DRN-5843228

The complaint

Mr M complains about the ongoing costs applied by Interactive Brokers (U.K.) Limited ("IBUK") to a contract for difference ("CFD") position in his investment account, which he cannot close.

What happened

On 24 February 2022, Mr M opened a long CFD position on 10,000 Sberbank shares, at a price of 115.7700 Rubles per share, with a total cost basis of 1,157,700 Russian Rubles (USD $13,696.75 at that time). IBUK bought 10,000 shares to cover the position and since 25 February 2022, those shares have been illiquid due to the sanctions applied to Russia and by Russia, which means that Mr M can't alter or close the CFD.

In July 2024 Mr M complained, as he was finding the financial burden of maintaining the position to be unsustainable. IBUK were continuing to apply FX charges, CFD charges and interest which had taken the account into margin call, so he asked that IBUK close the position. By August 2024 the interest alone charged on the position had amounted to around USD $12,000. IBUK didn't uphold the complaint, explaining they couldn't close the position due to the sanctions and that they would continue to charge interest and the other charges as a result.

Mr M remained unhappy and brought the complaint to our service – in doing so he suggested swapping the position for the underlying shares themselves, if that would stop the interest accruing. IBUK said that they had emailed Mr M on 24 and 25 February 2022 to warn him about the potential problems with continuing to hold the position because of the sanctions. They maintained that it was fair to apply the costs to the account.

An investigator at our service upheld the complaint, saying that from March 2022 the required margin on the position was 100%, so there were no material costs being incurred by IBUK, or risk to them. She said all interest Mr M had paid since the margin was 100% should be refunded, plus interest at 8%. She also recommended that IBUK pay Mr M £750 compensation for distress and inconvenience, due to the impact of having to continually fund the account to pay for the interest.

Mr M accepted the investigators opinion, but IBUK didn't reply to the investigator in the time allowed, so the complaint was passed to me for a decision. Subsequently IBUK provided the following submissions:

- The position remained profitable and the interest being applied was taking the account into a negative cash balance, which would be deducted from the profit once the position could be closed. Mr M wasn't having to deposit any money to maintain the position or pay the interest and hasn't made any deposits into the account since he opened the position in February 2022. So, if they were to do what the investigator suggested and refund the amounts directly to Mr M with 8% interest, that would put him in a better position than he would have ever been in.
- Once Mr M closes the position after the sanctions are lifted, they would sell the shares and then close the position at the same price as the shares are sold for. Any

interest would be deducted, and any remaining profit would be paid to Mr M. Under the negative balance protection rule, Mr M's position would not result in a negative account balance.

- Mr M's position is held in an escrow account where the only equity held against the margin requirement is the unrealized profit of the position itself, which amounts to less than 50% of the requirement.
- Mr M has held only this position since early 2024, and it has been in margin call since 15 April 2024 as the accounts hold less than the 50% margin requirement and normally IBUK would have closed the position as a result. However, IBUK say they can't do anything because the position can't be closed due to the sanctions, and they consider charging Mr M to be proportionate in the context of IBUK acting as a riskless principal.
- IBUK paid for the shares with "house money," which has a cost including opportunity costs, maintaining sufficient capital reserves and financing other customer transactions. CFD financing charges are assessed in part to cover those costs. They said the margin collected from Mr M cannot be used to finance the trade, so even if the margin requirement is set to 100%, IBUK must still cover the hedge with "house money."
- Contract interest is calculated daily on all open CFD positions, using the local currency's benchmark rate and other market conditions. As the shares are in Rubles, the benchmark here is the Ruble Overnight Index Average ("RUONIA") - essentially a weighted average of interest rates used to finance overnight interbank Ruble loans reflecting the cost of unsecured overnight borrowing. Due to the Ruble being volatile and unpredictable, IBUK adds a higher spread to it than other more stable currencies, of +5% compared to +1.5%.

I issued a provisional decision on the complaint, as follows:

"My provisional decision

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, it's clear this is a very unusual situation, due to the impact of the sanctions on the shares underlying the CFD. I'm satisfied that IBUK is correct in their interpretation of the sanctions - that the shares cannot be sold and nor could they reasonably be transferred to Mr M, as this could be considered a sale. So, the focus of my decision is on whether IBUK is acting fairly and reasonably in continuing to apply the ordinary charges and interest in these circumstances.

There's no doubt that Mr M was responsible for making the original decision to invest and I'm glad to see that IBUK warned him that there would likely be difficulties in exiting the positions on 24 February 2022. Mr M also accepts that the terms and conditions governing the account allow for charges and interest to be applied.

