Financial Ombudsman Service

The complaint

Mr V says Admiral Markets UK Ltd ('Admiral') manipulated its West Texas Intermediate Spot Crude Oil ('WTI Spot') Contract for Differences product on 21 April 2020, and thereafter, by freezing its price and by basing its price on the December 2020 futures contract, as opposed to the 'near month' pricing basis it was obliged to use. He claims compensation for loss incurred in WTI Spot positions he opened between 21 April 2020 and 29 April 2020 (when he says he learnt about the pricing basis change), for lost opportunity to make profit from the positions and for the trouble, inconvenience and personal detriments caused by the experience.

Admiral disputes the complaint. It denies the alleged manipulation of the WTI Spot product and it says the changes to its pricing were reasonable and compliant with the terms agreed for Mr V's account.

What happened

One of our investigators looked into the matter and concluded that the complaint should be upheld. He shared his view with both parties. Admiral disagreed with the upholding of the complaint, Mr V disagreed with the investigator's proposal for redress and both presented reasons, queries and challenges associated with their positions. The investigator responded to the queries and challenges they made, thereafter neither party agreed completely with his view so the matter was referred to an ombudsman.

Overall, in conclusion and in the main, the investigator said:

- Mr V's long WTI Spot positions resulted from long term planning on his part, whereby he anticipated a price drop in the underlying Oil market and whereby he reacted to such a drop – below $8 per barrel – when he opened the positions from 21 and up to 24 April 2020.

- The market faced the unprecedented event of Oil prices going into negative territory at the time. Ordinarily, Admiral priced the WTI Spot product using the near month's future contract as the pricing basis. For positions opened before 20 April the May futures contract was used, and for positions thereafter in April the June futures contract was used. Due to the global Oil price event, Admiral changed this on 21 April, it briefly applied the June futures contract as the pricing basis then it revised this and applied the December 2020 futures contract for that purpose. It explained that it did this in order to provide pricing stability for clients and to protect them from unprecedent volatility triggered by the negative pricing event (which had caused the May futures contract to also enter negative price territory).

- Section 2.7 of the terms agreed for Mr V's account provided for circumstances in which Admiral could "… *modify, suspend or discontinue, temporarily or permanently, all or any of* [its] *dealing services (in whole or in part) with or without notice*". Whilst this covered its actions in changing the pricing basis, and whilst it was entitled to apply the change and it was not obliged to allow existing positions to continue unaffected, it nevertheless had an obligation to conduct the change in a fair and reasonable manner.

- Admiral made the change on 21 April, but it did not notify its clients until its website notice on 24 April. This was neither fair nor reasonable. The changed had the effect of significantly and fundamentally altering the WTI Spot product, whereby it was no longer the product clients had opened positions in. In this context, clients like Mr V should have been given notice as the change was applied, in order for them to make informed decisions about their trading in the product.

- Admiral did not give such notice, and it should have. It was not fair for Mr V to continue to hold his open positions in a product that had significantly and fundamentally changed without being told that until the notice on 24 April. Given the planning and analysis behind his trading, it is unlikely he would have taken the positions he did if he had any form of awareness that the product would change or had changed in this manner. In early May 2020 he proceeded to open new long positions in the product and on the changed pricing basis, but he did so in an informed context, whereas his trading between 21 and 24 April was not in such a context.

- To compensate Mr V, Admiral should pay him £250 for the trouble, upset and distress the matter caused him; it should also void all the contracts he opened between 21 and 24 April that were impacted by the pricing basis change, offset the profitable contracts against the loss making contracts and if there is a resulting overall net loss, that amount should be paid to Mr V as redress.

- Mr V's argument/claim for lost potential profit has not been established. The same applies to his suggestion that a "CrudOil" product issued by Admiral after the complaint events was the same as the WTI Spot product – it was not, the pricing method for one product differed from the other's.

