

The complaint

Mr S complains about the service provided by Gain Capital UK Limited ("Gain") in relation to the position he opened on 20 April 2010 in its US Oil May futures contract.

What happened

On 20 April 2020 Mr S opened a long position in Gain's US Oil May futures contract, the underlying market for which is West Texas Intermediate Crude ("WTI"). He made two trades, the first at 17.27 and the second at 18.36 UK time, with the market due to close at 19.30.

The price for WTI went negative for the first time in its history at 19.08 UK time and this resulted in the price no longer being presented on Gain's platform and clients being unable to close or make any change to open positions. Gain subsequently closed Mr S's positions after market closure at 19.30 UK time and the losses that were shown on his account at that point were £9,580, based on a price of \$0.01.

However, this price was not reflective of the actual price of WTI, which was minus \$37.63 at market close. So, Gain subsequently reviewed all trades and adjusted them in accordance with the actual price in the market once the price turned negative.

Where a margin call would have been triggered at a certain price this was the price used for the purposes of the recalculation, otherwise the price used was the price at close of minus \$37.63. In the case of Mr S his account would have been subject to a margin call when the price hit \$32.21 and Gain adjusted his account accordingly, which amounted to his losses increasing to £64,644.

Mr S complained about the adjustment to his account, arguing that shortcomings in Gain's platform meant he could not see the price or take any action in relation to his position. Gain didn't uphold the complaint. It explained that the adjustment of client accounts was to reflect the actual underlying market price which it said the platform hadn't shown. It relied on various clauses within its terms in support of what it had done.

Mr S referred his complaint to us and one of our investigators considered it and thought it should be upheld. Gain didn't agree and the matter was referred to me for review. I issued a provisional decision upholding the complaint. The findings from my provisional decision are set out below.

"Having considered everything I think this complaint should be upheld but I differ from the investigator in respect of the basis for this.

The investigator has upheld the complaint on the basis that Gain's platform didn't operate with negative prices and has awarded redress on the basis that if its platform had shown the price Mr S would have closed his position at 19.13 UK time - this being the first time he logged back into his account after the price turned negative. So, the basis on which the complaint was upheld was that Gain did something wrong because its platform would not operate with negative prices.

I don't think Gain was obliged to provide a platform that would operate with negative prices. It has explained that its platform could not, and still does not, operate with negative prices because it is more likely than not that if the platform showed negative prices this would be the result of system error rather than a presentation of the actual price in the market. I am not satisfied that Gain did anything wrong in providing a platform that would not operate with negative prices. I think it is a matter for it, in the reasonable exercise of its commercial judgment, to decide the service it is going to provide and any limitations to that service.

However, there are potentially significant consequences for clients of it stopping providing its service when prices turn negative, as shown by what happened in this case. In effect because of this, clients are locked into open positions with no ability to see what is happening to the price or being able to take any action, such as closing open positions. In the circumstances I think Gain needed to make clients aware that its platform would not operate with negative prices and put in place a process that ensured that clients would not be in a situation where they were stuck in positions they could do nothing about as a result of Gain stopping providing its service once prices turned negative.

It did this for its UK and US Oil markets shortly after 20 April 2020, informing clients that if the price dropped below \$5 a barrel all existing positions would be switched to close only until the price rose back above \$5 and that if the price dropped below \$0 it would close all open positions. It has said this reflects its position if what happened on 20 April 2020 was to happen again, so is the process it now has in place.

I think it is fair and reasonable to find that the process that Gain introduced to mitigate the impact of its platform not operating with negative prices after 20 April 2020 should have been put in place beforehand. I acknowledge that US Oil had not turned negative before, but that didn't mean it wasn't a possibility such that Gain had no need to put a process in place to deal with this, given the potentially significant impact to clients of its platform not operating with negative prices if that did occur.

Furthermore, I think it was aware, or should have been aware, that before 20 April 2020 there was a real possibility US Oil would turn negative even though this had not happened previously. I say this because I think there was awareness within the industry generally that there was a real possibility that prices would turn negative in the immediate future.

I have seen an article from Bloomberg from March 2020 which referred to this possibility and which referenced one little known crude oil market that had already turned negative. CME Group also provided an advisory note to its clearing members before 20 April 2020 warning that certain New York Mercantile Exchange (NYMEX) energy futures could trade at negative prices or settle at negative values, listing these.

I acknowledge Gain was not a CME Group clearing member, but the point I am making is that there were signs before 20 April 2020 that negative pricing was a real possibility. I think Gain was either aware of this or if it wasn't that it should have been. So, I think this reinforces my finding that it should have made clients aware its platform would not operate with negative prices and put in place a process to deal with this.

I think that in failing to make clients aware the platform would not operate with negative prices and putting in place a process to deal with this Gain was in breach of both COBS 2.1.1 – the clients best interest rule – and COBS 2.2A.2(1) - which requires it to provide appropriate information in good time to clients regarding the firm and its services.

Gain has referred to a couple of clauses in its terms which it has relied on in deciding not to uphold the complaint. The first is clause 14 ("Manifest error") which allows it to void, close, or amend a trade when there has been a manifest error. The second is clause 15 ('Events

Outside Our Control and Market Disruption Events'), which allows it to take various steps where it determines such an event has occurred. I don't think either clause helps Gain in this case based on the findings that I have made.

I think Gain's terms do allow for the adjustment that was subsequently made to Mr S's account but as I don't think he should ever have been in the position that such adjustment was necessary in the first place, I don't think this is relevant.

Gain did refer to the limitation of liability clause is of no effect in relation to breach of its regulatory obligations."

I gave both parties the opportunity of responding and providing any further information they wanted me to consider before making my final decision.

Mr S agreed with my provisional decision saying he had nothing further to add and Gain responded and said it had no comments.

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.

Given Mr S agreed with my provisional decision and Gain had no further comments there is no basis for me changing the findings set out in my provisional decision which form part of this final decision. In short, I uphold this complaint because I think Gain should have made Mr S aware its platform didn't operate with negative prices and put in place a process to deal with this.

Putting things right

I think it is fair and reasonable for Mr S to be put in the position he would have been in if the process that was put in place after 20 April 2020 had been put in place beforehand.

On that basis Mr S's positions would have been closed as soon as the prices turned negative and I think it is reasonable to base redress on the price being zero. I acknowledge he would not necessarily have got that price but in the absence of any evidence as to an actual price his positions would have been closed at, I think it is fair and reasonable to base redress on a price of zero.

I also think that Mr S will have been caused some distress and inconvenience when Gain adjusted his account a couple of days after 20 April 2020 so that his losses went from £9,580 to £64,644. I think an award of £300 is appropriate for this in the circumstances.

My final decision

I uphold this complaint for the reasons I have set out above. 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 S to accept or reject my decision before 22 November 2022.

Philip Gibbons
Ombudsman