DRN-3576993

The complaint

Mr K complains that Gain Capital UK Limited didn't allow him to take any action on the long position in US Oil he opened on 20 April 2020.

What happened

On 20 April 2020 Mr K opened a long position in US Oil for the May 2020 futures contract at 19.02 UK time. The market for the US Oil May futures contract was due to expire that day at 19.30 UK time.

The underlying market for US Oil is West Text Intermediate (WTI) crude oil. The price went negative at around 19.08 UK time for the first time in its history, so shortly after Mr K opened his position. Once US Oil turned negative no further trades were possible on Gain's platform and it also didn't provide any pricing information for US Oil. The reason for this was that Gain's platform doesn't operate with negative pricing, something it says it was unaware of at the time of Mr K's trade.

Mr K's trade was initially shown to have settled at 0.1 on expiry, which meant he made a small loss on his trade. However, Gain subsequently adjusted all client trades that had been affected. For those that had short positions, these were adjusted so the price at close was the correct price on expiry of the market at 19.30 GMT - which was minus $37.63. For clients such as Mr K who had long positions, these were adjusted so that close out was at the point the margin would have dropped below 50% of margin. In Mr K's case this meant his losses were $27,937.99.

In response to his complaint Gain said that it was satisfied the adjustment to his account was correct and in line with its general terms and conditions ("terms") that governed his account. It referred to clause 14 ("Manifest error") and clause 15 ("events outside our control and market disruption events") in this regard. It also referred to the limitation of liability clause in the terms.

Mr K referred his complaint to our service and one of our investigators considered it. In short, she said the following:

- WTI going negative was an unprecedented event and the associated market volatility were outside of Gain's control.
- However, its platform being able to cope with negative pricing was within its control and whilst negative pricing may be rare, it does happen.
- One of the terms that Gain rely on which sets out what it can do in relation to 'Manifest Error' doesn't apply as there was no error in pricing, Gain simply stopped pricing the product.
- The terms relating to events outside of Gain's control and market disruption events is relevant in part.
- One of the options it has under that term is to close any open positions, cancel and/or fill any Order, and/or make adjustments to the price and/or limit the Quantity of any Trade, Open Positions and Orders.

- Mr K opened positions in anticipation that the market would move in one direction and instead it moved against him and this was down to his trading decisions which Gain weren't responsible for.
- In the circumstances it wouldn't be fair for Gain to have to refund the full adjustment it made.
- On balance Mr K would have closed his positions at 19.09 hours if he had been able to and the pricing on the platform accurately reflected the underlying market, so his losses up to that time should be repaid.

Mr K agreed with what the investigator said but Gain didn't. It provided the external tick data for the US Crude Oil price for the 20 April 2020 which confirmed that the price had turned negative at 19.08 UK time and continued to fall until expiry at 19.30 GMT when the price was -$37.

It referred to the information it had provided showing the clients activity on his account at the time. It said that even if the buttons were greyed out if Mr K had made a failed trade this would show up and a reason for the failure would have been recorded. It said the only record it had of Mr K trying to make a trade was at 19.28 UK time and that there was no record of him placing a trade at 19.09 GMT when the investigator says he would have closed his trades.

The investigator asked for Mr K's comments on what Gain had said. He responded and said that not long after he had placed the trade the options for editing the trade or closing out went grey. He said at no point did the system notify him of a negative value and no service from Gain that allowed him to ascertain the price was negative.

Mr K said he is sure he pressed the grey values to see if they were working, but to no avail. He said that by 19.28 UK time he was aware of what was happening with the price having found a feed from another provider but would not have attempted to close at that time as the price was well beyond the margin call level. He said it was believed that the trade could not go negative due to the restrictions of the platform.

I asked Gain to explain why it thought Mr K would have been aware of negative pricing given its system couldn't cope with this and didn't show the price going negative. It said if Mr K was logged in and looking at the platform he would have seen the live news feed which undoubtedly would have shown what was happening with the price of US Oil.
I issued a provisional decision the findings from which are set out below.

"There is no dispute that Gain's platform didn't show the price for US Oil and didn't allow any trades once the price turned negative. It said this was due to the platform's design including inbuilt logic based on it being more likely than not that negative pricing would suggest a system error. It said that this wasn't an IT error but a risk mitigation control that was built into the system which it was unaware of until the events of 20 April 2020.

Mr K opened his position knowing that the market was volatile and hoping to capitalise on that. The market went against him and he no doubt accepted that possibility at the time he opened his position and Gain obviously isn't responsible for the market going against him.

However, what Mr K could not have anticipated and taken into account when placing his trade was that he would be unable to see the current price or take any action - such as placing a stop loss order – when the price turned negative, as there was nothing to forewarn him that the platform couldn't deal with negative pricing or any process put in place to deal with this if it did happen.