Admiral mainly said the negative global Oil pricing was an extraordinary event; it sent a notice to its accountholders on 3 April 2020 about the impending OPEC meeting on global Oil supply and referred to the risks of sharp price movements, limited liquidity, higher overnight fees and potential trading term changes that could be applied under section 2.7; another notice sent on 13 April 2020 was about a change in overnight fees; the pricing basis change on 21 April 2020 was applied in an unprecedented emergency situation, with the market price dropping rapidly and without time for notice to clients (which is a task that can take a long time to complete); it had no prior information about the event, and it had no information about further developments across the market and no indication about whether the price would continue to fall or would recover; ideally best practice would have meant keeping clients informed at the time, but these were exceptional circumstances in which it had to act quickly with limited information.

Admiral suggested that the complaint should be settled only by payment of the £250 proposed by the investigator. Mr V disagreed with this. He also disagreed with the investigator's proposal of this payment. He referred to personal detriments for which he blamed the experience he had with Admiral and asserted that more should be awarded to him for trouble and upset. He noted that the detriments had given rise to the need for treatment costing up to around $500,000.

Mr V also mainly said the following (which he repeated in his submissions to the ombudsman):

- Admiral manipulated pricing for the WTI Spot product from 21 April onwards by freezing the price at around $8 per barrel. Elsewhere in the market the underlying spot/cash price was rising, but the price for Admiral's WTI Spot product remained unchanged.

- Admiral did not notify clients of the pricing basis change until 24 April. He had written to it earlier on that date, to query why the product's price had not followed the market for days. He did not see this notice at the time and did not learn about the change until Admiral wrote to him on 29 April. Shortly thereafter, and whilst the WTI Spot product did not revert to normal, Admiral introduced the supposedly new CrudOil product, which was exposed to and followed the spot/cash market. Both products are either the same or very similar, so why would Admiral take these steps if its action in changing the WTI Spot product was legitimate?

- Key points supporting his claim are – Admiral's unjustified failure to give notice of the change as it was applied; it had no right to apply the change because what it did fundamentally changed the WTI Spot product and the relevant part of section 2.7 went only as far as modification, not the creation of a different product, so this section does not support the change; in addition or in the alternative, even if the pricing basis was to change Admiral should have maintained the previous pricing basis for existing open positions on 21 April, until it gave its notice announcement about the change on 24 April; it should have been obliged to do this until the notice was given; on this basis a part of his claim for lost potential profit is established, because he had positions that would have made gains (with the positions reaching a value of around $32,000) from the price rise between 21 April and 24 April; these are gains he has lost due to Admiral's actions; furthermore, even more substantial gains have been lost thereafter, whereby the underlying price reached the level he had predicted (and had planned to hold for) and from which he would have made over $100,000.

- Admiral has breached regulations in its actions.

Mr V also presented grounds for his allegation of a conspiracy against him (and against the potential for gains in his positions) by Admiral, especially with regards to it allegedly misrepresenting itself as being dependent on price feeds from an independent Liquidity Provider ('LP'), when his research shows that the LP is not independent and is in fact Admiral's parent company.

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 have reached the same conclusion as the investigator for reasons broadly similar to those he gave.

The unprecedented event of global Oil prices going into negative territory on 20 April 2020 is widely known and is undisputable. On 21 April Admiral changed the WTI Spot pricing basis by abandoning the June futures contract and instead using the December futures contract. Available evidence shows that it did not give notice about this change until 24 April.

Mr V says it was not entitled to do this, regardless of the unprecedented circumstances. I disagree. The combination of the unprecedented circumstances and section 2.7 of the terms for the account meant, on balance, Admiral's response and actions were not unreasonable.

Mr V says some firms appear to have reacted differently to the negative global Oil pricing event. It is equally true to say some other firms reacted by doing as Admiral did – using the December 2020 futures contract as the spot pricing basis. I make no finding on this point about comparison. Admiral was entitled to make reasonable commercial decisions for its business without an obligation to follow another firm. I have shared the observation about what other firms did in order to note that an argument about Admiral following its peers could go either way – in line with those who did something different or with those who reacted like Admiral.

