

The complaint

Mr J complains that IG Markets Limited (IGML) failed to pay him for lapsed rights on a rights issue as it should have done.

What happened

Mr J had a Contracts for Differences (CFD) trading account with IGML and in July 2019 it emailed him to notify him of a rights issue by Synthomer PLC, a company that Mr J had opened a long position in. The options set out in the email were to take up the rights, do nothing (the default position) or trade out of the rights. Mr J did nothing and the email explained this would mean the rights would lapse with no profit.

He complained to IGML when he didn't receive anything. It didn't uphold the complaint. It explained that the rights related to a leveraged CFD account and as such when you buy shares you don't own the underlying asset so will not benefit the same as with a share dealing account. It pointed to the options that Mr J was informed he had as to the rights issue which made it clear that if he did nothing the rights would lapse with no profit – this being the default option.

However, IGML did offer to pay Mr J the £340 he had been expecting as a gesture of goodwill and on condition that he confirmed that closed the matter and that future CFD positions held on shares will not result in lapsed rights payments. Mr J was unwilling to accept that he wouldn't be entitled to lapsed rights payments in the future so didn't accept the offer.

One of our investigators considered the complaint but didn't think IGML had done anything wrong. The matter was then referred to me and I issued a provisional decision upholding the complaint the findings from which are set out below.

"In July 2019 Synthomer offered its existing shareholders the opportunity of purchasing additional shares in the company – a rights issue. Shareholders were provided with a provisional allotment of the new shares and the opportunity of taking these up within the timescale set out. For those shareholders who decided not to take up the entitlement to the new shares the provisional allotment was lapsed.

That didn't mean these shareholders weren't entitled to any benefit from those lapsed rights. Those shares not taken up then had to be sold and shareholders with lapsed rights were entitled to any amount over the issue price and expenses – as made clear in the rights issue prospectus Synthomer provided.

To reflect the rights issue for Mr J's long position in Synthomer, IGML credited his account with 625 nil paid rights shares. Mr J was sent an email regarding the rights issue which gave him the options of; taking these up; trading them; or doing nothing – in which case the rights would lapse with no profit. He chose to do nothing in the belief that he would still get the value of the shares credited to his CFD account less the issue price and expenses, as he did for actual shares he held in Synthomer, with another business.

Whilst Mr J was not trading shares by way of his long position in Synthomer, his 'holding' arising from his position should behave broadly in the same way as if he did hold shares in the company – which is why IGML credited his account with the 625 nil paid rights shares he would have been entitled to from the rights issue if he had been trading shares.

However, whilst Mr J's position should behave broadly in line with the actual market, I must consider whether it was reasonable for him to have expected IGML to replicate exactly what happened in the actual market regarding the rights issue.

The email informing him of the rights issue did state that if he did nothing the rights would lapse with no profit. Arguably this should have made him aware that he would get nothing if the rights were lapsed.

However, Mr J has pointed to a previous occasion in 2015 when he received the value of the lapsed rights relating to a position he held. He said that IGML emailed him at the time and stated:

"If there are lapsed rights proceeds paid then this will be paid accordingly, if not then the position will be closed at a level of 0."

I acknowledge that the wording Mr J has referred to is different to the email about the Synthomer rights issue which referred to 'no profit' on lapsed rights. However, he has referred to receiving lapsed rights benefits on two further occasions, the first in 2018 – so before the rights issue the subject of this complaint - and the second afterwards, in 2020. In the circumstances I don't think it was unreasonable for Mr J to have thought that IGML would pay the value of lapsed rights based on what it had done previously, despite the reference to 'no profit' in the email.

And in any event, I think it is reasonable to expect some consistency in the approach taken by IGML on a rights issue. If it normally pays out the lapsed value on a rights issue, I think it is reasonable to expect it to have done so on this occasion, regardless of the wording of the email.

Mr J has also pointed out that as his CFD account was a Direct Market Access account, when he placed the trade in Synthomer it hedged the risk by taking a parallel position in the underlying market so it hedged his Synthomer CFD rights position and would have received the lapsed rights of those shares as a result of him deciding to do nothing. He makes the point that it would not be fair or reasonable for it to deprive him of the benefit in the circumstances. I agree with him that it would be reasonable for IGML to pay him the benefit from the lapsed rights in the circumstances.

Although I am upholding this complaint in any event for the reasons I have set out above, I have also considered the relevant terms of the Customer Agreement between Mr J and IGML.

