

The complaint

Mr C complains that a failure of the payment processing systems operated by Fortrade Limited led to the forced closure of a number of open contracts for difference (CFDs) that he held.

What happened

Mr C holds an account with Fortrade that he uses for CFD trading – the account was opened in March 2021. In February 2022 he held a number of open positions in a US based company. At that time there was a degree of market turmoil in response to the start of the Russian invasion of Ukraine. Towards the close of business on 23 February 2022 Mr C identified that he needed to deposit some additional funds into his trading account to ensure he met Fortrade's minimum margin requirements.

Mr C attempted to deposit £10,000 from his bank account, using his debit card, via an app provided by Fortrade for that purpose. His payment was rejected. And the same thing happened shortly afterwards when Mr C attempted the transaction again. He spoke with Fortrade who told him that it had no current problems with its systems, so the failure must be due to Mr C's bank rejecting the transaction. It suggested Mr C speak with his bank urgently.

Mr C had experienced a previous failure of a deposit request in January 2022. At that time Fortrade had reinstated a position it had closed due to margin requirements as a gesture of goodwill. Mr C asked Fortrade whether it would apply a similar approach should he continue to be unable to make his intended deposit. Fortrade told Mr C that "it would do whatever it could to support him – just like last time." But it reminded him he needed to resolve the problem as soon as possible and pointed him towards alternative payment methods on its website.

Mr C spoke with his bank who confirmed it hadn't declined (or processed) any payment requests from Fortrade on 23 February. So its conclusion would be that an error had occurred on Fortrade's side before any payment request had been submitted. Fortrade had warned Mr C that a third failed attempt would most likely result in the blocking of his debit card.

Mr C says he was unable to add any funds to his trading account that evening. But he spoke with Fortrade the following morning. By that time some of his positions had been automatically closed by Fortrade. And Mr C's analysis, that was confirmed by Fortrade, was that further closures would take place at 10am when trading reopened if he wasn't able to deposit any further funds. Those closures did happen taking Mr C's losses from the forced closures to £74,224.07.

During 24 February Mr C continued his discussions with Fortrade. He says that, certainly at the start of the day, he believed that Fortrade would reinstate his positions as it had when the problem last occurred in January. But he says he became increasingly concerned, as the day progressed, that Fortrade would not be taking any action to support him. So he decided to close out the remaining positions that he still held. Those closures resulted in a further loss of £53,805.10 being incurred.

Mr C complained to Fortrade about what had happened. Fortrade told him that it had been able to establish the payment failures were due to security checks undertaken by its third-party provider for which it wasn't responsible. And it reminded Mr C that he was responsible for ensuring sufficient margin remained in his trading account at all times. But, as a gesture of goodwill, Fortrade offered Mr C the sum of £5,000. Mr C didn't accept that offer and brought his complaint to us.

Mr C's complaint has been assessed by one of our investigators. He thought that the failure of Mr C's intended deposit was the responsibility of Fortrade. The deposit had failed because of security limits Fortrade had agreed with its payment provider. He said Fortrade should have been aware of those limits and advised Mr C accordingly. The investigator thought that, had nothing gone wrong with the payments, Mr C would have ensured his account remained above the minimum margin and his positions wouldn't have closed. And the investigator thought those findings applied equally to the positions Mr C had closed himself. So the investigator asked Fortrade to pay Mr C compensation equal to the losses that had been incurred from those positions as a result of the payment failure – a total of £128,029.17.

Fortrade didn't agree with that assessment. So, as the complaint hasn't been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process. If Mr C accepts my decision it is legally binding on both parties.

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.

In deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mr C and by Fortrade. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

At the outset I think it is useful to reflect on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

I think both Mr C and Fortrade accept that the start of the problems that underpin this complaint was when Mr C's payment was rejected on two occasions on 23 February. But I think it would be helpful, by way of background, to briefly summarise how Mr C generally operated his trading account.

Mr C has shared with us analysis and monitoring tools that he used to ensure that his trading account remained above the minimum margin set by Fortrade. Of course I cannot be sure these documents haven't been created after the events, and with the benefit of hindsight. But they seem to me to be the type of information a responsible trader might want, and use, when conducting the activities undertaken by Mr C. On balance I am satisfied it is most likely that Mr C had created, and was using, these tools during the normal operation of his account and before his deposit attempts failed.

