Financial Ombudsman Service

The complaint

Mr S complains that ActivTrades Plc ('ActivTrades') wrongly closed his trading positions and caused him a financial loss.

What happened

Mr S had a trading account provided by ActivTrades. He used the account to make trades on the foreign exchange (forex) market.

When the forex market closed on Friday 13 October 2023 Mr S had more than 20 open positions.

When the forex market opened on Sunday 15 October 2023 ActivTrades successively closed all but three of Mr S's positions.

Mr S complained to ActivTrades. He said his margin had been at 75% at the close of trading and ActivTrades shouldn't have closed out his positions.

ActivTrades didn't uphold Mr S's complaint. In summary it said the following:

- Mr S's positions had been closed due to a trade-out, which was also known as a close-out and involved ActivTrades automatically closing a client's positions when equity in the client's account fell to 50% of the required margin.

- It was a requirement of the regulator that ActivTrades close out positions when equity fell to 50% of the required margin.

- A market gap caused Mr S's three buy positions to trade out. This caused an unbalanced account and increased the margin requirement which led to more close-outs.

- A gap can occur at opening or closing and also when there's relevant news about the asset in question. In Mr S's case the market was already declining and, in addition, a number of positions were opened on 13 October 2023 which increased exposure.

- Mr S's account fell below 50% because a buy order was executed at the ask price and the spreads were wide due to market fluctuations and large exposure.

- The documentation Mr S agreed to when he opened the account allowed ActivTrades to do what it had done. And it had made Mr S aware that this would happen if his margin fell to 50% or lower.

Mr S referred his complaint to this service. He said he'd been monitoring his account and his equity had been above 75% of the margin required when the market closed on 13 October 2023. He provided daily account statements for 14 and 15 October 2023.

One of our Investigators considered Mr S's complaint. He thought ActivTrades hadn't done anything wrong. He said:

- Although Mr S's positions were mostly hedged (so his net long exposure was only 0.1 lots), trade-outs could still occur in such circumstances because swap fees reduce the available margin over time, and market volatility causes spreads to widen.

- As of 14 October 2023 Mr S's margin requirement was £1,466.67. And Mr S's equity at that time was £947.56.

- The initial trade-outs had the knock-on effect of breaking Mr S's hedge, which in turn increased his margin requirement for his remaining open positions, and that caused further trade-outs due to his account having insufficient margin to maintain those unhedged positions.

- Clause 19.5 of the Customer Agreement, which Mr S agreed to when he opened the account, said it was Mr S's responsibility to maintain required margin on his account.

- GBP/USD tick pricing data showed that the execution prices at which his positions were closed accurately reflected the prices traded in the underlying market.

- Although Mr S felt strongly that a market gap hadn't occurred on 15 October 2023, the available evidence showed market volatility increased and a gap in the price of GBP/USD occurred at the time his trades were closed on 15 October 2023.

Mr S disagreed. In summary he said the evidence he'd provided showed the closures were unwarranted. He said it was simplistic and misleading to say the trade-outs were caused by swap fees and widening spreads reducing his available margin. And a more thorough analysis of the trading data would've revealed that the closures weren't justified by market conditions at the time.

Mr S said his positions were consistently above 75% margin which he said meant they couldn't have fallen to 50% while the market was closed. He said he personally monitored his positions until the market closed, confirming they were all well above 75% margin.

The Investigator said amongst other things that he hadn't seen any evidence to suggest Mr S's positions were closed in error. He cited figures from Mr S's 14 October 2023 statement and said Mr S's margin balance at that time was only about £214 above the 50% level. And so it should've been reasonably foreseeable to Mr S that unless he deposited funds there was a significant risk that a close-out would occur. The Investigator was satisfied ActivTrades had acted fairly and met its regulatory obligation by closing Mr S's positions when it did.

Mr S remained in disagreement with the Investigator's view. He said again that his positions had been above 75% of the required margin so it was impossible for them to fall below 50%.

Because no agreement could be reached, the complaint was passed to me to review afresh and make 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.

Having done so, I'm not upholding the complaint. I'll explain why.

The purpose of this decision is to set out my findings on what's fair and reasonable, and explain my reasons for reaching those findings, not to offer a point-by-point response to every submission made by the parties to the complaint. And so, while I've considered all the submissions by both parties, I've focussed here on the points I believe to be key to my decision on what's fair and reasonable in the circumstances.

The available evidence suggests on balance that Mr S's equity fell below 50% on 15 October 2023. And in circumstances where Mr S's margin had fallen below 50% of the required level, the terms and conditions of his account allowed ActivTrades to close-out his positions in the way it did. And I'm satisfied that, under the terms and conditions of Mr S's account, it was Mr S's responsibility to maintain the required margin, as is usual on accounts such as this one.

I don't agree with Mr S that, prior to the close-out, his positions were at 75% equity and so it was impossible that his margin could've fallen below the 50% level. Mr S has said the daily account statements he provided support his argument on this point. But the daily account statements show that as of 14 October 2023, when the market was closed, Mr S's equity was at less than 75% of the margin requirement. And in real terms it was about £214 above 50% of the margin requirement. The rollover swap fees for some of Mr S's positions were as high as £192.25. The statements also indicated a widening spread. On balance, having carefully considered the evidence, I'm not persuaded Mr S's margin couldn't have fallen below the level of 50%. And I'm not persuaded that ActivTrades acted unfairly or unreasonably when it calculated that Mr S's margin had fallen below the 50% level and applied its close-out policy accordingly.

Overall, I'm sorry to know Mr S lost money on the trades that were closed out. But I can't say that was the result of any failing by ActivTrades. So I won't be asking ActivTrades to do anything.

My final decision

For the reasons I've set out above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 8 July 2024.

Lucinda Puls
Ombudsman