

The complaint

Mr P is complaining that Gain Capital UK Limited trading as City Index incorrectly executed certain trades on his account.

What happened

In December 2019, Mr P had held short positions at City Index on a GBP-USD currency pair for some time. On the evening of 12 December 2019, his total short position was 20.84 units. He also had buy orders set up so that if the price went above a certain level his account would automatically open long positions.

At 10pm on 12 December the exit poll for the UK general election was announced. This caused significant movements in the price of the currency pair and Mr P's buy orders were triggered. In addition, at around the same time, City Index closed all his short positions. This left Mr P in a long position – which he didn't want to be in. If he'd stayed in his short positions, he says, he'd have been well-placed to make significant profits.

Mr P called City Index a few days later, on 17 December. He said he understood that he'd been closed out of his short positions because his account didn't meet the 50% margin requirements. But he didn't understand why the buy orders had been triggered after that. During the conversation with City Index, the representative explained to Mr P that everything happened within a very short timeframe and the market had moved very quickly.

Mr P said on this call that his intention of the buy orders had been to reduce his short position if necessary to try to avoid a margin close-out. So he was confused as to why this hadn't happened. Instead, the short positions had all been closed by the margin call while the long positions remained open. Mr P and the representative had a long conversation about the timing of the various buy orders and the close-out.

Towards the end of the call the City Index representative told Mr P he was on a list for an account adjustment because the close-out had been executed late. Later in the day, Mr P got in touch with City Index again to ask when the adjustment would be made, saying that his account was down by over £1,000 and that he needed the extra money to make some trades. City Index eventually told him the adjustment would be around 1,400 US dollars and would be paid within the next couple of days.

The adjustment was paid a few weeks later, on 9 January 2020. By this point, Mr P had raised a complaint with City Index. They rejected the complaint, saying that the trades had been carried out in line with their terms and conditions. Mr P wasn't satisfied and City Index reconsidered the complaint. They offered Mr P £550 as a goodwill gesture because they felt they hadn't replied to Mr P's complaint as well as they might have done – and because they'd led Mr P to believe some trades had been opened out of sequence.

Mr P remained unhappy and brought his complaint to our service. Our investigator looked into things and said that broadly City Index had got things right but the account adjustment which had been promised within a couple of days took around a month. He said City Index weren't responsible for any losses Mr P suffered on the trades that were correctly opened

but thought City Index should increase their offer by £150 to take into account the additional upset caused by their delays in processing the adjustment. City Index accepted our investigator's view.

Mr P disagreed though. He said he'd been significantly affected, financially, emotionally, and mentally, by City Index's actions. He still didn't think the sequence of the trades and close-out had happened properly. And, most importantly, he felt that City Index had promised something over the phone which they hadn't fulfilled – he said he'd been led to believe that he'd be put back in the position he'd have been in if the margin close-out hadn't happened. Mr P feels strongly that he'd have made life-changing profits if things hadn't gone wrong. Because Mr P and our investigator couldn't reach an agreement, the matter's come to me.

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've reached the same conclusion as our investigator, for broadly the same reasons. I'll explain below, considering in turn the buy trades and close-out and then what Mr P was told.

Execution of trades and close-out

Mr P had buy orders set up for nine units – two at one price point and seven at a higher price. Looking at Mr P's trading history the first two orders executed 16 seconds after 10pm and the second 16 seconds later, at 32 seconds after 10pm. This aligns with the price data for the currency pair which shows when the price hit these trigger points. I appreciate Mr P intended that his buy orders would close his existing sell positions, but, as City Index explained to him, that wasn't what happened – he didn't link them to his open positions.

City Index's position on the first two buy orders is a bit mixed. In their latest communications with us they've said they shouldn't have been executed at all but haven't been able to clearly explain why. From a review of the calculations, it looks to me like Mr P's account wouldn't have met the margin requirements for the buy orders to have been opened. In any event, City Index have offered to refund to Mr P the losses he made on these two trades. I'm satisfied that's a fair offer – with respect to these particular trades, it puts Mr P in the position he'd have been in if they hadn't been opened.

I know Mr P's queried whether the two buy orders were taken into account in determining that the close-out was necessary. Because they weren't linked to the sell positions, the buy orders increased the required margin on the account and so worsened Mr P's position rather than improving it as he'd hoped. Again, City Index's communication hasn't been clear on this point. Their systems have changed since 2020 and they can't recreate the calculations. But I've looked at the account and it's clear the margin close-out would have been necessary either way.

The second set of buy orders was executed after the margin close-out should have happened. I've reviewed the margin close-out calculations and I'm satisfied it should have taken place before the long positions were opened. So I can't say City Index shouldn't have fulfilled the buy orders, or that they should have been closed as part of the margin close-out. I'm satisfied they've acted fairly in this respect.

City Index say they had a widespread problem with their system on 12 December 2020 – currency prices were moving rapidly and their system wasn't able to cope with the number of liquidations it had to process as a result. This meant that Mr P's margin close-out was

executed a few seconds later than it should have been – and at a different price. City Index calculated the losses Mr P should have made on the margin close-out and paid him around £1,055. Although I haven't seen how City Index calculated this amount, I've seen enough to be satisfied it's a fair reflection of the additional losses to Mr P's account caused by the margin close-out being executed late.

