

The complaint

Mr K complains that IG Markets Limited ('IG') acted unfairly by not following the Financial Conduct Authority's (FCA) negative balance protection rule on his contracts for difference (CFD) account following a margin call. He also states that the margin call IG made was incorrect.

What happened

On 17 April 2023, Mr K deposited £2,250 into his CFD account and opened a long position in 'VirnetX Holdings Corp'. The following day, a dividend adjustment of £4,757 was due on his position, however IG's corporate action team didn't credit those monies promptly and shortly after the US market opened, Mr K's VirnetX position was automatically closed by IG for failing to meet margin compliance. As a result, this took Mr K's account into a negative balance of -£3,870.

As a retail client, Mr K is protected by the FCA's negative balance rules, so IG's system amended his account balance back to zero. Shortly afterwards, the dividend adjustment of £4,757 was credited to Mr K's account which he promptly withdrew to his bank account.

On 19 April 2023, Mr K added new funds to his account and opened a number of new positions. On 24 April 2023, IG adjusted Mr K's account to take account of the correct dividend adjustment that should have been applied on 18 April 2023. This resulted in a number of Mr K's positions being closed and his account ending up in a negative balance.

After initially questioning with IG why they'd debited the funds and after not having received a satisfactory response, Mr K decided to formally complain to them. In summary, he said that he was unhappy that they'd not applied negative balance protection to his account. Mr K went on to say that had IG's corporate actions team booked the 'dividend adjustment' for his VirnetX position before the US market had opened, his position wouldn't have been closed out.

After reviewing Mr K's complaint, IG concluded they were satisfied they'd done nothing wrong. They also said, in summary, that they were correct to close out Mr K's position when they did (which was at 14:31 just after the US markets had opened on 18 April 2023), due to the equity in his account falling below the 50% of the total margin required for his running position. They explained that because of the negative balance protection, they'd then brought his account back to a zero balance by crediting his account with an amount of £3,870 the same day.

IG did however apologise for the fact that their corporate actions team hadn't made the dividend adjustment of £4,767 until 16:54 UK time, which was after the US markets had opened. But, IG went on to say that given the dividend adjustment was to neutralise the account balance and bring it back to zero, Mr K had unfairly taken advantage of the account amendment by withdrawing those monies three minutes after the adjustment was credited to his account. IG also explained that they were of the view that Mr K should have either

flagged the error to them or left the monies for them to rectify the account balance. As Mr K hadn't acted in good faith, IG said that they had taken the decision to close his account.

Mr K was unhappy with IG's response, so he referred his complaint to this service. In summary, he said that he was unhappy that IG hadn't applied the negative balance protection he assumed was mandatory as part of the FCA's retail trader's rules.

The complaint was then considered by one of our Investigators. He initially concluded that IG had treated Mr K fairly and applied the margin close out when they were required to do so. However, in response, Mr K said that had IG not delayed applying the dividend adjustment to his account, he'd calculated that rather than his account closing out, he'd have made a profit of around £4,000.

Our Investigator asked IG to re-run their calculations to confirm to this service if, having made the correct adjustments when they should have done, whether the account would have still failed to maintain margin compliance and closed out.

After looking at Mr K's circumstances again, IG explained that had the correct dividend adjustment been made on time, Mr K's VirnetX position wouldn't have been closed out and he would have had enough equity to cover the margin required. As a consequence of the new information, our Investigator was minded to alter his original thinking and felt that IG should put things right for Mr K; as well as setting out the steps IG should take, our Investigator also felt that IG should pay Mr K £150 for the trouble that they'd caused him.

IG, however, disagreed with our Investigator's findings about how they should put things right for Mr K. In summary, IG said:

- Having re-considered the events, their complaint resolution letter should have acknowledged that the original issue only arose because of their initial failure to process the dividend adjustment in a timely manner. In recognition of this, they accepted the Investigator's view that Mr K should be recompensed for the trouble caused but rather than the £150 suggested, they explained that they'd like to add a further £100, taking the amount to £250.
- They went on to say that they felt the Investigator's view undermined the fact that Mr K withdrew funds and decided to start investing elsewhere following the incident without asking to be re-instated into his original position.
- In addition, they said that the reason why they avoid refunding for 'potential profits' is because many of the hypothetical factors cannot be fully accounted for and nobody really knows what would have happened were it not for the mistake.
- The decision our Investigator set out doesn't consider the fact that Mr K decided to re-purpose the funds by withdrawing them instead of calling IG to re-instate his position or to use the funds to regain his exposure if he wanted to continue carrying the risk.
- Finally, they explained that the performance of the share since it was closed at market open (on 18 April 2023) to the point of their reply showed that it had underperformed and as such, could result in them having to deduct funds from Mr K's account.

Our Investigator was not persuaded to change his view as he didn't believe IG had presented any new arguments he'd not already considered or responded to. As IG didn't provide any further comments in response to our Investigator, the case comes to me 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 the redress approach our Investigator set out is fair and reasonable in the circumstances.

