Financial Ombudsman Service

The complaint

Mr L complains that Trading 212 UK Limited treated him unfairly. He says it:

1. Increased its swap rate inconsistently and unpredictably.

2. Didn't give him enough notice of a margin requirement increase.

3. Forced him to close a position by issuing an unfair account termination notice.

4. Forced him to purchase the underlying stock.

He says its actions caused losses which he wants reimbursed. And he wants compensation for the distress and anxiety he's been caused.

What happened

Mr L opened a contract for differences ("CFD") trading account with Trading 212 in 2020. Towards the end of October 2020, he opened a long position in a company I'll refer to as "N". In January 2021, Mr L contacted Trading 212 via its online chat to query why the margin requirement kept changing and why the overnight swap rate had increased. On 8 January 2021 he received an account termination notice from Trading 212. He was told he hadn't been actively trading, in that he'd held the position in N for an extended period which didn't fit in with T212's target client profile. He was given 14 days to close any open positions.

Mr L closed his position in N on 13 January 2021, realising a profit. Trading 212 allowed Mr L to keep his CFD account open because he'd closed the position in question. Mr L continued to trade throughout 2021 and 2022.

In March 2023, Mr L complained to Trading 212 about the increase in its swap rates, the increase in its margin requirements and its termination notice which had meant he had to close his open position in N. He also complained that Trading 212 had advised him to purchase N shares using its share dealing platform. He said he acted under duress due to Trading 212's unfair and aggressive tactics and that he subsequently made trading losses which he wants reimbursed.

Trading 212 said it had acted in line with the agreed terms and conditions.

Our investigator didn't recommend that the complaint should be upheld. He said:

- The terms and conditions allowed Trading 212 to adjust its margin requirements at its discretion.

- Whilst there were some significant increases in swap rates, this wasn't irregular or outside of the terms and conditions.

- Trading 212 issued a termination notice in line with the agreed terms. Mr L didn't incur a financial loss as a result of having to close his open position and it was his decision to buy N shares through a share dealing account with Trading 212.

Mr L didn't agree. He responded in some detail to say, in summary, that:

- The increases in swap rates weren't reasonable and were significantly large and sudden to make it difficult for him to stay abreast of the changes. They didn't correlate with changes in the price of N and seem to have been used as a tactic to counteract his investment gains.
- He was only given one day's notice of an % increase in the margin requirement from 20% to 50%. This raised the risk of his position being automatically closed out. Coupled with the increase in swap rates, concerns should be raised about Trading 212's underlying intentions.
- The termination notice was the final attempt to pressure him to liquidate a profitable position. In this context the termination notice was used unfairly and unethically.
- Trading 212 directed him to open a position in N in its share dealing account. He was under immense stress at the time because of the termination notice and in following Trading 212's direction he made financial losses. In an attempt to recoup those losses, he made further losses

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.

Firstly, I'm aware that I've summarised this complaint in far less detail than the parties and in my own words. Mr L has provided a considerable amount of information but I'm not going to respond to every single point made. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

Increase in Swap rates

I find Mr L understood, and it was reasonably clear from the information provided by Trading 212, that he would need to pay to hold his open position in N overnight. The terms and conditions say:

> "*For each day when you have an open position you shall pay or receive an Interest Rate Swap as specified in the Terms and Commissions Table*." (13.4)

The charge was made because Mr L had traded with leverage. In other words, Trading 212 had lent him money to open the position in N and the charge, or interest adjustment, was to reflect the cost of that lending overnight. And, as noted in Trading 212's key information document ("KID") for equity CFDs, "*the longer you hold a position, the more it costs*."

Mr L accepts it was his responsibility to be aware of the charge, but he says it was difficult to monitor when charges were inconsistent and unpredictable.

My role isn't to check the calculation of the rate for each day that Mr L held the position in N. Rather it's to decide whether I think Trading 212 acted reasonably in setting the rate. I'm satisfied that Trading 212 had discretion to change the rate, taking into account multiple factors, such as the price of the underlying instrument, general market conditions and relevant interest rate benchmarks. I'm satisfied by its explanation for the increases at the end of 2020. It said the markets were very one-directional and the prices of almost all financial instruments were going up. This reasonably influenced its decision to increase the interest swap rates on a number of instruments, including N.

Mr L queried the increase in overnight charges on Trading 212's online chat on 7 January 2021. Trading 212 explained that swap rate is subject to change based on the volatility and liquidity of the underlying instrument and that it is the charge to keep the position overnight. I'm satisfied this satisfactorily answered Mr L's query.

Margin requirements

Mr L had traded with leverage so was required to maintain an appropriate level of margin in his account.

Trading 212's margin requirements for CFDs in equities is usually 20%. But the terms and conditions allow it, at its "*sole reasonable discretion*" to "*modify, restrict or limit the Margin requirements*" (6.3).

