

The complaint

Mr D has complained about the spread betting account he had with IG Index Limited ('IG'). He says it wasn't appropriate for him, he couldn't withdraw funds, funds on account weren't invested, the account wasn't closed when it should have been, and he was given false information about the protection of his investments. To put the matter right, Mr D wants his losses of around £22,500 to be reimbursed.

What happened

Mr D opened his account with IG on 6 September 2017 and placed his first trade on 24 October 2018.

In March 2020 Mr D had positions in US and Brent Crude oil. As a result of volatility in the market because of the 'Russian-Saudi oil price war' and a failed OPEC deal Mr D wanted to close his positions and withdraw cash. Mr D says he wasn't able to access his account. However, because Mr D's running losses had reduced his account equity to below 50% of his margin requirement, the positions were automatically closed on Sunday 8 March at 10pm (between 22.00:51 – 22.02:20) UK time when the markets opened.

Over the following days Mr D spoke with IG and a complaint was raised. In its letter of 22 December 2022 IG didn't uphold Mr D's complaint;

- It couldn't find any attempt was made to withdraw funds on 6 and 7 March 2020 as stated by Mr D even though Mr D was active on his account at the time.
- On 8 March 2020 there was no evidence Mr D wanted to close positions or withdraw funds.
- Mr D's oil positions were closed due to margin call following price volatility. Mr D's phone call wasn't answered on the following day because of high call volumes but even if he had been put through to the dealing desk this was after the positions were closed.
- It was explained to Mr D on 12 March that he hadn't been able to withdraw funds over the weekend as it would be outside of banking hours and equally, he wouldn't have been able to close his positions as it was outside of market hours.
- It provided evidence of Mr D's successful log in attempts so couldn't agree Mr D had cause for complaint.
- Its margin policies were correctly applied. When markets opened on 8 March 2020 Mr D's running losses were below 50% of his margin requirements and his positions were automatically closed due to negative balance rules and to avoid the account going below zero. Mr D wouldn't have been able to have closed his positions outside of market hours.

In its later letter of 17 March 2023 IG further addressed Mr D's concerns about the disappearance of £35,651 from his account, calls with its help desk, lack of response to a complaint raised on 29 July 2021, being promised security of his invested money,

investment advice he had received and his request to withdraw funds of around £25,000 in July and November 2019 when he says he was advised to stay invested;

- It couldn't find any evidence that Mr D had been contacted by IG on 5 September 2017, only on the following day by a member of its new business team when Mr D's account was activated.
- It confirmed Mr D didn't have an account manager as the service offered was execution only. But he was given information when requested. Upon account opening he was informed about his previous broker's market capitalisation in comparison to IG's and that IG would be at less risk of default. Any business default would only result in a repayment of £85,000 to a customer by the Financial Services Compensation Scheme ('FSCS') if appropriate. But there was no evidence that Mr D was advised about his money invested with IG rather than banks or whether his funds would grow.
- There was no evidence of multiple calls being made to Mr D. Only the above sales call and Mr D making contact a year later when he funded his account for market and platform information.
- There was no evidence that Mr D had called in July or November 2019 requesting fund withdrawals or trades were placed on his behalf.
- Mr D had received confirmation on 2 August 2021 that his account had been closed as requested. Mr D responded to that email on 2 September 2021 requesting further account information to raise a complaint with this service but didn't reply to IG's request for more detail to provide the information requested. So, it couldn't agree that IG hadn't responded to his complaint.
- It had already addressed Mr D's complaint about missing funds in its earlier response to his complaint – as above, his positions were closed due to margin call.
- Mr D hadn't detailed how IG had breached the Conduct of Business ('COBS') rulebook – COBS 4.2.4 or COBS 4.2.5. But there was no evidence he was provided with trading advice or that IG had traded on his behalf.