I do not suggest that changing the pricing basis was the only or best thing Admiral could do. I do not need to. It is only necessary to consider the facts of what it did and whether (or not) it was reasonable in the circumstances. The notion of protecting clients from abnormal and extreme instability and volatility caused by the unprecedented negative pricing event is a plausibly reasonable motive/rationale. If no such reasonable motive/rationale existed, there could be merit in considering the conspiracy that Mr V has offered. However, the opposite is the case in this complaint. In addition, and as I address next, Admiral was contractually entitled to do what it did, so I do not find that there is a call to address the alleged conspiracy. The complaint can be fairly determined on the available facts and without the need to resolve the alleged conspiracy.

The above also applies to the manipulation that has been alleged as part of the claim about conspiracy. Available evidence is that the spot product's price had the *appearance* of being frozen because its pricing basis had been changed to the December 2020 futures contract, so it appears to have behaved like a futures product with around eight months left to expiry, with a considerable amount of time that was yet to decay and therefore with little in terms of price movement/volatility. In other words, I have not seen evidence that the price was actually/actively 'frozen', in the ordinary meaning of the word(s).

I understand Mr V's argument about section 2.7, but I am not persuaded by it. The section refers to modifying "… *all or any of* [Admiral's] *dealing services (in whole or in part)* …". A modification is the same as a change; the section covers any of Admiral's dealing services and it covers the whole or parts of such services; applying prices to the products on its trading platform is a part of the trading service that Admiral provided/provides; so applying a change to this part of its trading service would have come under section 2.7. Overall, on balance and for these reasons, I do not consider that Admiral acted outside section 2.7 in applying the pricing basis change to the WTI Spot product on 21 April.

I appreciate that Mr V will say that the change resulted in a different product. I agree, as did the investigator. However, that alone does not mean it was outside section 2.7. By using the December futures contract – as opposed to the applicable near month contract June futures or, if necessary (and if the June futures was deemed too unstable or volatile), the next best near month contract of July futures – the product essentially stopped being a spot product and was akin to the December futures product. However, as drafted, I consider that section 2.7 can reasonably be interpreted broadly enough to cover a *modification* that creates a different product.

The balance applied to the above finding – as also existed in the investigator's view – is that there could be no fairness or reasonableness in using, for the facts of Mr V's case, the part of section 2.7 that said a modification could happen *with or without notice*. In the circumstances of his case and given that the change Admiral applied created a different product, the minimum obligation that it failed to discharge was the obligation to give notice to clients as the change was applied. Such a significant and fundamental change could not have been fairly applied without such notice. The least the clients were entitled to know was that the product that they had opened positions in and/or were trading was no longer what they understood it to be. Admiral appears to agree with this, but it says it had reasons for not informing clients at the time.

I do not accept Admiral's argument on the above. It says it had to make quick decisions in exceptional circumstances without prior information and without indications of further developments. These appear to be true. However, what I disagree with is its claim about not having the time or information needed to notify clients. In simple terms, it is clear that it had the time and information required to apply the pricing basis change to the product, it needed no more the same time and information in order to provide notice of the change – very important, given that a product that was being traded had changed into something else – to its clients, so it should have done so. Even if it could not forecast future development, a simple notice on its website that summarised the change and the reason for it would have been sufficient and the least it owed its clients.

I do not accept that Admiral's notices of 3 and 13 April served as substitutes for the notice that was required on 21 April. They served as reminders to accountholders that they should monitor their Oil based CFD positions even more closely at the time due to live and relevant events in the market, but nothing within them predicted the unprecedented negative global Oil pricing and/or the changing of the spot product into [essentially] a futures product. Furthermore, for those with opened positions in the product when the change happened, and for the reasons given above, Admiral should also have offered them the option to unwind their positions.

As is evident from the above findings, Admiral's wrongdoing was in its failure to give notice to its clients about the pricing basis change as it happened and in the associated failure to give clients the option to unwind their positions. The change itself was not unreasonable, so I do not agree with Mr V's argument that there was an obligation to retain the pre-existing pricing from 21 April and until the notice on 24 April. I do not find such an obligation, instead the notice should not have been delayed until 24 April and it should have been given as the change was applied on 21 April.