However, terms and conditions documents cannot feasibly cover every eventuality – and the length of time the sanctions have been and may continue to be in place for, at this scale, is unprecedented. I doubt it was a situation anticipated when IBUK wrote the terms and conditions. In my view it couldn't be factored into their terms, ordinary processes or charging structure in advance and so it was something they'd reasonably need to develop an approach toward. I'm satisfied it was reasonable for them to continue with their normal application of charges and interest when the sanctions were initially introduced, but not for that to continue indefinitely.

I want to acknowledge that this is a quite unique situation caused largely by factors outside both IBUK and Mr M's control - I don't think either party would have chosen to be in this situation. I doubt Mr M would have truly wanted to be unable to control the position and take on such a long-term risk that he's unable to manage either by changing or closing the position. IBUK also can't manage their own position as they can't sell the shares.

I appreciate that IBUK has an ongoing opportunity cost that they have said is covered by the interest, as they can't use the money tied up in the shares. I note the shares cost them around $13,700 and they had recouped almost that amount in interest by mid-2024. I'm aware the interest is not just for that opportunity cost and covers other things as well. But its worth noting it isn't a specific tangible cost, in other words it isn't a direct cost IBUK are incurring applied by a third party, that they are passing on to Mr M.

I need to consider IBUK's contractual ability to apply the charges and interest, balanced against their obligations towards Mr M, including any regulatory rules and guidelines that IBUK should follow. They've an obligation to act in Mr M's best interests and to treat him fairly. For Mr M the interest and charges are taking the form of thousands of pounds of tangible costs and while he agreed to their application initially, he no longer has any control over it. The impact on him of their continued application is greater than the impact stopping the charges would be for IBUK.

In addition, in 2018 ESMA introduced the 'margin close-out rule', and when they did so they explained why in a questions and answers document – this says:

"What is a margin close-out (MCO) rule?

- *The margin close-out rule standardizes the percentage of the margin at which CFD providers are required to close out a CFD or multiple CFDs.*
- *The result of this standardization is a clear and consistent approach across providers, helping investors understand what will happen to their investments if they experience adverse price movements.*
- *The MCO has been set at 50% to ensure that investors' margin is not eroded close to zero. This is in line with examples of good practice in the industry to date. The rule will not prevent investors from choosing to 'top up' their margin if they wish to do so."*

As far as I can tell from the emails IBUK sent to Mr M, the position should have been closed under this rule on 15 April 2024, as Mr M has said he could not afford to add any money into his account. From then on, IBUK had to deal with two obligations, which on their face seemed to contradict – they couldn't sell the shares to close the position due to the sanctions, but they also had an obligation to close the position under the ESMA rule.

IBUK appear to have decided they couldn't do anything to act in line with the ESMA rule because of the sanctions, but I've not been persuaded that they had no other options. This is particularly the case given the onerous impact of continuing the apply the charges and interest to Mr M's account. In my view they ought to have stepped outside their normal processes at the point when their obligations under ESMA came into play.

In ordinary conditions, if the sanctions weren't in place, the shares ought to have been sold at that point and Mr M would have stopped paying interest and charges on this position from then and any gain or loss would have been crystalised at that time. But the position cannot actually be closed, so I'm not going to be able to put Mr M in the situation he'd be in, had the ESMA rule been followed. However, in my view, there are steps IBUK should take that would put him reasonably close to that position.

I consider a reasonable approach is that from the date the position would have been closed, IBUK ought to have stopped applying any interest and charges that related to it. So, they should credit Mr M's accounts – his main one and the escrow account in which the position is now held – with a sum equal to the interest and charges taken from the respective accounts since then. They should let Mr M know once they've completed this action. No further interest or charges should be applied until the position ceases to be illiquid.

Once the shares can be sold, IBUK should let Mr M know the position is liquid and he can make a decision about what to do with it. It might be that margin close out happens immediately, before he can make any decisions, due to the price of the underlying. However, if it doesn't, then IBUK would be entitled to resume application of the normal interest and charges from the date the position could have been managed by Mr M.

I appreciate this method of redress gives Mr M the potential benefit of possible future growth on the position and it possibly allows him a choice (once it's liquid at an unknown future date) to decide whether to keep the position. That's something that he wouldn't have been able to do had the position been closed in April 2024. On the other hand, Mr M is also being forced to take a risk that he doesn't want to take, and that the ESMA rules say he ought not to be taking, as a retail client.

Ultimately there is no perfect solution here as far as I see it – if IBUK or Mr M have any alternatives I'd ask that they put them forward in reply to my provisional decision and I'd be happy to consider them. As it stands, I consider the method I've set out to be fair, as it reflects the intent of the ESMA rules as closely as possible in the circumstances.

