

The complaint

Mr T complains that CMC Spreadbet Plc ignored warnings he had a gambling addiction while incentivising him to continue betting. He says that among other things it also allowed him to fund his betting with credit, manipulated markets and provided different pricing through different apps. He seeks a refund of the losses incurred on his account.

What happened

Mr T opened an account with CMC in late 2016 and traded for several years. In 2021 he complained to CMC about a number of issues relating to his trading, primarily that it had not acted when repeatedly informed that he had a gambling addiction.

CMC didn't uphold any aspect of the complaint. But given the nature of Mr T's concerns, it took steps to restrict his account at that point. CMC went on to explain that it had no record of Mr T telling its staff about his gambling issues (prior to him making the complaint) and felt it had otherwise administered his account correctly, based upon information he'd provided on which it was entitled to rely.

Mr T referred his complaint to this service, but our investigator also didn't think it should be upheld. Addressing the various issues he'd raised she said, in brief:

- **Appropriateness** – It was a regulatory requirement that CMC assess whether it was appropriate to offer Mr T a spread betting account and it had done this by way of gathering personal and financial information and a test to establish his knowledge, experience and understanding of trading and its risks. Based on the information he provided CMC determined that it was appropriate to offer Mr T an account. The investigator considered CMC was entitled to rely upon the information provided and she'd seen nothing to indicate a cause for concern.
- **Gambling addiction/rebates** – The investigator noted Mr T's concerns with CMC's lack of response to him telling his account manager that he'd had to borrow money and rely on rebates to continue betting. But she said these conversations had taken place face to face and without documentary evidence to support them it was difficult to conclude that CMC had failed to act. She felt that Mr T incurring losses was not in isolation enough to prompt CMC to act. And although one email in September 2017 showed that Mr T had raised the issue of losses and asked his account manager if his account was being monitored, the response to him had been reasonable, asking for more information and also whether Mr T wanted his account restricted, to which he'd not responded.
- **Sales team actions** – Mr T had given examples of what he saw as inducements to trade from CMC, such as tickets to events and lunch invitations. The investigator reviewed emails between Mr T and his account manager in this respect and concluded that these offerings were simply part and parcel of the management of its relationship with him. She didn't feel they were indicative of an inducement to trade and noted Mr T's willingness to participate in events and request offers and specific items.

- Professional status – Mr T had said CMC invited him to become a professional client despite him wanting to remain as a retail client. The investigator noted the communication between Mr T and CMC on this matter and found that he'd requested the change to professional status, prompted by new regulatory restrictions placed on margin requirements in 2018. However, the change was never completed as CMC explained to Mr T that he couldn't demonstrate he met the necessary criteria.
- Credit card payment – The investigator didn't feel CMC had acted incorrectly in respect of it receiving funds to Mr T's account via credit card. She said the terms of CMC's Risk Warning Notice made clear that trades shouldn't be financed in this way, so it had been Mr T's responsibility to ensure that was the case and to manage the account responsibly in accordance with the terms.
- App information – Mr T had described an occasion when he'd been able to download two apps and see different prices for the same instrument on each app. CMC said he'd called it in November 2019 about this and it had explained it was in the process of migrating clients from two separate apps, for CFD trading and spread bets respectively, to a single CMC trading application. There'd been a bug with the new app, but it was resolved within hours and safeguards put in place to prevent repetition. The investigator said that in an email on the day in question Mr T confirmed that the figures 'look like they match across both apps' and CMC advised that 'any issues on the app won't impact your account close-out in practice'. So, while the investigator appreciated the issue would've been frustrating, she didn't think the issue suggested CMC had tried to manipulate markets.

Mr T didn't accept the investigator's view. He felt the evidence hadn't been properly analysed and stressed that records of what had happened weren't available due to calls having been inappropriately made from personal phone numbers, or meetings not being noted. He highlighted video evidence he'd provided and questioned why this hadn't been considered. Mr T also drew attention to treatment he'd received for addiction.

