

## **The complaint**

Mr A complains about CMC Spreadbet Plc's decision to close his account. He claims this was done unlawfully and has caused him financial losses. He complains about its decision to restrict trading in a currency pair, its decision not to treat him as an elective professional client and the holding costs he continued to accrue following CMC Spreadbet Plc's decision to close his account. He also complains that he was spoken to inappropriately during a telephone call.

## **What happened**

One of our investigators looked into Mr A's complaint, but it didn't agree it should be upheld. She said that on 21 February 2022 CMC decided set to 'reduce only' currency pairs trading on Russian Ruble. This was due to the lack of liquidity caused by the conflict in Ukraine and was something it was entitled to do under the terms of the account he had opened. She thought this was fair and reasonable.

She said that she had listened to the call Mr A had on 1 March 2022 with CMC. In that call it was clear that Mr A had asked to become an elective professional client, but he did not meet the criteria. She explained what the criteria was and concluded that he did not meet two of the three criteria required – as a result, CMC's decision not to classify him as an elective professional client was fair and reasonable.

The investigator considered Mr A's complaint about the account closure. She outlined CMC's decision was based on the fact that Mr A had continued to express his unhappiness with CMC's decision not to classify him as an elective professional client, and that he had continue to threaten CMC with legal action and claiming losses of £1,000 per hour for each hour he wasn't classified as an elective professional client. She said that CMC had also taken into account the fact that he approached its employees by contacting them via professional networking websites. She said the terms of CMC's service that Mr A agreed to give CMC the right to close his account by giving ten business days' notice. She said that CMC had given Mr A notice on 4 March 2022, and it had in fact given him more than 10 days' notice. She concluded that CMC was entitled to close his account in the way that it did and didn't consider it had treated him unfairly.

She also said that as Mr A had to continue to have positions open in his account, he continued to incur holding charges – and it wasn't unfair for CMC to apply those charges in the circumstances. If Mr A didn't want to continue paying those charges, he wasn't prevented from closing his trades.

Finally, she reviewed the call Mr A had with CMC where he said he was spoken to inappropriately. She agreed that the adviser had on occasion displayed some frustration, but equally considered that Mr A didn't help matters by continuing to accuse the advisor and CMC of being complicit in criminal activity. She considered that CMC's apologies for any offence caused were sufficient.

Mr A didn't agree and raised some additional points. He said he felt he wasn't given enough notice by CMC, and that it went against the nature of derivatives to expect him not to open new trades. He also said that CMC had discriminated against him by closing the account on the following four grounds:

- His name gave away a different ethnicity.
- He was non-binary.
- He had previously exposed CMC to other regulators for breaches of regulations.
- He was a profitable client which went against CMC's interests.

The investigator looked into these allegations – she also asked CMC for more information. Having reviewed this, she concluded that Mr A's allegations were not substantiated. She said that CMC hadn't gathered any information in relation to his ethnicity or his gender identity, and therefore this couldn't have formed part of its decision to close the account. She said it was required by law to ask about his nationality, which it did, but saw no evidence to conclude that this played any part in its decision to close his account.

She also said that CMC was not aware of any other previous FCA or regulatory actions Mr A may have taken, and so this was also not taken into account. She said that CMC reiterated that it had made the decision to close his account based on his continuing dissatisfaction, his repeated threats of legal action for loss of profits amounting to £1,000 per hour, and the fact that he had contacted staff multiple times and at various departments and his general dissatisfaction with the service it was providing to him. The investigator said that her initial answer therefore hadn't changed and concluded that Mr A hadn't been treated unfairly.

Mr A still didn't agree, and therefore asked for an ombudsman to decide the matter. He subsequently said that he had tried to open an account with CMC again, and this time had been able to. He said this showed that his account had been closed unfairly in the past.

### **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.

Having done so, I've reached the same conclusions as the investigator and for broadly the same reasons. I also don't have much to add to what the investigator has already said.

I've nothing to add to CMC's decision to restrict trading on the Russian Ruble market. The terms (s.4.1.1) clearly allowed CMC to take this decision, and it has explained why the prevailing circumstances at the time had affected the liquidity of the instrument to the extent that it felt it was necessary to take this action. I'm satisfied this decision was fair and reasonable, and Mr A was not treated unfairly as a result.

I also don't have anything to add to CMC's decision not to classify Mr A as an elective professional client. The investigator has clearly set out the criteria in the FCA's Conduct of Business Rules (COBS), and CMC couldn't deviate from this criteria.

I'm satisfied Mr A didn't meet two of the three criteria, and therefore he couldn't be classified as an elective professional client.

I've considered CMC's decision to close Mr A's account. The terms (s.9.5.2) allowed CMC to close Mr A's account by giving at least 10 days' notice in writing. The terms didn't require

CMC to give a reason for taking such action. It has explained it did so because of the background to Mr A's contact – including his threats of legal action and contacting staff members on networking sites. Taking this into account, I'm satisfied it followed the terms when it wrote to Mr A to tell him his account had been limited to close-only.

Mr A was entitled to open an account elsewhere if he felt his strategy required the opening of trades while closing his positions on CMC's platform. I don't agree CMC treated him unfairly by limiting his account, and I'm satisfied it gave Mr A sufficient time to manage his trades (and far longer than the ten days it was required to). On this note, I agree with the investigator that the holding costs remained payable for as long as he had open positions on the account – I see no reason why it would be fair and reasonable to have those waived.

I agree with the investigator's conclusions in relation to the call Mr A had during which he said he was treated inappropriately. I'm satisfied the call was challenging for a number of reasons, not all of them to do with CMC – and as such, I'm satisfied its apology and reassurance of action taken was sufficient for the matter to be put right.

Mr A has made serious allegations about being discriminated against. I'm not persuaded he has provided any evidence that any of the grounds he has alleged were in fact reasons for why his account was closed. I'm satisfied the evidence shows that none of those reasons played a part in CMC's decision, particularly in view of the fact that it did not have some of the information Mr A says was used to discriminate against him. In my view, Mr A's conduct, his dissatisfaction with CMC's service and his repeated threats of legal action led CMC to conclude that it was unable to provide Mr A with the service he wanted – and this was a decision it was entitled to make, for the reasons I've already given.

Finally, Mr A has said that he has recently been able to open an account. He says this shows that CMC's previous decision was wrong. I'm not persuaded Mr A's ability to now open an account has any bearing on CMC's previous decision to close it. As the investigator has explained, it isn't for this service to tell CMC who it should do business with – that's something for its own commercial discretion, which it has applied in this case.

For these reasons, I don't uphold Mr A's complaint.

### **My final decision**

My final decision is that I don't uphold Mr A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 12 December 2023.

Alessandro Pulzone  
**Ombudsman**