

The complaint

Miss L complains that Tickmill UK LTD ('Tickmill') unfairly closed her account. She said that caused her a financial loss. She wants Tickmill to pay her compensation for that.

What happened

Miss L had a number of trading accounts provided by Tickmill which she used to trade foreign currency.

On 17 May 2022 Tickmill told Miss L it had decided to end its business relationship with her and close her accounts. It asked Miss L to close her positions within 15 days and said it would close the accounts and any remaining open positions after that.

Miss L objected to the closure of her accounts. She and Tickmill exchanged numerous messages about this and about some pre-existing issues Miss L was dissatisfied about.

On 15 June 2022 Tickmill told Miss L it would now close her accounts on 1 July 2022. It said doing so was in line with clause 27.1 of its Terms of Business. And it said, '*No further extensions will be given*'.

Miss L closed some but not all of her positions.

Tickmill reminded Miss L on 30 June 2022 that it would close her accounts and any open positions on 1 July 2023. And on 1 July 2023 it did that.

Miss L complained about Tickmill closing her accounts. Tickmill said it had the right to close them. Miss L referred her complaint about the account closure to this service.

During the various exchanges that took place between Miss L and Tickmill about her account closure, Miss L said Tickmill's Terms of Business were unfair and didn't apply, and she needed her accounts open so she could access evidence for ongoing complaints she had against Tickmill. Tickmill said Miss L had agreed to the Terms of Business when she opened her accounts. It also said it couldn't understand why Miss L would want to continue using Tickmill's service when she'd said she was dissatisfied with it. Miss L asked Tickmill to give her time to transfer her positions to another broker, but Tickmill said it wasn't possible to transfer positions.

Prior to the account closure Miss L and Tickmill had been in dispute about how Tickmill had to carry out an ombudsman's order for compensation, after this service upheld a complaint Miss L made about Tickmill. Miss L disagreed with the way Tickmill proposed to calculate the amount it had to pay Miss L under the ombudsman's order. Tickmill eventually paid the amount Miss L had said was correct under the order. During and after that time Tickmill and Miss L exchanged many messages in which it was clear they were in dispute, and both contacted this service a number of times about the dispute. As part of that Miss L said Tickmill was responsible for further losses on her accounts because of the time it took to pay the compensation ordered by the ombudsman.

Below I've summarised the main points Miss L made in her complaint to this service about the closure of her accounts. Miss L also made comments about matters outside the scope of this decision – I haven't included those here.

- Tickmill didn't give a reason for closing her accounts but admitted it was related to Tickmill being unhappy about having to pay redress to Miss L in response to her previous complaint. And it acted out of spite and personal grudge, and Miss L hadn't changed her trading behaviour or offended or insulted anyone.
- The closure of her positions had caused Miss L substantial losses.
- Tickmill relied on its April 2022 terms and conditions to close the accounts but hadn't shown that those conditions applied. And she couldn't have agreed to April 2022 terms when she opened her accounts in 2018.
- Article 1.3 of Tickmill's Terms of Business said '*...by ticking the relevant "I agree" box you acknowledge that you have read, understood and agree to be legally bound by the Agreement*'. But Miss L didn't recall seeing anything about terms and conditions when she opened her accounts. And, in any case, ticking such a box wasn't enough to ensure she understood the terms and conditions and could foresee their consequences. A ticked box to accept the terms and conditions couldn't reasonably be taken to show the client understood their account could be closed against their will.
- The terms were unfair according to consumer rights legislation which says, '*A contractual term which has not been individually negotiated shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations ... to the detriment of the consumer ...*' Miss L's contract wasn't individually negotiated and gave too much power to Tickmill by allowing it to close her account without her consent. The 15-day notice of closure was also unfair under the legislation because it wasn't negotiated and caused an imbalance to Miss L's detriment.
- Miss L needed her accounts to stay open as evidence for two unresolved complaints she had against Tickmill.
- Tickmill should've allowed Miss L to transfer her investments. Information online showed '*in-kind*' transfers of investments were common.
- Miss L's trading history showed her strategy was to hold her positions for a very long time so 15 days' notice wasn't reasonable.
- Tickmill created uncertainty and distress by postponing the closure.

Our Investigator's view

One of our Investigators looked into Miss L's complaint. He sought information from Tickmill and Miss L. Before issuing his formal view on the complaint, the Investigator had a number of email exchanges with Miss L in which he outlined his thinking and Miss L responded to the points he'd made. Ultimately the Investigator said he thought the complaint shouldn't be upheld and he said Miss L could refer the complaint for an ombudsman's decision if she didn't agree.

Because no agreement could be reached, the complaint was passed to me to review afresh and make a decision.

Below I've summarised the views our Investigator put to Miss L.

- Tickmill could choose who it did business with and it had decided to close Miss L's account after it felt its relationship with her had broken down.
- The way in which Tickmill closed Miss L's account was in line with the terms and conditions of the account.
- It was a condition of opening an account that the customer agreed to the terms and conditions of the account. So Miss L must have agreed to the terms and conditions.
- The risk of having her account closed with 15 days' notice was a risk Miss L took when she opened the account.
- Closure terms like those in Tickmill's Terms of Business were common.