I also disagree with his argument about accepting his awareness, on 29 April, of the change. He concedes that Admiral's notice was on its website/platform on 24 April. In the context of its execution only service for the account the notices that it issued on 3 and 13 April should have prompted him to monitor website information relevant to his positions more closely during this period. He says he wrote to Admiral on 24 April, so he appears to have suspected a pricing issue by then – because the product price was mismatching the market price – and that should have given him additional reason to monitor the website on this date (and thereafter). I have not seen evidence that Admiral was obliged to go beyond the public website notification to the extent of writing personally to Mr V to inform him about the change. Overall, on balance and for these reasons, I consider that Mr V ought reasonably to have been aware of the change on 24 April when Admiral's website gave notice of it.

Putting things right

fair compensation

In deciding what is fair my aim is to redress Mr V's position based available reliable evidence.

There is available reliable evidence of the long WTI Spot positions he opened between 21 April 2020, when Admiral applied the pricing basis change to the WTI Spot product, and 24 April 2020, when it issued notice about the change on its website.

Like the investigator, I consider that Mr V's analysis and planning – aimed at opening the long positions at the support level that he anticipated the market price will drop to, and then pursuing gains in the price rebound that he also anticipated – led to the opening of these positions. His objective included the anticipation of a price rebound, so it is unlikely he would have opened the positions if he knew the pricing basis for the product would no longer reflect any spot/cash price rebound in the underlying market – due to the shift to pricing on the December futures contract.

Therefore, he would not have opened the long WTI Spot positions that he did between 21 and 24 April 2020. He must be compensated for any net loss he incurred from across these positions – excluding those that he closed *before* the pricing basis change was applied on 21 April 2020 (because they were opened and closed on the original and undisputed pricing basis for the product).

I order Admiral to unwind these positions as though they were never opened, and to pay Mr V any total net loss that he incurred from across these positions. As I said in my earlier findings, Admiral was not obliged to maintain the original pricing basis up to 24 April, so this order is solely for the compensation of loss that Mr V actually incurred in the positions (as defined above), it is *not* for compensation of lost potential profit had the original pricing basis been retained up to 24 April.

I do not have enough evidence to determine what Mr V would probably have done in the alternative, had he been given notice of the pricing basis change as it was applied and had he traded differently. I also have not found that Admiral was unreasonable in changing the pricing basis for the WTI Spot product – it was only unreasonable in its method of conducting the change (as addressed above). As such, I do not find grounds to award compensation for the lost potential profit that Mr V has claimed.

I agree with the investigator's proposal of a £250 payment for the trouble and upset caused to Mr V by Admiral's delay in issuing notice about the pricing basis change and not giving him the option to unwind positions that had been opened. Redress for this has been separately awarded above, so this trouble and upset award is not intended to cover or duplicate that. It is intended to provide monetary compensation for the distress and inconvenience Mr V would have faced as a result. I consider that £250 sufficiently covers compensation for this. Beyond this, Mr V seeks compensation for the onset and treatment of personal detriments associated with his overall claim of, and pursuit of compensation for, lost potential profits, but I have not upheld his claim for lost potential profit, and there is no finding of trouble and upset arising from that claim.

compensation limit

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £150,000, £160,000, £350,000, £355,000 or £375,000 (depending on when the complaint event occurred and when the complaint was referred to us) plus any interest that I consider appropriate. If fair compensation exceeds the compensation limit the respondent firm may be asked to pay the balance. Payment of such balance is not part of my determination or award. It is not binding on the respondent firm and it is unlikely that a complainant can accept my decision and go to court to ask for such balance. A complainant may therefore want to consider getting independent legal advice in this respect before deciding whether to accept the decision.

In Mr V's case, the complaint event occurred after 1 April 2019 (it happened between 21 and 24 April 2020) and the complaint was referred to us after 1 April 2020 (it was referred to us by his email of 27 April 2020), so the applicable compensation limit would be £355,000.

My final decision

For the reasons given above, I uphold Mr V's complaint and I order Admiral Markets UK Ltd to pay him compensation as set out above, and to provide him with a calculation of the compensation in a clear and simple format.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr V to accept or reject my decision before 3 May 2022.

Roy Kuku
Ombudsman