DRN-3538154

The complaint

Mr H complains that Gain Capital UK Limited ("Gain") didn't allow him to close a trade that he placed.

What happened

On 20 April 2020 Mr H opened a long position in the US Oil May 2020 futures contract the underlying market for which was West Texas Intermediate (WTI) crude oil. He opened the trade at 19.03 UK time (22.03 UAE) with the market due to close at 19.30 UK time. Mr H says he tried to close the trade not long after opening it but was informed that the trade closure couldn't be performed.

As a result of this the trade remained open at the time the market closed, and his position was closed at a price of $0.01. Gain subsequently applied an adjustment to his account on 22 April 2020 which wiped out his account balance.

Mr H complained to Gain but it didn't uphold his complaint. He referred his complaint to our service and one of our investigator's considered and didn't think it should be upheld.

Mr H didn't think this was a fair outcome and said that a trade shouldn't be penalised because Gain's software had an error and that he was denied the chance to close his trade when he wanted. He said that he wouldn't have opened the trade if he had known the information wasn't correct.

The matter was referred to me and I issued a provisional decision upholding he complaint the finding from which are set out below.

Findings from Provisional Decision

"What happened on 20 April 2020 was that just after Mr H placed his trade US Oil turned negative for the first time in its history. He tried to close his trade but was unable to do so. The reason for this is that Gain's platform, unknown to it at the time, wouldn't operate with negative prices. So once the price turned negative for US Oil no action could be taken by a client in relation to a trade.

Mr H has said it is unfair that he was unable to close his trade when he wanted because Gain's software had an error. He said he wouldn't have opened the trade if he knew the information was incorrect. However, I am not satisfied that the information at the time he placed his trade wasn't correct, as at that point US Oil hadn't gone negative – if it had done then presumably he wouldn't have been able to place the trade. So, as matters stand, I am not persuaded that Mr H was misled into opening his position in US Oil.

However, the price did go negative very soon after he opened his position and once it did so Gain's platform wasn't showing the right price and wouldn't allow Mr H to close the trade. This was because the platform doesn't operate with negative prices. This isn't something that Gain made clients aware of at the time so Mr H had no way of knowing before he placed his trade that if the price went negative he would be unable to close the trade, or take any other action in relation to it, before expiry of the market at 19.30 UK time.

Gain's platform is unable to operate with negative prices as it was designed not to do so, something that Gain wasn't aware of itself until the events of 20 April 2020. As a result of what happened on that day Gain informed clients, in relation to its UK Oil and US Oil

markets, that if the price dropped below $5 a barrel it may not allow any new opening orders or trades. It also said that if the price dropped below $5 existing positions would be switched to close only with no ability to add to the position until the price went back above $5.

Gain further stated to clients that if the price dropped to or below $0 it will close any positions on that market at the current available market price – although warned the underlying price could be negative at the time of closing and that it would adjust the account accordingly.

I think Gain should have made clients aware, before 20 April 2020, of the limitation in its platform – namely that it doesn't operate with negative prices – and/or had a process in place, such as the one it introduced afterwards as set out above, if prices did turn negative.

In short, I think in allowing Mr H to open a position which the platform then almost immediately locked him into until expiry of the market, without him being able to close the trade or take any other action, Gain acted unfairly. I don't think the fact that it was unaware at the time that the platform wouldn't accept negative prices means it didn't do anything wrong as I think it should have known about this.

I am not saying that Gain can't operate a platform that doesn't allow negative prices, as is the position now. However, I think it did need to make clients aware of this limitation and have a process in place to deal with it, as it now does.

I acknowledge that US Oil turning negative has been called unprecedented, and it was in that it had never happened before. However, I don't accept that this means that it is unfair to have expected Gain to have made clients aware that its platform wouldn't work with negative prices or put in place a process if this happened.

Although US Oil had not turned negative previously this didn't mean this could never happen. Furthermore, I think there was some general awareness of this possibility before 20 April 2020. For example, I am aware of articles written by Bloomberg in March 2020 which raised the prospect of crude oil going negative with one article referring to one obscure crude oil market going negative. And on 15 April 2020 CME Group provided an advisory notice to clearing house members warning of the possibility that certain NYMEX energy futures could trade at negative prices or settle at negative values.

