

## The complaint

Mr P, on behalf of Company A, complains that TigerWit Limited unreasonably withheld profits made on the company's trading account.

## What happened

Mr P requested a withdrawal of profits on Company A's account in March 2021. After some delay and ongoing correspondence, TigerWit informed him that it wouldn't facilitate the withdrawal. It said an analysis of Company A's trading history had suggested it had been using a 'latency trading' strategy and this gave TigerWit reasonable grounds to rely on its terms and cancel all Company A's trades and associated gains.

Mr P didn't accept this and categorically denied that Company A's trading in any way contravened TigerWit's terms. He said there'd been numerous occasions where Company A's trading had been subject to 'downside risk' and many days where there'd been overall losses, which didn't indicate the use of a strategy that gave it an unfair advantage.

He added that, in any event, Company A's trading style would've been apparent from the records of its previous trading, which had been provided to TigerWit as part of its application for elective professional client status. So, it was unreasonable for TigerWit to have allowed it to continue trading only to later refuse to pay out the resulting profits.

The complaint was referred to this service, but TigerWit challenged our jurisdiction to investigate it, primarily on the basis that Company A had been trading as an elective professional client and was therefore not eligible to bring a complaint.

This issue of jurisdiction was considered by an ombudsman who concluded that Company A was an eligible complainant, but only in respect of matters relevant to its trading account that took place prior to 6 October 2020 – the date on which TigerWit revised Company A's trading status from retail client to elective professional client. (Company A had originally opened the account as a retail client in July 2020 and traded from late September 2020).

With the limits of our jurisdiction decided, an investigator then looked into the merits of the complaint and concluded that, on the basis of TigerWit's analysis, it had been reasonable for it to rely upon its terms and withhold the profits from Company A.

Mr P didn't accept this, so the matter was referred to me to review.

I issued a provisional decision in which I explained why I also didn't think the complaint should be upheld. I said, in part:

*"Firstly, I think it's important to stress that...my consideration of the merits of the complaint is limited to acts, or omissions, relating to trading carried out by Company A as a retail client. That is, the period during which it was an eligible complainant. So, as the act complained of is the withholding of profits, I can only look at whether it was fair for TigerWit to do this for trades made up until 6 October 2020. Mr P will be aware that this represents only a small proportion of Company's A overall trading history, and profits achieved."*

*Turning to my consideration of the merits, the question I need to answer is whether I'm satisfied, on the balance of probabilities, that it was fair and reasonable for TigerWit to conclude that Company A was using a strategy prohibited under the terms of the agreement between the parties, which allowed Company A to trade in a way which enabled it to gain an unfair advantage.*

*And in my view, having considered TigerWit's submissions carefully, alongside the trading data it has provided, set against the detailed arguments submitted by Mr P on behalf of Company A, I think it was reasonable for TigerWit to conclude that the evidence showed Company A was adopting a strategy designed to exploit a delay in the price feeds.*

*I say this for a number of reasons.*

*As noted, TigerWit has said that upon reviewing Company A's trading history it identified patterns that suggested Company A had been using some sort of system to take advantage of pricing latency – the use of an automated method to trade ahead of its price updates, particularly when there was a price movement greater than TigerWit's bid/offer spread within a period shorter than its pricing latency.*

*It explained that its prices sit very slightly behind the underlying prices of the relevant futures exchanges – in this case EUREX and CME respectively for the German Dax and Dow 30 indices that Company A was trading. TigerWit's liquidity provider first obtains a price from the relevant exchange, adjusts for 'fair value', then sends the price on to TigerWit. This process creates a two-stage delay, albeit of less than a second, compared against the exchange price, which is itself directly accessible to anyone with a futures trading account.*

*This being so, it's possible to take advantage of the delay with a system that can compare the exchange's current price with the previous price and, where the difference is greater than TigerWit's quoted spread, trade on TigerWit's system with the previous price.*

*TigerWit explained that with any given trade the next tick/print could be one of three outcomes – the same price, a move against Company A or a move in its favour. It said this should be random and, over time should average to zero. It said its analysis of Company A's considerable volume of trading showed that for opening trades in 34% of cases the first tick/print after the trade was wider than its full bid/offer spread in favour of Company A and for closing trades the percentage was 65%, with an average difference of 3.33 bps (compared to the typical spread of 0.57 bps).*

*TigerWit's view was that this statistical anomaly could only realistically be a result of the use of a system to take advantage of the system's pricing latency. As such, it felt Company A's trading activity contravened its terms and conditions.*

