

complaint

Mr B is unhappy with the way CMC Spreadbet Plc has dealt with his account in several respects, which he considers has resulted in a financial loss.

The following is a brief summary of the issues raised by Mr B:

- In March 2011 Mr B opened a short position in XAUUSD cash. He closed this trade generating a profit of £265 and opened a new larger long position. A short time later the business placed a sell trade on Mr B's account to take Mr B back to his original short position. It did this because it considered the trade was executed at a materially incorrect price. Mr B has said that this prevented him from obtaining a legitimate profit on this trade.
- Mr B has said that at 2:00 pm and 2:15 pm on 20 July 2011 he made two debit card payments each for £2,000 to his account. He has said that these payments were not applied to his account and that as a result his XAUUSD position was liquidated (at 2:36 pm).
- Mr B has said that the business' platform was not displaying data properly on 13 May 2010 and 2 August 2010 and that this prevented him from operating his account as he wished.
- Mr B also said that the risks of spread betting were not adequately explained to him when he opened the account.
- Finally he has said that the business changed its margining terms after saying it would not do so.

background

Mr B's complaint was considered by one of our adjudicators. He wrote to Mr B in August 2012 to explain why he did not consider the complaint should be upheld. In summary he said the following.

- He was satisfied that the price at which Mr B had traded in XAUUSD on 22 March 2011 was materially incorrect and that, as per its terms and conditions, the business was entitled to void the trade.
- He had been persuaded by the evidence provided by the business that on

20 July 2011 Mr B's account was on margin call and that Mr B had failed to forward the required payment in time. A payment reached the business at 2:43pm from another card but by that time the liquidation had already occurred. The adjudicator concluded that the business was entitled to liquidate the positions.

The adjudicator was satisfied that Mr B was made aware of the risks of spread betting during the account opening process.

- The adjudicator had noted that the business's platform did malfunction on 2 August 2010 but he was satisfied that the compensation already offered to Mr B (using a worst case trading scenario) was reasonable. He did not consider there was

evidence of any malfunction of the firm's systems on 13 May 2010.

- Finally he considered that the business was entitled to exercise its commercial judgement by changing its margining terms with prior notice (which was given in this case).

Mr B disagreed with the adjudicator's findings and said:

- The majority of his 40 page report had not been addressed.
- It is not possible to be certain that the prices displayed on the platform were incorrect since the business was a market maker.
- The business applied double standards when it came to applying market prices, i.e. it honoured prices only when it suited them. Mr B had provided evidence of this where the business prices did not match that of other platforms or the underlying market.
- He had provided evidence of several instances of incorrect displays on the platform in relation to pricing, which had led to multiple losses.
- The business had voided and broken its own terms.
- With regards to the liquidation of 20 July 2011, the business failed to accept payment six times in a row. In fact, the transactions had gone through so the business should not have liquidated the positions. It had failed to apply the payments to the account.
- No explanation of spread betting risks was ever provided to Mr B.
- The business had sent conflicting emails regarding the change of margining terms.

The business said:

- It is a market maker which means it makes its own prices. The underlying price is taken from external sources and if errors occur and a price is materially incorrect the business will cancel the trade regardless of whether the trade is winning or losing. The charts data the business sent clearly showed that the prices for the trades it voided were erroneous.
- In the instance where the business had accepted that the platform had displayed incorrect information, the business had offered a goodwill payment which Mr B had accepted.
- There is no evidence of the business reversing trades when it does not want to pay out a profit, but putting through trades associated with price spikes which result in a loss to clients.
- As regards the card payments, there was a declined payment by Mr B's card issuer and he has not provided evidence to show that the business's systems failed six times in a row.

- The business provided three emails as evidence that risk warnings were provided to Mr B.
- As regards the margin changes, the business informed its clients of changes which were supposed to occur on the gold cash instrument on 11 April 2011. These changes did not occur until 10 June 2011. During this period the business was also going to amend the margin terms on the gold futures instrument but then decided to postpone this, which possibly created some confusion. Mr B called the business on 10 June 2011 and during the call he was informed of the changes and as a goodwill gesture the business reversed a liquidation of a position. This offer was accepted by Mr B.

My provisional findings were as follows:

I made it clear at the outset that my investigation would be based on the merits of Mr B's individual complaint. I did not consider that the evidence of general wrongdoing gathered from internet bulletin boards and similar was relevant to the outcome of this complaint.