And I think those conclusions are supported by Mr C's trading statements. They show Mr C regularly providing additional funds to his account when market conditions meant he was approaching the minimum margins required by Fortrade. So I am satisfied that, had no problems occurred, Mr C was most likely to have aware of the actions he needed to take, on both 23 and 24 February, to ensure that his positions remained open and his account remained above the set margin requirements.

Fortrade failed to explain to Mr C, on 23 February, why his funding attempts had failed. Since then Fortrade has explained that it uses a third party to process its payments. And it has said the third party applies some security limits, both in terms of payment sizes, and monthly payment amounts. Those limits can be altered by Fortrade contacting the payment provider.

It appears that Mr C's funding attempts first breached those payment limits in January 2022. At that time Fortrade didn't tell him what had caused his payment problems, and simply resolved the problem for Mr C by reinstating a position it had automatically closed. So Mr C remained unaware of any third-party restrictions on his payments. And that continued when he again faced problems on 23 February. Fortrade told Mr C it was likely his payments had been rejected by his bank – and told Mr C he would need to contact his bank to make further enquiries.

Since the problem that occurred in February is likely to have been the same as happened when Mr C's payment was rejected in January I think Fortrade should have been on notice that the limits on Mr C's payments might mean that some would be rejected given the nature and value of the payments he was making. I would have expected, given the previous problems, that this might have been one of the first things that Fortrade checked rather than sending Mr C to his own bank.

It is for Fortrade to understand the mechanisms behind its payment processing. It seems unlikely to me that other customers too will not have been previously affected by the security limits agreed by Fortrade with its payment provider. And it seems, when Fortrade belatedly realised the problem with Mr C's payments it was able to alter his limits with the third-party provider quickly and easily. So I think that, had Fortrade identified the problem the limits had caused more quickly, they could have been resolved and allowed Mr C to add extra funds to his account and prevent it falling below the minimum margin requirements.

Fortrade has told us that it offered other payment options to Mr C but he failed to make use of them. In the main I don't think those options were suitable for Mr C's circumstances. He had used bank transfers in the past and seen payments take several days to reach his Fortrade account – something that would have been unsuitable given his time critical need to add additional funds. And Mr C has told us that he didn't have any of the other payment apps that Fortrade suggested such as a PayPal account. Opening accounts of that nature, to provide funding at the level required by Mr C would again have taken too long.

But Fortrade did offer an alternative payment application, that it says made use of an alternative third-party payment provider. It does seem likely that Mr C might have been able to use that app successfully. So I now need to consider whether Mr C's explanation of why he didn't use it is reasonable.

Mr C says that when he accessed the app it didn't appear to require the banking information he would expect. Fortrade says that information would have been gathered on a later screen. So it does seem that Mr C stopped his use prematurely. But I need to be very mindful of the background circumstances at that time. Mr C had been told by Fortrade that a further declined payment would be likely to block the only debit or credit card that he held. And Mr C was suffering from rapidly increasing levels of stress due to his understanding of

the potential losses he would face if he were unable to add further funds to his trading account. On balance I think it understandable that Mr C chose not to continue with using an unfamiliar application to transfer a significant sum of money.

Fortrade has also advanced other arguments why it thinks Mr C is responsible for the funding failure. It pointed out that Mr C had left matters to the last minutes before adding the necessary funds – it says it would generally expect consumers to leave a greater margin in their trading accounts, and generally it recommends a margin of 200% is applied. And it says that regardless of whether any funding was possible it doubts Mr C had the appetite to commit further funds to his account given the concerns he expressed by telephone about both the stability of global security (following the Russian advances towards Ukraine) and a lack of faith in Fortrade itself.

I'm not persuaded by Fortrade's arguments. As I have said earlier, Mr C has shown us how he closely monitored his open trading positions. And he consistently added the necessary funds to maintain his account above the minimum margin required by Fortrade of 50%. I have seen nothing to suggest that Fortrade required customers to maintain a higher margin such as the 200% it says was recommended.

