

The complaint

Mr U complains to StoneX Financial Ltd – trading as City Index – about charges applied to his trading account which weren't disclosed in line with the regulator's requirements and asks for them to be refunded.

What happened

Mr U has a trading account with StoneX following their purchase of business from his former trading platform. In October 2020, he contacted City Index after feeling concerned about charges being applied to his account. City Index provided him with a monthly statement to summarise the position, but Mr U followed up to query how they'd complied with some of the relevant regulations when concerned with disclosing costs and charges before the event (ex-ante) and after the event (ex-post).

City Index explained they provided ex-ante details within key information documents on their website, and ex-post details within statements. Mr U wasn't happy with this and made a complaint. He said, in summary:

- He'd checked the key information documents but couldn't see they mentioned overnight financing costs – the examples were intraday trades.
- The packaged retail and insurance based product regulation (PRIIP) requirements were different to what was required under the Markets in Financial Instruments Directive 2014 (MiFID II) and its supplementing directive – Directive 2014/65/EU and Commission Delegated Regulation (EU) 2017/565.
- He also hadn't consented to the provision of information by website – something that was in breach of articles 3(2) and 46(3).
- He realised the monthly statements had disclosed overnight financing costs, but the subject line of the email for monthly statements was the same as that of the daily statements, and the latter didn't disclose overnight financing costs – he'd stopped reviewing these as they contained information he already knew. He gave examples of subject lines in emails which simply said, "*Your Statement [number]*".
- Like most traders, he mainly relied on the trading app and thought charges should be disclosed on there – they weren't, so he felt they were hidden.
- The only reason he had an account with City Index was because they'd taken over from his previous provider – as the terms were potentially very different, there should have been a clear and transparent communication of the new terms.

City Index looked into Mr U's concerns but didn't agree they'd fallen short of what was expected. They said, in summary:

- They agreed they were required to present clients with ex-ante and ex-post costs and charges in a clear, fair and non-misleading manner.
- They pointed to a 'pricing and fees' document under the spread betting and CFD section on their website – this explained what overnight financing charges were, how they were worked out – and they provided a link to where the charges were displayed.
- They pointed to section nine within their terms and conditions that detailed their charges and noted that they might charge financing fees.
- They said the key information documents for the markets Mr U was trading included a table with ex-ante costs.
- They noted that the European Markets and Securities and Markets Authority (ESMA) required costs to be presented in a standalone document or within a document with wider context providing there was sufficient prominence. They thought what they'd provided was sufficient.
- They considered articles 24 and 50 and thought the ex-post costs and charges were clearly itemised within monthly statements as well as being available on the trading platform.

Mr U remained unhappy and asked for our help. He added, in summary:

- City Index hadn't communicated their overnight financing costs in a clear, fair and not misleading manner, nor in a regulatory compliant manner.
- Overnight financing costs in September 2020 alone were £121 – had a retail client been informed of this it wouldn't be logical for them to trade.
- The trading app reports profit and loss but omits charges.
- The generic comment on City Index's website that says 'financing costs may be charged' isn't compliant with regulatory obligations – these require specific cost and charge disclosures.
- He felt over £1,000 had been unfairly charged and asked for these fees, along with those on open positions, to be refunded as he was not aware of them when placing his trades.

The complaint was looked into by one of our investigators, but he didn't agree City Index had done anything wrong. He said, in summary:

- Relevant here was the FCA's conduct of business sourcebook (COBS) at 6.1ZA.
- At section nine, City Index's terms provided for the inclusion of certain fees which could be found on their website or by calling them.
- Though the account had moved over from another investment platform, City Index's terms applied here.
- The website had a page focused on pricing and charges, this included an example of how overnight fees would be calculated.
- From what he'd seen, City Index had given Mr U enough information up front about what charges he'd incur, and that they'd detailed actual charges on statements thereafter.

Mr U didn't agree. He said COBS 6.1ZA.14 required ex-ante and ex-post cost and charges schedules – he didn't think City Index's high level terms and conditions were sufficient. He also pointed to COBS 6.1ZA.19 that said he'd have had to consent to information being provided on a website – he hadn't, so this was another example of City Index not meeting the requirements. Mr U explained the relevance of his employment to the subject of the complaint, and ultimately didn't feel City Index had acted within the spirit of the regulations.

Our investigator thought at section two, City Index's terms made clear that information to do with costs would be provided on their website or trading platform and that COBS 6.1ZA.19 permitted this. And having reconsidered COBS 6.1ZA.14, our investigator thought it'd been complied with. Lastly, he said that even if Mr U hadn't initially been aware of the charges, he will have seen them on his statements so it wouldn't be fair to ask City Index to refund them now.

