

The complaint

Mr R complains that London Capital Group Ltd (“LCG”) closed positions in his spread betting account, and later closed the account, in an unreasonable manner, without giving reasons.

What happened

In July 2016 Mr R became a customer of LCG, having transferred from another provider. He had previously opened two spread-bet positions, one on Petropavlovsk (POG) and one on Gulf Keystone Petroleum (GKP), which were in a losing position at the time of transfer. Mr R had decided to keep them in the hope they’d recover. In 2018, LCG told Mr R he would only be able to close positions in his account and not open any more, due to a directive on margins for retail investors, issued by the European Securities and Markets Authority (“ESMA”). If he wanted to open new positions, he’d have to do that in another account, apparently to ensure they applied the right margin to any new positions.

On 28 February 2022, following the invasion of Ukraine by Russia, LCG were informed by their counterparty that positions in POG held by LCG would be placed in reduce only. At that time, LCG could have sourced another counterparty, but instead decided to cease any business related to Russia and took steps to close customers’ positions that were based on Russian companies, including POG.

On 2 March 2022 LCG called Mr R to let him know his positions in POG would be closed at the end of the day, crystallising a loss of just over £20,000. At the start of this call, Mr R had confused LCG with another share dealing company who had just given him similar news, who he was expecting a follow up call from. When LCG clarified that they were calling from a different company, Mr R swore, briefly and loudly. The call handler requested that he refrain from using such language, and for the rest of the call he was calm. When asked why the position was being closed, the call handler was unable to give detailed reasons, other than telling him that it had come from “*high up*” and it was due to the sanctions imposed following the invasion. Mr R was unsatisfied with those reasons and raised a complaint, because POG was traded on the London Stock Exchange, and wasn’t, to his knowledge, caught by the sanctions.

The next day, LCG called Mr R again, and he apologised for his language in the previous call, explaining that at the time of the call he was under “*extreme stress*” having just been informed by the other firm that they were crystallising an £80,000 loss, “*which to me is a significant amount of my retirement*”. LCG offered Mr R 20% of the losses he incurred on POG, just over £4,000, as a gesture of goodwill. Though he accepted this, and it was paid, Mr R asked for the reasons for the closure of the position in writing, because he was in such a unique position, having had it open for so long.

On 7 March 2022, LCG let Mr R know there was an error on the margin set on his position on GKP – they told him it was set at 1:1000 (£79) but the margin requirements had been switched to 1:30 and the position should have been taking 1:5 leverage (£4,990). They said the margin would be changed on 10 March, so Mr R added £5,000 to his account to cover this as requested – however he then noticed the margin didn’t actually change. On 15 March

he doubled the amount of his stake on the position to test his theory and was allowed to do so. On 18 March Mr R made a complaint about this.

On 2 May 2022 LCG replied to both parts of Mr R's complaint, and didn't uphold it, relying on the terms and conditions of the account to explain their actions. On 12 May LCG told Mr R that *"in accordance with the clause 26.6 of our Terms and Conditions, your LCG account will be closed. Please close any positions before Friday 20th May 2022. If you don't close your positions, we will liquidate your positions."*

On 26 May LCG closed Mr R's position in GKP at 284.982 pence and emailed him the following day to confirm the account was now closed. Mr R didn't see any of the emails sent after 2 May, until 27 May. He then complained about the account closure, and LCG again simply referred to the terms which they say allow them to close accounts. As Mr R remained unhappy, he referred his complaint to our service, and an investigator looked into it.

The investigator found that the position on POG could be closed under the terms of the account, and would have been closed out in July 2022 regardless, as the company delisted from the London Stock Exchange. LCG had refunded 20% of Mr R's losses, which he wouldn't have gotten had the position remained open, so he was in a better position than he otherwise would have been. The investigator found the change to the margin on GKP was fair and reasonable based on the terms of the account, and that the account closure wasn't unreasonable. This was because of the language used by Mr R and because LCG considered him to be vulnerable due to his comments about beings under extreme stress.