My role is to consider the evidence presented by Mr K and IG 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 upholding Mr K's complaint – whilst it's largely for the same reasons that our Investigator set out in his second view, I'll explain why below.

At the outset I think it is useful to reflect on the role of this service. This service isn't intended to regulate or punish businesses for their conduct when things go wrong; that's the responsibility of the FCA. Instead, this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong, we would ask the business to put things right by placing the consumer as far as is possible into the position they would have been in if the problem hadn't occurred.

Having carefully looked at all of the evidence presented to me, it seems clear that IG have conceded that their corporate actions team didn't apply the dividend adjustment to Mr K's account when they should have done. This then resulted in his account failing to maintain margin compliance and they were consequently obliged to close out his positions. So, had the correct dividend adjustment been made on time, Mr K's VirnetX position wouldn't have been closed out and he would have been in profit. Mr K says he thinks that would've amounted to around £4,000, although IG have questioned his numbers.

So, there seems to be no doubt that IG should have acted more promptly, but equally, when IG closed Mr K's position because of the margin call and then credited his account, I think Mr K should have known that something wasn't quite right. As an experienced trader, I think Mr K would have likely understood that an error had occurred somewhere along the line and as such, he missed an opportunity to speak to IG to investigate what had happened with the close out. I think that had he spoken to IG at the time (and not withdrawn the monies), this situation could have likely been avoided.

However, from what I've seen, I'm satisfied that had IG undertaken the dividend adjustment when they should have, Mr K wouldn't have found himself on the wrong end of a margin call. And, whilst I do accept that there were a number of steps that Mr K subsequently took after that which likely worsened the situation, such as specifically making further investments which were then closed out because IG attempted to claw back some of the monies owed, neither party at the time had the benefit of hindsight which they do now. So,

I'm very much of the view that those later transactions would likely not have happened were it not for IG's original error in closing out Mr K's original position.

I think it's important to be clear that we can't wind the clock back and fully replicate what should have happened in 2023. That's because we simply just don't know what Mr K's trading approach would have been post the event. There are several ways in how the redress could be approached but I'm satisfied that the methodology below strikes the right balance between putting Mr K back as close as is reasonably possible to the position he would've been in had it not been for IG's error and acknowledging that we're now working on a different timeline – and as such I'm satisfied that this approach also acknowledges IG's point about the underperformance of the VirnetX stock since April 2023 as it is fair and reasonable to both parties.

Therefore, I'm upholding Mr K's complaint because I'm of the view that IG's mistake on 18 April 2023 caused a chain of events that would not otherwise have happened. So, for the reasons I've set out above, I require IG to take the following actions to put things right for Mr K:

Putting things right

Given the complexity of the case, I acknowledge that what I've set out below wouldn't fully replicate what would have happened had the mistake not occurred because we simply don't know what Mr K would have done following the dividend adjustment, but I'm satisfied it will do so as near as is reasonably possible without making the process too onerous. Given we're a quick and informal dispute resolution service, I also think this approach is the fairest and simplest way to drawing a line under the complaint.

What should IG do?:

Undertake a calculation to put Mr K back into the position that he would have been in on 18 April 2023 had the dividend adjustment been undertaken in a timely manner and then calculating what position he would be in as at the date of this final decision. The calculation should take account of whether his position in VirnetX Holdings Corp. was likely to close via margin call any time after 18 April 2023. If Mr K is in a profit as of the date of the final decision:

- Deduct £4,676 that Mr K withdrew from his account thinking it was profit from his VirnetX Holdings Corp.
- Pay compensation of the difference, plus 8% interest p.a. simple for deprivation of funds.

If the calculation puts Mr K into a loss-making position, bring his account balance back to zero by applying negative balance protection, meaning that Mr K doesn't have to pay the money IG says he currently owes them. I'm of the view that were it not for IG's original error, Mr K would likely not have acted in the way that he did.

For trouble and upset, in the second 'view' of Mr K's complaint that our Investigator issued, he recommended that IG should pay him £150 for the distress and inconvenience that they'd caused him due to the overall chain of events. IG responded explaining that considering the updated view, they were happy to pay Mr K £250, an increase of an additional £100 for the fact that they had failed to acknowledge that the chain of events was a consequence of their initial delays. In light of IG's offer, I see no reason to amend that so

my decision is that IG should also pay Mr K £250 for the trouble that they caused him if they haven't already.

IG are within their rights, should they wish, to terminate a relationship with a client if they no longer feel that it's mutually beneficial for both parties to be in an arrangement. This is covered within their terms and conditions and is a business decision for them.

My final decision

I'm upholding Mr K's complaint and I require IG Markets Limited to put things right for Mr K in the manner that I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 1 July 2024.

Simon Fox
Ombudsman