Clause 24 of the Customer Agreement includes the following:

"(1) If any instrument becomes subject to a possible adjustment as the result of any of the events set out in Term 24(2) below (a "Corporate Event") or is otherwise the subject of a Corporate Event, we will determine the appropriate adjustment, if any, to be made to the size and/or value and/or number of the related transaction(s) (and/or to the level of any Order) to account for the diluting or concentrating effect necessary to preserve the economic equivalent of the rights and obligations of the parties in relation to the Transaction immediately prior to the Corporate Event and/or replicate the Corporate Event on someone

with an interest in the relevant underlying Instrument, which may include the opening of a new Transaction or the closing of the existing Transaction. Any action taken by us will be effective from the date determined by us and may, for the avoidance of doubt, be retrospective.”

Clause 24(2) sets out the various events that constitute a Corporate Event which includes the rights issue that is the subject of this complaint.

Clause 24(3) then states:

“(3) Any adjustment to the size and/or value and/or number of any Transaction(s) (and/or to the level of any Order) and/or the opening or closing of any Transaction(s) will be determined reasonably and will be conclusive and binding on you. If you have a Buy (i.e.: a long Transaction) that is affected by a Corporate Event, we will, should you give us notice of the same, in the form and with any period indicated by us, give consideration to your views about the action or adjustment to be made as a result of the Corporate Event. If you hold a Sell (i.e.: a short Transaction) then we will take whatever action is decided by us, acting reasonably. We will inform you of any adjustment or amendment under this Term as soon as reasonably practicable.”

Mr J makes reference to Clause 24(1) referring to replicating “the Corporate Event on someone with an interest in the relevant underlying instrument” and suggested that by not adjusting his position in accordance with the underlying instrument IGML is in breach of this. I think the clause is unclear and I may not have properly understood it, but it seems to me that the reference to replicating the corporate event does suggest that is what IGML would do. The brochure for the rights issue made clear what would happen with lapsed rights as part of the corporate event and IGML should have replicated this.

In the circumstances of this complaint I think it is fair and reasonable that IGML pay Mr J the value of the lapsed rights.”

I gave both parties the opportunity of responding to my provisional decision and providing any further information they wanted me to consider. Mr J responded and said that he wasn't claiming £340 but £390.29. He said this was based on 625 shares at 62.44565 pence per share based on what he received for lapsed rights for actual shares he owned.

Mr J also said that the wording of the previous in 2015 in relation to lapsed rights was the same as the wording in 2019, contrary to what I had said. He said that IGML confirmed to him at that time this meant was that if there are lapsed rights proceeds paid then this will be paid accordingly. Mr J also said that to put things right IGML should also amend the wording of the instructions they send to clients to make it clear they will still get an adjustment if there are any lapsed rights in underlying shares.

IGML responded and said that a point it had not made clear is that it doesn't receive payment for lapsed rights and on that basis it seemed unreasonable for it to have to pay these to a client.

It said that it believed Mr J was aware that payments that had been previously made had been made on a goodwill basis and that whilst it understood that it may look as if it had been acting without consistency it isn't reasonable that a client despite being warned to the contrary, might expect a payment in situations like this. It said that it seemed fair where there had been a genuine misapprehension on the part of a client, a goodwill gesture could be made but it does not seem fair that a client can just expect payment on any occasion. It asked me to confirm if it should be liable to pay Mr J proceeds it doesn't receive when he

has been told this isn't possible and he is warned that he needs to take action to avoid the rights lapsing.

I responded to IGML and said that I thought Mr J reasonably thought he would get paid lapsed rights based on what he had been told in 2015 – namely that *“if there are lapsed rights proceeds paid then this will be paid accordingly”*. I said that whilst IGML had said goodwill payments had been made to Mr J I had seen nothing that showed it was made clear to Mr J these were goodwill payments.

IGML responded and said so far as the reference to payment of lapsed rights in 2015 was concerned it would be reasonable for this to be referring to payment to it rather than meaning if payment was made generally this would be paid to Mr J regardless of whether IGML received payment. It said he was told if he did nothing his rights would lapse. IGML accepted that Mr J may have expected a payment, and that it wasn't minded to dispute it being reasonable for him to do so on this occasion. It said what it did want to say is that, given it does not receive proceeds for lapsed rights, it is not reasonable for it to be liable for these payments on future occasions.

I went back to IGML and asked it why it thought Mr J would have been aware that that the reference in 2015 to lapsed rights proceeds being paid referred to lapsed rights being paid to IGML. It responded and said that the only conclusion it could draw from what was stated to Mr J was that if IGML received payment for lapsed rights this would be paid to him.

I asked it to confirm it hadn't benefited from the rights issue the subject of the complaint given Mr J had said as he had a Direct Market Access (DMA) account it would have hedged the risk. It said that whether, or not, Mr J placed a trade through the DMA system, it remains the case it didn't receive payment for lapsed rights in this instance.

