

## The complaint

Mr S complains that TF Global Markets (UK) Limited (“TF Global”) unfairly priced a CFD contract in which he held a short position. He says this meant his position closed at a price unrepresentative of the underlying market, causing him to lose out on profits he ought to have made.

## What happened

Mr S opened an account with TF Global in September 2023. He placed a number of trades, and in October 2023 these included a number of CFDs on a stock I’ll call S. These trades closed at a substantial loss, leaving Mr S’s account in a negative balance of around \$25,000. Under the relevant regulations, TF Global wiped this balance.

Mr S funded his account with more money, and in March 2024 built a substantial short position on a stock I’ll call G.

On 2 April 2024, TF Global told Mr S it was going to close his account. It said this was because *“we have identified several transactions on your trading accounts that have violated our Terms & Conditions.”*

Mr S initially queried the account closure, although quickly accepted TF Global’s right to do so under the terms of his account. But he said the spread – the gap between the bid and offer prices of TF Global’s CFD on G – had widened unreasonably. He said this meant his positions could only be closed at prices he didn’t think fairly reflected the underlying market price in G.

There was some further correspondence between the parties, then on 19 April 2024 TF Global closed Mr S’s trades. Mr S complained the price his trades had closed at was unfair.

TF Global didn’t uphold his complaint. It said the instrument Mr S had traded was *“highly illiquid and volatile”* and that spreads may therefore vary. It went on to say that they felt Mr S had broken *“numerous”* terms of his account. It said Mr S’s account had been logged into from different locations, indicating he may have let third parties use it. And it said Mr S may have used *“a particular strategy that takes advantage of negative balance protection whilst trading highly-volatile instruments”*.

Mr S brought his complaint to our service, and one of our investigators thought it should be upheld. In summary he said it was reasonable for TF Global to have closed Mr S’s account. But that he didn’t think the price at which Mr S’s trades in G had closed was fair. He didn’t think the liquidity or volatility of the underlying market justified the width of spread quoted by TF Global. He said TF Global should reprice Mr S’s trades as if they’d closed at the Volume Weighted Average Price (VWAP) of the underlying market in G on 15 April 2024, which he gave as the day Mr S’s positions were closed.

Mr S accepted the investigator’s view, but TF Global didn’t. In summary it said:

- We’d not given enough weight to its arguments about Mr S’s trading strategy. It said

Mr S had previously engaged in “*potential Negative Balance Abuse*” – where Mr S would place one long position with one CFD provider and one short position with another provider. It said Mr S had possibly done this with his October 2023 trade in S which resulted in TF Global refunding a substantial negative balance.

- If it wasn’t for the widening of the spreads, Mr S could have “*potentially repeated*” this practice.
- CFDs by their nature are distinct from the underlying market and are priced accordingly. Mr S would have understood the risk of TF Global’s prices differing from the underlying market from the risk warning, key information document, and the account terms, all of which he was provided with when opening his account.

I issued a provisional decision about the complaint, in which I said:

TF Global has said our service should give greater weight to the points it has made about Mr S’s trading behaviour, and the concerns it has that he may have engaged in what it describes as “*negative balance abuse*”. As our investigator hasn’t addressed this in detail, I will address it here.

The practice of negative balance abuse isn’t defined or otherwise directly dealt with in the terms of Mr S’s account. In its submissions TF Global has made reference to Clause 18.2 of the terms, which reference “*market abuse*”.

In particular clause 18.2.2 (a) says that by agreeing to the terms Mr S warrants that “*You will not place and have not placed a Transaction with [TF Global] or otherwise behaved, nor will you behave in a manner that would amount to market abuse and/or market manipulation by you (or by acting jointly or in collusion with other persons).*”

The terms go on to say at clause 18.2.3 that if Mr S breaches this warranty, or TF Global “*has grounds for suspecting that you have done so*” then TF Global can, at its discretion, take one of three actions:

- Close the trade or any other trades or orders Mr S has open at the time;
- Enforce the transaction against Mr S; or
- Treat all Mr S’s transactions as void, unless and until conclusive evidence is produced that he in fact hasn’t committed the breach of the warranty above.

But I can’t see that TF Global has taken steps under this clause of the terms here. It hasn’t said to Mr S that this is the term it’s relied on, told him that it thinks he acted in a way it considered market abuse or otherwise breached this warranty. It hasn’t invited Mr S to provide evidence he hasn’t breached it, because it hasn’t said how it thinks he has.

Crucially, it also doesn’t appear TF Global has taken any of the steps available to it under this clause of the contract. TF Global did close Mr S’s positions in G, but as far as I can see it has done that under the rationale of closing his account (carried out under a different term of the contract as I’ll come on to shortly). It hasn’t voided Mr S’s trades or enforced them against him.