In summary Miss L said she disagreed with the Investigator's view for the reasons below.

- The Investigator referred to a '*contract*' but Miss L didn't have a contract with Tickmill.
- She didn't agree that in 2018 she'd ticked a box to say she'd read and understood the terms and conditions. The onus was on Tickmill to prove she'd understood the terms and conditions.
- Even if, when opening her account, she'd ticked a box agreeing to the terms and condition, she couldn't be said to have agreed to them because:
 - this service found in a published decision on a different complaint that a novice client can't be held accountable for ticking a box
 - the Investigator hadn't considered all the circumstances as required by section 62 of the Consumer Rights Act 2015 which said that whether a term is fair is to be determined (a) taking into account the nature of the subject matter of the contract; and (b) by reference to all the circumstances existing when the term was agreed and to all of the other terms of the contract or of any other contract on which it depends
 - when she opened the account in 2018 she couldn't have understood the terms because she couldn't have foreseen how Tickmill would act.
- The contract was unfair for reasons previously mentioned and according to items 2, 4 and 8 in the schedule of unfair terms in the Consumer Rights Act 2015.
 - Item 2 says a term is unfair that inappropriately excludes or limits the legal rights of a consumer in relation to the trader or another party if the trader doesn't perform their contractual obligations. Tickmill limited Miss L's rights by closing her account, after it failed to perform its contractual obligations by not paying redress as ordered by this service.
 - Item 4 says a term is unfair that permits the trader to retain the consumer's money if the consumer decides not to conclude or perform the contract, but doesn't compensate the consumer if it's the trader who cancels the contract. Tickmill cancelled the contract but didn't compensate Miss L.
 - Item 8 says a term is unfair that enables the trader to terminate a contract of

indeterminate duration without reasonable notice except where there are serious grounds for doing so. Fifteen days wasn't reasonable notice, especially given Miss L was a long-term trader.

- If the account closure clause used by Tickmill was common amongst brokers, that proved only that many clients of brokers were being disadvantaged.
- Tickmill was required to act reasonably under 27.2 of its Terms, but it didn't act reasonably because it didn't have good reason to close her account. Its email of 30 June 2022 showed Tickmill was watching Miss L's accounts which showed Tickmill intended to force losses on her. And Tickmill couldn't claim it suffered a relationship breakdown if it caused the breakdown itself.

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'm not upholding the complaint. I'll explain why.

The purpose of this decision is to set out my findings on what's fair and reasonable, and explain my reasons for reaching those findings, not to offer a point-by-point response to every submission made by the parties to the complaint. And so, while I've considered all the submissions by both parties – some of which are very detailed and extensive – I've focussed here on the points I believe are key to my decision on what's fair and reasonable in the circumstances.

First I've considered whether the terms and conditions apply. Tickmill said it wasn't possible to open an account of the type Miss L had without having agreed to the terms and conditions of the account. I'm aware this is usually the case with accounts of this nature. And I understand that to be a fair and reasonable arrangement, for both parties. Miss L said she didn't have a contract with Tickmill, but generally speaking the terms and conditions form the agreement or contract between the customer and the business for accounts like this one. That's why it's an important part of the process for the customer to be given the terms and conditions and to agree to them if the customer wants to open an account – so the business is transparent about what it's offering and the consumer proceeds only if they're content to accept that. That way the rights and responsibilities of the parties are set out and agreed. I appreciate Miss L says she doesn't recall agreeing to the terms and conditions when she opened her Tickmill accounts. But, as I've said, requiring a customer to agree to the terms and conditions of an account is standard industry practice and I've seen no evidence to show Miss L didn't so agree, other than her lack of recollection. So, on the balance of probabilities, I find that it's more likely than not Miss L did agree to the terms and conditions. To that extent I'm satisfied that the terms and conditions apply.

Miss L said she couldn't in 2018 have agreed to the 2022 terms and conditions. But, again, it's usual for a business to update its terms and conditions from year to year. And I've seen nothing to suggest Tickmill didn't do that fairly. Tickmill has said the terms relating to account closure were present in both versions of the terms and I have no reason to doubt that.

Miss L said that in another decision this service concluded that ticking a box wasn't sufficient to bind the consumer. In referring to a decision on a different case, it's important to note that this service considers each complaint on its own merits, with reference to the particular circumstances of the case, and based on what's fair and reasonable in the opinion of the ombudsman who determines the case.

But in any case I don't agree that the decision Miss L mentioned says what she said it does. In that decision the ombudsman said the business hadn't done enough to consider whether the consumer should be classified as a professional client, and the business couldn't rely on the consumer ticking boxes for that purpose because regulatory rules expressly required the business to make its own assessment. In Miss L's case, the box in question didn't relate to whether she was a professional client. It asked her to confirm she'd read and agreed to the terms and conditions. There was no express regulatory requirement for the business to assess whether Miss L really had read and understood the terms and conditions. And in fact, in the case Miss L mentioned, the ombudsman said that although consumer didn't recall agreeing to terms and conditions, the terms and conditions still applied because the ombudsman thought, on balance, that the consumer wouldn't have been able to open an account without agreeing to them.