Our investigator who considered Mr D's complaint didn't think it should be upheld. She said;

- IG had assessed whether the account was appropriate for Mr D, and she concluded that it had correctly applied the information he had provided.
- Initial call recordings suggested that it was Mr D who had contacted IG to open an account – he had only recently become aware of IG's services and had found it independently.
- Any money Mr D thought had disappeared had been lost through his trading activity.
- The account was execution only and IG had provided information that was clear and not misleading when Mr D asked questions.
- Mr D had been warned about the risks and was informed about online courses for him to further understand spread betting and strategy.
- Mr D's positions had been closed correctly because of margin call requirements. All his funds were invested in which is why they fell in value.
- Mr D's account had been closed on 2 August 2021 in response to his request to close it on 29 July 2021.
- IG had assessed Mr D's account closure request email as a request for more information. It sought to establish what information Mr D required but it didn't receive

any response so his email wasn't treated as a complaint.

- The investigator couldn't find any evidence to suggest Mr D was assured his funds were protected. Only a reference to the FSCS.
- She couldn't agree that IG had breached COBS4.2.4(G) and 4.2.5(G) regarding the firm's obligation to 'ensure that a communication or a financial promotion is fair, clear and not misleading.'

Mr D didn't agree with the outcome. As the complaint remains unresolved, it has been passed to me 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.

We are an informal dispute resolution service set up as a free – to consumers – alternative to the courts. In deciding this complaint, I have focused on what I consider to be the central issues that are relevant to the outcome of the complaint, rather than commenting on every issue in turn. This isn't intended as a discourtesy, rather it reflects the informal nature of our service and my remit.

Appropriateness

Mr D's account with IG was execution only. But as spread bets are classed as a complex instrument by the regulator then IG needed to assess whether such an account was appropriate for Mr D. COBS sets out the requirements for a business to assess the appropriateness of the service to its customer. COBS 10A.2.1 says;

'A firm must ask the client to provide information regarding that client's knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded to enable the firm to assess whether the service or product envisaged is appropriate for the client.'

COBS 10.2.2 sets out the nature of the information a firm must ask for, and COBS 10.2.4 says a firm is entitled to rely on the information provided by a client. I've considered this and taken into account the information Mr D supplied when he opened the account and how IG assessed his appropriateness.

Mr D's account opening application form confirmed he was employed in a management role, had savings of between £5,000 and £25,000 and had a large annual income. Over and above this IG has explained how it assesses appropriateness for its clients taking into account their knowledge and experience. It asks a series of questions and the answers given by the clients are allocated a score. Mr D scored double its minimum score.

I've reviewed the questions asked of Mr D before the account was opened. In the previous three years Mr D said;

- he had traded over the counter ('OTC') derivatives (trades not made on a formal market) and exchange traded derivatives (standardised derivative contracts traded on a regulated exchange) between ten and twenty times.
- He hadn't traded any shares or bonds.
- He confirmed he had mostly traded those products 'independently or with advice.'
- He didn't have 'any experience or qualifications relevant to the understanding of our

products.'

I've considered the above and I can't see there was any reason for IG to have considered that Mr D wasn't competent in opening such an account. He clearly had some knowledge and relevant experience of trading in complex investments during the previous three years and there was nothing to suggest trading was unaffordable for him. So, I'm satisfied that IG didn't do anything wrong in allowing Mr D to open his spread betting account.

Contact and withdrawal of funds

In March 2020 Mr D had positions in US and Brent Crude oil. The oil price fell by nearly a third over the weekend of 7/8 March 2020 because of a failed OPEC deal. Mr D says that during this time he couldn't access his account and trade or withdraw funds as he had wanted to.

I've listened to the recording of the call Mr D had with IG on 8 March 2020. He explained he hadn't been able to log into his online account and says he had tried four times. During the phone call however, he was able to log in. He asked about the 50% margin call, and it was explained to him that when his account equity dropped beneath 50% of his margin requirement closure of his positions would be triggered.

There's no reference during that call of Mr D trying to withdraw funds and IG has said that it has no data evidence of Mr D attempting to withdraw funds online. Mr D's oil positions closed when the market opened.

