

complaint

Mr I has complained about various losses suffered on three trading accounts in his name with AxiCorp Limited ("Axitrader").

background

In early 2017 Mr I contacted Axitrader to complain about a number of S&P 500 positions (on one of the three accounts in his name) that had been closed out. He said that these positions shouldn't have been closed out as he had sufficient funds on deposit to support them. And at no time was he contacted to say closure of these positions was pending. He also said that he suspected Axitrader of market manipulation.

Axitrader responded to say, in summary, that it had done nothing wrong in closing the S&P 500 positions it did. This was because at the relevant time Mr I's funds on deposit fell to below 20% of the required amount. It also said that Mr I was sent a number of warnings that he was to be closed out, something it wasn't obliged to do.

It dismissed Mr I's suggestion (for a number of reasons) that it had manipulated the S&P 500 price to 'force' the closure of his positions. It also pointed out that Mr I could have added funds to his account and reopened positions at a better level than he was closed out at had he wanted to. In closing it advised Mr I that if he was dissatisfied with its investigation and response he could refer a complaint to our service.

Mr I then contacted Axitrader to accuse it (again) of market manipulation and to question how its business model worked.

Axitrader responded to say that as a straight through processing ("STP") broker all its trades and positions are 100% hedged, thus avoiding any market risk. And that it hedges through its Australian parent company who in turn hedges through a number of international banks. In closing it added that it couldn't see what relevance its business model workings were to Mr I's complaint.

Mr I then contacted Axitrader to ask who, other than Axitrader, would know what positions he had open at any point in time.

Axitrader responded to say that given the amount of trades it hedges on a daily basis, nobody other than it would know what positions Mr I had open.

Mr I then contacted Axitrader to say that he hadn't received a withdrawal he had made from one of the accounts in his name.

Axitrader responded to say that it was satisfied that all withdrawal requests made by Mr I (and which it actioned) were successfully credited to the appropriate card account. It provided evidence in support of its view in this respect.

Mr I then contacted Axitrader to say that he still believed his S&P 500 positions were closed out incorrectly and that Axitrader had manipulated the market.

Axitrader responded to say, in summary, that it had done nothing wrong in closing the S&P 500 positions it did. This was because at the relevant time Mr I's funds on deposit fell to below 20% of the required amount. It also confirmed that the prices it publishes are market prices and come from an electronic communication network ("ECN") price supplier and it's at these prices clients' trades are filled. It provided price charts to confirm the prices at which Mr I was closed out at and reiterated that he could refer a complaint to our service if he remained dissatisfied.

Mr I then contacted Axitrader to say that he believed it had closed out other positions (including EUR/JPY currency pairs) on one or more of the three accounts in his name incorrectly.

Axitrader responded to say, in summary, that it had done nothing wrong in closing the EUR/JPY currency pairs it did. This was because at the relevant time Mr I's funds on deposit fell to below 20% of the required amount.

Mr I then contacted Axitrader to say that its business model didn't operate in the way he was told it would. And that one or more of the three accounts in his name had been managed not by him but by a broker acting for Axitrader.

Axitrader responded to reiterate what it had said before about how its business model worked. It also said it was unaware of the person (broker) Mr I said had been managing one or more of his three accounts. And if he had allowed a person to trade through his account (under a private arrangement) this was nothing to do with it. In closing it added that Mr I was never prevented from closing positions himself or withdrawing cash from the three accounts in his name.

Mr I then contacted Axitrader to say he was dissatisfied with the explanations he had been provided with.

Axitrader responded to say that all of Mr I's trades were carried out with it, and it's Mr I's counterparty when trades are opened, held and closed. And what it does with the other side of trades is of no consequence. The prices at which its clients' trade are market prices made up from STP and ECN feeds from a number of liquidity providers.

Mr I then contacted Axitrader to say that he had been scammed by it, or its broker, and that he wanted all his losses refunded. He also said at no time did he sign anything to allow him to trade and therefore incur losses.

Axitrader responded to confirm its name, its registered address, registered company number, FCA and Financial Ombudsman Service number and the FCA and our service's contact details. It also reiterated what it had said previously.

Mr I then brought a complaint to our service. In doing so he accused Axitrader of, amongst other things, fraud, market manipulation and money laundering.

An adjudicator reviewed Mr I's complaint but concluded that Axitrader had, in the particular circumstances of this case, done nothing wrong. In summary she said:

- She was satisfied that Mr I had agreed to the terms and conditions (whether explicitly or implicitly) of the three accounts opened in his name.
- If Mr I had allowed a third party to open accounts and trade on his behalf, then that wasn't something Axitrader could reasonably be held liable for.
- She wasn't persuaded that the third party Mr I said had opened accounts and traded on his behalf was in anyway linked to Axitrader.
- She was satisfied that Axitrader had managed the three accounts in Mr I's name in line with its terms and conditions. Therefore she was unable to conclude that Axitrader has closed any of Mr I's positions incorrectly.
- She was satisfied that Axitrader's business model works in the manner that it says it does.
- There was insufficient evidence to conclude that Axitrader was guilty of market manipulation. In any event, attempts to manipulate markets (given how highly regulated and scrutinized they are) would be quickly spotted.

Mr I didn't agree with the adjudicator's view. In his various responses to that view Mr I reiterated and expanded on his previous submissions. He also posed a number of questions he said he (and his legal representatives) required answers to.

The adjudicator considered Mr I's various responses to her view, but wasn't persuaded to change her mind. She therefore confirmed to Mr I (and Axitrader) that the matter would be passed to an ombudsman for review and decision. She also gave both parties the opportunity to make further and final submissions.