I've also considered the impact of this situation on Mr M and whether compensation for the distress and inconvenience he's been caused is warranted. I note that when the investigator awarded £750, she appeared to be under the impression that IBUK was forcing Mr M to continually fund his account. This seems to have been a misunderstanding based on what Mr M had said about the financial burden he was under when he referred the complaint to our service. Given we've since found that he's not had to add any money in since opening this position, I now understand he was referring to the impact these charges and interest would have in future when the position is tradable once more.

As the situation is quite different to what the investigator had understood it to be, I don't agree that IBUK should pay £750 compensation here. That isn't to say that I doubt the amount of worry Mr M has been caused by the situation – it's simply that I don't think it would be fair to say IBUK is entirely at fault for that worry. As set out above, much of the situation is entirely outside of the control of both IBUK and Mr M.

That being said, I do think IBUK ought to have done more from April 2024. In continuing to apply the interest and charges after that point in what I consider to be an unfair way, they've exacerbated Mr M's concerns about the continued risk of this position, as it increased the risk that he may lose all the money invested. In my view, compensation of £200 would be fair and reasonable for IBUK's role in the situation."

Replies to my provisional decision

Mr M replied and in summary, said:

- He agreed that IBUK acted unfairly, but didn't think the redress went far enough. He was very worried about having a debt that he would owe to IBUK once the position was liquid, if the charges that had been applied outweighed the profit. That potentially significant liability had left him very stressed, which he felt was exacerbated by the lack of support from IBUK. He felt £750 would be a fair amount.

- He felt IBUK had an obligation to do something different before 15 April 2024, given their obligation to act in his best interests, and should have stopped applying charges when the margin became 100% in March 2022.
- He felt the refund of charges should be paid to a separate account that he could access and that interest should be applied to the refund, to offset the high interest being charged due to the currency involved in the transactions.
- He asked that IBUK provide a clear breakdown of their calculations once they have completed the redress.
- He would like a clear guarantee that no further charges would be applied until the position ceases to be illiquid and that he will be notified promptly in writing once the position becomes liquid.

The investigator explained to Mr M that due to negative balance protection he wouldn't have a debt once the position is closed. She also explained that the final decision, if accepted by him, is legally binding on IBUK and him. Mr M confirmed that helped him to understand the situation going forward.

IBUK replied and didn't accept the provisional decision. They said:

- Our service should dismiss the complaint as it would be more suitably dealt with by a court, due to the fact it gives rise to important or novel points of law with potentially significant consequences, which could have wider implications.
- They didn't solicit or recommend that Mr M open this position.
- They aren't permitted under English or EU law to close the position.
- In instructing them to refrain from assessing interest on the position, our service is acting inconsistently with our statutory role and objectives as a dispute resolution service and pointed out that our service is not a financial conduct regulator.

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've not been persuaded to depart from the findings set out in my provisional decision quoted above, which form part of my final decision, and will explain why.

I disagree with IBUK's position that I am acting outside of my remit and stepping into the shoes of the regulator. My remit is set out in the Financial Conduct Authority's Handbook at DISP 3.6, which says:

> *"The Ombudsman will determine a complaint by reference to what is, in his opinion, fair and reasonable in all the circumstances of the case…*
>
> *In considering what is fair and reasonable in all the circumstances of the case, the Ombudsman will take into account:*
>
> *(1) relevant:*
> *(a) law and regulations;*
> *(b) regulators' rules, guidance and standards;*
> *(c) codes of practice; and*
> *(2) (where appropriate) what he considers to have been good industry practice at the relevant time."*

I'm satisfied my approach here has been to decide what is fair and reasonable in the circumstances of this case. In finding IBUK hasn't acted fairly and reasonably, I've taken into account relevant law, regulations, rules and guidance. I've agreed with IBUK that they have acted reasonably in their interpretation of the sanctions, and I agree that it was Mr M's choice to invest. In setting out the redress that I consider reasonable, I have not directed IBUK to go against any law, regulation, rule or guidance.

When considering a business's acts or omissions, my approach it to look at the reasons for that action (or inaction) to decide if the business's choice was fair and reasonable. Here, I accept that because the position can't be closed due to the sanctions, that IBUK have a reasonable reason for why they can't meet the requirement of the ESMA margin close out rule to close the position.

However, I'm satisfied the spirit of the ESMA rule can still be met – there's no rules or guidance that prevents that. I've given IBUK an opportunity to provide submissions as to why they didn't attempt to act in line with the spirit of that rule. IBUK hasn't put forward any reasons as to why they couldn't or shouldn't act in line with the intent of the ESMA rule and put Mr M as close to the position he'd now be in, had it been possible for the ESMA rule to be followed. As a result, I'm satisfied that a fair conclusion is that they haven't acted reasonably.

