

The complaint

Mr P is complaining that he couldn't trade his spread bet positions because of IG Index Limited's technical problems.

What happened

In January 2021, Mr P had several trading accounts with IG, with whom he was registered as a professional trader. This complaint is solely about his spread betting account.

On 27 January 2021, when the US markets opened, IG experienced technical issues due to unexpected volumes of trades. Mr P couldn't access the platform for around 40 minutes, so was unable to manage his account. During this time, the markets went against Mr P. His equity fell below the margin requirement of 50% so IG closed a number of his positions. A loss of around £125,000 crystallised in Mr P's account as a result.

Mr P spoke to IG on the phone that afternoon. They offered to reinstate the trades that had closed as a result of the margin call and refund the £125,000 losses. At the same time, IG told Mr P that he'd need to either fund his account with around £18,000 or close some positions to avoid another margin call once the positions were reinstated.

IG reinstated Mr P's positions at around 7pm. The refund didn't go through until around 10am on the following day. Mr P closed a few positions shortly after 7pm to avoid the further margin call. He then tried to continue trading but wasn't able to. He tried several trades over the course of around twelve hours, but they were all rejected.

Mr P had further conversations with IG. He was very upset about the situation he found himself in when he was able to trade again – he said his account had lost over £120,000 due to IG's technical issues. IG's account manager made Mr P an offer – to refund the difference between the trades he could see Mr P had been attempting to make and the ones he made once he'd regained access to his account. But this was only around £700 so Mr P wasn't interested. He said the trades he'd tried to make represented a small proportion of what he would have done – he hadn't tried more because it clearly wasn't working.

When Mr P complained to IG they said Mr P's loss calculation appeared to show his losses had arisen largely due to market movements and partly due to the positions he closed to avoid a margin call. So they said they couldn't be held responsible for his losses. They said they'd reinstated all the positions that had been closed as a result of the first margin call. They also explained that Mr P had experienced rejected trades on the evening of 27 January and morning of 28 January because the trades would increase his exposure when the account was already on a margin call.

IG said they don't consider refunding clients in respect of missed opportunities on hypothetical trades. And they said Mr P hadn't been at all specific about how the technical issues had impacted him. So they offered him £1,000 as a goodwill gesture.

Mr P remained unhappy so he brought his complaint to our service and an investigator looked into things. Our investigator didn't uphold Mr P's complaint. She said it was impossible to quantify what losses Mr P had incurred as a result of IG's technical issues so

instead she considered the distress and convenience the issues had caused Mr P and said IG should pay him £800. By this point IG had withdrawn their goodwill offer of £1,000.

Mr P was upset with our investigator's response and asked for an ombudsman to look at the matter. He's frustrated that our service hasn't calculated his losses and said that it's not unreasonable to look at the loss in value of his investments between when the platform malfunctioned and when the refund went through – he wasn't able to manage his positions at all during this time. He added that IG should refund him all the commission they'd charged him, plus interest.

I issued a provisional decision on 26 April 2023 in which I said:

It's not disputed that there were technical issues affecting the IG platform between around 2.35pm and 3.20pm on 27 January 2021. So I've not looked into this but instead thought about the position Mr P would have been had the technical issues not occurred.

Mr P was subject to a margin call just before 3pm on 27 January 2021. On a phone call with IG later that afternoon he said this wouldn't have happened if he'd access to his account just before this, because he'd have made trades to avoid the margin call. At around 7pm IG reinstated all the positions they'd closed and refunded the realised losses. On the face of it, then, Mr P was put back into the position he'd have been in if the technical issues hadn't happened.

But unfortunately the refund didn't reach Mr P's account until 10am on 28 January 2021. Mr P says this meant he couldn't trade as he wanted to. It's not entirely clear whether this was because the account was on hold or because he didn't have the margin to trade – IG have offered both explanations at different times. What is clear is that between 7pm and 8pm Mr P made additional trades to meet the additional £18,000 margin requirement that IG had told him he'd need. After that a number of his trades were rejected – but he would have been able to trade if the refund had reached Mr P's account by that time.

