

## **The complaint**

Mr L complains that Atlantic Capital Markets Limited ('Atlantic') didn't do enough to stop his contracts for difference (CFD) positions from being closed out due to a margin call.

Mr L would now like Atlantic to compensate him for the investment losses he says he suffered as a consequence of his CFD positions being closed against his wishes.

## **What happened**

In February 2022, Mr L opened an execution only account with Atlantic to trade CFDs. Atlantic used a broker to facilitate the trades for their customers, City Index. In September 2022, City Index liquidated a number of Mr L's positions because his trades failed to maintain their margin compliance.

Shortly afterwards, Mr L decided to formally complain to Atlantic. In summary, he said he was closed out of his CFD positions against his will and he felt he'd made it clear that he wanted his positions to be rolled over.

After reviewing Mr L's complaint, Atlantic concluded they were satisfied they'd done nothing wrong. They also said, in summary, that as Mr L was an 'execution only' client, this meant that Atlantic weren't responsible for monitoring his positions or providing any ongoing advice or direction about his trades. Atlantic also said that it was Mr L's responsibility to keep abreast of what was happening on his account and take the appropriate action when necessary.

Mr L was unhappy with Atlantic's response, so he referred his complaint to this service. In summary, he repeated the same concerns that he'd set out to Atlantic and that was that he was upset his CFD positions had been closed out without being given a chance to top up his account.

The complaint was then considered by one of our Investigators. He concluded that Atlantic hadn't treated Mr L unfairly and from what he'd seen of the terms and conditions of both the broker and Atlantic, it was down to Mr L to have been aware of and to have maintained the appropriate margin on his account to ensure his positions didn't close out when he didn't wish them to.

Mr L, however, disagreed with our Investigator's findings. In summary, he said that he'd made it clear to Atlantic that he did not ever wish for his positions to be closed and that he would always top up his account whenever necessary, which in the past, Mr L says, he always did, except on the morning in question when City Index closed out his positions.

Our Investigator was not persuaded to change his view as he didn't believe Mr L had presented any new arguments he'd not already considered or responded to. Unhappy with that outcome, Mr L 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 L 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 Atlantic should have done more to stop Mr L's CFD positions from being closed out.

My role is to consider the evidence presented by Mr L and Atlantic 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 L's complaint - I'll explain why below.

What I don't believe is in any doubt is the reason why City Index were obliged to close out Mr L's CFD positions. The regulator, the Financial Conduct Authority (FCA), has very clear requirements that all CFD providers must follow where retail customers hold such investments; that is to say, they must ensure that a retail client's net equity in an account used to trade restricted speculative investments doesn't fall below 50% of the margin requirement required to maintain the open positions. This is covered under the FCA's COBS rule 22.5.11R and, from what I've seen, had City Index not acted when they did, Mr L's account would have breached this rule. In any event, Mr L is complaining that Atlantic didn't forewarn him that his positions were likely going to breach that limit and he needed to fund his account to prevent it, rather than the reason why City Index had to liquidate his positions.

I've looked closely at the nature of the relationship that Mr L had with Atlantic. Mr L was an execution only client; that meant Atlantic was not responsible for advising him or managing his positions. Mr L 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, whilst Mr L may have expressed a preference during discussions with Atlantic that his positions shouldn't be closed out, the nature of the service that he was paying for from Atlantic, meant that it was his responsibility (and not Atlantic's) to ensure he was fully aware of the status of each of his trades and whether and when he needed to fund his account to maintain margin compliance.

I've looked closely at Atlantic's terms of business document that Mr L signed on 9 February 2022 which set out the agreement between them both. Atlantic have clearly set out to Mr L that it's his responsibility to continually monitor his positions and they're under no obligation to provide any ongoing notifications about his trades – that commitment rests solely with him:

*'6. Monitoring of open positions*

*6.1 Where you purchase investments using your Trading Account on an execution-only basis, we will not keep your holdings in these investments under review for you or monitor their performance.*

*6.2 In addition, we are under no obligation to bring investment opportunities to your attention or to continue to monitor or update any information which we have provided to you. It remains your sole responsibility to manage and monitor your positions.'*

Mr L explained that he was disappointed that he wasn't advised his positions were at risk of being liquidated and didn't learn about them being closed out until after the event, thereby depriving him of the option of topping his account up. However, from what I've seen, the broker wasn't under any obligation to forewarn Mr L of the need to top his account up and neither was Atlantic. That's because more typically, CFDs can be volatile investments and prices can change rapidly and it's for this reason that responsibility for keeping abreast of price movements rests with the consumer, rather than the business. And, I think on balance, Mr L knew this because from the onboarding document that I've seen, he appears to be an experienced trader having invested in CFDs for a number of years previously.

Even though Mr L says that he told Atlantic over the telephone that he didn't want his positions being closed out, I've not seen any evidence to suggest that Atlantic offered any warranties to Mr L that they would provide any ongoing monitoring or alert service to him about how his positions were performing. That's because it's just simply not practical to do so given many instruments trade outside of normal office hours. But, despite what Mr L may have said to Atlantic about his preferences, given he was an execution only client, he couldn't delegate the monitoring of his portfolio to Atlantic.

During his discussion with our Investigator, Mr L commented that had Atlantic treated him as an elected professional client (EPC), his positions wouldn't have been closed out. Mr L also went on to explain that in his view, he met the criteria to be classified as an EPC. However, I have to base my decision on Mr L's circumstances at the time of the close out and at that point, he was a retail client. And, in any event, just because a consumer may meet all of the criteria to be recategorised as an EPC, it doesn't necessarily mean it's in their best interests to do so but importantly, from what I've seen, Mr L hadn't previously requested this from Atlantic – which he would need to do in writing for them to consider recategorising him to an EPC. So, based on Mr L's circumstances at the time, which was as a retail client, I can't say that Atlantic have treated him unfairly by either not offering to alter his status to being an EPC or by not monitoring or telling him to top-up his positions in advance of them being closed out.

## **My final decision**

I'm not upholding Mr L's complaint and it therefore follows that I'm not going to instruct Atlantic Capital Markets Limited to take any further action.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 27 June 2024.

Simon Fox  
**Ombudsman**