There are two aspects to this issue. Firstly, the extent to which such a conflict of interest existed or was managed by FXCM, and secondly whether any such conflict was exploited by FXCM to Mr M's detriment.

The potential for this conflict is acknowledged and explained by FXCM in its description of its dealing desk model: *"FXCM's compensation may not be limited to our standard markup and our interests may be in direct conflict with yours. FXCM faces market risk as a result of entering into trades with you. If FXCM elects not to cover its own trading exposure, then you should be aware that FXCM may make more money if the market goes against you"*.

So I'm satisfied that FXCM made Mr M aware of the potential of a conflict between its interests and his own. I should say that this type of conflict isn't unusual in the industry. But nonetheless, I've therefore considered whether the existence of such a conflict makes the arrangement between Mr M and FXCM inherently unfair.

Broadly speaking, FXCM manages this conflict by covering its trading exposure. Some of this will happen organically, as amongst its clients some will be long of a particular contract and some short, reducing or eliminating both FXCM's exposure and conflict with its clients.

Crucially, and for the reasons given elsewhere in this decision and my provisional decision, I'm not persuaded FXCM treated Mr M unfairly or exploited any conflict to put its interests ahead of his - in the way it dealt with him from opening his account, to the way it offered its trading services and the way it executed his trades.

Mr M has referred to previous regulatory fines and censure FXCM and its related entities had been subject to. I don't think it follows that because FXCM had previously done anything wrong in its dealings with clients that it must have done so here. I've considered the specific way it's dealt with Mr M and I've not found that it treated him unfairly.

So overall I'm still not persuaded it caused Mr M's losses and so don't think it would be fair and reasonable to require FXCM to refund those losses to Mr M.

my final decision

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 5 March 2019.

Luke Gordon
ombudsman

Copy of provisional findings:

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

Firstly, I'd like to say I have tremendous sympathy for Mr M and the situation he's now in. I appreciate he's lost a lot of money and I don't underestimate the impact this has had on him. But I have to consider what's fair and reasonable in all the circumstances of this complaint, which in this case means I've thought very carefully about whether Mr M's losses are a result of anything FXCM has done wrong.

Like our investigator, I'm not currently persuaded FXCM has caused Mr M's losses. So I don't think it would be fair to require it to pay him any compensation. I'll explain why.

opening Mr M's account

Because of the particular risks posed by CFD trading, before allowing Mr M to open an account and trade FXCM was required to assess whether an account would be appropriate for him. This assessment involved gathering relevant information to allow FXCM to decide whether Mr M had enough knowledge and experience to understand the risks he'd be exposing his money to. If it didn't think the account was appropriate for Mr M, it needed to warn him that was the case. If Mr M said he wanted to proceed anyway, it would be for FXCM to consider whether to allow him to trade or not, having regard for the circumstances.

When he first applied for his account, Mr M said he was unemployed, and didn't have any previous trading experience. FXCM sent him an email saying it didn't think CFD trading was appropriate for him, and recommending he create a 'demo' account to practice trading, and saying he should read the educational materials on its website. It also asked where the money he was intending to trade was coming from.

Mr M then amended his application to say he was self-employed and earned between £25,000 and £50,000 a year. He also wrote to FXCM to explain he'd left his previous job due to a health issue, and wanted to learn foreign exchange trading. He said he'd start with a few hundred pounds and build from there as he gained confidence. In his email Mr M said if FXCM didn't open an account he'd go to another broker.

So I'm satisfied FXCM gathered the right sort of information about Mr M and his knowledge and experience. It warned him it didn't think a CFD account was appropriate for him. Mr M's response, in my view, indicated he'd thought about the risks he was exposing himself to and was intending to only invest a small amount to begin with. He'd indicated his desire to trade CFDs, and overall I don't think it was unreasonable for FXCM to allow him to open an account and trade.

I don't think FXCM's decision to open Mr M's account can fairly be said to have caused his losses, in any event. The correspondence from the time indicates Mr M was very keen to trade in CFDs. He'd told FXCM he'd go elsewhere if it didn't let him open an account. So I think even if FXCM had declined to open Mr M's account, he'd have done whatever he needed to in order to open one. That might have involved trading somewhere else, or trading on a demo account until FXCM was satisfied he was able to understand the risks involved.

I'd also note that, to begin with, Mr M's trading was successful. He made several thousand pounds of profit, and traded hundreds of times, in the first few months he had his account. So by the time things

turned against him and he suffered the losses he's complained about, I've no doubt he had enough experience to understand the risks of CFD trading.

the account leverage

Mr M's complained FXCM gave him too much leverage. In other words he was able to trade bigger positions for the amount of money he had deposited as margin. This meant when his trades went against him, his losses were larger in relation to his investment than they would have been with lower leverage.

When Mr M first opened his account, FXCM gave new accounts below a certain size (which it called 'mini' accounts) 200:1 leverage. It said once an account was above a certain value it would default to a 'standard' account with leverage of 100:1. This would, understandably, happen at the end of the day. I'm satisfied that Mr M's individual accounts never had balances above the required level at the end of a trading day.

FXCM changed its policy, and opened new accounts with lower leverage, but this happened about three weeks after Mr M's first account was opened. When he opened his second account the leverage was given on the same terms as his first account. I don't find any of this to be unreasonable or inconsistent with FXCM's own policies.

Further, and crucially, Mr M had a web chat conversation with FXCM around a month after his account was opened, which covered the leverage on his account and the different account types.

