

The complaint

Mr C complains about the US Crude Oil positions in his Contracts for Difference account held with Gain Capital UK Limited. He says when the market went into negative pricing, they closed his positions and unfairly adjusted his account causing him significant losses.

What happened

Mr C held US Crude Oil futures positions in his Contracts for Difference (CFD) account with Gain Capital UK Limited and these were due to expire on 20th April 2020 at 19:30.

For the first time in history, the US Crude Oil market went into negative pricing at around 19:08. Gain's platform didn't allow them to record negative pricing, so they were unable to get an up-to-date accurate price and closed Mr C's long positions at the last available price of \$0.01 before expiry of the futures contract.

Gain subsequently went on to make adjustments to his account to the expected margin close out (MCO) level of 50% which amounted to losses of around £8000 for Mr C. He says the adjustment was made several days after the positions were already closed and this action was unfair. He says he was prevented from closing his positions because the platform was frozen. To put things right he would like Gain to reimburse his funds.

Gain issued a final response letter in June 2020 and didn't uphold his complaint. They said the adjustment to his account was in line with the general terms and conditions of his account. They referred to clause 14 "manifest error" and clause 15 "events outside our control and market disruption events". They say:-

- A manifest error in the pricing available due to market volatility required a price adjustment to his US Crude Oil positions.
- This situation would be covered under the "market disruption events" in their terms and conditions.
- Their platform was not designed for negative pricing, so they closed his positions at 0.01 - the lowest available price and then a manual price adjustment was made.
- The adjustment calculation was that Mr C's margin close out level of 50% would have triggered between 19:08 and 19:30 and so they made a decision that he would not have held the position to expiry e.g. the -\$37.63 price. They calculated that his MCO level would have reflected the oil contract price of -\$15.91. As he was closed at zero, the adjustment was calculated as stake X price difference (USD 5 X -1591) = USD -\$7,957.66.

Our investigator looked at the complaint and said the following:-

- The Covid 19 pandemic brought about unprecedented market events.
- He would expect the price Gain offered to be reflective of the underlying market, but their price didn't go below \$0.01.
- He said the US Crude Oil market continued to trade at negative prices until the expiry of the futures contract at 19:30 so the retrospective adjustments to the accounts were in line with the terms and conditions of the account.

- He acknowledged Mr C was logged into his account at 18:53 and that the evidence shows he tried to close his positions after the futures contract had expired but considered what would have happened if the correct price was displayed.
- He said he was satisfied that on balance Mr C would have closed his positions had the correct price been displayed and obtained a better price than what Gain have given him.
- He was unable to say precisely at which point the positions would have been closed. As such he recommended that Gain refund 50% of the sum they debited to Mr C's account being \$3978.83 and pay him £250 for the trouble and upset caused.

Mr C accepted the investigators view, but Gain didn't agree and provided further information to show the price of US Crude Oil was negative at 19:08 and continued to fall until expiry of the contract at 19:30. Their system didn't show the continued fall in price and it was greyed out so the trading platform prevented trading once the price went negative. They say this is risk mitigation control built into the system not a system failure, but this was not known at the time.

In addition, they say, if Mr C had attempted to trade by pressing the greyed buttons, they would have a record of this, but there is no evidence of him attempting to close any positions or contact them until after expiry of the contract.

As Gain didn't agree with the investigator, this has come to me for a final decision. I issued a provisional decision on 30 September 2022 explaining why I was intending to uphold this. I include this below.

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.

What I've provisionally decided – and why

Whilst it is not within my remit to tell a business what its terms and conditions should say or how it should operate, it is key to look at how Gain have exercised their rights when making any changes. I would expect them to be fair and reasonable in exercising their rights and so must consider whether in this instance their action was exercised in this way or not.

I accept the market conditions were unprecedented and the change in market conditions are not Gain's responsibility. They are also entitled to have a system which doesn't deal with negative prices, but they need to be transparent and fair in giving their customers information on their platform limitations and particularly on how they will manage the customers positions when situations like this arise.

