

The complaint

Mr D has complained that his Contracts for Difference ('CFD') positions held with XTB Limited ('XTB') were unfairly closed due to margin close out. He says he has suffered a loss of £4,412.18.

What happened

Mr D opened his CFD account with XTB on 21 April 2024. On 5 August 2024 XTB closed 12 of Mr D's open trades because of margin call. Mr D wasn't happy as the trades were closed based on 'maximum loss first' as per industry practice which he said violated the regulator's – the Financial Conduct Authority ('FCA') – rules and guidance and XTB's own Terms of Business. He said this was unfair and unlawful.

Mr D raised a complaint with XTB on 11 August 2024. He said it had benefited from his loss and hadn't acted in his best interests.

XTB responded to Mr D's complaint on 13 August 2014. It said;

- The stop out closing when margin fell below 50% was a regulatory requirement.
- The closure of the position with the biggest loss first was explained on XTB's website.
- The Terms of Business Mr D had referred to related to cash equities and not margin stop out.
- It didn't uphold the complaint.

Unhappy with the outcome, Mr D brought his complaint to the Financial Ombudsman Service. Our investigator who considered the complaint didn't think XTB needed to do anything more. He said;

- He referred to the relevant clause in XTB's Best Execution Policy which was clause 6.2.6.
- He also referred to the regulator's Conduct of Business Sourcebook ('COBS') which require a firm to close positions on speculative investments if the net equity on the account falls below 50% of the margin requirement.
- COBS guidance reminded firms to act in the client's best interests and the investigator didn't agree that by XTB closing the largest losing position first violated that.
- The losses Mr D wanted returned to him already existed on his positions when the margin close occurred, so it wouldn't be fair to ask XTB to refund them in any event.

Mr D didn't agree with the outcome, and he requested a final decision. He said 'maximum loss' for him meant 'maximum profit' for XTB as it was counterparty to the trades. He thought the 'maximum loss first' closure method was against the COBS best interest rules and just because it was standard industry practice didn't make it right. He referred to COBS2.1.1R and COBS 11.2A.2R and COBS 22.5.16G. Mr D thought the investigator's assessment was

biased and unlawful based on wrong twisted facts. XTB hadn't mentioned clause 6.2.6 in its response to the complaint and asked where the investigator discovered it as XTB had failed to find this section in its terms and 'maximum loss first' wasn't in XTB's terms, only on its website.

Mr D says his contract with XTB was unfair and could be challenged in court and he would take the matter to the County Court if he did not get justice. The investigator had ignored the regulator's binding regulations

As the complaint remains unresolved, and as requested by Mr D, the complaint has been passed to me for a decision in my role as ombudsman.

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.

After doing so, I've reached the same conclusions as the investigator and broadly for the same reasons. I'll explain why.

The FCA's rules make clear what action firms must take when a retail client account – such as Mr D's – falls below 50% of the margin requirement;

'COBS 22.5.13 R;

(1) A firm must ensure a retail client's net equity in an account used to trade restricted speculative investments does not fall below 50% of the margin requirement (as outlined in COBS 22.5.11R) required to maintain the retail client's open positions.

(2) Where a retail client's net equity falls below 50% of the margin requirement, the firm must close the retail client's open position(s) on restricted speculative investments as soon as market conditions allow.'

In making his complaint Mr D referred to XTB's Terms of Business which he agreed to at the outset of the relationship. In particular he referred to the following clauses;

'12.6. Open positions are closed pursuant to the FIFO (first in first out) principle, which means that Open positions are closed according to the time they were opened, starting with the position which was opened first.'

...

50.54. Open Positions are closed pursuant to the FIFO (first in first out) principle, which means that Open Positions are closed according to the time they were opened, starting with the one opened earliest.'

He also says clause 6.2.6. as referred to by the investigator wasn't in XTB's terms and only on its website – as referenced by XTB in its response to his complaint – where it said;

'When the margin level falls below 50%, your open position with the biggest loss will be automatically closed as an in-built safety mechanism.'

However, XTB's Best Execution Policy document, which Mr D would also have agreed to, does lay out the rules for CFDs.

'6.2 Specific rules for CFDs.

...

6.2.6. Margin close out for all 'Standard Accounts' is set at 50% on an account level basis. XTB will close your largest losing position first in order to increase your margin level back to above 50%.'

Here it makes clear that the position with the maximum loss would be closed first. Mr D doesn't agree with this method of closing positions in margin. He says just because it is industry standard it doesn't make it right and isn't in line with the regulations such as COBS 2.1.1R – client's best interests and COBS 11.2A.2R – a firm's obligation to execute orders on most favourable terms to the client.

These rules are reiterated in COBS 22.5.16 G;

'Firms are reminded that they must comply with COBS 2.1.1R (the client's best interests rule) and COBS 11.2A.2R (obligation to execute orders on terms most favourable to the client) when:

- (1) making a margin call to a retail client; or
- (2) exercising a discretionary right to close a retail client's position; or
- (3) closing a retail client's position(s).

CFD firms can close the biggest loss making positions first to minimise the risk to both the firm and the customer – as far as possible. Margin close outs are risk driven and the firm's priority is to reduce the customer's risk exposure and protect the account equity so would not follow the order in which the trades were opened as per FIFO.

By closing the position with the most loss this helps reduce the risk of further losses and *may* improve the customer's overall equity/margin balance depending on the amount of margin the position was using. If the position were to stay open and keep losing the account balance could go below zero so closing the losing position first will prevent further erosion of equity.

Overall, this helps to protect the customer's account from going negative and potentially stops further losses quickly. While I appreciate Mr D didn't want his positions closed on largest loss first, but XTB acted in line with its Best Execution Policy which Mr D agreed at the outset. And I haven't seen anything to suggest XTB doesn't consistently apply that clause to all its clients' positions.

So, while I appreciate Mr D's reference to COBS 2.1.1R, I'm satisfied that by XTB closing the positions with the most loss it was acting in the client's best interests as it protected the account from further losses. And with regard to COBS 11.2A.2R, I haven't seen anything to suggest the closure of the positions weren't at the most favourable terms. Overall, the positions were closed to protect the account, so I don't agree that XTB has acted outside of the rules.

Mr D has asked why XTB didn't refer to clause 6.2.6. of its Best Execution Policy in response to his complaint and asked where the investigator who considered his complaint was able to 'discover this section'. But Mr D would have accepted the Best Execution Policy before his account was opened so this clause was always in place during the time Mr D had his account with XTB. Just because XTB didn't explicitly refer to it in its final response doesn't mean it wasn't relevant.

Mr D says XTB is motivated to close positions on a 'maximum loss first' basis because that will benefit it most in its role as counterparty to the trades. But I'm satisfied XTB acted in line with its terms which Mr D agreed to at the outset. So, I don't agree it has done anything wrong or was motivated to close the positions based on any return it would receive. If Mr D now doesn't agree with how XTB closes positions when margin falls below the requirement, he is free choose to find another firm which closes positions as he would like – whether by FIFO or positions that use the most margin as examples.

Taking all the above into account, I don't uphold Mr D's complaint. I appreciate Mr D will be disappointed with the outcome – he understandably feels strongly about it – and I'd like to thank him for the time and effort he has spent in bringing his complaint. But I hope I have been able to explain how and why I have reached it.

My final decision

For the reasons given, I don't uphold Mr D's complaint about XTB Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 3 October 2025.

Catherine Langley
Ombudsman