I don't need to consider whether it was fair for the refund to take so long - if the initial technical issues hadn't happened, the refund wouldn't have been necessary. Mr P would have been able to trade throughout. Instead he lost the opportunity to trade between 8pm on 27 January 2021 and 10am on 28 January 2021 (as well as the 45-minute period that the platform was down).

I've reviewed Mr P's calculation of his loss. He's taken the reduction in equity on his spread bet account on 27 January, and added back the refund, arriving at a loss of around £77,000. He's then added on around £40,000 of losses he realised on trades when trying to avoid a further margin call. I think Mr P's double-counted the £40,000 loss as it forms part of the overall reduction in equity for the day. I also don't think either of the elements of this calculation are reasonable – I'll explain why.

Taking the loss realised when trying to avoid a further margin call first, these were trades that Mr P chose to make – so it's not reasonable to hold IG responsible for these losses. Doing so requires an assumption that Mr P could have kept his account within the margin requirements without realising losses. Looking at Mr P's positions and the market movements I don't think that's a reasonable assumption.

Thinking then about the £77,000 loss of equity in Mr P's account – this is predominantly a reflection of the market movements on 27 January. Mr P's calculation requires an assumption that he wouldn't have made any losses on that day. Mr P says he was a scalp trader so would have been able to benefit from the market movements. I can see from his trading history that he generally closed a fairly high proportion of his positions within a few minutes, and most within a few hours. But he did also often hold positions

for many days. In addition, his trading history shows many days on which he made losses, some of them significant. For example, his losses on his spread bet account on 15 January 2021 were around £74,000. So it's not reasonable to say he wouldn't have made any losses if he'd been able to trade throughout 27 January 2021 or that IG should compensate him as if he'd made no losses.

Mr P's also said IG should refund him all the commission they'd charged him, plus interest. It's not clear what period Mr P's referring to, or whether he'd like this to apply to all of his accounts with IG or just this one, but either way, I'm satisfied it's not a reasonable request. IG provided a service to Mr P it's therefore not reasonable to ask them to refund commissions. Even at times when the platform was down, IG were available on the phone.

Mr P hasn't sent in any suggestion of what trades he'd have made if he'd had full access to his account on 27 January. Nor has he provided a commentary of what sort of thing he'd have done. So I can't make a detailed assessment of what Mr P's gains or losses might have been if IG's platform hadn't failed.

However, I don't think the compensation suggested so far by IG or by our investigator goes far enough. It's clear Mr P was an active trader and I'm persuaded that he'd have carried out numerous trades to try to manage his positions if he'd been able to. Mr P says he'd had limited success with his trading before January 2021, but that he'd started to make some money. And that's confirmed by his trading history – prior to January 2021 his average daily gain on his spread bet account was around £100, but from 1 January to 26 January his average daily gain was around £6,500 (even taking into account the day he lost £74,000).

With cases like this it's impossible to say exactly what Mr P would have done and therefore how much he'd have lost or gained if the technical issues hadn't occurred. I'm inclined to say the fairest solution is for IG and Mr P to take an equal share in the amount Mr P's lost after the technical issues arose on 27 January 2021.

I've looked into what his losses were and provisionally calculated the following, taking the figures from the daily statements and trading history for Mr P's account:

| | £ |
|--|------------------|
| Opening equity on 27 January 2021 | 106,690.94 |
| Closing equity on 27 January 2021 | -95,000.74 |
| Difference | 201,691.68 |
| Less: Amount refunded by IG | -124,934.32 |
| Less: Loss realised before 2:35pm on 27 January (not attributable to technical issues) | -17,155.00 |
| Add back: Amounts transferred into spread bet account from CFD account on 27 January | 26,000.00 |
| Total loss | 85,602.36 |

It follows that I'm inclined to say IG need to pay Mr P half of this amount - £42,801.18.

Both parties replied to my provisional decision with extensive comments and IG sent some additional evidence. I'll set out their comments and my response to them 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.