I am not satisfied that Gain provided Mr H with the information it should have done about its US Oil market and the fact that its platform couldn't deal with negative pricing. It failed to put in place any process to deal with its platforms inability to deal with negative prices so that Mr H's trade was in effect held in limbo until the market expired once prices turned negative. The investigator referred to clause 14 ("Manifest Error") of the terms which she thought allowed Gain to do what it did. This clause allows Gain to void a trade, close a trade, amend a trade or place a new trade when a manifest error has occurred.

I have also considered clause 15 of the terms – "Events Outside Our Control and Market Disruption Events" – which again allows Gain to take certain steps where such an event occurs. Gain may rely on those clauses in relation to the adjustment it subsequently made to Mr K's trade. However, I don't think either clause can be relied on by Gain in relation to the findings I have made about what it did wrong. If it had done what I think it should have done no adjustment would have been necessary in the first place.
What Gain should do to put things right

I could award redress on the basis that Mr H be put in the position he would have been in if his trade had been closed at the point that he says he tried to close it. However, given this was after the price turned negative and Gain's platform wouldn't, and still won't, operate with negative prices this isn't what would have happened if Gain had done nothing wrong.
In the circumstances I think redress should be based on Mr H being put in the position he would have been put in if his trade had been closed by Gain when the price reached zero in line with the process it subsequently put in place. I think Gain should also pay simple interest at 8% each year on the amount it calculates is payable.

I also think Gain should pay Mr H £300 for the distress and inconvenience I think was caused to Mr H both initially when he was unable to take any action on his trade and subsequently when Gain readjusted his account. I have no doubt he will have been upset when he initially saw a loss of $3,500 on his account and then a day later find that Gain had calculated that his account should have a further loss of $12,835 applied - which he not only lost the money in his account but also that a trade he had to be closed."

I gave both parties the opportunity of responding to my provisional decision and providing further information and arguments they wanted me to consider. Gain responded and, in summary, made the following points:

- When the demand in oil slumped, trading in oil slowed down which coincided with the expiration of the futures contract, so there were fewer participants willing to trade.
- Because the value of the futures contract is derived from the underlying market if there are not enough participants willing to buy or sell the number of prices quoted goes down.
- When the volume of prices quoted are very low and there is a lot of volatility brokers cannot set prices which actively reflect the market.
- The contract could not be priced so if the client was in fact trying to trade between 7.08pm to 7.30pm on 20 April – and there is no evidence he was – the client could not be closed out because there was no price available to close the positions – there has to be participants in the market willing to buy the contract.
- There is no evidence Mr H tried to close the position before it went negative, as he has suggested is the case
- The market was greyed out on the system due to the system not being able to price negatively but this wasn't the reason Mr H couldn't trade the contract.
- Clause 15 of its terms and conditions allows it to make adjustments when trades are impacted by pricing issues and this was the basis on which it adjusted Mr H's account.
- It didn't close out all clients at the final market price of -$37.64 because if client margin indicator fell below 50% before that price their position was closed at that point.
- A feature of volatile markets is 'gapping' where there is a significant change in price between consecutive quotes and this mainly occurs in fast and falling markets. The price at which it executes client orders may be affected if gapping occurs in the relevant market and in this case the market had gapped to the price of -$37.64 where the market eventually settled.
- Under its terms and conditions it could have closed all clients out at -$37.64 as a result of gapping but instead simulated the market as if it had not gapped.
- Mr H was closed out at -$0.50 rather than the market price of -$37.64.
- Whilst this was a rare market event, the conditions and outcome for trades is familiar as price adjustments and gapping are common in periods of high volatility.
- Clients trading a futures contract close to expiry attempting to capitalise on extreme volatility comes with a very high level of risk and in this instance it didn't go Mr H's way.