As I say, TF Global, although it told Mr S it thought he had breached terms of his contract, didn’t say it was taking steps under clause 18.2. Instead it says it was enforcing its right under clause 24.1 to close his account. I’m satisfied that clause (24.1) entitled either party to terminate the agreement by giving written notice (which TF Global did) and Mr S doesn’t seem to dispute this right or TF Global’s use of it to close his account.

So my current view is that TF Global reasonably invoked a clause in Mr S's contract to end its relationship with him. It did so by giving him notice that, unless he closed his positions sooner, it would do so on 19 April 2024. Considering the amount of time Mr S had to close his positions and the terms of his account, I don't think TF Global acted unfairly or unreasonably in doing any of that.

But, I don't find that TF Global had any other right under the contract to do anything but close Mr S's trades at the prevailing and fair market price at the time it closed them. To be clear, I make no finding here on whether TF Global would have been fair to void Mr S's trades under its discretion given by clause 18.2 of its terms. I don't think I need to because that isn't what TF Global did. What it did was close Mr S's trades on 19 April 2024. And I've gone on to consider whether it did so fairly.

TF Global is, in my view, right to point out that the price of its CFD on G shares is distinct from the underlying market in G shares themselves. I don't think it's inherently unfair or unreasonable for its price to have deviated from the underlying market price. But I think, if that deviation was substantial, in order to demonstrate it was treating its customers fairly TF Global would need to explain why that was the case.

Here, I'm satisfied TF Global's price was substantially different from the underlying market. The range of prices in G shares on 19 April 2024 was between \$0.7088 and \$0.7777. TF Global has said its liquidity provider's bid and offer prices that day settled at \$0.13 and \$2.34. And I understand Mr S's positions were closed at \$2.35. I've not seen persuasive evidence why TF Global's spread and prices were so wide and different from the underlying market. TF Global has simply cited "liquidity" and "volatility". But I've not seen anything to suggest that day was especially illiquid or volatile in trading in G shares. Even if it was, I'm not persuaded that would explain the extent of the difference between TF Global's prices and the underlying.

By way of comparison:

- On 25 March 2024, TF Global's spread was reasonably tight – closing with a bid of \$2.65 and an offer of \$2.73.
- In the underlying that day, a little over 800,000 shares traded in a range from \$2.68 to \$2.89 (21 cents).
- On 19 April 2024, the day Mr S's trades closed, as I've mentioned TF Global's spread was \$0.13 vs \$2.34.
- The underlying market traded range, as above, was just 7 cents between \$0.70 and \$0.77. 1.5m shares traded in the market.

So on an objectively more volatile, more illiquid trading day just a few weeks earlier, TF Global was able to quote prices in its G CFD much closer to the underlying market. I've also taken account of the fact that TF Global has said only "1 or 2" of its clients had exposure to the G shares CFD, and that its spread widened on 2 April 2024, the day it wrote to Mr S to say it was closing his account.

TF Global has referred to guidance that says when giving best execution in an OTC product like a CFD, it was allowed to apply a different approach. But that guidance at COBS 11.2A.7G says that for products like this *"firms should gather relevant market data in order to check whether the OTC price offered for a client is fair"*. Further, the rule at COBS 11.2A.8UK (4) says that when executing a trade in an OTC product a firm needs to *"check the fairness of the price proposed to the client, by gathering market data used in the estimation of the price of such product, and where possible, by comparing with similar or comparable products"*. From everything I've seen of the data for the underlying market and other providers of CFDs on G shares (which are, in my

view, similar or comparable products) I am not currently persuaded that if TF Global compared its prices to those, it would reasonably have concluded the price offered to Mr S was fair.

Considering all the above, I'm currently not persuaded it was fair or reasonable for TF Global to quote the prices it did for its CFD on G shares on 19 April 2024. I therefore don't think it was fair or reasonable for TF Global to close Mr S's trades at the price it did.

I've also thought more broadly about what's fair and reasonable here. Whatever other positions in the same CFD Mr S may or may not have had with other providers, he had deposited substantial sums with TF Global in order to open his G trades. He was on risk, and had the market moved against him could and would have lost all of his deposit (acknowledging that his exposure was limited by the negative balance protection).

I think TF Global was fair to close Mr S's accounts, but I don't think it was fair for it to price its CFD in such a way that Mr S's trades would close out for a loss or negligible profit. I think it was obliged to close his trade in line with the prevailing market conditions, and for the reasons given above I don't think it did that. So I think it needs to compensate Mr S for the consequences of that.

### **Putting things right**

I currently see no reason why TF Global's price for its G CFD should have differed greatly from the underlying market price on 19 April 2024. I do understand that TF Global would usually apply a small markup to the underlying price when quoting its CFDs – I understand from submissions that this was usually around 7 pips.