Gain is entitled to provide a platform that does not operate with negative pricing – as is still the case with its platform now. The difference with the position now as opposed to 20 April 2020 is that Gain has explained to clients what will happen if oil markets turn negative and has a process in place to deal with this.

In short, after 20 April 2020 Gain informed clients in relation to its US Oil and UK 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 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 the main issue in this complaint is whether Gain did anything wrong because it didn't have such a process in place to deal with negative pricing before 20 April 2020. So it is clear, the fact that Gain doesn't appear to have been aware of the limitations of its own platform isn't a basis for finding it did nothing wrong.

I'm mindful that US Oil turning negative has been called unprecedented in some articles I have seen. However, I am not persuaded that it is unreasonable to have expected Gain to provide clients with information about the limitations of the platform – such as it not operating with negative pricing – and/or providing a process that would be followed because the platform would not operate when prices are negative.

I am mindful that whilst the negative pricing of crude oil has been called unprecedented there had been some warning of this possibility before the 20 April 2020. For example as early as 19 March 2020 Blomberg had written about some traders talking about this possibility and around a week later it wrote about one obscure crude oil market having already turned negative.

I think it is also of note that CME Group provided an advisory notice to its clearing member firms on 15 April 2020 warning of the possibility that certain NYMEX energy futures could trade at negative trade prices or settle at negative values. So, there seems to have been information that pointed towards the possibility of negative prices for crude oil before 20 April 2020. I acknowledge that US Oil turning negative caught many brokers by surprise but nevertheless I think Gain should have been aware of the possibility and ensured its clients were aware of the impact this would have on any trades they placed through its platform.

I am not satisfied that Gain provided Mr K with the information it should have done about its US Oil market and the fact that the platform wouldn't accept negative pricing. It failed to put in place any process to deal with the situation if prices did turn negative and in effect, as a result, clients were held in limbo until the market expired.

Gain allowed Mr K to open a trade at 19.02 GMT which the platform then didn't allow him to close or place a stop loss for, not because of any action that it had to take as a result of what was happening, but because it's platform couldn't deal with negative prices – something Gain itself was unaware of at the time.

I note that Gain has sought to argue that clause 14 – "Manifest Error" - of its terms allowed it to do what it did. Clause 14.2 sets out in what circumstances manifest error is relevant. It states:

"14.2 If a trade is based on a Manifest error (regardless of whether you or we gain from the error) and/or closed on the basis of Manifest Error we may act reasonably and in good faith to:

> *14.2.1 void the Trade as if it had never taken place;*
> *14.2.2 close the Trade or any Open Position resulting from it; or*
> *14.2.3 amend the Trade, or place a new Trade , as the case may be, so that (in either case) its terms are the same as the Trade which would have bene placed and/or continued if there had been no Manifest Error."*

I don't think this has any relevance to the findings I have made about Gain failing to provide the information it should have done to clients about the platform being unable to cope with negative pricing and its failure to have a process in place to deal with this.

Gain have also referred to clause 15 of the terms – "Events Outside Our Control and Market Disruption Events". The clause allows Gain to take various steps if it determines such an event exists. As with the previous clause I don't think has any relance to the findings I have made about what Gain did wrong.

I am not satisfied that either clause is relevant to what happened between when Mr K opened his trade at 19.02 GMT and the expiry of the market less than 30 minutes later. The platforms failure to show the price when it turned negative and preventing Mr K taking any action in that period was nothing to do with Gain exercising rights under the clauses I have referred to above.

By its own admission it was unaware beforehand that the platform software didn't permit trading when the price turned negative, so I don't think it can reasonably argue that what happened before expiry was the result of action it took under the clauses I have referred to. Those clauses may have some relevance to what it then did in adjusting client trades to reflect what happened in the market. However I don't think that is relevant to my findings because Mr K should never have been put in the position that such an adjustment was necessary in the first place."

I awarded redress on the basis that Gain pay the difference between the readjusted position it put him in and the position he would have been in if his trade had been closed when it reached zero.

I gave both parties the opportunity of responding and providing any further information they wanted me to consider before making my final decision.
Mr K responded and accepted the decision. He noted that I have referred to USD rather than GBP.

Gain responded and, in summary, made the following key points:

- When the demand in oil slumped, trading in oil slowed down. This 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 goes down. When the volume of prices quoted are low and there is lot of volatility, brokers cannot set prices which actively reflect the market.
- The contract was not priced so if Mr K was trying to sell between 19.08 UK time and 19.30 UK time of 20 April 2020 – and there is no evidence he was – the client could not be closed out because there was no price available to close the positions.