Mr P's comments

In summary, Mr P made the following comments:

- He'd deposited £26,000 in his account hoping to be able to trade and this should be returned to him as he couldn't trade.
- All commissions and spreads charged during the period he couldn't trade should be refunded.
- The issue had wiped out his capital and denied him the opportunity to continue to make a living from trading.
- All of his trades were scalping trades and he'd have been able to protect against losses by hedging.
- As I'd noted in the provisional decision, he'd been making average profits of £6,000 a day – so as a minimum he should be put back in the position he was in before the system crashed.

I'm satisfied I took all of these comments into account when reaching my provisional decision. The £26,000 is factored into the calculation set out above, and I was aware of the impact on Mr P's livelihood. I've taken the commissions and spreads into account when thinking about putting things right. Given the market at the time, and Mr P's trading history, I don't think it's reasonable to assert that he'd have avoided any losses if the technical issue hadn't occurred. In summary, Mr P's comments don't change my mind.

IG's comments

I've summarised IG's comments as follows:

- The technical issue that IG experienced was caused by an unprecedented event – high worldwide demand for specific stocks. This was widespread and impacted other clients as well as other brokers. Two days later, the Financial Conduct Authority issued a statement which said broking firms could withdraw their services if they considered it necessary or prudent to do so. This context isn't considered enough in the provisional decision.
- There's no evidence to show exactly what trades the client would have made while he couldn't access the platform or while he was waiting for the cash correction to be credited to his account. It's very generous to propose IG carry half the difference between the opening and closing equity on the account. Where an actual loss can't be determined, it's not fair for IG to carry half the hypothetical loss.
- The technical issue was sufficiently corrected by reinstating the positions, crediting back the realised losses, and the initial goodwill offer of £1,000. But there was a delay in crediting the cash correction. It could have been credited sooner but would still have taken at least two hours to process so wouldn't have been before 9pm. Even if the correction had been processed sooner, Mr P would still have been on margin call and unable to place trades.
- Mr P could have made a deposit on his account at any time in order to continue his trading.

I appreciate the technical issue was caused by unprecedented demand in the financial markets. Whilst I didn't comment on this in my provisional decision, I had considered it. And I'd understood that IG had accepted that the issue was their fault. In their final response letter to Mr P they said *"This is clearly not something you should expect from IG, and I wish to assure you that measures have been put in place to reduce the likelihood of such events occurring again in the future."* While the context is important, it doesn't change the fact that IG's platform failed Mr P and it wouldn't be fair for him to bear all the losses that arose as a result of that failure.

IG have described the losses I've calculated as being hypothetical. But it isn't hypothetical – it's the amount that Mr P actually lost between the start and end of 27 January 2021. We don't know what profit or loss he would have made had the technical issues not occurred and the margin call not happened. The platform issues led to a margin call which otherwise would likely not have happened. This margin call prevented Mr P from being able to manage his account and limit his losses. So, whilst I understand IG's view that it's not fair for them to carry half of a hypothetical loss, I'm not satisfied that it's fair that Mr P carry all of the loss – if there had been no issues I'm satisfied on balance that his loss for the day would have been much smaller, or he may have been able to make a profit. That's why I suggested the parties share the loss.

As I said in my provisional decision, the delay to the cash correction is incidental as the correction wouldn't have been necessary if the platform hadn't gone down and Mr P had been able to trade out of the margin call. IG have sent screenshots showing that at several points in time between 7pm and 8pm Mr P would have needed more than the amount of the cash correction to avoid a margin call. But this doesn't take into account the cumulative impact of the 3pm margin call – it's likely that if the margin call hadn't happened, Mr P wouldn't have been in such a negative position by 7pm. So this additional evidence doesn't change my mind.

While I don't disagree with IG's statement that Mr P could have made additional deposits and this would have allowed him to continue trading and potentially mitigate his losses, my understanding is that Mr P didn't have the money available to him to do this.

In summary, IG's comments haven't changed my mind and so my final decision is unchanged from my provisional decision.

My final decision

As I've set out above, my provisional decision is that IG Index Limited should pay Mr P £42,801.18.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 19 July 2023.

Clare King
Ombudsman