Axitrader responded to say that it had nothing further to add to what it had already provided our service.

Mr I responded to reiterate, in the main, his previous submissions. He also posed a number of additional questions he said he (and his legal representatives) required answers to. He also made reference to a number of laws, rules and regulations that he (and his legal representatives) believed that I, as the ombudsman deciding this case, should have regard to.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

When considering what, in my opinion, is fair and reasonable in the circumstances of a complaint, I'm required by DISP 3.6.4 of the FCA Handbook to take into account:

(1) relevant:

- (a) law and regulations;*
- (b) regulators' rules, guidance and standards;*
- (c) codes of practice; and*

(2) (where appropriate) what [I] consider to have been good industry practice at the relevant time.

I would also add that where the evidence is incomplete, inconclusive or contradictory, I make my decision on the balance of probabilities - that is, what I consider is most likely to have happened given the evidence that is available and the wider surrounding circumstances. Furthermore it's for me to decide what evidence to request (or not to request), and what evidence I rely on. It's open to me to exclude evidence that would otherwise be admissible in a court, and it's also open to me to include evidence that wouldn't be admissible in court.

It's clear Mr I has very strong feelings about this complaint. He has provided detailed submissions in support of his view which I can confirm I've read and considered in their entirety. However, I trust that Mr I will not take the fact that my findings focus on what I consider to be the central issues, and that they are expressed in considerably less detail, as a courtesy. The purpose of my decision isn't to address every point raised. The purpose of my decision is to set out my conclusions and reasons for reaching them.

the opening of the three accounts in Mr I's name.

Having considered what Mr I has said and provided, I'm satisfied that it's quite possible that one or more of the three accounts in his name was opened by a third party.

However, I'm satisfied that this third party isn't in anyway connected with Axitrader. If it was, I might have expected Mr I to have provided more than he has, for example a business card, a letter of appointment or terms of business, but he hasn't.

I'm also satisfied that if one or more of the three accounts in Mr I's name were opened by a third party then this was done with Mr I's full knowledge, cooperation and consent. In other words Mr I was fully prepared to be bound by anything that third party said, did, or agreed to in opening those accounts. I say this in part because of the substantial amount of personal information that was required to be submitted to Axitrader for these accounts to be opened, what documentation needed to be uploaded (including identification proof and address verification) and the checks and systems that were in place (including the sending of a code halfway through the account opening process).

I've also seen nothing that was submitted as part of the account opening process that would have caused Axitrader to question whether it was Mr I applying to open an account(s) or a third party.

Furthermore I find it difficult to reconcile this aspect of Mr I's complaint with other aspects of it. For example he says he didn't open the accounts himself but complains that **he** wasn't able to close positions when **he** wanted to and that **he** was prevented from withdrawing cash.

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

Axitrader's business model.

Mr I says that Axitrader's business model works differently to how he was told it would work. Now I accept that Mr I might have been told by a third party (unconnected to Axitrader) that Axitrader's business model works in a particular way, and contrary to how it actually works. But I've seen insufficient evidence to be able to conclude that Axitrader ever misrepresented its business model to Mr I.

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

closing of various positions by Axitrader.

Mr I says that Axitrader acted incorrectly in closing out a number of his open positions. I know that Mr I would like our service to carry out a full investigation and audit of each and every position Axitrader might have closed. But that isn't our role.

I've considered the closure of the positions Mr I specifically raised with Axitrader, these being a number of S&P 500 positions and a number of JPY/EUR currency pairs. And having done so I'm satisfied that Axitrader has been able to demonstrate that these were closed correctly and in line with the account terms and conditions.

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

closing of positions by Mr I.

Mr I says that he was unable to close, when he wanted to, a number of profitable positions. However Mr I has simply provided insufficient evidence for me to conclude that this was the case. Furthermore, I find Axitrader's submissions in respect of this complaint point to be the more persuasive.

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

withdrawal of funds

Mr I says that he was unable to withdraw, when he wanted to, cash from his accounts. However Mr I has simply provided insufficient evidence for me to conclude that this was the case. Furthermore, I find Axitrader's submissions in respect of this complaint point to be the more persuasive.

I would also add, for the sake of completeness, that Axitrader has been able to demonstrate to my satisfaction, that Mr I has had the benefit of all cash withdrawal requests processed by it.

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

other points/concerns raised by Mr I.

Mr I has raised a number of other points and concerns including, but not restricted to, fraud, money laundering and market manipulation on the part of Axitrader. Such allegations are very serious and I'm simply not persuaded that Mr I has provided anywhere near enough evidence (if any) for me to be able to agree with him.

I would also add that such allegations are ones that, in my view, Mr I needs to take up with the Financial Conduct Authority and other organisations rather than our service.

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

As I say above I don't underestimate Mr I's strength of feelings. But I'm simply not persuaded that Axitrader has done anything wrong in the particular circumstances of this case. In my view Axitrader has operated the accounts in Mr I's name in line with the terms and conditions Mr I agreed to be bound by (either explicitly or implicitly) and in line with the business model it 'advertises' it uses.

my final decision

For the reasons I've explained above I'm not upholding Mr I's complaint.

I appreciate Mr I will be disappointed by my conclusions. My final decision, however, represents the last stage of this service's dispute resolution procedure. Mr I doesn't have to accept my decision and if he doesn't do so, he will be free to pursue legal action against AxiCorp Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 3 November 2017.

Peter Cook
ombudsman