Regarding IBUK's argument that I should dismiss the complaint, I don't agree. They've mentioned other cases our service has decided to dismiss, but they involve different facts and considerations. I'm satisfied that I am safely able to give a fair and reasonable decision in Mr M's case, so I am not dismissing it.

Simply because my decision may have wider ramifications for IBUK does not mean I am acting outside my remit or that I should dismiss this complaint. The guidance at DISP 1.3.2 and DISP 1.4.2 sets out that IBUK should learn from determinations given by our service. So, the fact businesses may need to change the way they operate as a result of findings we give, was clearly built into the way our service was designed to interact with the financial sector. Whether they do implement changes, is a matter for their regulator – our service will simply consider individual complaints on their own merits, if they are referred to us.

Turning now to Mr M's point that he feels IBUK ought to have done more earlier to act in his best interests. I did consider whether I could fairly point to an earlier time at which it would have been reasonable for IBUK to stop applying interest and charges. In considering that I took into account the client's best interest rule at COBS 2.1.

Acting in a customer's best interests doesn't mean businesses need to protect them from all potential harm. There's an inherent risk in share dealing – let alone CFD trading – that is part and parcel of the product. If businesses had to protect against all potential harm, none would be able to offer share dealing to any consumers, due to the risk of loss involved. So, there are clearly limits to what is expected when firms consider a customer's best interests and they have to balance that duty against a customer's right to make their own decisions.

Mr M had agreed to IBUK's terms and conditions and had chosen to open the position at a very volatile time in the particular market involved. He has not complained about his ability to open the position or the account in general. As I set out in my provisional decision, I found IBUK acted fairly in applying the charges and interest that Mr M had agreed to when he opened the position. In my view, acting in Mr M's best interests includes acting in line with his instructions to open the position – inherent in that instruction is his agreement to the application of the charges and interest.

I don't consider that the increase in the margin to 100% in March 2022 changed the situation in such an unusual or significant way as to merit a change to the agreed approach. It was still very soon after the implementation of the sanctions, and at that time IBUK couldn't reasonably know what would happen or how long the position would be illiquid for. The illiquid nature of shares underlying a CFD position is not unique to the sanctioned shares – it's a potential risk that any investor takes when buying shares or opening positions relating to shares.

So generally, the application of interest and charges in and of themselves isn't against Mr M's best interests. However, I do agree IBUK ought to have reviewed this situation due to the particularly unique circumstances due to the sanctions, and in my view an appropriate time to review it would have been when the account was no longer meeting the margin requirement, in April 2024. So, I've not been persuaded to change my findings about the time at which the interest and charges ought to have stopped.

I've considered whether the amount of compensation for the distress caused is fair. As Mr M now understands the impact of the negative balance protection, I hope he is less anxious about the situation as he won't be left with a debt. CFD trading generally comes with a high level of risk and some of the worry he's experienced here has come from the choice of investment that he made, which I can't fairly blame IBUK for. As set out in my provisional decision, IBUK are also not responsible for the sanctions which are the reason the shares cannot be sold. Overall, I'm satisfied £200 compensation is fair here.

Turning to Mr M's comments about the account the refund should be paid to and whether interest should be applied. My aim is to put him as close to the position he'd be in now, if IBUK had acted differently from 15 April 2024. By instructing them to credit the accounts the interest and charges were deducted from, my aim is to effectively reverse the action that took place. It follows that the amounts should be credited to the accounts they were deducted from. If I were to instruct IBUK to pay a different account, that wouldn't put Mr M back in the position he should be in.

For largely the same reasons, no interest is due on the refund. That money wouldn't have been earning interest had it not been deducted. Mr M wouldn't have been able to use the funds regardless, so he's not been deprived of their use to the point where he deserves compensatory interest.

I consider that Mr M's request for a breakdown of the amount credited to his accounts is reasonable and something I'd expect IBUK to provide to him, when they let him know the amount has been credited to his account.

In summary, to put things right, IBUK should:

- Credit Mr M's accounts – his main one and the account in which the position is now held – with sums equal to the interest and charges taken from the respective accounts since 15 April 2024.
- Tell Mr M once they've completed this action and provide him with details of the calculation in a clear, simple format.
- Apply no further interest or charges until the position ceases to be illiquid.
- Once the shares can be sold, IBUK should promptly let Mr M know the position is liquid and he can make a decision about what to do with it. It might be that margin close out happens immediately, before he can make any decisions, due to the price of the underlying. However, if it doesn't, then IBUK would be entitled to resume application of the normal interest and charges from the date the position could have been managed by Mr M.

- Pay Mr M £200 directly as compensation for the distress and inconvenience he's been caused.

My final decision

I uphold the complaint. My decision is that Interactive Brokers (U.K.) Limited should take the steps I've set out and pay the amount calculated as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 24 October 2025.

Katie Haywood
Ombudsman