

The complaint

Mr T complains that Saxo Capital Markets UK Limited failed to notify him that that one of his derivative sub accounts was overdrawn. He went on to say that Saxo should have acted more promptly to stop further losses and interest being accrued.

What happened

In February 2022, Mr T says he undertook a number of trades and closed them out towards the end of March 2022 after incurring some losses. After that, he decided not to trade again and left a small amount of monies in his account to cover his losses after withdrawing his funds.

Mr T explained that after not logging into his account for some time, he logged back in around 5 May 2022 and at that point, noticed the balance outstanding on his account had increased significantly. He then added further funds to his account to bring his balance up to date.

Shortly afterwards, Mr T decided to formally complain to Saxo. In summary, he said that he was concerned that Saxo had failed to notify him of the negative balance, so he could've taken steps earlier to limit its impact.

After reviewing Mr T's complaint, Saxo concluded they were satisfied they'd done nothing wrong. They also said, in summary, that as an execution only provider, it was Mr T's responsibility to keep abreast of what was happening with his account. Saxo referred to their terms and conditions, which highlighted that they weren't under any obligation to send alerts to Mr T about the position of his account, and that monitoring of his funds was his responsibility. In addition, Saxo also provided clarification about how interest had accumulated on Mr T's account and explained the costs that they had levied were in line with the charges schedule which Mr T had been provided a copy of when he opened his account.

Mr T was unhappy with Saxo's response, so he referred his complaint to this service. In summary, he said that he was unhappy Saxo had failed to notify him that his account was significantly overdrawn or took mitigating steps to avoid further losses.

The complaint was then considered by one of our Investigators. He concluded that Saxo hadn't treated Mr T unfairly and felt that Saxo's terms, which Mr T had been provided a copy of, were clear. In addition, he also felt that the terms of Saxo's collections policy were a commercial decision for them and stood outside their general terms and conditions.

Mr T, however, disagreed with our Investigator's findings. In summary, he said that he didn't believe it was reasonable for Saxo to merely rely on the fact that his account is 'execution only' to absolve them of any blame. Mr T also said that as far as he is concerned, that relates only to the trading aspect of the account and that Saxo still has obligations in respect of the administration of the account. Mr T explained that had Saxo informed him of the

position of his account sooner, he could have added monies to his account at an earlier point to limit the impact of where he eventually found himself.

Our Investigator was not persuaded to change his view as he didn't believe that Mr T had presented any new arguments he'd not already considered or responded to. Unhappy with that outcome, Mr T then asked the Investigator to pass the case to an Ombudsman for a decision.

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.

I have summarised this complaint in less detail than Mr T has done and I've done so using my own words. The purpose of my decision isn't to address every single point raised by all of the parties involved. If there's something I've not mentioned, it isn't because I've ignored it - I haven't. I'm satisfied that I don't need to comment on every individual argument to be able to reach what I think is the right outcome. No discourtesy is intended by this; our rules allow me to do this and it simply reflects the informal nature of our service as a free alternative to the courts. Instead, I will focus on what I find to be the key issue here, which is whether Saxo acted fairly in allowing Mr T's account to start accruing interest without informing him.

My role is to consider the evidence presented by Mr T and Saxo in order to reach what I think is an independent, fair and reasonable decision based on the facts of the case. In deciding what's fair and reasonable, I must consider the relevant law, regulation and best industry practice. Where there's conflicting information about what happened and gaps in what we know, my role is to weigh up the evidence we do have, but it is for me to decide, based on the available information that I've been given, what's more likely than not to have happened. And, having done so, I'm not upholding Mr T's complaint – I appreciate that Mr T will be disappointed by this decision but I'll explain why below.

There's no dispute that Mr T was trading as an execution only client – this meant Saxo was not responsible for advising him or managing his positions. He alone was responsible for deciding how much money to deposit, when to open trades and on what markets, monitoring those positions, and when to close them. So, despite what Mr T may have said in his complaint, Saxo were not responsible for overseeing his positions or contacting him as and when his account was at risk of going into deficit.