I also asked it to explain why it thought Mr J would have been aware that previous payments were goodwill - I mistakenly referred to gratuitous - payments. IGML said that an instance of it paying Mr J in the absence of misinformation or breach of the customer agreement on its part, would in practice be a goodwill payment if it hadn't received payment itself for lapsed rights.

Finally I asked IGML in what way could any genuine misapprehension on the part of the client arise such that a goodwill payment would be made, if the information about lapsed rights was as clear as it was suggesting. In response the writer said it wouldn't have caused him to misunderstand the issue, but that he was not inclined to disbelieve Mr J's word that he believed a payment was due.

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.

Mr J has pointed out that the figure of £340 that I referred to was what IGML originally offered him as a goodwill payment before it revised its offer to £393 which it paid into his account. As with the original offer this payment was conditional on Mr J confirming he would have no lapsed rights on future rights issues. Mr J didn't agree with this and asked that the money paid into his account be debited from his account.

The redress in my provisional decision didn't refer to a figure but to payment by IGML of the share value less the costs of issue and expenses. If this amounts to £393 then this is what would have to be paid to him.

I note that IGML is not unwilling to pay redress to Mr J, its concerns are in relation to the possibility that it is expected to pay out in future rights issues where there are lapsed rights when it hasn't itself received any lapsed rights payment.

However, whilst I understand why it would like me to comment on this, I am only considering the specific rights issue the subject of this complaint. I don't think it is appropriate for me to make any findings in relation to whether, or not, IGML should pay out where there is a future rights issue and no lapsed rights payment has been received by it.

Whilst IGML said it didn't want to go into huge amounts of detail on what has happened in the past, I think what happened previously is important in relation to the issues in this complaint.

I still think that Mr J had a reasonable belief that he was entitled to the lapsed rights value of the shares credited to his account because of what he had been told, and what IGML had done, previously.

I note that IGML has said that the only conclusion that could be drawn from what was stated to Mr J in 2015 – namely that *“if there are lapsed rights proceeds paid then this will be paid accordingly”* – was that this meant that if lapsed rights proceeds were paid to IGML then this would be paid to Mr J and not that this was a statement about the general position.

However, IGML has said that it doesn't get paid for lapsed rights. On that basis the statement in 2015 *“if lapsed rights proceeds are paid”* doesn't make sense in the context of this referring to possible payment to IGML. In other words, if the statement was referring to IGML there is no possibility of payment of proceeds to it so the answer to Mr J's query about receiving lapsed payment proceeds should have been a simple 'no'.

In the circumstances it isn't clear that IGML was referring to itself rather than to the general position with lapsed rights. Furthermore, I don't think it was unreasonable for Mr J to have interpreted the statement in that way, as he has indicated he did. The statement makes no reference to IGML and, whilst I acknowledge payment of lapsed rights would normally be made to someone who held actual shares such that the use of the word 'if' might be questioned, I think this could easily be seen as just poor wording rather than meaning if IGML was paid.

I think Mr J's understanding of what would happen on a rights issue as a result of what he was told in 2015 will have been reinforced by the fact that IGML paid him lapsed rights proceeds in 2018. Although IGML has referred to any such payments as goodwill payments it has provided no evidence to show this is what they were. It suggests that any payment by it beyond what it received was de facto a goodwill payment. I don't think this necessarily follows and whilst it now says that such payments were goodwill payments it has provided no evidence to show this is what they were, so I don't think it is clear this is the case.

In any event I think what is important is whether Mr J was made aware that any payment of lapsed rights to him from IGML was by way of a goodwill payment. I have seen nothing that shows Mr J was made aware payments for lapsed rights were only made as goodwill payments or that he was otherwise aware of this. I think he had a reasonable expectation that he would receive lapsed rights proceeds for the Synthomer rights issue.

In making that finding I acknowledge the wording of the default option for the Synthomer rights issue, which referred to the rights lapsing without profit. However, given my findings and what had happened previously I am not satisfied this would have made it clear to Mr J that he wouldn't get anything for lapsed rights.

As I have already said, my findings relate only to the Synthomer rights issue the subject of this complaint. I have made no findings relating to what should happen with any future rights issues. It might be advisable for the parties to discuss and clarify the position with regard to what will happen on future rights issues to avoid any misunderstanding. This is simply an observation on my part and not a direction.

Putting things right

IGML should pay Mr J the value of the shares credited to his account less the costs of issue and expenses together with simple interest of 8% on the amount it calculates is payable.

My final decision

I uphold this complaint for the reasons I have explained. IG Markets Limited must calculate and pay the redress I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 28 June 2022.

Philip Gibbons
Ombudsman