*I've considered this carefully, and agree that, on balance, this detailed analysis suggests strongly that some sort of system was being utilised to take advantage of the pricing latency TigerWit has described. I'm not saying it necessarily proves beyond doubt that Company A was acting illegally in some way. But the test isn't whether (or not) Company A has broken any laws. I'm considering whether TigerWit acted reasonably in light of the contractual agreement between the parties. And that contract prohibited latency trading, which it defined as trading -*

*“ where we believe, at our sole discretion, that the client is using any means, including any electronic device, software, algorithm, trading strategy or arbitrage practice, that aims to manipulate or take advantage, whether considered unfair or otherwise, of the way in which we construct, provide or convey our bid or offer process or to trade to their advantage, whether considered unfair or otherwise, ahead of our price updates. You agree that using*

any device, software, algorithm, strategy or practice in your dealings with us whereby you are not subject to any downside market risk will be evidence that you are taking unfair advantage of us.”

*As I've said, I think TigerWit's detailed analysis of Company A's trading gave it reasonable grounds to conclude that it was acting in such a way. I note what Mr P has said about Company A having clearly been subject to some downside risk, this being demonstrated on specific trades and days where losses or overnight charges were incurred. But I think the key point here is the use of a strategy to take advantage of pricing latency doesn't guarantee a profit on each and every trade. Rather, it gives an ongoing statistical advantage that over time leads to profits being made that wouldn't have been made in the absence of the strategy.*

*In a similar way, Mr P has argued that it's unfair for TigerWit to withhold profits because not all trades could be said to have been a result of latency trading. But I think this is covered under section 3.15 of the term which says, in part –*

*“...All trades should be made at a price that is fair and based upon the underlying market price of the relevant market. If this is deemed to not be the case (i.e. Manifest Price Error, Latency Trading to name two such examples) then TigerWit may adjust the prices of said trades to reflect the correct underlying market price at the time of the transaction or cancel the relevant trades (and any related trades) in their entirety.”*

*Latency trading strategy would, by its nature, be applied across all trading to take advantage of price differentials as and when they occurred, to give the overall unfair advantage. I think the fact that term covers relevant trades and “any related trades” addresses this point.*

*Mr P has also questioned the fact that the review of Company A's trading history was only prompted by the act of him requesting the withdrawal and that this came many months after the trading began and at a point when Company was categorised as an elective professional client. So, is it fair that this should form the basis of a justification of withholding profits obtained as a retail client?*

*Mr P has argued that TigerWit was made aware of its trading style through the provision of its trading history with other businesses relating to its professional client application. So, TigerWit should've acted at that point and not granted Company A professional status, which would've meant that any profits made would then either have been achieved as a retail client, or elsewhere with another business. So, effectively within this service's jurisdiction, or not subject to TigerWit's withhold.*

*But given that the trading history was provided for a very specific reason – to demonstrate Company A's trading volumes in relation to the quantitative test at COBS 3.5.3R for classification as a professional client – I don't think it's reasonable to expect TigerWit to have performed any sort of ‘trading style’ review on the information (and there was no regulatory requirement for it to do so). And in any event, I think it's highly unlikely if such a review had taken place that, in isolation, it would've revealed anything to prevent the reclassification.*

*I don't think it's relevant when the discovery of the trading strategy was made. Once TigerWit had determined through its analysis of Company A's trading that it was, in TigerWit's view, in contravention of its terms it was entitled to rely upon those terms to cancel any gains and withhold profits. It could have noticed the issue sooner, but I don't think it was unreasonable for the withdrawal request to act as a ‘red flag’ and prompt an investigation.*

*And this leads me on to two points that, although circumstantial, I think further support the action taken by TigerWit. Up until point of the withdrawal request Company A had been*

*trading with it as a 'B Book' client, whereby TigerWit was the counterparty to Company A's trades (so at the close of the trades either Company A won and TigerWit lost, or vice versa). This meant Company A was trading on the price on TigerWit's platform. But shortly before the withdrawal request was made, TigerWit had taken the decision, on the basis of Company A's trading history and profit level, to move Company A to its 'A book', so its trades were then sent direct to TigerWit's liquidity provider and filled at that price. This change effectively removed the potential for any pricing latency advantage.*

*Mr P has said that Company A was unaware of this change, so it can't have been what prompted the request to withdraw its profits. And I accept that Company A weren't explicitly informed of the change. But Company A would nevertheless have become aware that the advantage provided by the pricing latency was no longer available.*

*And further, when the withdrawal request was originally made, Mr P emailed TigerWit to say:*

*"As we have been discussing with you, we are in the process of handling an audit report and settling some tax bills due for the late 2020 portion of our trading.*

