

complaint

Mr T is complaining about IG Markets Limited ("IG Markets") having closed positions on his account too quickly and without any prior notification. Mr T feels that IG Markets' Customer Agreement implies fair warning will be given to customers prior to positions being closed.

background

In early February 2013 four of Mr T's positions were closed as his account breached margin requirements. The positions were closed without Mr T being given any prior notification.

Mr T's complaint was investigated by one of our adjudicators, who recommended that the complaint should not be upheld. She said, in summary:

- Mr T accepted the terms in IG Markets' Customer Agreement when he opened his account. He agreed to term 16(2)(a) which said if an "*Event of Default*" occurs, IG Markets may "*close or part-close all or any*" of a customer's positions.
- Term 16(1)(a) of the Customer Agreement said that an "*Event of Default*" includes a customer's "*failure to make any payment (including any payment or Margin Payment) to us or to an Associated Company of ours in accordance with the conditions set out in Terms 14 and 15*".
- The figures show that in early February 2013, Mr T's account required a margin payment. In accordance with term 16 of the Customer Agreement, this constituted an "*Event of Default*", thus allowing IG Markets to close Mr T's positions.
- Term 16 of the Customer Agreement said that if an account requires a margin payment, IG Markets has "*absolute discretion*" to close customers' positions at "*any time without prior notice*".
- Although IG Markets says that it does endeavour to contact its clients where there is a margin breach, term 14(6) says that it is "*not under any obligation to keep you informed of your account balance and Margin required...*"
- Term 14(3) said that it is the customer's responsibility to be aware of, and to pay, the margin required on his or her account at all times.
- IG Markets acted reasonably within the terms of its Customer Agreement when closing Mr T's positions without notification.

Mr T did not agree with the adjudicator's conclusions and said, in summary:

- IG Markets is obliged to treat him honestly, fairly and professionally. Mr T considers that after funding his account for months to cover margin calls, for IG Markets to suddenly close positions, without notification, is in no way treating him fairly.
- He referred to IG Markets' literature and stated that it implies that customers will be given notice of, and the opportunity to comply with, a margin requirement before positions are closed.

- IG Markets' Customer Agreement is unclear and unfair. It gives IG Markets the right to close positions without justification or cause, and is an unfair contract.
- IG Markets was also in breach of COBS 4.2.1.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I have come to the same conclusions as the adjudicator for essentially the same reasons.

I note that Mr T has not suffered any material loss in this case, since his losses have been refunded by a third party. So even if I found that IG Markets had done something wrong, I would not award compensation for the loss, since this would not be fair.

It is not in dispute that Mr T's positions were closed because there was insufficient margin. As our adjudicator explained, this triggered an event of default, enabling IG Markets to close his open positions under the account terms and conditions (term 16 (2)). This clause says that in such an event IG *may* close or part-close "all or any" positions at "any time and without prior notice".

Part of the reason for Mr T's complaint appears to be that on previous occasions where his account had breached margin, IG Markets had phoned him and he had transferred funds. But in my view, the Customer Agreement was clear that IG Markets was "not under any obligation to keep you informed of your account balance and Margin required..."

Mr T believes that some of IG Markets' literature was unclear, and misleadingly implied that a margin call would be made. He has pointed in particular to its Risk Disclosure Notice, which says:

"At all times during which you have open trades, you must ensure that your account balance, taking into account all running profits and losses, is equal to at least the total Margin that we require you to have paid us. Therefore, if our price moves against you, you may need to provide us with substantial additional Margin, at short notice, to maintain your open trades. If you do not do this, we will be entitled to close one or more or all of your trades. You will be responsible for any losses incurred.

You should also be aware that under our customer agreement we are entitled to increase Margin rates at short notice. If we do so, you may be required to deposit additional funds into your account to cover the increased Margin rates".

I am not persuaded that saying "you may need to provide us with substantial additional margin at short notice" and "...you will be required to deposit additional funds" implies that a phone call will be made. It does not say "if we call you" you need to provide more margin, it says "if our price moves against you" and makes it clear that it is the customer's responsibility to ensure there is sufficient margin.

I note that on previous occasions when his account breached margin, emails were sent (one was sent on this occasion too, but only about a minute before the close-out). These emails all included the warning "If you do not take action to cover the margin required on your

account, we may, without further notice to you, cut back or close all or any of your open transactions. We make no commitment to contact you before closing any such transactions.” In my view, even if Mr T had misinterpreted the Risk disclosure Notice as implying that a call would always be made, these emails made it clear that this was not the case.

Mr T says that the term of IG Markets' customer agreement relating to margin calls is an unfair contract term. Such a term is standard practice across the industry. This does not necessarily mean it is fair, but it does mean that it is likely to have been subject to a degree of regulatory scrutiny. It seems to me that it is not the case that it is always in a client's best interests to make a margin call, nor that it is always to their detriment not to do so. Markets move fast and there may be instances when the delay could cause greater losses. I am therefore not persuaded that it is an unfair term.

Mr T has also argued that IG Markets is in breach of COBS 4.2.1 of the FCA's Handbook, which requires a firm's communications to be "*fair, clear and not misleading*". For the reasons set out above, I am satisfied that IG Markets' Customer Agreement and Risk Disclosure Notice were not unclear, unfair or misleading in this case.

In summary, as there was a margin requirement on Mr T's account, I am satisfied that IG Markets acted reasonably in closing his positions on the date in question.

my final decision

For the reasons given, my decision is not to uphold this complaint against IG Markets Limited.

Louise Bardell
ombudsman