

The complaint

Mr K complains that Interactive Brokers (U.K.) Limited ('IBL') 'arbitrarily liquidated two currency futures contracts' he held for hedging purposes.

Mr K would now like IBL to recompense him for the investment loss he says he's suffered.

What happened

Mr K held two long futures contracts of 6BV2 in his IBL account. On 13 October 2022, IBL sent him a warning message that his contracts were approaching their expiration date. Their message went on to explain that physical delivery was not possible, and he should either close out or roll the positions and if he didn't do so, they would close the positions on his behalf.

As Mr K hadn't taken any action, the following day, IBL sent another message to him repeating the same warning. As Mr K failed to either roll over or close his positions, IBL liquidated those positions later that day after their second warning to him.

Shortly afterwards, Mr K decided to formally complain to IBL. In summary, he said that the liquidation of his two futures positions was improper.

After reviewing Mr K's complaint, IBL concluded they were satisfied they'd done nothing wrong. They also said, in summary, that their terms and conditions expressly set out that consumers cannot take physical delivery of the instrument that Mr K had invested in.

Mr K was unhappy with IBL's response, so he referred his complaint to this service. In summary, he repeated the same concerns that he'd made to IBL and this was that two of his currency futures contracts had been unfairly liquidated.

The complaint was then considered by one of our Investigators. Our Investigator said that from what he'd seen of IBL's terms and conditions, along with the fact that they had given Mr K sufficient warning of the need to take action, he wasn't persuaded that Mr K had been treated unfairly.

Mr K, however, disagreed with our Investigator's findings. In summary, he said that he has a general margin account with IBL and in several instances previously, he received physical delivery of the underlying currency upon expiration. Given this instrument was sat within a self-invested personal pension (SIPP), from what he'd seen, Mr K felt that such a delivery could take place.

In addition, Mr K went on to say that he doesn't recall ever receiving and reading IBL's notifications about the need to either roll over or liquidate his positions and as such, their argument shouldn't stand. He also felt that there should be a 'measure of proportionality that safeguards the interests of the customer when no risks are involved'.

Our Investigator was not persuaded to change his view as he didn't believe Mr K had presented any new arguments he'd not already considered or responded to. Unhappy with that outcome, Mr K then asked the Investigator to pass the case to an Ombudsman for a decision.

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 summarised this complaint in less detail than Mr K has done and I've done so using my own words. The purpose of my decision isn't to address every single point raised by all of the parties involved. If there's something I've not mentioned, it isn't because I've ignored it - I haven't. I'm satisfied that I don't need to comment on every individual argument to be able to reach what I think is the right outcome. No discourtesy is intended by this; our rules allow me to do this and it simply reflects the informal nature of our service as a free alternative to the courts. Instead, I will focus on what I find to be the key issue here, which is whether IBL treated Mr K fairly when they liquidated his two long futures contracts (6BV2).

My role is to consider the evidence presented by Mr K and IBL in order to reach what I think is an independent, fair and reasonable decision based on the facts of the case. In deciding what's fair and reasonable, I must consider the relevant law, regulation and best industry practice. Where there's conflicting information about what happened and gaps in what we know, my role is to weigh up the evidence we do have, but it is for me to decide, based on the available information that I've been given, what's more likely than not to have happened. And, having done so, I'm not upholding Mr K's complaint - I'll explain why below.

Mr K says that IBL never informed him that he needed to roll over his contracts and had they done, he would've taken action. IBL, however, say that they did alert Mr K to this fact and have shared screen shots of the prompts they issued to him. There's no dispute that Mr K was trading as an execution only client – this meant IBL was not responsible for advising him or managing his positions; he alone was responsible for deciding how much money to deposit, when to open trades and on what markets, monitoring those positions, and when to close them. So, despite what Mr K may have said in his complaint, IBL were not responsible for overseeing his positions or contacting him if and when his trades were at risk of being liquidated.