I have listened carefully to the phone calls that Mr C had with Fortrade. On those calls it is clear that Mr C was becoming increasingly concerned about the financial risks his inability to fund his account were causing to him. But, to be clear, I don't find those concerns to mainly derive from external factors. Mr C clearly had sufficient funds to make the necessary payments. And, whilst the global situation was undoubtedly of concern, the discussions Mr C had with Fortrade suggested that he, and the representative from Fortrade, expected a positive outcome to the situation.

So I think the fundamental reason for Mr C's concerns was the failure of Fortrade's payment processing systems. I accept that Fortrade engaged a third party to provide that service. But ultimately the processing was being done on behalf of Fortrade. It wasn't something within the control of Mr C, such as not having sufficient funds or payment verification applied by his bank, that caused the payments to fail. It was the process agreed by Fortrade with its payment provider that prevented the payments Mr C tried to make from being submitted to his bank.

Ultimately, had nothing gone wrong with the payments Mr C attempted to submit on 23 February, I think it most likely, on the balance of probability, that he would have remitted sufficient funds that day, and on the following day, to ensure he met Fortrade's minimum margin requirements and so that his trading positions would remain open.

As I've said earlier, on 24 February, following the forced closure of some of his open positions to maintain a minimum margin, Mr C decided to close the remaining open positions that he held. Fortrade says that was entirely a decision that Mr C took, so even if I found it responsible for the closures due to maintaining the minimum margin it should not be found responsible for Mr C's actions in voluntarily closing the trades.

I think to reasonably assess Mr C's actions I need to go back to what he was told on the call he had on 23 February, when taken alongside what had happened when he faced similar problems in January. On 23 February Fortrade's representative said to Mr C that "it would do whatever it could to support him – just like last time". The last time (in January) Fortrade had reinstated a closed position, so it wouldn't have been unreasonable for Mr C to expect a similar response on 24 February.

Mr C had a number of calls with Fortrade on that date. Whilst at the start Mr C appeared confident that Fortrade would honour what he believed he had been told the day before, as the day went on, it appeared that Fortrade was giving him no guarantees about any support it might offer. So faced with increasing losses, and the likelihood that the remaining positions would be automatically closed later as his minimum margin again came under pressure, Mr C told Fortrade that he would be protecting what little equity he had left by closing those remaining positions.

I am satisfied that Mr C's actions were a direct result of the funding problems that he had faced the day before, and Fortrade's apparent decision that it would not be providing similar support to Mr C such as it had in January. If the funding problems, that I have found earlier were the responsibility of Fortrade, hadn't happened then I am satisfied that Mr C wouldn't have closed his remaining trades. So I find that Mr C's decision was entirely the consequence of something that Fortrade did wrong.

I cannot be sure how long Mr C would have retained his open positions. Within a few weeks they had returned to a profitable position. But, as Mr C accepts, any assessment of his likely future actions would undoubtedly be influenced by the benefits of hindsight. So I don't think it would be reasonable to ask Fortrade to compensate Mr C for any future profits that he might have lost, or provide any compensation for the loss of use of the money he lost.

Instead I think Fortrade should compensate Mr C for the losses he incurred following both the automatic closure of his positions on 23 and 24 February, and those positions Mr C chose to close when it became apparent that Fortrade would not offer him support for the payment failures. Those losses amount to £74,224.07 and £53,805.10 respectively.

In summary, I am satisfied that Mr C's attempted funding failed due to a breakdown in the payment process between Fortrade and its third-party payment provider. Whilst the limits on payments had been put in place for entirely valid reasons they were not transparent to Mr C or other consumers. So only Fortrade could identify the reasons for the payment rejections, and it failed to do so in a timely manner. And as a result of the payment failures the open positions held by Mr C were closed, either automatically by Fortrade or by Mr C in response to the increasing pressure on his margins. I direct that Fortrade should pay compensation to Mr C for the losses he experienced on the closure of those trades.

Putting things right

I consider that the closure of both the trades closed automatically, and those closed by Mr C in response to the problems, arose as a result of a payment failure that was the responsibility of Fortrade. So I direct Fortrade to pay Mr C £128,029.17 as compensation for the losses that he experienced from those closures.

My final decision

My final decision is that I uphold Mr C's complaint and direct Fortrade Limited to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 17 May 2024.

Paul Reilly
Ombudsman