Having concluded that the terms and conditions applied, insofar as Miss L agreed to them, I've also considered the fairness of the terms and conditions themselves. Miss L said the terms and conditions were unfair and so they weren't binding on her.

I agree with our investigator that account closure terms like those in Tickmill's terms and conditions are common. And I don't think it's generally unfair for Tickmill to allow itself the discretion to decide who it will do business with. I've considered carefully all of Miss L's points on this subject, but I haven't seen any reason to conclude that the terms themselves are unfair.

Miss L said when she opened the account in 2018 she couldn't have foreseen how Tickmill would act in future. Unfortunately I can't agree that this means the terms and conditions don't apply or that they're unfair. The terms and conditions set out each party's rights and responsibilities. They made clear that Tickmill could close her account with 15 days' notice. She might not have expected it to happen, but she was made aware of the risk before she opened the account.

I'm also not persuaded the terms which allowed Tickmill to close Miss L's relationship created a significant imbalance between Miss L and Tickmill. The terms generally allowed either party to end the relationship by closing the account. Where it was Tickmill who ended the relationship the terms required Tickmill to give Miss L notice so she could take steps to minimise or prevent detriment. So I don't think the terms caused a significant imbalance. And I don't think the terms would be fair if they required either Tickmill or Miss L to continue the relationship between the parties without the option to end it.

In the same vein, I don't think Tickmill's terms for account closure inappropriately excluded or limited Miss L's legal rights, or permitted Tickmill to retain Miss L's money if she cancelled the contract while not compensating her if it cancelled. So, again, I've considered the fairness of the terms, including in relation to the points raised by Miss L, but I haven't seen that they're unfair.

I've also considered whether Tickmill in fact complied with the terms and conditions. Having looked at the timeline of events and correspondence between Tickmill and Miss L, I'm satisfied Tickmill gave Miss L the notice required under the terms and conditions.

Although Miss L has pointed out that she intended to hold her positions open for the long term, I don't think that means it was unfair for Tickmill to apply the notice period specified in the terms and conditions. The possibility that her account would be closed at 15 days' notice was a risk Miss L took on when she opened the account. And, once Tickmill had decided it wanted to end its relationship with Miss L, it wouldn't be fair to expect Tickmill to wait for her to close her positions in her own time simply because her strategy was to hold them for a long time.

As it was, Tickmill gave Miss L more than 15 days' notice because after initially giving her notice it postponed the closure to a later date. Although Miss L said this caused confusion and inconvenience I don't think it was wrong for Tickmill to do what it did. If Miss L had wanted her accounts or her positions closed sooner she could've closed them herself as requested by Tickmill.

I understand Miss L would've liked to transfer her open positions to another provider. But the online information Miss L mentioned which discussed in-kind transfers related to equity investments, not forex trades. It's common to transfer holdings of equities between providers. But it's not common to do that with forex trades. And so I accept that Tickmill couldn't facilitate that option.

Miss L had time to manage her open positions. If she had trades she wanted to keep open beyond Tickmill's deadline, she needed to take action to close them and open them elsewhere.

I'm also not persuaded it was necessary for Miss L's accounts to stay open so she could access evidence for further complaints about Tickmill. The notice Tickmill gave Miss L before it closed the accounts was enough that she could reasonably have taken what information she needed from the accounts before they closed.

Miss L said Tickmill didn't have a good reason to close her account and so it hadn't acted reasonably. I can see why Miss L feels aggrieved about the account closure. But having considered the correspondence between the parties and the submissions made to this service, I can also see why Tickmill might have felt the relationship was poor. Most importantly, it's generally fair for Tickmill to decide not to do business with a particular client. Tickmill's reason for making that decision on this occasion doesn't persuade me that the decision was unfair or unreasonable.

Taking into account all of this, and all of the detailed submissions made by Miss L, I can't conclude that Tickmill has acted unfairly or unreasonably to her by exercising the right it had under the terms and conditions to close her account. I understand Miss L feels it's inappropriate for Tickmill to turn her away as a client, but it remains the case that Tickmill has the commercial discretion to decide who it will do business with. Tickmill believes the relationship has broken down. And it's acted within the applicable terms and conditions which make clear that Tickmill can close a client's account the way it closed Miss L's account. And I can't say the terms and conditions are unfair. The notice Tickmill gave Miss L would've been sufficient for Miss L to decide whether she wanted to close her positions herself at a time of her choosing and to find another broker that would allow her to trade. So I won't be asking Tickmill to do anything on this occasion.

My final decision

For the reasons I've set out above, my final decision is that I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 10 May 2024.

Lucinda Puls
Ombudsman