Having looked at the nature of the arrangement Mr K had entered into with IBL, as an 'execution only' customer, it's the consumer's responsibility to ensure that they are fully aware of their account status and balance at all times – that means it's up to Mr K to check and not IBL. And, when a consumer enters into a trade, it's their responsibility (and not IBL's) to ensure they clearly understand the nature of that position, and more specifically, when the contract will come to end so they can manage it appropriately. It also seems clear to me that Mr K didn't want the contracts to expire because as soon as he realised that IBL had liquidated his contracts, he restored his position by buying two December 2022 contracts.

And, I also think on balance, it's more likely than not that Mr K understood that he would need to take action with these two contracts because in his complaint, he stated that *'for nearly 10 years now, I have kept two (often three) GBP futures contracts, for hedging the dollar exposure (mainly US stocks) of my pound sterling nominated account. I keep the hedge in place by rolling these contracts forward, thus avoiding currency fluctuations'*. So,

despite knowing that he needed to regularly take action and roll his contracts forward, in this instance, he missed the close out deadline and didn't.

I've looked at the screengrabs that IBL submitted showing that they alerted Mr K to the need to take action, thereby avoiding his positions being liquidated - Mr K states he never received these prompts, despite IBL's system showing that he'd read them both. I think on balance, it's more likely than not that he did receive the alerts because Mr K says he received the third message from IBL, telling him that his contracts had been liquidated (because that prompted him to contact IBL). But in any event, from what I've seen, IBL are under no obligation to provide these reminders to Mr K anyway.

Mr K electronically signed and accepted IBL's 'Notice of Execution and Clearing Agreement'. I've looked closely at that agreement which covered a range of issues, and I believe the following clause is the most relevant to Mr K's complaint (text in bold is my emphasis):

'4 Particular Products or Orders

E. Close-Out Deadline for Futures Contracts Not Settled in Cash: *For futures contracts that are not settled in cash, but are settled by actual physical delivery of the underlying commodity (including those foreign currency contracts that call for actual delivery of the physical currency and are not on the IB Deliverable Currency List). **Customer may not make or receive delivery of the underlying commodity.** For long positions not settled in cash, Customer agrees to roll forward or to close-out any position by offset three (3) business days prior to the exchange-specified first notice day (the long "Close-Out Deadline"). For short positions not settled in cash, Customer agrees to roll forward or close-out the position by offset three (3) business days prior to the exchange specified last trade day (the short "Close-Out Deadline"). It is Customer's responsibility to make itself aware of the last trading date for such contracts and the Close-Out Deadline. If Customer has not closed out any position in a futures contract not settled in cash by the Close-Out Deadline, IB UK and its Affiliates shall have the right to liquidate Customer's position in the expiring contract, at any time and in any such manner as IB UK or its Affiliates deem necessary, without prior notice to Customer. If Customer fails to close out a futures position and IB UK or its Affiliates are unable to close out the position prior to the expiration of the contract, then Customer shall be liable for any and all costs of delivery and the liquidation of the resulting physical currency position.'*

Mr K explained that he was not disputing whether or not these types of contracts can be liquidated prior to expiry date, rather, he was questioning whether physical cash delivery could take place in the case of a SIPP account (that's because Mr K held the instruments in his SIPP). However, the terms of the 'Execution and Clearing Agreement' (clause 4E) makes no distinction about the nature of the wrapper the instrument is in, rather, IBL have set out that given the nature of the futures contract that Mr K had entered into, IBL's terms wouldn't allow him to take physical delivery and as such, he had to either roll the contracts over or liquidate them. So, despite what Mr K says about IBL not informing him of the need to take action on the 6BV2 instrument, it was his responsibility to ensure he was aware of the last trading date and the close out deadline for physical delivery futures held in his account and take the appropriate action to avoid IBL liquidating his positions.

Mr K explained that because his account was well funded, his position created no risk to anyone. However, I think Mr K knew that the instruments needed to be rolled over and IBL's terms were clear that the consumer may not make or receive delivery of the underlying commodity. It therefore follows that I can't conclude that IBL have treated Mr K unfairly and as such, I'm not upholding his complaint.

My final decision

I'm not upholding Mr K's complaint and as such, I won't be instructing Interactive Brokers (U.K.) Limited to take any further action.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 24 June 2024.

Simon Fox
Ombudsman