

The complaint

Miss L says Tickmill UK LTD ('Tickmill') is responsible for over 300 margin call close-outs (and a total loss of around 44,000 EUR) incurred in her trading account(s) on 9 March 2020. She says a defect in Tickmill's payment processing system prevented her from making a deposit into the account on 8 March 2020, which then led to the account breaching maintenance margin required for her open positions and led to the close-outs.

What happened

Miss L and Tickmill shared evidence with this service that included the following:

- Correspondence from 4 March 2020 (and thereafter), when a technical payment processing problem caused a processing delay of eight hours to a deposit Miss L made; this was for 500 EUR and Tickmill accepted responsibility for the technical problem; on the same date Miss L also had a transfer payment (between her Tickmill accounts) which faced the same technical problem and the same length of delay; this was for 200 EUR and Tickmill accepted responsibility for this too.
- Information on a total of 12 payment processing problems Miss L says she faced between May 2018 and March 2020 (including those of 4 March 2020 and the problem of 8 March 2020 she has complained about). In response to these problems, and as part of its reply to Miss L's complaint about the 8 March problem, Tickmill said –

"... there are a number of varied reasons why this has happened i.e. malfunction on your bank side, server delay between your bank and card processor, insufficient amount of funds etc.

However ... it was clear that you made a second attempt straightaway which was successful and the deposit was credited to your MT4 account."

"To summarise, there were 2 instances where a delay was caused by Tickmill. The other instances in question, no funds were debited from your card and these issues are beyond our control.

I would therefore like to conclude my review to offer as a gesture of goodwill from Tickmill 100 EUR to be credited to your trading account for any inconvenience caused. This is a one off payment and we are not accepting any liability on our part."

Both parties also shared other complaint related correspondence.

- Account activity evidence showing that other than around two close-outs between 04:46 hours and 04:47 hours on 9 March, the rest of the close-outs in Miss L's account on this date happened over around a minute between 04:49 hours and 04:50 hours.
- Confidential documentary evidence shared by Miss L to confirm that the card

payment she made on 8 March was well funded and that there was even more funding on standby in order to make further payments to feed margin in the account if needed. In this respect, Miss L also shared information about her funding strategy and arrangements.

- Correspondence from Miss L's bank/card company confirming that after she submitted the payment on 8 March Tickmill had to make an authorization request, but no such request was made so the transaction could not be completed.

One of our investigators shared his initial thoughts with Tickmill. Overall, Tickmill disagreed with the initial views he expressed. In the main, the exchange was as follows:

- The investigator said he was minded to conclude that it is likely Tickmill's system had a fault in processing deposits into the account at the time (on 8 March).
- The first reason he cited was what he considered to have been a similar issue arising previously on 4 March – he referred to this in terms of both the deposit and transfer payments that faced problems on this date. Tickmill argued that the issues on 4 and 8 March were not similar; that the deposits were actually received on the former date and its system was at fault for the delay in processing them; Miss L incurred no financial loss from that incident; in contrast, no deposit was received on 8 March, so Tickmill was not responsible for the matter and responsibility lay between Miss L's bank and the relevant Payment Service Provider ('PSP').
- The investigator's second reason was that the card company had confirmed it did not decline the transaction and that Tickmill did not send an authorization request. Tickmill doubted this was the case and said it could see that the PSP recorded a rejection so it must have received a negative call-back from Miss L's bank/card company.
- The next reason given by the investigator was that there is screenshot evidence showing that the payment was 'pending' and that this matched the other examples in which payments remained pending for a delayed period. In response, Tickmill said all unsuccessful deposit attempts are noted as pending on its system, in order to reflect that there has been a deposit attempt.

The investigator also put preliminary queries to Miss L, and to Tickmill, in terms of what was more likely (than not) to have happened if she was able to make the deposit she sought to make on 8 March – 225 EUR – and how (if at all) that could have correlated with avoidance of the total loss that followed.