I have listened to the further calls Mr D had with IG on 9, 10, 11 and 12 March. It's clear that Mr D wasn't happy he couldn't access his account online as he wanted to or that phones weren't answered. During these calls it's explained to Mr D that IG and the stock markets had been busy and that some US exchanges had suspended or restricted trading because of 'limit down' breaches.

It was also explained that Mr D's positions would have been closed as soon as the markets opened because of the lack of margin. However, the orders may not necessarily have been filled immediately upon opening because of market volatility and price gaps. But Mr D wouldn't have been able to trade any earlier over the weekend to close his positions because the markets weren't open until 10pm on Sunday UK time.

Equally, if Mr D had tried to remove funds from his account over the weekend, any withdrawal wouldn't have been processed until the Monday within banking hours. And if Mr D – knowing that he would suffer losses when the market opened – had tried to withdraw funds from his account prior to that, then that would be 'cheating the system'. I assume this comment was made because retail client accounts can't go below zero and IG would have to recredit the client account if this happened – and which is what happened in this case.

I appreciate that Mr D says he couldn't access his account online – and he should be able to have 24-hour access – and that his phone calls over the weekend weren't answered. But the two actions Mr D says he wanted to carry out – close his positions and withdraw funds – wouldn't have been carried out before the markets opened and banking hours in any event. So even though I haven't seen any evidence that Mr D couldn't access his account I can't see that Mr D has suffered any detriment if that was the case because he was limited in the action he could have taken with his oil positions and funds on account.

The phone recordings suggest to me that Mr D was under the impression that his equity/cash on account – would be protected if positions were closed because of margin call requirements.

But during those calls it was also explained to Mr D that if the account equity, less the deficit on the positions, reached 50% then it was at that point the position closure would be triggered. But this would also depend upon how busy the market was, volatility and price gapping and how long it took for the order to be filled. This meant that the amount of equity remaining on the account couldn't be guaranteed. And this is what happened in this case – the positions couldn't be closed exactly at the point 50% margin call was breached because of the volatility in the oil market and the impact that had on Mr D's positions. But as already explained, IG reccredited his account to zero.

How the account was opened and security of funds

Mr D has said he was approached by IG and persuaded into opening his account. He also says he was assured of the security of his funds.

I've listened to the calls that Mr D had with IG when he first opened his account. They indicate Mr D had an account elsewhere and was still holding some positions. He also says that he had previously been unaware of IG in the spread betting market and had only recently discovered the firm. There was a general discussion about what products IG offered but I can't agree that he was assured about the security of the funds to the extent he says he was.

Mr D referred to an account he had with the other broker, and it was explained by IG's representative that the other broker had struggled with capital adequacy in the US, and it was ongoing. The representative detailed the history and the size of IG compared to that other broker, particularly in the case of business default. The safety net of the FSCS was also discussed. But I can't agree that Mr D was given any other assurances about the security of his funds.

Was Mr D given advice?

Mr D has said that he was given advice by IG. But after listening to the selection of calls – from the time of the account opening and the closure of the oil positions – I haven't heard anything to suggest that Mr D was given trading advice by IG.

It's clear at the outset contact was made with Mr D and he was assisted in accessing his online account and there were discussions about the markets and instruments offered by IG as well as charging and margin required for different instruments. But I can't agree that during the calls I have listened to that Mr D was given anything more than information and which included reference to demonstration facilities and on line learning available.

Equally, from the information I have reviewed, while I see there were some emails to and from Mr D – providing assistance/information – there's nothing to make me think that Mr D had his own account manager or that IG traded on his behalf.

Account closure instruction

IG has provided a copy of Mr D's account closure instruction from 29 July 2021 and that he wanted 'all the funds deposited into the account to be returned to the originating source.'
Mr D went on to say;

'I have a reason to believe that I lost the funds due to the Company's professional misconduct. In order to assess my complaint, I kindly ask you to review (and share with me) the phone calls and conversations between myself and your manager, as well as a detailed evaluation of my trading activity (account records, brokerage trade

confirmations, including the proof that my funds were in fact loaded into a segregated trading account, the overview of positions held, trades over the time period when the margin calls were exercised, timeseries data of the margin of the account, etc.).’