With respect to the 2 August 2010 problems with the firm's systems, Mr B accepted an offer in full and final settlement of this matter from the firm. I therefore did not consider it reasonable to investigate this matter further. I was not persuaded that there was any evidence of the businesses' systems not working properly on 13 May 2010.

I was satisfied that the evidence showed that, whilst Mr B made attempts to fund his account on 20 July 2011 the required funds did not reach the account until after the positions were closed. It is apparent that Mr B made attempts to fund the account before the liquidation; but, whilst the exact reasons for the unsuccessful payments are unclear I was not persuaded that it was due to an error on the part of the business.

I considered that Mr B was made sufficiently aware of the risk of spread betting on his execution only account during the account opening process. This was demonstrated by the emails sent to him by the business. Mr B was also an experienced spread bettor before becoming a client of the firm and so I considered it reasonable to assume that he was already aware of the risks associated with spread betting.

I also found that on the specific occasion when the business's platform displayed incorrect information, the goodwill payment made by the business (using a worst case scenario approach) was appropriate compensation for the error made.

Finally, with regard to the margin changes notifications, I considered that these changes (both on the gold cash and the gold futures) were made clear to investors and were given with sufficient notice.

I disagreed with the adjudicator about the voided trade on 22 March 2011. I was not satisfied that the price at which the position was opened was manifestly wrong. Having looked at the price chart it is clear that there was a short sharp spike in the price. However, such spikes are not uncommon and I do not consider such a move necessarily shows the price was manifestly wrong. In the absence of any additional evidence I was not persuaded that the price was manifestly wrong and that CMC had therefore acted incorrectly in voiding the trade. Appropriate redress would be to reinstate the trade and credit Mr B's account with the profit based on a closure of the position at his suggested stop loss limit.

The business accepted my findings and said it had nothing further to add.

Mr B agreed with my assessment of the March 2011 trade but not the rest of my provisional decision. He did not provide any additional new information but did reiterate the main points of his complaint.

my findings

I have considered all the evidence and arguments from the outset, in order to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I have, with one exception, not been persuaded to depart from my provisional conclusions.

As regards the issue about the change in margining terms I have now concluded that the actions of the business would have confused investors. Whilst the information about the various changes to the margining terms were given to clients the failure of the business to put in place the changes will in my view have caused some inconvenience to Mr B. Whilst the business reinstated the particular trade that was affected I now consider that a modest payment to reflect the inconvenience caused is merited. The business made no further comment on this matter. Mr B reiterated the points he had made previously and said that the sum of £100 did not compensate him adequately for the stress and losses he had suffered.

In respect of the August 2010 problems, it is clear from the phone conversation between the business and Mr B that the business did not guarantee that there would not be problems with the platform in the future. I am therefore satisfied that in the circumstances it is not reasonable to consider this issue further after Mr B accepted the offer made by the business.

As regards to the failed payments, it remains my view that there is no evidence to support Mr B's assertion that they were due to errors on the part of the business. The fact that there may have been previous problems with payments does not mean that they occurred on this particular occasion. On the day in question a series of payments had been successfully made to the account. A payment from one particular card had been declined. Mr B's account was on margin call and a short time after being notified (by email) he tried to make a payment. He used the card that had previously been declined. This attempt was unsuccessful. As payment was not received the positions were closed. A short time afterwards a successful payment was made by Mr B using a different card. I am therefore satisfied that it is more likely than not that the failure to credit the account was not due to an error on the part of the business.

In the absence of any further submissions about the price spike on 22 March 2011 I have not changed my view and I remain satisfied that the business was wrong to void the trade. As set out in my provisional decision I consider appropriate compensation would be to pay Mr B the profit the trade would have generated based on Mr B's suggested stop loss.

In his e-mail to the firm of 23 March 2011 Mr B states that he placed a stop sell on the position at 1,427.2. It is reasonable to assume that if the trades had not been voided this is the level of profit that would have been achieved on the position i.e. a £10 long position opened at 1,423.9 and closed at 1,427.2. To this sum should be added simple interest at the rate of 8% per year from the date of the trade to the date of payment. The profit on the original £5 short opened at 1,429.2 and closed at 1,423.9 should also stand. Interest at 8% simple per year should be added from the date of closure to the date of any final decision.

My decision

My final decision is that the complaint should be partially upheld. I order CMC Spreadbet Plc to pay Mr B the profits set out above. I also order it to pay Mr B the sum of £100.

Michael Stubbs
ombudsman