Mr R didn't agree, in summary because:

- He didn't trust that the information from LCG about margins was correct, either the information given in 2018 or 2022 – though he was told his account was in close-only from 2018, in practice he'd been allowed to increase both positions after.
- The margin for GKP wasn't amended in March 2022.
- The investigator told him that LCG said the account was set up incorrectly in 2016 and if that's right and the margin for GKP was wrong, then his positions ought to have been closed out as soon as the account was opened, as he wouldn't have had enough funds to cover the margin. Had that happened, he'd have received more on the POG position as the price was higher.
- He felt the reasons our service had been given for account closure weren't correct, because if they weren't happy with what he'd said in the call, they should have dealt with it immediately. He feels the increase to the margin on GKP was a tactic to try and make him close the account himself. In closing the account when they did, he missed out on a special dividend on GKP in June 2022.
- He was told in 2020 that LCG's systems were failing to send out 10% depreciation warnings and that failure continued after 2020 and LCG has refused to answer his questions about this. In 2020, they'd closed his POG positions, and later agreed that was incorrect, reinstated the positions and paid him redress. That admittance of wrongdoing, combined with the events of 2022, has made him question whether his account has ever been run correctly.

The investigator wasn't persuaded to change his mind, so the case was passed to me for a decision. I asked LCG for more information around the margin, and any previous complaints Mr R had made about the account. I asked about the timing of the closure of the account, and whether LCG had any written policies in 2022 setting out their approach to unreasonable behaviour or vulnerable customers. In reply, LCG explained:

- In December 2023 they ceased to offer client dealing and in February 2024 they surrendered their dealing in principal license. They've transitioned to being an introducing broker and have returned most of their clients' funds.
- They explained that the margins are calculated per instrument, but they don't store margin information per position on a daily basis, only at account level.
- They provided a spreadsheet with a variety of information, including showing the margin applied to the account each day from 2016 to 2022, the margins specific to POG and GKP on the opening of each. It also included some charts, daily profit/loss information, corporate action and dividend information.
- Regarding written policies, LCG explained that their terms allow them to close accounts due to "*rude or abrasive behaviour*". It was during the investigation of the complaint that they identified the behaviour and vulnerability concerns – and they said they investigated the complaint within the eight weeks they are allowed.
- The delay in closing the account between 20 and 26 May didn't cause any financial loss - the closing price of GKP on 20 May was 265.01 pence versus 284.982 pence on 26 May. The additional financing costs during this time totalled £0.39.

I issued a provisional decision in the case in which I said:

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

My role is to decide whether LCG has treated Mr R fairly and reasonably, against the background of their communications with him, the terms of the account, general industry practice and the rules and guidance that applies. I consider that Mr R's complaint can be broken down into the following areas:

- *The way the account was administered between 2016 and March 2022, with regards to the margin required on GKP and the depreciation notices.*
- *The closure of POG.*
- *The closure of the account, including the closure of GKP.*

The administration of the account from 2016

LCG has said that on Mr R's GKP position, on 9 December 2016, there was a stock consolidation and in the process of booking the stock split on his account, the margin rate was amended to 1:1000. They've said this should have been reverted after the pounds per point was adjusted – but it wasn't. This is what was identified in March 2022 when Mr R was asked to add almost £5,000.

Mr R has said that had he known the account wasn't set up correctly, then the positions would have been closed in 2016, as he would have been required to fund the account further. However, I'm not convinced by his argument – he's said several times that he was holding these positions in the hope they'd recover. It was for that reason that when asked to cover the additional margin amount in 2022, he complied and added a further £5,000 in order to keep the GKP position open. So, I consider it is more likely than not, that had LCG administered the margin on the account properly in 2016, that Mr R would have simply added more funds if needed.

However, I do appreciate it was worrying to Mr R to discover that the positions had not been set correctly on LCG's system so suddenly on 7 March 2022. Given how long Mr R had held these positions in his account - for over six years - I'm persuaded that the way LCG handled this was not fair or reasonable. If the margin was wrong, then they ought to have been more upfront about their own error - perhaps apologising right away could have helped. At the

least they ought to have explained in detail what was happening and why. Instead, their explanation was simply that the margin had changed, without admitting to when it had changed, and that under the terms they were able to change the margin.

I'm also not convinced that only three days' notice was fair against the background of the length of their error – LCG is lucky that Mr R saw the email in time and was able to make arrangements to prevent the forced closure of the position. The fact that the margin change wasn't then followed through with, is also unreasonable and compounds the impact of the initial error. I'm not surprised that Mr R thought he'd been given entirely incorrect information and that he was frustrated and didn't trust what LCG had to say about this.

