

complaint

Mr V has complained that CMC Spreadbet Plc have acted irresponsibly by allowing him to open an account and continue to trade.

background

Mr V submitted his application to open an account on 10 January 2016 and starting placing spread bets in February 2016. He has said he lost his job in June 2017. As a result he obtained credit which he used to place bets on his account and built up a huge debt on his spread betting account. He feels CMC didn't carry out any checks to obtain where the money he was using to place the bets was coming from. And he said that due to CMC's lax standards he has now found himself in a cycle of debt. Mr V claims that if stricter measures had been in force it would have prevented irresponsible use of his account.

Mr V has also raised that during this period of time his trading pattern had changed. He says he was trading much larger amounts more frequently. And at no point did anyone from CMC try to contact him to discuss this. If it had been monitored and contact had been made with him he feels his account would have been closed sooner. Mr V has also said that during that time he was suffering from a gambling addiction. And so it was irresponsible of CMC to continue to allow him to trade.

CMC has said after Mr V completed his account application he confirmed he'd read and understood the Terms of Business which said that Mr V would notify it as soon as possible if there were any changes in his circumstances. As Mr V didn't notify it, CMC was unaware he had lost his job or had a gambling addiction. It also said Mr V would have received its risk warning cautioned against trading on credit.

It also said that it was unaware of Mr V's gambling addiction. If it had have been aware it would have taken the appropriate measures.

Mr V remained unhappy so he brought his complaint to our service. Our adjudicator looked into this for him but he didn't recommend it be upheld. To summarise he said as Mr V opened an execution only account CMC were not required to carry out a detailed assessment of the customers financial situation and objectives as we would expect when advice has been given. And he had seen evidence to suggest CMC had given Mr V a warning to say credit shouldn't be used for his bets.

He said he accepted there was an increase in Mr V's activity in placing trades and larger sums he had credited. But as the CMC didn't have any concerns about Mr V's trading he wouldn't have expected CMC to have intervened or prevented Mr V from using the account.

Mr V didn't agree so the case was passed to me for a 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. Having done so, I agree with the adjudicator for broadly the same reasons. I will explain why.

opening the account

The service CMC provided to Mr V was on an execution only basis, so it wasn't required to assess whether spread betting was suitable for Mr V. But under the regulator's Conduct of Business Sourcebook COBS 10, CMC had to establish whether this type of trading was appropriate for Mr V. This meant it needed to decide whether Mr V had the necessary knowledge and experience to understand the particular risks of spread betting.

As well as this it needed to explain how spread bets work and the risks involved, and ensure appropriate risk warnings were provided alongside the service agreement. I have reviewed the answers Mr V gave when he opened his account and this led CMC to conclude he didn't have the knowledge and experience to understand the risks of trading. So because CMC didn't think the account was appropriate for him it sent him a risk warning.

Having reviewed the risk warning I am satisfied CMC explicitly says he may be exposing himself to risks that fall outside his knowledge and experience. It pointed out that Mr V should familiarise himself with the demo account, free educational material and risk warning on its website. And goes on to explain if he still remains uncertain he should seek independent advice. In order for Mr V to have successfully opened his account he would have needed to accept the terms of business and accept he had read the risk warning. As Mr V did open the account and began trading I am satisfied he saw the declaration and confirmed he agreed to the user agreement.

was the account appropriate

Under COBS 10.3.3G when a business doesn't think it appropriate for a customer to open an account but the customer wants to continue anyway, it's for the business to decide whether to let them having regard for the customers circumstances and interests.

This rule only requires CMC to warn Mr V that the account wasn't appropriate. Mr V was warned the account wasn't appropriate, and the risks of him continuing were explained to him. He was given resources to increase his understanding. Mr V chose to accept the risks, and not make use of the resources available, before he began trading

I've considered whether there was anything in Mr V's application which meant that CMC shouldn't have allowed him to proceed with opening the account. And, given the particular circumstances of this complaint I'm satisfied that CMC's decision to allow Mr V to open the account wasn't unreasonable. I can also see that CMC explained that it may consider closing an account if new facts or issues come to light once an account was opened. In Mr V's case, given the volume of trading which began virtually as soon as he opened his account, there was no particular reason why CMC ought to have decided to close it.

Mr V's personal circumstances

I am really sorry to hear that Mr V lost his job in June 2017. I appreciate this would have been a difficult time for him. And I acknowledge that Mr V has said he has a gambling addiction, again I accept this would have been difficult for Mr V. But I have looked at CMC's Terms of Business which say that Mr V should notify it if there were any changes in his circumstances. CMC has said Mr V didn't make it aware he had a gambling addiction prior to February 2018 nor that he had lost his job. And our investigator said he hadn't seen any

evidence to suggest Mr V had made CMC aware of this information earlier. Mr V hasn't disputed this point in his correspondence. So with that in mind, I think it is likely that CMC wasn't aware prior to February 2018 (after the account had closed) that Mr V had lost his job, had a gambling addiction or was funding his bets by credit.

However I appreciate that Mr V's main point in relation to this was that CMC should have been aware of this due to the activity on his trading account. But having looked at Mr V's trading pattern I'm satisfied there wasn't a significant change. When Mr V opened his account in 2016, he placed a high volume of trades. And on some occasion multiple trades each day. And I have looked at the trades placed from June 2017 onwards. Again while the volume of trades may have slightly increased, I don't think it was significant enough to say that CMC should have been alerted to an issue prior to it closing Mr V's account.

trading with credit

Having reviewed the risk warning I am satisfied that CMC makes it's consumers aware that they shouldn't be using credit or finance to place their bets. Mr V has said CMC should have checked where his funds had come from. But as I said previously Mr V at that point had been trading for over a year and had demonstrated he understood how spread betting worked and the risks involved. His trading pattern hadn't altered significantly and Mr V continued to place a similar amount of winning and losing trades. Although I appreciate the overall losses exceeded the profit but that on its own isn't unusual with this type of trading. So with that in mind, I don't think it's fair to say that CMC should have had cause to be concerned. Particularly after Mr V had confirmed he'd read and understood the risk warnings, had the option to view other literature and demonstrated he knew how spread betting worked.

current position

Mr V stopped trading on 19 September 2017 and withdrew a balance of £45.57. As there was no outstanding balance and the account has no closed, I won't be asking CMC to do anything further.

my final decision

My final decision is I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to Mr V to accept or reject my decision before 7 February 2019.

Jade Rowe
ombudsman