Having looked at the terms of Mr T's agreement with Saxo, it seems clear to me that it's the consumer's responsibility to ensure that they are fully aware of their account status and balance at all times – that means it's up to Mr T to check and not Saxo. I'm satisfied that this is covered in Saxo's terms and conditions.

Mr T electronically accepted Saxo's 'General Business Declarations' in October 2020 that included a number of different policies which he confirmed that he had read and understood. I've looked closely at those documents, and I believe the following are most relevant to Mr T's complaint:

Risk Disclosure Notice

2.1.4 General - It is important to note that it is your responsibility to ensure that you continuously monitor your account at all times and that Saxo Markets is not obliged to provide you with any alert regarding failure to maintain margin on your account.

3.6 Need to Monitor Positions - It is important that you monitor all of your positions closely. It is your responsibility to monitor your positions and during the period that you have any open Contracts or Transactions, you should always have the ability to access your accounts.

General Business Terms

2.1 The Client acknowledges, recognises and understands that: 4) unless it is otherwise specifically agreed, Saxo Bank shall not conduct any continuous monitoring of the transactions entered into by the Client neither automatically nor manually. Hence, Saxo Bank cannot be held responsible for transactions developing differently from what the Client might have expected and/or to the disadvantage of the Client;

26.3 The Margin Requirement applies from opening a Margin Position and throughout the term of the Margin Position. It is the Client's responsibility to continuously ensure that sufficient Collateral is available on the Account at any time to meet the Margin Requirement. Saxo Bank may, but is not required to, notify the Client if the Margin Requirement is not met (margin call).

So, it seems evident to me that Saxo have made it clear that the onus is on Mr T to keep abreast of his positions and associated balances within his account and take action where necessary.

Mr T states that whilst he accepts he holds an execution only account, that shouldn't extend to what he believes are administrative issues which, he says, Saxo should have been more proactive about communicating with him on when his account moved into a negative balance. In February 2022, Mr T says he undertook a number of trades and closed them out towards the end of March 2022 after incurring some losses. After that, he decided not to trade again and left a small amount of monies in the account to cover his losses.

Mr T explained that when he withdrew the net balance from his account, he thought the monies he left in Saxo would cover his €:\$ losses. Mr T went on to say that as he left a positive GBP balance, he understood that this would be sufficient to offset those losses. Mr T also explained that after not logging into his account for some time, he logged back in around 5 May 2022 and at that point, quickly realised the balance outstanding on his account had increased significantly. He then added further funds to his account to bring his balance up to date.

In their complaint response to Mr T, Saxo provided a detailed explanation of how his account worked and importantly, why interest had started to accrue despite having funds in his GBP account. Saxo say that clients are required to have a positive account value on each account, and a positive net free equity on the main trading account at all times. Saxo went on to say that interest is charged despite having an overall positive cash balance if there is a deficit in any of the customer's accounts. It therefore seems to me that Mr T mistakenly believed that because he held a positive GBP balance, he wouldn't accrue interest on his €:\$ losses. But, just because he didn't appreciate the impact of that, it doesn't necessarily follow that Saxo have done anything wrong and that's because, as I've already explained, Mr T was trading as an execution only consumer.

In his complaint submission, Mr T has stated that Saxo only contacted him to start recovering the interest charges after he'd prompted them following his complaint. However, Saxo have shared evidence with this service that they had already initiated contact with him

to prompt additional cash to be added to his account to bring it back into order prior to him making a complaint.

Finally, I've not seen any evidence to persuade me that Saxo have applied interest charges inaccurately to Mr T's account so I can't conclude that he has been treated unfairly on this point either.

My final decision

I'm not upholding Mr T's complaint and as such, I'm not instructing Saxo Capital Markets UK Limited to take any further action.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 17 May 2024.

Simon Fox
Ombudsman