Miss L referred to her margin monitoring strategy, her access to ample funds for this purpose, her attempt to apply the strategy on 8 March and how she was frustrated when the payment did not go through – in response to which she contacted Tickmill. Tickmill said, in broad terms, the deposit would have avoided the majority of the close-outs (and losses) but a few close-outs could still have taken place subsequently. Upon consideration, the investigator's view was that whilst some close-outs, as described by Tickmill, could have been possible after the deposit payment there is evidence that Miss L could have supported her margin even further beyond this payment and she had the finances available to do so. He shared with Tickmill that he was minded to uphold the complaint and to ask it to compensate Miss L for "... losses on trades closed which would have remained open had the 225 euros been successfully deposited".

The investigator proceeded to confirm a view in which he concluded that the complaint

should be upheld and that Miss L should be compensation for "... *losses incurred on trades closed which would have otherwise remained open had her attempt to deposit €225.00 been successfully processed*" and that "*She should also be paid £400.00 redress for the trouble and upset she has experienced as a result of the error*". He based this conclusion on broadly the same preliminary findings he had shared with Tickmill and he was not persuaded by its responses to those findings – highlighting that the payment remained 'pending' on its system up to 22 March 2020 and its status does not appear to have changed to 'failed' until 16 May 2020; that evidence from the bank/card company was reliable; and that there was a lack of evidence that there was an error by Miss L or by the PSP in the process.

There is record of a telephone conversation between Miss L and the investigator in terms of the practical effect of the redress he proposed. She wrote in thereafter and objected to what she understood as a limited form of redress which, she said, did not cater for her losses. Tickmill disagreed with the investigator's conclusion and stressed that it cannot fairly be held responsible for the processing of a deposit it never received.

The matter was referred to an ombudsman.

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 expressed by the investigator for broadly similar reasons. I uphold Miss L's complaint.

I note the points she has made about redress. She says she initially understood the redress proposal to mean compensation for her losses, but she then understood something not quite the same from her conversation with the investigator. I have taken the view that the investigator's redress proposal – as quoted above, directly from his preliminary and concluding findings – is indeed compensation for Miss L's losses in the matter, as she appears to have initially understood it to be. It is not clear if something different was said or perhaps misunderstood during the telephone conversation she has referred to, but the investigator's *written* views clearly confirmed compensation as I have quoted above and that amounts to compensation for Miss L's losses in the matter – which, as I set out further below, is also my finding.

I understand Tickmill's objections to the idea of upholding the complaint. Its core position is that it cannot reasonably take responsibility for the processing of a deposit that it says never reached Tickmill – in other words, it says there was no deposit to process. In another case, this might be a credible argument but in this case the point that Tickmill appears to have missed is that if, as the balance of available evidence suggests, the deposit did not reach its system because it had not requested authorization for release of the payment, then that in itself is a responsibility it failed to discharge.

The relevant bank/card company has confirmed that the payment submitted by Miss L on 8 March awaited an authorization request from Tickmill that never happened. I too consider this evidence to be credible and I have seen no evidence that the relevant bank/card company has been untruthful about the matter. If Tickmill's system was supposed to give it notice about this pending authorization request but failed to do so, that would have been part of its responsibility in the matter. It is not disputed that the system had twice already displayed payment processing faults four days earlier. I understand Tickmill's argument that the fault related to delays in processing deposits that were actually received, however this does not automatically discount the possibility that the system fault – which Tickmill has not established was resolved prior to 8 March – could have worsened by 8 March to the extent

of not prompting authorization requests in the first instance.

Tickmill could argue that I do not have technical evidence to make a finding that the problem in its system as of 4 March worsened thereafter. I make no absolute technical finding in this respect, but it is reasonable to make a finding on the balance of probabilities and, as a basis for the finding, to reflect factual evidence that the authorization request that it should have made was not made and that it does not appear to have been aware of that at the time. It appears more likely (than not) that there was a defect in the system or process that should have made Tickmill aware of the pending authorization request at the time, but did not.