In summary, it's clear some of Mr P's trades weren't executed correctly. It seems that his first two buy orders shouldn't have been executed, and the close-out was executed late, and at the wrong price. But I'm satisfied City Index have taken appropriate steps to resolve these issues – they've paid Mr P the difference on the close-out, and offered to refund his losses on the buy orders.

Mr P's phone conversations with City Index

Mr P's said the main point of his complaint is that City Index haven't done what they said they'd do in a call on 17 December 2019. Mr P felt that the City Index representative told him that there shouldn't have been a margin close-out on his account at all and that his account would be adjusted to reflect that.

I've listened to this call. While I don't entirely agree with Mr P's interpretation of the call, I can understand how he came to this view. The City Index representative wasn't particularly clear about what had happened or why an adjustment was going to be made to Mr P's account. Mr P came away from the call expecting that the adjustment would put him back into the position he'd have been in if there'd been no margin close-out. And this really is what he's complaining about now – that City Index haven't done this.

Before I go any further, it's important to explain how our service thinks about putting things right when a business has got things wrong. We focus on trying to put the consumer in the position they'd have been in if the business had got things right. So, in this case, where the City Index representative wasn't clear about what had happened with the margin close-out and what the adjustment was going to be for, I have to consider what would have happened if the City Index representative had been clearer on the phone.

I appreciate Mr P won't be happy with this. He feels strongly that he should be reimbursed as if his short positions hadn't been closed and his long positions hadn't been opened. His view is that this is what he was promised on the call. And he says he wasn't told anything different until February 2021, well over a year later. He says if the reimbursement had happened as he expected he'd have made life-changing profits because of the way the market moved. Instead, he's made losses on his long positions.

It's not clear exactly what Mr P would have done differently if that first 17 December call had been clearer. But there were several more calls over the course of the next ten days. In one of the later calls on 17 December, City Index told Mr P the amount of the adjustment and that it would be paid in roughly one working day. In this call, City Index told Mr P that they weren't going to reinstate any positions and told him he could carry on trading as normal – nothing he did would impact the adjustment that was to be made.

Then, on 26 December 2019, Mr P had another call with City Index. In this call, the City Index representative clearly explained what the adjustment was and why it was being made. I'm satisfied this explanation was good enough to overcome the lack of clarity Mr P had experienced up to this point. Listening to the rest of the call, it seems Mr P still didn't quite understand what had happened with his account and why the buy orders had been opened but the City Index representative spent a lot of time on the phone explaining what had happened and what was going to happen. There was nothing on the call to suggest Mr P would get any further compensation or adjustment beyond the £1,055. Instead, the City

Index representative on this call told Mr P he'd previously been told the wrong thing. So I'm satisfied that by the end of this call City Index had done enough to explain to Mr P what the adjustment was for, and that he'd previously been given misleading information.

Putting things right

I've thought carefully about what's happened here. I know Mr P's suffered significantly, both as a result of these trades going wrong, and because of other circumstances, which I won't go into in this decision. I have a lot of sympathy for Mr P, but it's not fair to blame City Index for all of this.

As I've set out above, City Index's errors were:

- the margin close-out happened later than it should have and at a different price;
- the first two buy orders shouldn't have been executed;
- the initial call on 17 December 2019 wasn't clear about what had happened and why Mr P would be getting an adjustment; and
- the adjustment wasn't paid until 9 January 2020 when it was promised within a day or two of 17 December 2019.

In addition, City Index acknowledged that their first response to Mr P's complaint was inadequate and apologised for that and for how long it took them to issue a proper explanation of what had happened.

City Index have already reimbursed Mr P for the financial loss as a result of the delayed margin call. And they've offered to reimburse him for the losses he made on the buy orders that shouldn't have been executed.

I've thought about what would have been different if the initial 17 December 2019 call had been clearer. Mr P first called City Index because he'd unexpectedly ended up in a long position on the currency pair. During the calls that day it's clear he wasn't sure whether to close his positions or whether that would make any later adjustment more difficult. But he also talked about wanting to open long positions.

As I've explained above, I think City Index clarified what the adjustment was for on 26 December – and that there would be no further adjustment. Looking at Mr P's trading history, I can't see that had any impact on his trades. And I can also see that he closed his long positions gradually between December 2019 and February 2020 - certainly before February 2021. In summary, it's difficult to conclude that Mr P would have acted differently if the 17 December phone call had been clearer.

It's clear Mr P was anxious to receive the money as soon as possible – he said he wanted to make more trades and needed the money to do so. A delay of around three weeks was significant for him. It's not appropriate to speculate with hindsight what trades Mr P would have made if the adjustment had been paid to him earlier – but it is appropriate to recognise that he'd have been disappointed and inconvenienced by the delay in the payment. In total, City Index have offered Mr P £700 (on top of the adjustment already paid). And I'm satisfied that's fair and reasonable, taking into account the disappointment he'd have felt about the late payment of the adjustment, the lack of clarity on the 17 December 2019 phone call, and the length of time it took them to thoroughly investigate his complaint and provide a complete written response. I've taken into account the fact that the adjustment and the close-out were

clearly explained to Mr P on 26 December 2019 so I think City Index limited any period of confusion to ten days.

My final decision

As I've set out above, Gain Capital UK Limited trading as City Index need to pay £700 to Mr P. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 20 April 2023.

Clare King
Ombudsman