*Please can you process a withdrawal today for 134,000 USD from MT4 account xxxxxxxx. Please let us know when this has been done.*

*We will be rebalancing across our numerous brokers. In the next 1-2 weeks. we will be further depositing this account and also our second account once our taxes have been settled."*

*(In respect of this last paragraph, Company A had recently requested a second account be set up with TigerWit on the same terms as the existing account.)*

*Yet, in the response to the investigator's view, in addressing the point that the withdrawal request followed the move from B-book to A-book and that, as Company A wasn't aware of this, it couldn't be any evidence of wrongdoing, Mr P gave a different, contradictory explanation of why the withdrawal request had been made, saying,*

*"The reason we ceased trading is because overnight our spread and cost of trading became three times more expensive. Our reason for trading at TigerWit was the competitive low cost of trading, something the firm boasts in their marketing. As any rational business, if costs are now three times what they used to be, and there are cheaper alternatives in the market, we will withdraw our funds and move elsewhere."*

*TigerWit has confirmed that with the move from B-Book to A-Book there was no increase in cost or change in the spread.*

*This lack of consistency, while not in itself proving that Company A had been acting in contravention of TigerWit's terms, does to my mind cast doubt over the version of the circumstances and Company A's actions that Mr P has provided.*

*Ultimately, as noted, what I'm deciding is whether it was fair and reasonable for TigerWit to conclude that Company A was trading in such a way that contravened it terms and having done so, withheld the profits gained as a result of that trading. And I currently think, given the evidence I've seen and in light of the wider circumstances, that TigerWit did act fairly and reasonably."*

*TigerWit accepted my provisional decision, but Mr P on behalf of Company A did not. He provided further comments, in summary:*

- I had demonstrated bias by not balancing Company A's evidence against that provided by TigerWit. I had not properly taken it into consideration.
- I had accepted that Company A's trades were subject to downside risk, so the trading cannot have met TigerWit's definition of latency trading.
- Company A had provided evidence that the trading had been carried out manually, and it had simply been applying its proprietary manual trading strategy.
- It could not understand the position on jurisdiction. I had made clear I couldn't consider issues relating to when Company A was being treated as an elective professional client but had then referred to trading carried out during that period to support my findings.
- I had agreed that the data did not provide evidence of latency trading but because profit was made over time from this strategy it must be latency trading. So, was it the case that any broker could withhold profits because statistically everyone should lose?
- My comments on the communication between the parties regarding the withdrawal request were not material. In any event, the spread did change, contrary to what had been said at the outset as part of TigerWit's sales pitch.
- Company A had proved all the trades were subject to downside risk. I had agreed with this, so it was unreasonable for TigerWit to withhold when none of the trades meet the definition of latency trading in its terms. Making profits shouldn't be evidence of wrongdoing and if Company A's trading didn't meet the definition of latency trading, it had not breached TigerWit's terms.

### **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.

But having done so and having also given careful consideration to the additional submission provided by Mr P on behalf of Company A, I find I remain of the view set out in my provisional decision. I still think that given all the evidence I've seen and in light of the wider circumstances, TigerWit acted fairly and reasonably when it relied upon its terms to withhold the withdrawal from Company A.

I note the additional comments Mr P has provided concerning downside risk. But I made clear in my provisional decision that the use of an overarching strategy to take advantage of pricing latency wouldn't necessarily guarantee a profit on each and every trade. Rather, it gives an ongoing statistical advantage that over time leads to profits being made that most likely wouldn't have been made in the absence of the strategy.

Therefore, my acceptance that Company A's trading was subject to downside risk in no way implied that I therefore necessarily thought that latency trading had not occurred. And, in any event, as I explained in my provisional decision, I was not making a finding on whether (or not) it had occurred.

Rather, I was considering whether, in light of the terms of the agreement between the parties, it was reasonable for TigerWit to exercise the discretion afforded by those terms to withhold the requested payment. And I remain of the view that it was reasonable and that exercising that discretion based on a detailed trading analysis that suggested some sort of system was being used to take advantage of pricing latency, TigerWit had not acted capriciously, arbitrarily or irrationally in any way.

Finally, in respect of the jurisdiction, my intention was to make it clear that, while I would look at all the circumstances and information available to me – which included, among other things, information about Company A's trading during the period it was treated as an elective

professional client – our rules meant that as of 6 October 2020 Company A had not been an eligible complainant. So, in any event, regardless of my eventual findings, no award could be made in respect of Company A's trading during that period.

### **My final decision**

For the reason given, my final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Company A to accept or reject my decision before 22 September 2023.

James Harris  
**Ombudsman**