

The complaint

Miss W complains that Interactive Brokers (U.K.) Limited ('IBUK') liquidated a share in her ISA without her authority.

What happened

On 8 April 2024 Miss W opened a stocks and shares ISA provided by IBUK.

IBUK said that on 2 August 2024 it sent Miss W an email saying her cash balance was low, and her account would be subject to a forced liquidation if a fee or deduction exceeded her cash balance and so caused a deficit. Miss W says she didn't receive the email.

Also on 2 August 2024 IBUK applied a minimum activity fee of £3 to Miss W's account. The deduction of the fee left Miss W's account with a small negative cash balance.

On 5 August 2024 IBUK liquidated a share in Miss W's ISA. It says it sent her a notification the same day telling her details of the liquidation and that the reason was that her cash balance had become negative which wasn't permitted. The notification IBUK said it sent provided a link to more information on the IBUK website. Miss W says she didn't receive the notification.

On 6 August 2024 Miss W complained to IBUK that it had liquidated her share without her authority. She said the sale of the share had put her in breach of her employer's dealing policy and was likely to have caused her a financial loss. She wanted to be reimbursed for any loss. She said she accepted that her account might have become overdrawn and that wasn't allowed, but IBUK had made no effort to notify her. She said if it had notified her she would've deposited some funds.

IBUK didn't think it had done anything wrong. It said had acted in line with the terms and conditions which Miss W had agreed to as part of applying for her account. In particular it said the terms and conditions said IBUK would charge the fees set out on its website which included a minimum activity fee of £3, and the terms allowed IBUK to liquidate her investments if an account violation occurred. IBUK said it charged the £3 fee because Miss W had paid no other fees or commissions in July to reach the £3 minimum. And it said the fee caused her account's cash balance to become negative and so IBUK liquidated a share to restore a positive balance.

Miss W wasn't satisfied with IBUK's response. So she referred her complaint to this service. She said her complaint was that IBUK didn't tell notify her that her account was overdrawn, that it was taking a fee, or that it was selling her share.

One of our Investigators looked into Miss W's complaint. He didn't think IBUK had done anything wrong. In summary he said the following:

- IBUK's terms and conditions said at A2.1 that Miss W agreed to pay the commissions, fees and interest at the rates and terms specified on the IBUK website. And IBUK would deduct commissions and fees from Miss W's IBUK account and that

would reduce equity in the account. The IBUK website said IBUK charged a minimum monthly activity fee of £3 for a stocks and shares ISA. So the charge was made clear to Miss W.

- IBUK's terms and conditions said at A14 that if Miss W's account was in deficit IBUK could liquidate any or all of her positions at its sole discretion any time without notice.
- Miss W's account went into deficit.
- Even though Miss W said she wasn't aware what was happening, IBUK had acted in line with its terms and conditions and hadn't acted unfairly or unreasonably.
- IBUK had sent emails to Miss W warning her of potential liquidation due to her low balance, and letting her know when it had liquidated a share.

Miss W didn't agree with the investigator's view. In summary she said the following:

- She didn't dispute the charge. Her complaint was IBUK didn't notify her that her account went into deficit and she wasn't given a chance to rectify it.
- She knew ISAs couldn't be overdrawn. She worked in a financial services role and dealt with ISAs as part of her job.
- FCA rules, for example COBS16a and the '*prompt notification section*', required '*a certain level of reporting ... for execution only accounts*' and IBUK hadn't met the requirements.
- IBUK didn't tell Miss W it was taking the activity fee. And she couldn't find that on IBUK's online platform.
- IBUK didn't tell her the account was overdrawn, or give her sufficient time to make a payment. She would've responded immediately if she'd known because she understood ISAs couldn't be overdrawn.
- IBUK didn't tell Miss W it had liquidated her share. She discovered this later when she was checking her trading positions after the end of the month.
- The share IBUK had chosen to liquidate wasn't the one Miss W would've chosen because '*the market was at a year low*' so Miss W made a loss.
- IBUK charged commission on the sale of her share, so it benefited from failing to communicate with her.

The investigator cited COBS16A.2.1R to Miss W and said he was satisfied IBUK had met the requirements of that rule.

The investigator sent Miss W screenshots from IBUK's system which were IBUK's records of notifications sent to Miss W. Miss W said she didn't receive them. In support of that she sent a screenshot of an inbox in which she had searched for 'Interactive broker' and not found the messages in question. She asked for further proof the messages had been sent, such as read receipts or evidence from a server.

The investigator was satisfied the screenshots were enough to show IBUK had sent the emails, even if Miss W hadn't received them. He said the screenshots showed the time, date

and the content of the emails, and they were the usual proof the business would send this service to show what it had sent a customer. Miss W didn't agree.

Because no agreement could be reached, this 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.

First, it's relevant to note that Miss W's account was '*execution-only*'. This was set out in the account's terms and conditions which said IBUK didn't give advice or manage customers' accounts. In broad terms that meant IBUK wouldn't give advice or be otherwise responsible for Miss W's investment decisions or the day-to-day running of her account.