The system clearly applies a distinction between payments that are pending and those that failed – hence the different respective status categories for either – and I do not find it credible that the word ‘pending’ would have been used to describe ‘all’ unsuccessful payments. Surely the word ‘failed’ would have applied in this respect, otherwise it begs the question – *when would it have applied?* Furthermore, and as the investigator said, the payment of 8 March continued to have a pending status for weeks and, it appears, months. This – and the lack of notice about the authorization request – indicates to me that the system and/or process defect was more likely (than not) to have been deeper or wider than Tickmill considered at the time. Like the investigator, I have not seen evidence that the PSP or any third party shares or undertakes responsibility in this case.

Overall and on balance, I consider that Tickmill’s system/process had a defect that prevented proper authorization and processing of the deposit made by Miss L on 8 March; that she was in Tickmill’s hands at the time and could not mitigate the matter independently (she could not make deposits where the system was not accepting deposits); that Tickmill itself appears to have been in a position whereby it did not know how to resolve or mitigate the matter at the time; and that but for the deposit being hindered it would have been successfully processed and it would have fed the maintenance margin for Miss L’s open positions as she intended.

I am also satisfied with the balance of evidence that Miss L would have been in a position – given her attention to the account at the time and in terms of her access to more than sufficient funds required to maintain margin – to manage margin in the account and to avoid any close-outs. Tickmill appears to accept that the majority of the close-outs that happened would have been avoided by the initial deposit she sought to make at the time. I consider it inconceivable that she would have stopped at that single deposit, unless she could do so safely. She was monitoring the account and had the ability (and finances) to continue funding the account to the extent that she needed to in order to sustain her open positions and I consider it more likely (than not) that, but for the problem she faced, she would have done that successfully.

Putting things right

It follows from my findings above that the close-outs (and losses) incurred by Miss L would probably have been avoided but for the deposit processing problem that Tickmill is responsible for.

At the time of the events last year – and at the time of her initial complaint last year – Miss L asked for the reopening of the closed-out positions. I can understand why she made such a request, but Tickmill did not oblige her with that and over a year and a half has elapsed since.

Fair compensation, at present, would be to put Miss L as close as possible to the position she would be in had she been able to fund her account and had the close-outs been avoided. It is not possible to replicate this precisely, because there are key unknown

variables in terms of what would have happened thereafter – that is, it is not known precisely how the over 300 positions would have behaved and/or been managed thereafter and what outcomes they would have had. I consider that an attempt to draw a conclusion on this, with the benefit of hindsight that did not exist at the time, will be unsafe.

I am satisfied that a reasonable compromise is to address the damage to Miss L that is known, as a fact, to have happened. That is the close-outs that happened and the financial losses they crystallized/created. But for the payment problem that prevented her from funding the account, neither the close-outs nor the financial losses would have happened at the time, so she should be compensated for said financial losses. Available evidence is that these close-outs happened across Miss L's four trading accounts.

I order Tickmill to calculate the total financial losses that arose from all the close-outs that happened in Miss L's four trading accounts in the morning of 9 March 2020 (broadly between 04:46 hours and 04:51 hours, as set out in the activity statements for the accounts); I order Tickmill to pay Miss L the total of these financial losses as compensation; and I order Tickmill to provide Miss L with the calculation of this compensation payment in a clear and simple format. I also order Tickmill to pay Miss L the EUR equivalent of £400 for the trouble and upset the matter has caused her, including the trouble and upset she has faced in pursuing the matter over more than a year and a half.

My final decision

For the reasons given above, I uphold Miss L's complaint and I order Tickmill UK LTD to pay her compensation (including the trouble and upset award) as set out above, and to provide her 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 Miss L to accept or reject my decision before 25 January 2022.

Roy Kuku
Ombudsman