There is no dispute that up-to-date price was not available for US Crude Oil and Gain's platform didn't show negative prices, so the platform was greyed out to prevent any trading. Gain say this was risk mitigation control, but this wasn't clear to Mr C because there was no warning or system message that told him what the situation was. As far as he could see, a system error had prevented him from trading, and he makes this point to Gain when he calls them to complain.

Mr C didn't know the system couldn't cope with negative prices, or that he would be prevented from trading. He wasn't able to make decisions such as placing a stop loss on his account which could have mitigated any loss he would have incurred. There is a possibility he may have made the decision to close his positions sooner when he was logged in earlier at 18:53 if he had known the system couldn't cope with negative prices. This would have left

him in a much better position than he finds himself in now. So, I think it is unfair that Mr C wasn't given all the information which would have contributed to the decisions he may have taken in managing his positions.

Gain quoted various clauses in the terms and conditions that it considers cover the events that took place as a result of the movements in the US Crude Oil market including "manifest error" and "events outside our control and market disruption events". I take on board the points Gain makes in relation to these but having looked above at how much information Gain gave their customers in relation to the way the platform operated and negative pricing, I don't think these clauses would have come into effect and so I don't think their points are relevant to the findings I have made here.

Ultimately, Gain should have informed Mr C what would happen and that they didn't deal with negative pricing. They along with other brokers should have been aware from earlier in the week when the changing market information had become available as well as the possibility of negative pricing, so they should have put their customers on notice to make them aware. I am not satisfied that they made clear how they would deal with this situation before the event happened in order to ensure transparency. I understand they say they didn't know this at the time and no such system was in place to inform customers what would happen, but I think the onus on the business to have made this clear.

The fact that Gain didn't know the system couldn't deal with negative prices or what they would do in this situation doesn't mean it absolves them of responsibility. They failed to give their customers sufficient information and operated in a way that I don't think was fair or reasonable. Their customers should not be expected to bear the repercussions of this by being locked out of making any changes to their positions until the market expired.

I have to consider what Mr C would most likely have done had he been given all the information about negative prices on the platform and the retrospective price adjustments. With market conditions being as volatile as they were and being so close to expiry of the futures contract, I am persuaded that Mr C would have closed his positions sooner – most likely at 18:53 when he logged in to the platform before the prices went negative at 19:08 so any retrospective price adjustments wouldn't have been necessary - and so the clauses they mention above would become irrelevant.

Gain should put Mr C back in the position it would be if his positions were closed at 18:53 which is when he would most likely have closed his positions. They should compare the readjusted figure with the position he would have been if they had closed at 18:53. They should also pay him simple 8% interest on the difference each calculated year.

The lack of information and the process involved in dealing with this has added considerable distress and inconvenience to Mr C. Gain should also pay him £250.00 for the distress and inconvenience he has suffered.

My provisional decision

For the reasons given above, I intend to uphold this complaint against Gain Capital UK Limited. They should calculate and pay Mr C as noted above.

They should pay him £250 for the distress and inconvenience caused.

Responses to my provisional decision

Mr C didn't respond to the provisional decision. Gain responded to say they had settled the complaint with Mr C directly as noted in the provisional decision above. They confirmed "a

credit of \$10,081.00 including 8% interest and £250.00 for distress and inconvenience was applied to the trading account of Mr C.”

Putting things right

As both Mr C and Gain accept my provisional decision, there is nothing further for me to add. I see no reason to depart from my provisional findings and make the same findings here.

My final decision

For the reasons given above, my final decision is that I uphold this complaint against Gain Capital UK Limited.

If not done so already, they should compare the readjusted figure with the position Mr C would have been if they had closed at 18:53. They should also pay him simple 8% interest on the difference each calculated year and should pay him £250 for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 6 December 2022.

Naima Abdul-Rasool
Ombudsman