IBUK said in its reply to Miss W that she'd agreed to the terms and conditions when she opened her account. This is a standard requirement for investment and trading accounts, and Miss W hasn't disputed that she accepted the terms and conditions. So I have no basis to think the terms and conditions didn't apply and accordingly I've considered whether IBUK's dealings with Miss W in the circumstances of this complaint were in line with the terms and conditions. I've also considered whether they were otherwise fair and reasonable, including in the context of the regulator's rules in COBS which Miss W said required IBUK to give her certain information.

The amount of the fee IBUK charged Miss W, and IBUK's right to charge the fee, aren't in dispute. Miss W has said more than once she's not complaining about the fee itself – her complaint is that IBUK failed to tell her it was taking the fee. Having considered this, I'm satisfied IBUK made clear to Miss W in advance that she'd be charged the fee she was charged in the circumstances. As set out by the investigator on this case, the terms and conditions required Miss W to agree she'd pay IBUK's fees as specified on IBUK's website. And the website said IBUK would charge a minimum activity fee of £3 per month which is what it did in this case in respect of July 2024. If Miss W had paid other fees on her account in July 2024, such as commissions on trades, which amounted to at least £3, then IBUK wouldn't have had the right to take the minimum activity fee. But IBUK said there was no activity on Miss W's account in July 2024. So the minimum activity fee applied and I'm satisfied IBUK had done enough to make Miss W aware of the circumstances in which IBUK would charge the fee.

Miss W mentioned not receiving a '*fee statement*' showing the £3 fee was taken or being taken from her account. I'm aware IBUK includes fees paid in its regular statements, and it sends activity statements to customers daily, monthly and yearly. I've seen from a screenshot Miss W sent that she received these statements. Her inbox included a daily statement for 5 August 2024 sent by IBUK on 6 August 2024. The fee in question was what caused Miss W's balance to become negative and so triggered the liquidation. And Miss W hasn't disputed that her cash balance became negative. So on balance I think the fee was

included in IBUK's statements and IBUK gave Miss W information that showed the fee had been charged.

I don't accept that IBUK had to warn or notify Miss W that it was going to charge the fee before it did so in any given month. As I've said, Miss W's account worked on an execution-only basis. IBUK had told her the basis on which it would charge fees. And it reported fees after they were charged in the activity statements it provided. I'm satisfied that's enough to allow Miss W to manage her account effectively in relation to information she needed about the minimum activity fee.

Miss W has complained IBUK didn't tell her she had a negative balance and so was at risk of liquidation. She thought IBUK should've given her the opportunity to add funds to her account to prevent liquidation. But IBUK wasn't obligated to do that. The account's terms and conditions expressly said IBUK had sole discretion to liquidate her positions without notice in certain circumstances. And those circumstances included her account going into deficit, and an '*event of default*' occurring. Events of default also included the account going into deficit.

In fact IBUK did choose to send Miss W a warning by email, saying her account balance was low and she was at risk of forced liquidation. Miss W says she didn't receive the email. When there's a dispute over what happened I must decide on the balance of probabilities what I think is more likely than not to have happened. In this case, although the screenshot of an inbox search that Miss W sent fails to show the email in question, the evidence provided by IBUK shows a record that IBUK took action to send the email. There's nothing in the details provided IBUK that indicates it made an error in the sending of the email. And I find it implausible that IBUK would fabricate the record provided to avoid liability for the loss Miss W has claimed, particularly given that IBUK was of the view that it wasn't obligated to send the email anyway. So on balance I think it's more likely than not that IBUK did send the email. Because it's IBUK's acts and omissions that are the subject of this complaint, it's not necessary for me to find that Miss W received and read the email, if I'm satisfied IBUK took reasonable steps to send it. So I'm not persuaded this point requires further investigation.

Miss W also said IBUK didn't tell her it liquidated her share. She referred to rules in COBS 16A requiring an investment firm carrying out an order on behalf of a client to promptly provide the essential information about the execution of the order. I think it's fair and reasonable to expect IBUK to have notified Miss W promptly when it liquidated her share. Miss W's screenshot didn't show the notification IBUK said it sent Miss W telling her it had liquidated a share in her account. But IBUK's back-office system showed that message was sent to the message centre on 5 August 2024. I think IBUK's daily activity statement for 5 August 2024 will also have provided Miss W with essential information about the liquidation and I've seen from Miss W's screenshot that she received that statement (or a link to it) by email on 6 August 2024. Despite saying she only found out about the liquidation at the end of the month, Miss W complained about the liquidation on 6 August 2024 which was the day after the liquidation occurred. So, considering all the available evidence, I find it more likely than not that IBUK sent information about the liquidation to Miss W on either or both of 5 and 6 August 2024.

Overall, I realise Miss W had an unpleasant surprise when she became aware IBUK had liquidated one of her shares. I sympathise with what she's said about the share price being relatively low at the time. But I've found IBUK acted fairly and reasonably and in line with its terms and conditions when it charged Miss W the minimum activity fee and liquidated a share after her balance became negative. And for all the reasons I've explained I'm not persuaded IBUK's communication around that was deficient. So I'm not asking IBUK to take any action.

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 Miss W to accept or reject my decision before 13 May 2025.

Lucinda Puls
Ombudsman