Mr R also shouldn't have been allowed to trade on his account, based on the information he was given in 2018. The way LCG applied the ESMA provisions meant his existing account was allowed to continue with a high maximum leverage/margin allowance. However new trades ought to be on the post-ESMA rates for retail clients. Yet, when he added extra points per position on GKP to test whether the margin had really increased, he was allowed to do so, and the controls put in place in 2018 seem to have failed. It's only natural for Mr R to be further confused by LCG not doing what they said they would do in 2018.

I'm glad to see Mr R got back the additional £5,000 he added to his account to cover the supposed margin on GKP. However, I've taken this area of administrative failings into account when considering a compensation award here.

Turning to the 10% depreciation warnings, since 3 January 2018, COBS 16A.4.3, which I'm satisfied applies to LCG, has said:

“Investment firms that hold a retail client account that includes positions in leveraged financial instruments or contingent liability transactions shall inform the client, where the initial value of each instrument depreciates by 10% and thereafter at multiples of 10%. Reporting under this paragraph should be on an instrument-by-instrument basis, unless otherwise agreed with the client, and shall take place no later than the end of the business day in which the threshold is exceeded or, in a case where the threshold is exceeded on a non-business day, the close of the next business day.”

In the last couple of years, the FCA issued guidance (which the investigator shared with the parties) on their expectations around this, initially following the impact on the markets caused by the Covid pandemic, and subsequently due to the Brexit transitional period. The guidance says that firms are still required to send the depreciation notifications – but only the first time the portfolio or position decreases in value by 10% in each reporting period - each subsequent 10% depreciation in the same reporting period doesn't require notification.

Based on this, I'm satisfied that since 2018 LCG should have been sending these notifications where needed on a per-position basis and I believe the position on POG has experienced 10% losses in that time. However, similarly to the investigator, I'm not convinced that those notifications – if not sent – would have changed how Mr R was managing his account. The two main positions in question were already at around the same level of loss in 2016 as they were in 2022, so prior to the rule coming into force, Mr R was fully aware of the losses he'd incurred and had chosen to keep the positions open.

That being said, I do take Mr R's point into account that the lack of these notifications has caused him to lose faith in LCG's ability to provide him with the service they are obliged to provide under the rules.

The closure of POG

Its largely accepted now that the closure of this position in March 2022 led Mr R to be in a better position than he'd be in financially, had the position remained open until the underlying shares were delisted in July 2022. However, I've still considered the way LCG went about closing this position and the impact this had on Mr R, for the purposes of compensation for the distress and inconvenience caused.

When informing him of the closure, I'd have expected LCG to give Mr R clear, fair and not misleading information about what was happening, and why. I'd have also expected them to have anticipated the concern that this could cause Mr R – especially as they were aware of Mr R's reasons for keeping the position open, bearing in mind their records of previous discussions in 2018 and 2020.

LCG didn't give clear or true reasons – in the call when LCG told him what was going to happen, the information they gave was vague and, in blaming sanctions, was incorrect. POG hadn't been delisted and my understanding is that trading in it didn't go against the sanctions that were imposed in February/March 2022. LCG seem to have recognised this to a degree, in that they offered Mr R 20% of his losses. I understand the actual reason was based on LCG's political and ethical opinions, which influenced the types of securities they were willing to offer on their platform.

LCG have relied on various parts of their terms and conditions to justify this closure. Terms that allow a firm to close positions without any reason are not terms I would generally consider to be fair if applied arbitrarily or indiscriminately. Based only on the information LCG gave Mr R in the call, its not unreasonable that Mr R thought this is what LCG were doing, so I'm not surprised he was so concerned by their actions.

Given they took away Mr R's choice as an investor in unilaterally deciding to close the position, and did so without explaining it properly, I'm not satisfied LCG treated him fairly and reasonably in the way they went about dealing with this situation. I don't consider it reasonable to lie about the reasons for closing positions in circumstances such as this – regardless of whether closure can happen under the terms. At least some of the frustration and upset caused to Mr R here was foreseeable, and avoidable.

In saying this, I do appreciate the level of sanctions being applied were unprecedented and LCG were in a position of needing to make a quick decision about finding a new counterparty or closing positions. However, they still had a choice about how to explain this to customers and were obliged to communicate in a way that at the very least, took into account the FCA's high level principles – including those about considering the information needs of their customers and treating them fairly, and acting with due skill, care and diligence. I'm not satisfied they did so here and so I've taken in to account the way LCG positioned this message and the reasoning given when considering the compensation to award.

The closure of the account

In general, firms have the freedom to decide to end a relationship with a customer, but in circumstances such as this, I'd expect them to have reasons for it, and to be open about those reasons.