Mr U remained of the view that City Index had failed to comply with the requirements and this failing has cost him a lot of money. He wasn't persuaded our investigator had understood the requirements and asked for an ombudsman's review to reconsider this point and the importance it has for retail clients.

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.

My role is to make a finding as to whether City Index have treated Mr U fairly and reasonably. In deciding this, I take into account relevant evidence, law, rules and guidance – including the FCA's conduct of business sourcebook Mr U has referred to along with MiFID II and its supplementing directive. Having done so, and though appreciating this will disappoint Mr U, I agree with our investigator for broadly the same reasons. I'll explain why.

In the course of making his complaint, Mr U has cited a number of different rules he thinks City Index have failed to adhere to. He's told us about his relevant profession too, so I appreciate he is very familiar with the subject matter of his complaint and the relevant practices of other financial institutions. I won't quote each rule here, not least because Mr U is familiar with them but also given their length, but I will summarise some of their intentions and confirm I have considered the version in force at the time.

Generally speaking, the Conduct of Business Sourcebook (COBS) sets the rules firms have to follow when they are carrying out investment services, as City Index were for Mr U here. These have brought about the MiFID II requirements Mr U points to – notably, COBS 6.1ZA provided "*Information about the firm and compensation information (MiFID and insurance distribution provisions)*". Relevant here, the handbook required City Index to be clear Mr U about charges he'd incur trading with them in advance, as well as to report on what he'd been charged afterwards.

Firstly I will say that it doesn't appear there is any concern around the rationale or reasons for why financing is charged when holding CFD positions overnight – whether that be for the implication of borrowing for long positions or lending for short positions. The dispute is instead whether these charges were disclosed in line with the requirements, and therefore whether or not they have been fairly applied on Mr U's account.

The relationship between Mr U and City Index was governed by the terms and conditions and associated documents. Here, City Index have shared their 'general terms' and 'pricing and fees' document in force at the time.

Within the general terms at 9, City Index explained they'd inform Mr U about all costs and charges and that the way these worked would depend on the market in question – for example, they might earn profit through spreads, charge commission, impose financing fees or charge premiums. They said further information was on their website or investors could call to ask about it. I'm satisfied that including the cost information on the website was sufficient given Mr U agreed to City Index's terms which, at 2.2, said he consented to

information about costs and charges being shared either by email, on their website or on their trading platform. So I don't agree Mr U's consent in line with article 3 wasn't sought.

I've also reviewed City Index's pricing and fees sheet in force at the time – this document referred to overnight financing and explained what the charges were, before going on to explain how they'd be calculated. It said, in part:

Overnight Financing

What are financing charges?

Overnight financing charges may be applied to positions that have no set expiry date, for example spot FX trades. As with our low commissions and tight spreads, these charges are competitive in order to keep your trading costs low. Under normal circumstances, long positions will incur a small charge whilst short positions will be credited overnight financing, although this varies according to the transaction type. You are charged overnight financing on the total value of your positions, and competitive rates are applied across all of our markets to ensure financing costs are kept to a minimum.

And then moved on to set out the formulas and methodology for calculating financing on different types of position. City Index then said, *"Please review the market information sheets in the Advantage Trader and MetaTrader platforms for details on financing charges for each market."* and they've shared a screenshot of how this was displayed on their platform where daily rates were illustrated – for example, short £0.14 and long -£0.55.

I've also considered an example of a 'key information document' which City Index referred to in their final response letter. This explained that the product – the example being one relevant to Mr U, 'CFD on a Commodity' – included a section titled 'What are the costs?' followed by a table to show the different types of cost categories and their meanings. Next to 'Ongoing costs' and 'Daily holding cost' it said *"A fee is charged to your account for every night that your position is held. This means the longer you hold a position, the more it costs."* So from everything I've seen, City Index did tell Mr U about the charges he'd incur, before he incurred them.

In terms of the disclosure of costs after the event, I've seen examples of two of Mr U's monthly statements from around the time – September and October 2020. Under the subtitle 'Financial Activity' both noted any commission charges before another subheading 'Type: Financing'. Both statements then itemised over five pages of financing fees. The impact of these fees was totalled on each last page and we can see Mr U paid £121.45 in September and £107.56 in October. This was under the 'Detailed Account' subtitle which summarised things like Mr U's opening balance, closing balance, margin requirement and profit and loss. So I think this was enough for Mr U to appreciate the impact that fees and charges in the round had on his positions and the disclosure was in line with, and in the spirit of, the regulations.

Though I appreciate Mr U stopped checking his monthly statements – given the subject line of the email was similar to those he received each day which contained less information – I don't think this means City Index fell short of the requirements. Instead, from what I have seen, City Index did tell Mr U about the charges he'd paid.

My final decision

For the reasons explained, I don't uphold Mr U's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr U to accept or reject my decision before 5 January 2024.

Aimee Stanton
Ombudsman