- The market was greyed out on the market due to the system not being able to price negatively but this wasn't the reason why clients could not trade the contracts.
- This was not an IT error but a rare market event which affected the margin calculations and therefor pricing. At the time negative pricing created challenges for it and the US Crude Oil contract settled at $0.01 which did not accurately reflect the price of the underlying market.
- Its terms allow it to make adjustments to an account and it reviewed all trades to ensure proper alignment with the underlying market.
- A feature of volatile markets is 'gapping' where there is a significant change to price between consecutive quotes. And in this case the market gapped to a price of -$37.64.
- It could have closed out all clients at this price but as a gesture of goodwill simulated the close out as if the market had not gapped and the clients close out level had reached 50%.
- Mr K was closed out at -$13.96 rather than the market price of - £37.64 which was far more favourable.
- Whilst this was a rare market event the condition and outcomes for trades is very familiar as price adjustments in periods of high volatility are common as is gapping. Trading a futures contract close to expiry in an attempt to capitalise on extreme volatility comes with a very high level of risk and in this case it didn't go Mr K's way.
- Mr K entered his position looking to speculate on the price WTI Oil was trading at and if the price had gone the other way and the system had limited the price from going above a certain level.
- The notice from CME Group was sent to clearing members of CME and it wasn't one and did not receive or see the notice before 20 April 2020 according to its Head of Trading.
- In any event the notice states that 'recent market events have raised the possibility that certain NYMEX energy futures contracts *could* trade at negative, or zero trade prices be settled at negative or zero values.
- There are a few reasons why it would not have been feasible to implement a contingency plan for negative pricing between 15 April and 20 April 2020 for example it would take a month of development and testing to change the logic to calculate margin for zero or negative pricing.
- It did take risk mitigation measures after the event, in that it decided to refuse orders when the price falls below $5 and close out positions at zero.

Mr K provided some further which I have considered. He repeated what he said previously about not being able to set buy/sell orders or a stop loss below zero which made him think this was the floor of the trade and the point at which he would be closed out. He made some comments on what Gain has said which I have not set out as they provide no new information or evidence which I need to comment on.

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 the findings in my provisional decision.

I acknowledge the point Gain has made, about low volumes of prices and high volatility and that this means brokers are unable to set prices that accurately reflect the market and that Mr K couldn't have closed his position once the price turned negative because there was no price available.

However, I have not upheld this complaint on the basis Mr K was prevented from closing his position once the price turned negative. I have upheld it on the basis that Gain provides an execution only trading service that is not available to clients when prices are negative but didn't inform clients of this limitation in its service or put in place a process to deal with it before 20 April 2020.

I accept it may not have been aware of this limitation before 20 April 2020 but this was its system and I think it reasonable to have expected it be aware of and be responsible for limitations in its service that could affect clients. The fact that negative pricing was very unlikely doesn't mean it wasn't possible such that Gain should not have made clients aware its system would not operate with negative prices and put in place a process to deal with this at the outset.

Even if I am wrong and that Gain couldn't reasonably have been expected to put in place a process to deal with the limitation in its service from the outset I think it is reasonable to find it was aware or should have been aware that negative prices were a possibility shortly before 20 April 2020 as I think there were indications this could happen – as referred to in my provisional decision. So, I think it should have put in place a process to deal with this before 20 April 2020 in any event.

I have noted what Gain has said about not being a clearing member of CME Group and as such not receiving the notice sent to members on 15 April 2020. However, I referred to what the CME Group sent out because I thought it and other information, such as the article from Bloomberg referred to in my provisional decision - which Gain has not made reference to - showed there was some general awareness of the possibility of negative prices before 20 April 2020.

I have noted that Gain has said it didn't get the notice, it has not said that it was unaware of what had been happening regarding crude oil and the possibility of negative prices before 20 April 2020.

Gain has sought to argue that it would have taken some time to implement a contingency plan for negative prices and referred to a period of around a month to do this. At the same time it has also pointed to the risk mitigation steps it took after the 20 April 2020 – which steps it took within a matter of days.

I can see no reason it could not have put these in place before 20 April 2020. If it had done so Mr K's position would have been closed at zero. I acknowledge that he would not necessarily have gotten this price but I think it is fair and reasonable to use this price when calculating redress.

Putting things right

I think Gain should put Mr K in the position he would have been in if his trade had been closed at zero. So, it should compare the readjusted figure it calculated for Mr K with the position he would have been if his trade had been closed at zero and pay the difference together with simple interest at 8% each year on the figure it calculates is payable.

I also think that Mr K has been caused distress and inconvenience because of what happened. He spent a long time on the phone trying to find out what had happened as well as trying to resolve matters through an online chat facility and was clearly frustrated by the time it took and the lack of clarity as to what was happening. I think an award of £300 for this is fair and reasonable.

My final decision

I uphold this complaint for the reasons I have 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 K to accept or reject my decision before 3 August 2022.

Philip Gibbons
Ombudsman