He and FXCM's adviser discussed mini and standard accounts, and he was given a link to a webpage setting out the differences in detail. Mr M said *"my leverage will goes [sic] down to 1:100 from 1:200 if I switch to standard, meaning that I need more capital to make the same level of profit."*

So I think Mr M was fully aware of the leverage of his account, and if he'd wanted to could have chosen to trade in smaller size to limit his exposure. But while things were going well, he wanted to maximise his leverage to make greater profits. He chose not to change his account type to one with lower leverage. As a result I don't think it would be fair to hold FXCM responsible for Mr M using his full leverage to put on bigger trades, and for the larger losses he subsequently suffered when his trading wasn't as successful.

trading advice

Mr M has said FXCM gave him trading advice, which it shouldn't have done. And that it pressured him into trading. I've looked at the emails and web chats Mr M exchanged with FXCM. And I've listened to a number of calls between him and FXCM's staff throughout 2017 while he was trading.

I've not seen or heard anything which I think constitutes regulated advice. At no point has FXCM recommended a particular trade it thought Mr M should carry out. There have been conversations about his account and the way he's traded, and FXCM have invited him to trading seminars and talked about Mr M upgrading his account.

But overall I think Mr M was at all times making his own trading decisions. I also think he was keen to continue trading. At one point in May 2017 Mr M tells FXCM he had some open losses on his account. But his demeanour remained positive, and he talked about how he felt the market would turn in his favour and he'd resume making money again. He told FXCM how he was intending to move from part time trading to making it his full time occupation.

So I'm satisfied Mr M understood what he was doing and had a clear plan in place for his trading. He was aware he could (and had) suffered some losses but wanted to carry on as in his view things would get better again.

I think this is important in light of what Mr M's also said about how his account was funded. He'd paid into his FXCM account from a credit card and, as his losses grew, he took out loans which he used to add more funds in the hope of recouping what he'd lost.

I want to be clear that I'm not dismissing the impact those decisions have had on Mr M, or that because he wasn't able to make further profitable trades he's now been left with a debt he's struggling to pay off. But the key issue is whether that's something FXCM needed to or ought to have done something about. And ultimately, I don't think it was.

This was an execution only account and as I've said I'm satisfied Mr M was making his own trading decisions. It was his choice how much to fund his account with, and what type and size of trade he wanted to place. And I've taken into account the fact that the courts have made it clear that firms like FXCM don't have a general implied duty to protect their clients from causing themselves economic harm. So while I sympathise with Mr M, I don't think his trading decisions or how he funded his account are something I can fairly hold FXCM responsible for.

Mr M's access to the trading platform

Mr M's said that – particularly at volatile times – he wasn't able to trade. He's provided screenshots he says demonstrate this. But based on the evidence I've seen I'm not persuaded FXCM has caused Mr M to be unable to trade.

FXCM's acknowledged there was an issue on one particular day – where a pop up box appeared and couldn't be closed. But it said Mr M contacted FXCM and it explained he could call the dealing desk to trade. I've not seen anything to suggest he did so.

The screenshots Mr M has sent simply show his computer screen with FXCM's platform open. They show charts and boxes which I take to be order entry tickets, but it isn't clear why and when Mr M was prevented from trading.

Overall I'm not currently persuaded Mr M has been caused losses because of a problem of FXCM's making leaving him unable to trade. If Mr M has specific evidence of occasions he was unable to trade I'll of course consider it. But I'd note that I'd need to be satisfied that the issues were caused by FXCM, and further that Mr M wasn't able to trade by any other means either.

price manipulation

Mr M has said FXCM manipulated the prices on its platform to give the impression of volatility when there wasn't any, causing some of his trades to be closed and crystallising losses. Again, I've not seen anything to suggest that's the case. Mr M has mentioned this happened particularly on Fridays at the end of the trading day. So I've looked at Mr M's trading history, focussing on trades at those times.

I haven't considered every one of Mr M's trades – of which there are many thousands. But from the sample I've looked at I find that his trades have closed at prices reflective of those trading in the underlying market at the time. So I don't think FXCM has executed any trades at incorrect levels. If Mr M

has a specific trade or trades in mind he thinks were unfairly closed, I'll consider them in detail before making my final decision.

depositing money to Mr M's trading accounts

Mr M's said he suffered losses when he couldn't fund his account quickly enough. I can't see that FXCM ever guaranteed he'd be able to make payments that would appear in his account straight away. And on FXCM's website it states that deposits can take up to one business day to process.

Looking at the specific times Mr M wanted to add money to his account, I can see these were often at times when he'd made multiple deposits that day or in a short period of time. And many were for the same amounts of money. FXCM has explained, and I'm satisfied, that the third party it uses to process payments has safeguards in place which will delay deposits if certain criteria are triggered – meaning a manual assessment has to be made. It says these are to protect against fraud and payments made in error.

Making lots of deposits in a short space of time, and repeated requests to pay in the same amount are some of those criteria. I think that makes sense – these are the sort of things that may well indicate someone has tried to make the same payment twice, for example.

So I don't think it's unreasonable payments sometimes took longer to reach Mr M's trading account, or that some payments were declined by either the third party vendor or Mr M's bank. Mr M knew it may take up to a day to credit his account, and it was his responsibility to ensure he had enough money in his account to keep his positions open.

Taking all this into account I don't think FXCM can fairly be held responsible for Mr M's losses. He wanted to open a CFD trading account and for a while was successful. He chose how much to put into his account and what trades he wanted to make. Unfortunately, a number of those trades went against him and he suffered some quite substantial losses. But those losses were caused by Mr M's bets on the market direction turning out not to be right. I'm not currently persuaded his losses were caused by anything FXCM did wrong.