

## The complaint

Mr R complains that CMC Markets UK plc closed his account without his consent. He said this decision caused him significant losses and was unfair.

## What happened

Mr R opened his trading account in 2020. In May 2022, he called CMC in order to verify whether a bank transfer of £500 he had just made could be credited to his account. He was concerned about having further trades closed out due to insufficient margin, as he had already realised around £10,000 worth of losses that day.

In that conversation, Mr R told CMC that he had borrowed the £500 from his wife in order to manage his positions – and explained that he had kept adding money as he didn't want his positions to be closed out. When asked whether his intention was to continue depositing in order to avoid a closeout, Mr R said that he was 'trying his level best', but he had 'borrowed a lot of money' and he didn't know how he was 'going to recover all this' – he further said that he felt 'mentally and physically broke down'. Mr R was told that the payment of £500 could not be applied as it was out of hours, and the only form of immediate payment would be via debit card. He was also told that he could consider closing some of his positions in order to manage his risk, but Mr R reiterated that having realised £10,000 worth of losses he wasn't keen to do this.

A day or so later Mr R called CMC again. He had received an account closure email from CMC explaining that his account would be closed in 10 days, and he was asking what this was about. He was told that as he had mentioned borrowing money, and this was against CMC's terms, a 'business decision' had been taken to close his account.

Mr R disputed ever saying that he had borrowed money, and some further calls ensued during which CMC agreed to re-listen to the calls. Having done so, it maintained its position that Mr R's account should be closed.

Mr R complained about this. CMC looked into his complaint but didn't think it had done anything wrong. In short, it explained that it had taken this decision due to some of the disclosures he had made on the phone and it maintained its decision to close his account was fair and reasonable, and reminded him of the date by when he needed to take action. As Mr R did not close his open positions himself, CMC closed them on 26 May 2022.

Mr R remained unhappy and referred his complaint to this service. One of our investigators looked into his complaint, but didn't think it should be upheld.

Mr R disagreed and asked for an ombudsman's decision. He said:

- He didn't think the reasons CMC had given for closing his account applied to him. He had never actually borrowed money from his wife – he had paid her back the next day. He said he and his wife shared funds as they were a family and said they were 'accustomed to using each other's money for financial endeavours'.

- He said the period in which his account was closed was one of the worst financial periods for markets across the world due to lasting effects of Covid and war. So he said it was expected that his holdings would be lower, but he had 'faith that these shares would regain their value'.
- He said he would accept 'the value of the capital that he held' and 'disregard the need for compensation' in order to resolve the matter, even though the matter had caused him a great deal of distress.

As agreement couldn't be reached, the case was passed to me to decide.

### **What I've decided – and why**

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

I'd firstly like to emphasise that I fully understand Mr R's situation and I can appreciate why CMC's decision felt unfair to him, and importantly, why it felt like a very significant financial loss was imposed on him.

However, although I sympathise with Mr R and the difficult circumstances he found himself in, I'm satisfied that CMC acted fairly and reasonably, and in line with the rules and what the regulator, the Financial Conduct Authority (FCA), requires firms to do in cases like Mr R's.

I should be clear first and foremost that this service does not usually tell a firm who it must or should do business with. With that in mind, I've reviewed CMC's actions in light of the terms of the account that Mr R had agreed to, as well as the broader rules and guidance which the FCA requires all firms to follow, in order to determine what's fair and reasonable in the particular circumstances of Mr R's case.

Clause 9.5 of Mr R's agreement with CMC sets out when Mr R's account can be closed.

It says, at 9.5.2 that CMC 'may close an Account by giving you notice in writing' and that 'this will take effect on the date specified in such notice being no less than ten (10) Business Days after the date of the notice'. The terms also specify that while Mr R could not open any new positions, he was entitled to close any open positions he had. And this was also explained to Mr R at the time.

This means that CMC was entitled to close Mr R's account, and while it gave reasons to Mr R to explain its decision, it wasn't obliged to do so. Although Mr R says he was caused a financial loss, I'm sorry to say that I don't agree. The losses to Mr R were caused by the differences in the opening prices of the trades he had, and the closing price on 26 May 2022 when his trades were closed. Although these losses were 'realised' at the time of the closure, CMC didn't cause them – and if Mr R continued to have faith that the positions he had open would come good in future, he was able to open them with another broker.

I'm therefore satisfied that CMC acted in line with the terms by giving Mr R notice in writing of at least 10 business days.

In terms of the disclosures Mr R made to CMC, and in particular in one of the calls his statement that he should be able to manage his account as he wanted, this isn't what the FCA expects firms to do. The rules require all firms to ensure they act in the best interests of their customers at all times.

Furthermore, the guidance on identifying vulnerabilities, which could include financial or

mental health vulnerabilities, requires firms to take appropriate action when they become aware that a consumer may be at risk.

In this case it isn't my role to conclude whether or not Mr R did borrow money from his wife, or whether that should have been acceptable to CMC. It isn't my role to replace CMC's decision with my own, but to consider whether CMC's actions were fair and reasonable in the circumstances – taking all relevant factors into account.

In my view, such relevant factors do include what Mr R said on that initial call – which I confirm I've listened to. It's clear to me that Mr R was discussing his struggles in managing the very significant unrealised losses he had accumulated, and he does mention borrowing money multiple times – including a statement about not knowing how he'd be able to recover. Those disclosures, alongside his description of how he had been physically and mentally affected by the situation, in my view were significant – and I'm persuaded it was fair and reasonable for CMC to place weight on them.

I'm sorry to disappoint Mr R, but nothing he said in his subsequent calls, which I've also listened to, alters that evidence. In my view, whilst he was disputing the contents of that initial call, it's clear that his strategy continued to be ongoing funding of his open positions in the hope that the markets he was investing in would improve – there was no other strategy in place to mitigate the high risk of capital loss. Taking into account the disclosures he made in his initial call, which went beyond the issue of borrowing money, I'm satisfied CMC was required to consider what was in Mr R's best interests, and I consider it was fair and reasonable for it to conclude, as it did, that this type of trading no longer was.

For these reasons, I'm satisfied it was fair and reasonable for CMC markets to exercise the right it had under the agreement to give Mr R ten days notice that it would close his account. Those ten days would've been sufficient for Mr R to decide whether he wanted to close his positions himself at a time of his choosing and to find another broker that would allow him to trade. I'm satisfied he wasn't treated unfairly and CMC did not cause him any financial loss.

### **My final decision**

My final decision is that 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 20 February 2024.

Alessandro Pulzone  
**Ombudsman**