I've carefully considered the two reasons LCG has given for closing Mr R's account. In the call on 2 March when he was informed about the situation with POG, on the whole Mr R's tone and words were that of a frustrated investor, unhappy with the service being provided, which is foreseeable and not unusual, given the message being delivered. I'd say the level of upset was to be expected given the message from LCG and the poor quality of that message, as I've set out above.

LCG has said to our service that Mr R was “abusive” toward the call handler. The short outburst he had upon hearing the news consisted of Mr R shouting the phrase “are you kidding me?” with a swear word, twice in quick succession. It naturally was a shock to the call handler, and she asked Mr R to refrain from that sort of language. Mr R calmed down and I’m glad to see he apologised to the same call handler the following day and didn’t repeat that behaviour.

LCG didn’t have a policy in place for their staff to follow, other than their terms stating an account can be closed when a customer acts “in a rude or abrasive way to our employees”. Its arguable that the language and tone used met that threshold – though I’d stop short of agreeing it was “abusive”, in these circumstances. Without a policy in place for this, it’s very difficult to say whether LCG has treated Mr R fairly in their application of this term, as one of the things to consider would be whether they’ve treated him the same as other customers who say similar things.

I consider it reasonable to expect any concerns such as this to be raised in a timely manner – both to ensure the customer has a full understanding of the situation, and for the benefit of staff members. I’m not persuaded its fair use this as a reason more than two months after the incident – especially as Mr R wasn’t told this was why his account was being closed, which caused obvious and foreseeable confusion.

I’ve gone on to consider the second reason LCG has given. They’ve said that Mr R’s comments in the call on 3 March showed signs of potential vulnerabilities, which caused LCG to be concerned that a spread bet account, which is generally considered high risk, would not continue to be suitable for Mr R’s situation. This is because of his comments that he was under “extreme stress” and that he was relying on the money for his retirement, which was now at risk.

I’m minded that the comment about being under “extreme stress” has likely been taken out of context somewhat by LCG. Mr R said that phrase when explaining his behaviour in the call the day before and it seems he meant it in reference to the news he’d received on that day. It was not necessarily reflective of his ongoing state of mind.

It’s not unusual for firms who offer derivative trading to become concerned about a potential vulnerability, when customers state they are unable to bear losses in this sort of account, due to reliance on the money for living costs, including for retirement. I note Mr R had already made the losses in his account many years before he mentioned this, and the closure simply crystalised them. Technically he already had a degree of protection in this account as he wasn’t supposed to be able to place new trades, so was already protected from further losses (though I note that in practice, LCG needed to put stronger controls in place for this, as mentioned above.)

I’ve considered the guidance issued by the FCA on this topic. In 2021 the FCA issued a paper called FG21/1 - Guidance for Firms on the Fair Treatment of Vulnerable Customers, which LCG ought to have been aware of. Amongst other things, this says that firms ought to talk to customers about their options when they become aware of a vulnerability. It says frontline staff should be able to recognise and respond to concerns customers have shared and proactively deal with them. Firms should ensure that they have systems and processes that allow staff to record and access information to respond to vulnerable consumers’ needs.

The FCA didn’t set out any strict timescales in which vulnerability concerns should be dealt with once raised, but given their focus on frontline staff, it’s clear the intent is to ensure vulnerabilities are addressed quickly, preferably at the time they are raised. LCG’s consideration of whether Mr R was exhibiting vulnerability characteristics didn’t happen for

more than two months, in which time, Mr R was asked to add a further £5,000 into the account. I find this concerning, as LCG effectively made Mr R take more risk, despite already being aware of his potential vulnerability.

Given they didn't ask any further questions, I'm not convinced LCG took sufficient steps to understand the potential vulnerability, in line with the guidance issued by the FCA. For instance, they could have asked how this particular account impacted Mr R's retirement plans, and whether his stressed state was something temporary or ongoing, in order to understand how he was impacted.

Given the delay between notification of a potential vulnerability and the account closure, even if I were to say it was fair to close the account, I'm not convinced the notice period was fair. LCG only gave a week - though I note in reality it was two weeks between notification and closure - but regardless, the short time frame meant Mr R wasn't aware until after the fact. This is relatively short in the industry - 30 or 60 days is more common. I consider a shorter notice period to be reasonable if a firm has legitimate concerns and wishes to prevent harm to the customer. However, LCG have not explained the harm that they were seeking to prevent with such a short notice period and again, they didn't tell Mr R about their concerns.