- It's risk notice to clients draws attention to the possibility of price movements being volatile and unpredictable.
- Mr H entered his position looking to speculate on the price WTI Oil was trading at and if the system had set a limit above which the price couldn't go and the market had gone the other way it would have credited his account.
- This is shown by what it did with clients who had taken a short position in WTI Oil as it credited those clients based on the closing price of -$37.64.
- It is not a clearing member of CME Group and didn't receive the notice referred to in the provisional decision according to Gains' Head of Trading.
- There are a few reasons why it wouldn't have been feasible to implement a contingency plan for negative pricing between 15 April 2020 and 20 April 2020. The margin engine is based on local currency value of the client position and in the case of zero or negative pricing the logic to calculate margin does not work and changing the logic would take a month of development and testing.
- It did take risk mitigation measures after the event as following an incident review a decision was taken to refuse any new orders where the price of the futures oil contract falls below $5 and to close out positions at zero. The operational burden to lose out positions manually is mitigated as a result.

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 taken account of the various points raised by Gain in response to my provisional decision. Having done so I am not persuaded that I should change my provisional decision.

I note that Gain has said there is no evidence that Mr H tried to close the trade before it went negative. However, this is contrary to what it has said to us previously - that Mr H tried to close his trade immediately after he opened it but couldn't do so because of low liquidity – and the spreadsheet it provided which showed his attempts to close.

The terms and conditions allow that there are circumstances where it may not be possible to close a trade including where prices are said to be indicative or similar – which would include 'speculative'. I have not seen enough persuasive evidence that shows that the reason Mr H was unable to close his trade was because of something Gain did wrong so have not upheld the complaint on that basis.

I acknowledge what Gain has said about trading futures contracts close to expiry to capitalise on extreme volatility coming with high risk. I accept that Mr H is likely to have been aware of this and accepted the possibility the market could go against him when he placed the trade.

However, I don't think this changes my findings, which are based on what I consider to have been a limitation in the service Gain provided and its failure to make clients aware of this and put in place any process to deal with this limitation.

Gain provides an electronic execution only trading service for clients to make trades but its systems cannot provide that service when there is negative pricing. I think clients needed to be made aware of that and furthermore that Gain should have had in place a process to deal with this – such as the one it put in place after the event.

Gain has said it was unaware of the limitation in its system before 20 April 2020 but I think it is reasonable to have expected it to be aware of limitations in the service it was able to provide to clients. I accept that it was very unlikely US oil would turn negative and it caught a lot of brokers by surprise when it did. But whilst it may have been unlikely and brokers may have thought it wouldn't happen, this doesn't mean it could never happen such that Gain should not have had in place a process to deal with this.

I acknowledge that Gain isn't a clearing member of CME Group. I referred to the warning from the CME Group and another earlier indication that crude oil could turn negative because I thought this showed that there were indications in the market that prices could turn negative - even if the likelihood of this was very low. I also note that Gain has not said it had not been aware there was a possibility of this, just that it didn't get the notice from CME Group.

Gain has referred to the time it says it would have taken to implement a contingency plan for negative pricing. But it has also referred to the risk mitigation measures it took as result of what happened on 20 April 2020 – to refuse orders where the price falls below $5 and to close positions at zero.

Gain notified clients of these risk mitigation measures within a few days of 20 April 2020 and in the circumstances I can see no reason these could not have been implemented before 20 April 2020. If they had been then Mr H's trade would have been closed at zero. I accept he would not necessarily have got this price but in the circumstances I think it is fair and reasonable to use that price when calculating redress.

Putting things right

I think redress should be based on Mr H being put in the position he would have been put in if his trade had been closed by Gain when the price reached zero in line with the process it subsequently put in place.

I also think Gain should pay Mr H £300 for the distress and inconvenience I think was caused to Mr H both initially when he was unable to take any action on his trade and subsequently when Gain readjusted his account. I have no doubt he will have been upset when he initially saw a loss of $3,500 on his account and then a day later find that Gain had calculated that his account should have a further loss of $12,835 applied - which meant he not only lost the money in his account but also that a trade he had to be closed.

My final decision

I uphold this complaint for the reasons explained. Gain Capital UK limited must calculate and pay redress as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 8 July 2022.

Philip Gibbons
Ombudsman