On 28 November 2020, Trading 212 emailed Mr L to say that:

> "*Due to extreme market conditions, on Tuesday the 1st of December, at 14:30 GMT, we will temporarily raise the margin requirements for all CFDs on stocks to 50%."*

I find Trading 212 provided a reasonable explanation for the increase – "*the turbulence in the marketplace means that we have to cover any credit risk from market gaps*."

The nature of the quickly changing market meant Trading 212 wasn't reasonably able to give much notice of the change. Mr L says he had to borrow money from a friend to meet the margin requirement and that this caused problems. But the nature of trading with leverage is such that he could be required to deposit additional money at short notice to keep positions open or to fund losses. And it was Mr L's responsibility to have access to money to deposit in these circumstances. He was fortunate that his position was showing a profit so, if he couldn't, or didn't want to meet the temporarily revised margin requirement, I find he had the opportunity to close his position.

Mr L contacted Trading 212 on its online chat on 4 January 2021 to ask why the margin requirement kept changing. I'm satisfied that Trading 212 gave him a reasonable explanation - that the amount depends on the underlying price of the instrument and the exchange rate.

Account closure notice

On 8 January 2020, Trading 212 emailed Mr L giving him 14 days' notice that it was terminating his agreement. It explained that:

> *"We made our yearly client transactions review and noticed that your trading behaviour for stock CFDs does not fall within our target client profile in terms of trading activity and position size. Your account is not actively trading, and holds instruments we no longer offer. We are sorry that in order to withdraw the instrument, we need to close your account.*

> *We regret to inform you that based on the above, we can no longer provide you our CFD trading service…."*

This was a standard letter to several clients to cover various circumstances. In further correspondence, Trading 212 explained that in Mr L's case his position in N "*did not fall within our target client profile in terms of trading activity and position size*".

There was no expiry date for Mr L's CFD and Trading 212's KID says that "*there is no recommended holding period*". But it also says that:

> *"CFDs are intended for short-term trading, sometimes intraday, and are generally unsuitable for long-term investments.*"

Mr L had been holding the CFD for just over two months and had made it clear he wasn't happy about the mounting overnight charges and the increased margin requirement. I think, in the circumstances, Trading 212 didn't act unreasonably. It fairly suggested it might be more appropriate for Mr L to invest directly in N shares and said he could do this without incurring a charge in its share dealing account.

Mr L says Trading 212 acted to encourage him, through increases in overnight fees and margin requirements, and then force him, by sending him a termination notice, to close his position because it was showing a profit, which was unfavourable for Trading 212. I'm not persuaded that was Trading 212's motive. I say that because it's provided reasonable explanations for the increase in swap rates and the temporary increase in the margin requirement. And because investing directly would avoid the charges and margin payments Mr L wasn't happy about.

Did Trading 212 direct or advise Mr L to invest in N shares?

In its notice of termination, Trading 212 said:

> "*Should you wish to continue trading stocks with us, we will be happy to assist you in transferring your existing stock CFD positions into Real stocks with our zero-commission share-dealing services – Invest & ISA where you'll no longer pay daily interest*."

I don't find this amounts to investment advice. It merely suggested Mr L could open a share dealing account if he wanted to trade in shares, rather than CFDs. In the follow up email exchange, Trading 212 explained in more detail how he could do this. But, again, I don't find this amounted to advice or a direction. It was Mr L's decision whether to close his open position in N (before it was closed out by Trading 212); his decision to open a share dealing account; and his decision if he wanted to invest in N shares.

Mr L's financial losses

Mr L closed out his trade at US$61.87 on 13 January 2021 realising a profit of £19,337. He says his profit would have been higher if:

1. He hadn't had to pay the overnight charges. But, as I've found these were fairly charged in line with the agreed terms and conditions, I don't find there's an obligation on Trading 212 to refund these.

2. He hadn't been forced to close his position. For example, he could've closed out at a higher price around a week later – he says that on 25 January 2021, the price was US$64.52. But this was the high price for that day. The high price on 11 January 2021

had been US$66.99, but Mr L didn't choose to close his position then. And there was no guarantee in any event that he would have received the highest price on the day he closed the trade. On 13 January when he did close out at US$61.87, the high price was US $64.41.

3. He had been able to close out the position in the 2021/22 tax year, which would have avoided a capital gains tax liability. But I note the price of N generally fell from around January to April 2021 and didn't recover during the 2021/22 tax year – on some days falling to less than the price Mr L opened the position. So I don't find he would have made a higher profit if he'd been able to close out the position after 5 April 2021.

Mr L says that, whilst he made a profit when he closed out the position, he made subsequent losses which were due to the duress he was put under by Trading 212. I don't agree. Mr L was clearly unhappy with the position he was in. But I don't find Trading 212 coerced or forced him to take any action after he'd closed out his position in N. He wants Trading 212 to reimburse him for the losses he made on trades he entered into using the profit from his closed position. All of those trades were completed on an execution only basis and were Mr L's sole decision.

Overall, for the reasons I've explained, I don't find Trading 212 acted unreasonably or treated Mr L unfairly.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 2 July 2024.

Elizabeth Dawes
Ombudsman