The investigator noted Mr T's concerns but wasn't persuaded to change her opinion, so the matter's been referred to me to review.

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 come to the same conclusions as those reached by the investigator and for broadly the same reasons. I want to assure Mr T I've read and considered everything on the file. But that said, I'm satisfied I don't need to comment on every point raised to reach what I consider to be a fair and reasonable decision. Where I've chosen not to comment on something, it's not because I haven't considered it. It's because I've focused on what I think are the key issues. That approach is in line with the rules we operate under.

Further, where the evidence is incomplete or inconclusive, I've reached my decision based on the balance of probabilities. That is, what I think is more likely than not to have happened in light of the available evidence and a consideration of the wider circumstances.

Firstly, I'd like to cover off the issue of the video evidence Mr T provided. This deals specifically with a concern he's raised about the functionality of CMC's platform relating to margin requirements and the apparent circumvention of relevant regulation. For clarity, that issue was responded to by CMC as a separate matter with a final response issued in June 2021, prior to Mr T making his more substantive complaint in October 2021, which

concerned the issues dealt with above. As such, I've not considered the margin issue here.

That said, I have noted that Mr T feels the video evidence also supports more generally his view that CMC acted incorrectly or unfairly. So, I have considered the video evidence in that light. But I don't agree that it does support either his primary argument – that CMC failed to act when informed of his gambling issues – nor any of the secondary issues.

Turning to that primary issue, I appreciate how strongly Mr T feels that CMC was put on notice that he was experiencing problems with his spread betting and gambling problems. And I note all he's said about the lack of availability of records (whether that be recordings of phone calls between him and his account manager, or written notes of meetings) indicating an attempt by CMC to conceal wrongdoing.

But there is a reasonable weight of documentary evidence available in the form of email and text communication between Mr T and his account manager. And to my mind none of it suggests that there'd been face to face discussions about gambling difficulties at any point.

Mr T did send the email noted by the investigator in September 2017 (by which point he'd had some meetings with the account manager) in which he asked, "*Based on the scale of losses on my account, have your compliance teams/account teams raised any flags relating to my account conduct?*" But I don't think this slightly ambiguous enquiry can be reasonably construed as Mr T raising gambling issues, nor as him following up on a previous face to face discussion of that subject. In any event, in response the account manager sought clarification of what information Mr T was seeking. And importantly, given the concerns Mr T has raised in making his complaint, queried whether he wanted any restriction placed on his account, to which no reply was received.

There was then continued positive communication between Mr T and his account manager over the next couple of years, including references to the offers of tickets to events, lunches, and trading-related presentations. I understand that Mr T's personal circumstances may have meant that this type of engagement exacerbated his desire to continue trading. But I've not seen that they were direct inducements to trade. Rather, I think they were simply part of the normal management of a commercial relationship with a customer. I don't think CMC acted incorrectly in making these offers and engaging in this way. I would feel differently if I was of the view that CMC was, or ought to have been, aware of potential gambling addiction issues. But I've not seen that it was. At least not until October 2021 when Mr T made his complaint about the issue. And at that point CMC took the steps I would've expected it to take in restricting his account.

From the point when CMC opened the account for Mr T, having first taken steps to assess appropriateness, through the management of the ongoing relationship over several years, until the point of the complaint being made, I've not seen that CMC acted incorrectly. During the course of that relationship there may have been occasions where problems arose – examples being the issue Mr T experienced during the app migration, or occasions where he felt the agreed rebates hadn't been applied correctly to his account. But I think given the length of the relationship and the volume of trading that took place, it was to be expected that the occasional issue would arise.

In general, I'm satisfied, on balance, that CMC provided Mr T with its service correctly and fairly. Importantly, while I recognise that Mr T will be very disappointed, I've not been persuaded that CMC failed to acknowledge and act upon information it received regarding him experiencing gambling issues.

My final decision

For the reasons given, my final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 22 March 2024.

James Harris
Ombudsman