

The complaint

Mr K complains that TF Global Markets (UK) Limited, trading as ThinkMarkets, cancelled a number of profitable trades on his contracts for difference (CFD) account.

Mr K would now like ThinkMarkets to refund the profits from the trades that they cancelled.

What happened

On 5 March 2023, Mr K opened a CFD account with ThinkMarkets; ten days later, between 15 and 27 June 2023, Mr K opened several positions in a pharmaceutical stock. Those trades were very successful for Mr K and resulted in profits of around £151,000, which he then attempted to withdraw. However, ThinkMarkets subsequently cancelled those trades on 29 June 2023, stating that they breached the terms and conditions of the account.

Shortly afterwards, Mr K decided to formally complain to ThinkMarkets. In summary, he said that he was unhappy that the trades had been cancelled and asked for his profits to be reinstated.

After reviewing Mr K's complaint, ThinkMarkets concluded they were satisfied they'd done nothing wrong. They also said, in summary, that the trades had been cancelled in line with their terms and conditions. In such circumstances, ThinkMarkets said that they reserved the right to remove and nullify any corresponding profits and/or losses.

Mr K was unhappy with ThinkMarkets' response, so he referred his complaint to this service. In summary, he repeated the same concern that he'd set out to ThinkMarkets, and that was the trades that they'd cancelled were done so, unfairly. In addition, Mr K said that he'd not been provided with an explanation about which of ThinkMarkets' terms or conditions he'd breached and said that their correspondence with him had been 'vague' about specifically what he'd done wrong.

The complaint was then considered by one of our Investigators. She concluded that ThinkMarkets hadn't treated Mr K unfairly because from what she'd seen of their terms and conditions, ThinkMarkets acted within those terms when cancelling his trades.

Mr K, however, disagreed with our Investigator's findings. In summary, he said that both ThinkMarkets and our Investigator had made a number of mistakes when reaching their respective conclusions. Those were:

- ThinkMarkets had inaccurately portrayed Mr K as a director of a public company, unfairly suggesting that the information he was privy to in his role gave him an unfair advantage.
- Mr K went on to say that his trading activity wasn't linked to buying and selling CFDs relating to the energy and biotech sector as had been suggested. Mr K went on to say that suggesting as much was a strategic attempt to cast doubts on the legitimacy of his trades.

- Mr K says that ThinkMarkets' assertion that he's undertaken 'possible market abuse' has been made without substantiation and he's always upheld the integrity of trading regulations.
- All of the trades Mr K undertook, he says, were done so well before any news releases. He went on to say that ThinkMarkets had tried to deliberately mislead this service.
- Despite what ThinkMarkets' terms and conditions state, Mr K says that their narrative of his trading activity is fundamentally flawed and misleading.

Our Investigator was not persuaded to change her view as she didn't believe that Mr K had presented any new arguments that she'd not already considered or responded to. Unhappy with that outcome, Mr K 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 K 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 it was fair and reasonable for ThinkMarkets to cancel Mr K's trades.

My role is to consider the evidence presented by Mr K and ThinkMarkets 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 K's complaint.

I've looked very closely at the submissions of both parties, and I wanted to start by acknowledging to Mr K that I very much appreciate his strength of feeling about this matter. He says the impact of having such a significant sum of money debited from his trading account has been very stressful. But, for me to make an award to Mr K, I have to conclude that ThinkMarkets has done something wrong, but from the evidence that I've seen, I've not been persuaded that they have - I'll explain why below.

As a regulated business, the Financial Conduct Authority require ThinkMarkets to monitor all trading activity that takes place through their trading systems. And, as a result of that monitoring, ThinkMarkets state that they cancelled a number of Mr K's trades because, in their opinion, his trading activity gave them cause for concern. I need to be very clear here that my decision is not about whether Mr K has done something wrong but to decide whether ThinkMarkets has acted fairly and reasonably in the circumstances and specifically whether the action that they've taken is in line with the terms and conditions that are set out in their agreement with Mr K.

ThinkMarkets provided me with a copy of their Client Terms and Conditions document that Mr K confirmed he'd read and accepted on 5 March 2023, and I've studied that document carefully. This document sets out what Mr K can expect from his relationship with ThinkMarkets. I've set out the relevant provisions of ThinkMarkets' terms below. I have highlighted in bold what I consider the key parts are in terms of my findings.

Clause 18.2 Market Abuse

"18.2.1. When ThinkMarkets executes a Transaction on the Client's behalf, ThinkMarkets may buy or sell on securities exchanges or directly from or to When ThinkMarkets executes a Transaction on the Client's behalf, ThinkMarkets may buy or sell on securities exchanges or directly from or to another financial institution shares or units in the relevant instrument. The result is that when the Client places Transactions with ThinkMarkets the Client's Transactions can have an impact on the external market for that instrument in addition to the impact it might have on ThinkMarkets price. This creates a possibility of market abuse."

