

complaint

Mr T complains about a £111 per point spread bet he placed with City Index Limited. Mr T says he placed this trade in error, intending a trade for £1 per point, due to the slowness of City Index's platform.

background

In February 2014, Mr T placed a sell trade at £111 per point on the FTSE-100 index. Less than a minute and a half later, he closed the trade, making a loss of £888.

Mr T says he placed the trade due to a slow system response to key strokes. He didn't know the extra keystrokes had been registered until after he'd placed the trade.

Mr T says that he tried phoning City Index shortly after closing the trade to report the error, but the call wasn't answered. He called again around an hour and 15 minutes later.

City Index told Mr T that there was nothing it could do because the trade was placed over an hour before. It told Mr T he needed to call them straight away if there was an error.

One of our adjudicators investigated the complaint and recommended upholding it. He said:

- Mr T provided evidence to show that the trade was out of line with his past trading history of small trades.
- Mr T had also provided evidence that he had tried to obtain call logs from his phone company to show he made an earlier call. The phone company weren't able to provide this due to the non-chargeable number involved. But the fact that he'd proved he tried to get the records indicated he had made the call.
- Mr T had placed the bet as a result of an uncharacteristic and obvious error.
- There was no clause in the contract to support City Index's stance of not voiding the trades because Mr T didn't contact them immediately. City Index had sought to rely on a clause about contract notes. But this wasn't relevant as Mr T contacted them before any contract note was received.
- Mr T had acted promptly and reasonably.
- In the circumstances, it would be unfair for City Index to rely on its contract terms to exclude liability for Mr T's losses.

City Index disagreed. It said:

- It had no opinion on whether the trade was made in error and didn't accept that it was. City Index had simply processed Mr T's instruction in accordance with its execution-only mandate.
- Its IT department confirmed that no IT issues were reported on the online trading platform on the day in question.

- Mr T should have realised the trading error when the deal confirmation ticket appeared and closed the trade straight away. Had he done so, Mr T would have only paid the spread of one point.
- Mr T didn't double-check his stake before opening the trade, didn't read the deal confirmation ticket and waited one minute and twenty seconds before closing the trade.
- It was Mr T's responsibility to monitor and manage his account at all times.
- It had no responsibility for Mr T's losses under the terms of the client agreement.

Mr T said:

- When he pressed the "*Place Trade*" button, only £1 per point was displayed. The extra "1"s appeared afterwards, when it was too late to cancel. He then had to navigate around the website to work out what had happened and which quantity had actually been registered. When this was clear, he cancelled the trade.
- The clause in the client agreement City Index mentioned gave a 48 hours' time limit from receiving the contract note for informing City Index of errors.
- Section 14.2 of the client agreement said *City Index was required to exercise good faith in dealing with manifest errors, whichever side gained from them*. A manifest error had been made and should be voided according to this clause.

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'm going to uphold it. I explain why below.

First, I think the evidence provided supports Mr T's version of how the spread-bet arose - that is, because of a slow system response to keystrokes. I say this because of his past trading history, the fact that the trade was all "1"s and his actions after placing the trade.

City Index's first email to Mr T after he asked it to void the trade said:

"I can see that you spoke to my colleague [...] at 15 00 to request that this trade be reversed. As she advised to you we are unable to do this unless you ring us as soon as it happens. As you left a gap of over 1 hour and 15 minutes we are unable to do anything".

I think this clearly implies that City Index would have reversed Mr T's trade if he'd contacted them faster. So the problem for City Index is the delay. Its final response letter says something very similar.

Having considered the circumstances, I don't think City Index's argument is reasonable. I can't see any reference to a requirement to phone immediately in its terms and conditions. There's no definition of "*as soon as it happens*" or "*straight away*" (the words used in the final response letter). I don't think the time taken was unreasonable. And in any case, in view of his attempts to contact the phone company, I believe Mr T that he did and rang City Index earlier.

I'm satisfied that Mr T has acted in good faith in the circumstances of this complaint. I don't think it would be fair and reasonable to expect Mr T to bear the loss because he didn't phone for an hour and 15 minutes.

City Index hasn't been able to point to anything in its terms and conditions which specify a timescale for contacting it about an error. There's a clause about contacting it about errors in contract notes. But that isn't what happened here.

City Index has said that a "*confirmation ticket*" appears on the screen as soon as a trade is placed. So Mr T should have known then that the trade was an error and closed it immediately. But I think it's reasonable that Mr T should want to go back into the platform to check what had actually happened – after all, the error could have been in the "*confirmation ticket*" rather than in the trade. I don't think one minute and 20 seconds is an undue length of time to delay closing the trade.

City Index has referred us to the terms of Mr T's client agreement to explain that it has no responsibility or liability for his trading losses. But I think the specific circumstances here are akin to a "*manifest error*". Manifest error is a concept used by spread-betting firms to enable them to void trades where there has been a clear mistake in, for example, a pricing feed. In these circumstances, it's accepted that it would be unfair for the firm to have to bear the cost of the trades. So they're cancelled. City Index's terms and policies include the following:

*"A Manifest Error is an error, omission or misquote (including any misquote by our dealer) which **by fault of either of us** or any third party is materially and clearly incorrect..."* [my emphasis]

It goes on to say:

"If a Trade is based on a Manifest Error (regardless of whether you or we gain from the error) we may act reasonably and in good faith to:
14.2.1 void the Trade as if it had never taken place..."

City Index is obliged to carry out business in accordance with the Principles set out in the Financial Conduct Authority's Handbook. Principle 6 is "*A firm must pay due regard to the interests of its customers and treat them fairly*".

In this case, I'm satisfied that there is an error, which is "*materially and clearly incorrect*". My conclusion is that the trade should be voided, just as it would be if City Index had made the error. I don't think it would be treating customers fairly to allow City Index to void trades where it made an error but require its customers to bear their own losses where they make the error. And I don't think City Index can fairly argue that one hour and 15 minutes is too long to take to inform it.

I find that City Index should have voided the trade in this case. Fair compensation is therefore to cancel the trades (opening and closing) and refund the loss Mr T suffered when the position in question was closed.

my final decision

My final decision is that I uphold this complaint and direct City Index Limited to void the trades and refund the £888 loss Mr T suffered.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr T to accept or reject my decision before 9 November 2015.

Louise Bardell
ombudsman