I don't know at what point in the day TF Global would have closed Mr S's positions, so in order to put things right I think TF Global should calculate the VWAP of G shares on the underlying exchange on 19 April 2024. It should add 7 pips to this figure, and use the resulting price to re-price the positions of Mr S's that it closed on 19 April 2024.

I'm also satisfied that seeing what he thought was a substantially profitable trade closed for negligible profit would have been upsetting for Mr S. I think TF Global should pay Mr S a further £150 in light of that.

Mr S responded to my provisional decision, agreeing with most of my conclusions but arguing:

- The compensation calculation should use a 3-4 pip markup rather than 7, from the underlying market's VWAP. 7 pips was the entirety of TF Global's bid/offer spread, and so the distance of each of the bid or offer from the market mid-price (represented here by the VWAP) should more accurately be around 3-4 pips.
- He'd been deprived use of the money TF Global would pay in compensation, and so an interest award should be added in light of that.

TF Global didn't respond to the provisional decision, but said to our investigator that it was *"amending the client's close prices, these will be referenced to the End of Day close price on the 2<sup>nd</sup> of April 2024, that is the time when the client contacted [TF Global]."*

### **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.

As neither party has substantively responded to my main provisional findings, I see no reason to depart from them and so make those same findings and conclusions final here. In other words, I remain of the view that TF Global should re-price Mr S's G CFD trades and pay him any losses he suffered. The responses dealt mainly with the remedy, and so I'll address that below.

### **Putting things right**

Both parties have questioned the representative prices TF Global should use to re-price Mr S's trades. TF Global hasn't explained why it intends to use end of day prices, or the 2 April 2024 prices, rather than the 19 April VWAP prices I suggested in my provisional decision. I'm not persuaded TF Global's proposal is fair.

Mr S first contacted TF Global about its prices on 2 April, but I'm not persuaded that means he wanted to close his trades then. In fact I've seen nothing to suggest Mr S wanted to close his trades at all – he only ended up doing so because TF Global was closing his account. So based on the fact that Mr S hadn't shown any sign of closing the trades before the mispricing, and that the decision to close wasn't his, I'm satisfied on balance that had TF Global given fair prices for its G CFDs, Mr S wouldn't have closed his trades until he absolutely had to. That seems to be 19 April when TF Global closed his trades for him ahead of closing his account. So I see no reason to use the price from any other day to calculate compensation.

It is then difficult to say what price exactly Mr S would have achieved for the sale of his CFDs on 19 April 2024. As the VWAP gives more of a representation of the trading activity in the underlying market across the whole day – and ought to be as straightforward for TF Global to calculate as the end of day closing price – I remain of the view that this is the representative underlying price TF Global should use when working out how much it needs to pay Mr S.

I've considered Mr S's point about how much markup TF Global can reasonably apply to the underlying VWAP when assessing compensation. The VWAP is intended to be a reasonable proxy for the price at any given time when considering what the underlying market price would have been when Mr S's trades were closed. I think it's reasonable in the circumstances to take that VWAP as representing the market offer price in G shares (which would be the relevant reference price for closing a short position like Mr S's).

If in the normal course of events TF Global applies a markup to the underlying market price when quoting its CFDs, I think it is reasonable for it to apply it here when calculating compensation. So, when making that calculation, TF Global may apply whatever its standard markup to a market bid/offer is to the VWAP price, in order to arrive at what I consider would be a fair and reasonable estimate of the correctly priced TF Global CFD in G when Mr S's trades were closed.

So to clarify - TF Global should calculate the VWAP of G shares on the underlying exchange on 19 April 2024. It should add its standard markup to this figure (if appropriate), and use the resulting price to re-price the positions of Mr S's that it closed on 19 April 2024.

I've considered Mr S's points about adding interest to this figure carefully. I accept that Mr S has been deprived of the use of any compensation funds since the events complained of. But I've also taken into account that this money was money Mr S used for speculative CFD trading, and on balance I think it's more likely than not that he'd have continued to use this money trading.

It's possible Mr S would have made a return with that money, but in my view it's equally plausible he'd have made a loss. And I don't think it would be fair to make an award for Mr S's trading skill. So in the particular circumstances of this complaint, I find that simply re-pricing Mr S's trades and paying him any loss fairly compensates Mr S for the financial impact of TF Global's errors.

I would however add that if TF Global doesn't pay Mr S compensation within 28 days of the date it receives Mr S's acceptance of my decision, it must then add to any compensation payment 8% simple interest, calculated from the date of this decision until the date it does settle the complaint.

For the reasons in my provisional decision I also remain of the view TF Global must pay Mr S £150 for the distress and inconvenience he's been caused.

### **My final decision**

I uphold this complaint and direct TF Global Markets (UK) Limited to pay Mr S compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 11 April 2025.

Luke Gordon  
**Ombudsman**