Clause 18.2.2:

"You represent and warrant to ThinkMarkets and agree that each such representation and warranty is deemed repeated each time you close and open a Transaction and each time you place or cancel an Order that:

(a) You will not place and have not placed a Transaction with ThinkMarkets or otherwise behaved, nor will you behave in a manner that would amount to market abuse and/or market manipulation by you (or by you acting jointly or in collusion with other persons).

(b) You will not have placed a Transaction or order that contravenes any primary or secondary legislation or other law or regulatory rule including in relation to insider dealing or any corporate finance activity."

Clause 18.2.3:

"In the event that you place any Transaction or order in breach of any of the representations or warranties given above, or ThinkMarkets has grounds for suspecting that you have done so, ThinkMarkets may, in our absolute discretion (and with or without giving you notice): (i) close the Transaction or order and any other Transaction or orders that you may have open at the time; (ii) enforce the Transaction against you; or (iii) **treat all your Transactions as void**, unless and until you produce conclusive evidence that you in fact have not committed the breach of the representations and warranties above."

Clause 18.2.4:

"The exercise by ThinkMarkets of its rights under this clause shall not affect any other right of ThinkMarkets, under this Agreement or law, whether in respect of that Transaction or order, or any other Transaction or order."

In short, Clause 18.2 allows ThinkMarkets to void all transactions where it has 'grounds for suspecting' that a client has placed a transaction that would amount to market abuse or market manipulation. Importantly, the wording of the above terms doesn't require that ThinkMarkets establish that Mr K has in fact placed a transaction that amounts to market abuse or market manipulation. They provide ThinkMarkets with a contractual discretion, where if, in their opinion, they feel that he traded in such a way, they can take a number of steps, including treating trades as void and making corrections and adjustments to the account. To be clear, such terms are not uncommon in broker agreements and there is

nothing wrong with ThinkMarkets imposing such terms on its customers. If ThinkMarkets believe transactions did involve such practices, it can then exercise its contractual discretion under clause 18.2 to void all transactions.

ThinkMarkets must exercise its contractual discretion honestly and in good faith without arbitrariness, capriciousness, or irrationality. This is commonly referred to as the 'Braganza duty' set out in the case of *Braganza v BP Shipping Limited* (2015) UKSC 17.

So, I don't need to decide whether it is more likely than not that the trades placed by Mr K involved market abuse or manipulation. I just need to decide whether ThinkMarkets exercised its contractual discretion in accordance with its Braganza duty. In other words, whether when ThinkMarkets judged that Mr K's trades appeared to be of a certain nature, it exercised its judgment honestly and in good faith, without arbitrariness, capriciousness, or irrationality.

In this regard, whilst I have summarised the points made by Mr K in response to the Investigator's opinion to show I have considered these, I don't think it is necessary for me to address what he has said as this doesn't go to the issue of whether ThinkMarkets exercised its contractual discretion under the relevant clauses in line with its Braganza duty. Having considered what the parties have told me and the overall evidence I am satisfied that ThinkMarkets exercised its contractual discretion in accordance with its Braganza duty.

It's not for this service to determine which trades ThinkMarkets should and shouldn't have cancelled. In line with other large businesses, ThinkMarkets say amongst the tools they use to monitor for transactions that look out of the ordinary, they utilise automated transaction monitoring software that is common across the industry. ThinkMarkets have stated that based on the number of orders which they received for a specific stock within the space of just two weeks, along with the volume of each order and the amount traded, they suspected possible market abuse. Those suspicions were heightened because of the short length of time Mr K had held the account for. And, after undertaking a detailed review of Mr K's trades, ThinkMarkets concluded the trading strategies he'd employed were an abuse of its services and a breach of its terms and conditions.

Therefore, I am satisfied that ThinkMarkets exercised its contractual discretion under the relevant clauses in accordance with its Braganza duty and that it didn't act arbitrarily, capriciously, or irrationally - given the information available to it at the time - in voiding Mr K's trades in accordance with its rights under the clauses I have set out above.

I'm therefore satisfied that ThinkMarkets' general terms and conditions provides them with sufficient discretion that allows them to void any transactions which they suspect are the result of market abuse, without the need to actually establish market abuse. And, it's for that reason that I'm not upholding Mr K's complaint.

My final decision

I'm not upholding Mr K's complaint and as such, I'm not going to instruct TF Global Markets (UK) Limited, trading as ThinkMarkets, to take any further action.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 3 October 2024.

Simon Fox

Ombudsman