

## complaint

Mr J complains about the way Gain Capital UK Limited administered his account. In particular, he complains that:

- Gain said that it would close all his positions on 10 December, but in fact closed them on 14 December causing him a loss;
- His second account shouldn't have been opened at all, given the reasons why he had closed his first account with Gain.

## background

Mr J first opened an account with Gain in 2009. From the notes of various calls Mr J had with Gain, I can see that his relationship with it had become increasingly difficult. In 2013, the account was closed due to *'trading problems'*.

In early 2014, Mr J opened another account with Gain. He completed an appropriateness assessment which confirmed, based on the information he provided, that the account was appropriate for him.

But in early November 2015 Mr J received an email from Gain explaining that it was giving him notice that in 30 days his account would be closed. It explained that all open positions would be closed on 10 December 2015. In fact, his positions were eventually closed on 14 December at less favourable prices than the ones available on 10 December.

Mr J complained. He claimed losses of over £6,000 in relation to the delayed closure of his positions. He also complained that in fact, his second account should never have been opened given his *'gambling problems'*. So he asked for all his losses, from the opening of the second account, to be reimbursed.

Gain agreed that it should've closed his positions on 10 December. So it offered to pay him the difference between the end of the day prices on 10 December for his open positions, and the prices these positions were eventually closed at on 14 December. This amounted to around £1,200. But it didn't uphold the second element of his complaint.

So Mr J complained to this service. One of our adjudicators considered Mr J's complaint. She thought that Gain's offer of compensation for the delayed closure was reasonable in the circumstances. She didn't agree with Mr J that Gain should've picked the most favourable price on 10 December, and not the end of the day price.

In terms of Mr J's second complaint, she considered that the business wasn't aware that Mr J thought he still had some sort of gambling problem. She thought that if it had been made aware, it wouldn't have opened his account. She also noted that Mr J only raised concerns around the opening of this second account when the business notified him that it would close it.

Mr J didn't agree with the adjudicator and so the case was passed to me.

## **my findings**

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 agree with the adjudicator and for essentially the same reasons.

I can see that Mr J feels strongly about his complaint, and has provided detailed submissions which I can confirm I've read and carefully considered. As I understand it, Mr J disagrees with the way Gain calculated compensation for the first element of his complaint. And he disagrees with the adjudicator's explanations as to why his second account was opened, and later closed.

In relation to the first aspect of his complaint, I agree with the way Gain has calculated the compensation to be paid. I understand that Mr J would've wanted a more favourable price in order to increase the compensation. But that wouldn't have been fair or reasonable. There wasn't a set time for when his positions would be closed on 10 December. And so I consider it fair that Gain use the end of the day price of the various positions to be closed on 10 December, and compare them to the price he was actually closed at on 14 December. So I'm going to make that award.

In relation to the second part of his complaint, I'm afraid I have little to add to what the adjudicator has already said. I've looked at the account opening documentation, and the answers he gave at the time. I can see that as a result of these answers, the account was deemed appropriate for him. Based on the information he provided at the time, I don't disagree with that assessment.

Gain has in fact confirmed that after he completed the appropriateness assessment, his account was flagged on an internal blacklist. But Mr J was in touch with an employee who worked for City Index. This employee asked for the account to be confirmed and this is why Mr J's account went live.

My understanding is that Mr J has said that he explained to this employee that he had gambling problems.

We've been unable to listen to telephone calls for that period. But in any event, I don't think it's likely that, on the one hand he would go through the trouble of opening an account online; and then on the other, encourage an employee not to allow him to open his account because he had gambling problems. In addition, I doubt that the employee would've taken the responsibility of specifically asking for Mr J's account to be created, if he had been told that Mr J had a gambling problem.

Gain has explained that in late 2015 given Mr J's behaviour, one of their managers recognised his name. At this point, the manager carried out a search and located Mr J's previous account. As a result, Mr J was given 30 days notice that his account would be closed. I don't think in the circumstances this was unreasonable. In any event, it was in line with Gain's terms and conditions. And I'm persuaded by the explanation that Gain has provided about this.

So I don't uphold this aspect of Mr J's complaint.

**my final decision**

My final decision is that Gain Capital UK Limited should pay Mr J the difference between the end of the day closing prices on his positions on 10 December 2015, and the prices his positions were closed at on 14 December 2015. I understand that this amounts to £1,292.44. I don't award any interest on this sum, because it's an offer that the business made in its final response to Mr J.

But I don't uphold Mr J's complaint about his second account being opened. Accordingly, I make no award in that respect.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 30 September 2016.

Alessandro Pulzone  
**ombudsman**