‘Supporting evidence’ was attached to the email which included the regulatory status of IG, Mr D’s account ledger for April to November 2019, statement of trades and account summaries.

On 2 August 2021 Mr D’s email was responded to;

‘Thanks for your email.

I can confirm that your account has been closed as per your request. I can see from your attachment that you have transaction and trade summaries for your account. Please clearly confirm which information is outstanding and so that we can investigate.

If you have any further queries, please do not hesitate to contact us.’

Mr D responded a month later requesting call recordings, account records, brokerage trade confirmations, evidence his funds were held in a segregated trading account, overview of his positions held, trades over the time period when margin calls were exercised and time series data of the margin of the account. He believed he had lost funds due to IG’s professional misconduct.

In response IG sought information about the details of the phone calls as the last call he had was in 2019 but Mr D didn’t respond or provide anything further about which IG could investigate. However, I understand that IG has subsequently been provided with recordings of the calls for the periods Mr D mentioned.

While IG may not have responded as Mr D had hoped – and I do think Mr D’s message was an expression of dissatisfaction/complaint – but after it sought additional information from him, Mr D didn’t respond or clarify what IG’s professional misconduct was in order for it to be able to address his concerns. So even though Mr D would have liked for IG to have considered his email as a complaint, I am satisfied that IG did seek further clarification from him about that but due to the lack of response it was limited as to how it could proceed. However, I can’t see that Mr D has been caused any detriment by this. I say this because his account was closed as requested and he has now been able to bring his complaint to this service, albeit later than he otherwise would have done.

February 2023 account closure request and COBS

Mr D requested that his account be closed on 22 February 2023 and in doing so referred to COBS 4.2.4 and COBS 4.2.5 and requested that the deposits be returned to their originating source.

However, by this time Mr D’s account had already been closed in 2021 and IG had already addressed his initial complaint in its response on 22 December 2022 so it would have been difficult for IG to assess what action Mr D wanted. However, I have considered IG’s compliance with the COBS Mr D referred to – specifically COBS 4.2.4 ‘Fair, clear and not misleading financial promotions’. Essentially this rule says that the information given about a product or service that can place a client’s capital at risk should be fair, clear and not misleading.

I've also considered whether Mr D was sufficiently warned – over and above his recent trading experience – of the risks involved. I can see from the Customer Agreement that the risks were highlighted at the beginning of the document and clearly explained – they carried a high level of risk and were not suitable for everyone.

And all emails sent to Mr D had the following risk warning attached;

'All trading involves risk.

Spread bets and CFDs are complex instruments and come with a high risk of losing money rapidly due to leverage. 76% [this would vary based on the date of the email] of retail investor accounts lose money when trading Spread bets and CFDs with this provider. You should consider whether you understand how spread bets and CFDs work and whether you can afford to take the high risk of losing your money.'

So, I'm satisfied IG carried out its obligation to make Mr D aware that he could lose his money and spread betting was high risk. Mr D was given information about the spread betting account that was clear, fair and not misleading.

Taking all of the above into account, I've seen nothing to persuade me that IG has done anything wrong. It was correct to close Mr D's positions when his account equity had dropped below 50% of the margin requirement. Mr D wouldn't have been able to withdraw funds or carry out trades as he would have liked on Sunday 8 March – even though I've not seen any evidence he attempted to do so. IG closed his account upon his request, it didn't misinform him, and I can't see he had his own account manager or was persuaded either to trade or not close his account.

From the evidence I have seen it was Mr D that approached IG to open his account and all of the information provided to him was clear, fair and not misleading. It therefore follows that I don't uphold Mr D's complaint.

It's clear that Mr D feels strongly about his complaint and no doubt will be disappointed with the outcome. But I hope I have been able to explain how and why I have reached the decision that I have.

My final decision

For the reasons give, I do not uphold Mr D's complaint about his spread betting account with IG Index Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 26 February 2024.

Catherine Langley
Ombudsman