Bearing all this in mind, I understand why Mr R feels the decision to close was unreasonable. He ought to have been given clear fair and not misleading information about it, and I'm satisfied LCG fell short of doing that. However, we now know that since the above events, LCG have effectively closed their client book, so even if they hadn't closed Mr R's account in 2022, I'm persuaded that it's likely they'd have done so by now, at which point the GKP position would have been closed out.

I've considered the offer LCG has made regarding financial loss, of just over £4,000. I appreciate this was offered in relation to POG, but was more than any financial loss LCG caused Mr R in relation to that position (though I appreciate we only know that with the benefit of hindsight). Had GKP remained open, Mr R would have received dividends in the interim, which from my calculation would have totalled between £200 and £300 up to 2024. Looking at the share price of GKP, with the exception of the price at the start of June 2022, it's been lower since, so Mr R's loss would have been higher, had the position stayed in place. So, I'm satisfied the £4,000 paid sufficiently covers any loss on the GKP position caused by LCG closing the account.

I've also considered the fact that LCG said GKP would be closed on 20 May and they didn't close it until 26 May. I can see that the position was closed at its highest price since 2018. The financing costs were less than £1 and outweighed by the gain. So, I'm satisfied Mr R wasn't caused a financial loss by LCG not doing what they said they would do in May.

Putting things right

In summary, I'm persuaded that the payment LCG has made of around £4,000 covers any financial loss caused to Mr R. However, LCG has caused Mr R distress and inconvenience in the following ways:

- The way they administered the account by not sending the 10% depreciation notices and setting the incorrect margin on GKP, causing unexpected and poorly timed changes to be necessary.
- They didn't do what they say they would do, demonstrated by: not following through on the changes instigated in 2018 by allowing him to place more trades; the lack of actual changes to the margin on GKP in 2022 after 7 March; the unexplained delay in the closure of the account between 20 and 26 May.

- *They gave unclear, unfair and misleading information about the reasons for their actions in closing POG and the account.*
- *The notice periods given weren't fair and reasonable, in the circumstances of this case.*
- *They didn't deal with their concerns about Mr R's behaviour or potential vulnerabilities in a timely manner.*
- *They didn't explore the potential vulnerabilities Mr R displayed in the way described in the FCA's guidance.*

Having considered everything, I'm satisfied it would be fair for LCG to pay Mr R a further £600 in compensation, to put things right."

Replies to my provision decision

Mr R replied and was glad that the complaint had been upheld. He said that for the sake of accuracy, prior to 2018, his positions had been switched on to 100% margin requirements, with zero gearing. In 2018 the margin was reduced, and he was able to take out new positions at his discretion.

LCG said they would accept the findings in order to bring the matter to a close. However, they noted that at no time was the leverage set to 1:1000 and said this was a labelling issue. They were confused why the dividends Mr R could have received on GKP were mentioned, as the market price of an equity includes sentiment on the company's future earnings.

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 conclusion as in my provisional decision, for the same reasons, and I make my provisional findings final.

I appreciate the clarification from both parties about the margin on the GKP position. Having considered what they've said, I'm not convinced it changes the overall amount of compensation I consider fair for the distress and inconvenience caused by LCG here. I took the information about the margin of 1:1000 on the GKP position from an email LCG sent to Mr R on 7 March 2022, in which they told him that was the margin and that it was incorrect. If that was in fact wrong information, I'm satisfied it goes hand in hand with the rest of the inconvenience caused by asking him to fund the account by a further £5,000, which I'd already taken into account.

Regarding the dividends, I mentioned these to illustrate the types of financial loss that Mr R had incurred in his position being closed when it was. His position could have remained open for more than a year before LCG would have closed the account in 2023/24. I don't agree with LCG that as a blanket rule, the price of equities can take into account dividends that wouldn't be paid for such a long time. So, I do still consider that the dividends were a reasonable factor in considering the financial loss here – though as set out, the amount LCG has already paid for financial loss exceeds the loss Mr R incurred here.

For the reasons set out above in my provisional decision, I'm satisfied LCG has caused distress and inconvenience in the way they communicated with Mr R and the way they administered his account. I consider £600 to be a fair and reasonable amount of compensation for the impact of LCG's errors.

My final decision

I uphold this complaint and London Capital Group Ltd should pay Mr R £600 for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 23 October 2024.

Katie Haywood
Ombudsman