DRN-3642833

Financial Ombudsman Service

The complaint

Ms M complains that IG Markets Limited closed her trades when she had less than 50% equity in the account. She claims she should be compensated so that she did not lose more than 50% of the equity in her account.

What happened

Ms M had a spreadbetting account with IG. On 8 August 2021 she had a number of long positions open on Spot Silver. As a result of the market moving against her positions at the time, the net equity in her account fell below 50%. In accordance with its regulatory obligations, IG proceeded to close Ms M's trades. As a result of the volatility of the price of silver at the time, Ms M was left with less than 50% equity in her account by the time IG had closed her trades. So she complained.

IG looked into her complaint, but didn't think it had done anything wrong. It provided evidence to show how volatile the price of silver was on the day, demonstrating a 10% swing in its price within a minute. It explained that it had no obligation to begin closing her trades earlier and that the rules did not require it to guarantee she'd be left with at least 50% equity in her account. It said that the only guarantees were that it would begin closing positions when the account equity fell below 50%, and that as a retail investor she could not have a negative balance.

Ms M remained unhappy and referred her complaint to this service. One of our investigators looked into her complaint, and didn't agree it should be upheld. In short, he considered that Ms M was wrong in her interpretation of the rules, and he didn't agree that IG's website was misleading. Further, he considered that the evidence showed that her trades had been appropriately executed at prices that reflected the underlying market.

Ms M didn't agree and asked for an ombudsman's decision. She provided detailed submissions. In summary she said:

- Protections were offered to retail clients were supposed to be greater than professional traders. She said in her case she was treated less favourably than a professional trader in breach of various rules.

- She said the rules specified that 'a firm must close retail client positions when their funds fall to 50% of the margin needed to maintain their positions' but in her case her account was allowed to drop far lower than that, 'effectively wiping out the account and the funds deposited'. She said that this meant there was no material difference between how her account was treated and a professional trader's account.

- She said that the volatility of silver wasn't persuasive, because IG 'had the technology in place to close the positions at any level' or to restore her balance retrospectively. She said that IG breached the client's best interests rule, as well as best execution rules. She said that IG didn't give her sufficient warnings of the risks associated with the investment and that IG misled her into thinking she couldn't lose more than 50% of the equity in her account.

- She had incurred numerous debts in order to ensure she had sufficient margin on the account and despite alerting IG to this, it ignored her pleas.

- She raised some concerns about how IG dealt with a chargeback she made to recover some of the money, and the way it was now threatening to pursue her for the outstanding amount. She alleged various offences under a number of statutes and complained that she wasn't being allowed access to her account.

As agreement couldn't be reached, the case was passed to me to consider.

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.

I'd like to thank Ms M for her detailed submissions. I can see this matter has caused her a great deal of distress, and she clearly feels very strongly that she has been misled. However, I hope she doesn't take it as a discourtesy that I won't be responding to each submission or point she has raised. The purpose of my decision is to focus on the key issues on the complaint and explain my reasons for my findings.

I should also make clear that Ms M has raised a number of issues which she has not complained to IG about, and which were not the subject of her referral to this service. I do not have the power to make findings on these issues. I only have the power to consider the original complaint she made to the service – namely that she understood IG's obligations to be that she would not be left with less than 50% equity in her account and, since that hasn't happened, she considers IG is responsible for compensating her.

The relevant rules that govern IG's obligations in this regard are set out in the Financial Conduct Authority's (FCA) Handbook – specifically in the section called Conduct of Business Rules (COBS).

COBS 22.5.13 says:

(1) A firm must ensure a retail client's net equity in an account used to trade restricted speculative investments does not fall below 50% of the margin requirement […] required to maintain the retail client's open positions.

(2) Where a retail client's net equity falls below 50% of the margin requirement, the firm must close the retail client's open positions on restricted speculative investments as soon as market conditions allow.

COBS 22.5.16 says that firms are required to comply with COBS 2.1.1 (client's best interests rule) and COBS 11.2A.2R (obligation to execute orders on terms most favourable to the client).

COBS 22.5.17 says that the liability of a retail client for all restricted speculative investments connected to the retail client's account is limited to the funds in that account.

COBS 22.5.18 clarifies that this means a retail client cannot lose more money than the funds specifically dedicated to trading restricted speculative investments.

In my view the above rules are clear that there is no obligation to refund or take liability for losses that exceed 50% of the client's net equity in the account. COBS 22.5.17 and COBS 22.5.18 would be entirely redundant if that were the case. Instead the rules require firms to take action when a client's net equity falls below 50% of the required margin. This means closing a client's position or positions 'as soon as market conditions allow'. But the losses sustained as part of that process are not something the regulator has said businesses need to take responsibility for.

I note that Ms M has quoted guidance from the European regulator. That same guidance supports what I've said above. Whilst the introduction of the rule to trigger an automatic closure of positions at 50% of the account's equity is designed to ensure that a consumer's margin is not reduced to zero, there is nothing in that document that suggests that a consumer's losses are guaranteed to only amount to 50%. In fact, the document specifically makes references to 50% being the 'trigger' for margin close out – and as I've said above, that's what happened in her case. The guidance then goes on to explain 'negative balance protection' – that is the requirement that a business, such as IG, compensate consumers for any losses which reduce the account's balance below zero. The rules explain that negative balance protection is designed 'as a backstop for when MCO does not work effectively as a result of very sudden price movement'. In Ms M's case the sudden price movement meant that the balance in her account was reduced to below 50% - but it was not reduced to zero or below zero.

So insofar as Ms M has made submissions to the effect that she thinks the FCA mandates that IG needed to compensate her for any losses over the 50% threshold, I'm not persuaded. I'm satisfied that IG acted entirely within the FCA's rules by taking the action that it did, in the way that it did.

Ms M has also made some comments around best execution and the client's best interests rule. In my view she has equally misinterpreted the effect of these rules, because neither of them required IG to compensate Ms M for losses her own trading decisions caused. I cannot overlook the fact that IG did not cause Ms M's losses – her own trades, and the fact that she thought the price of silver would rise when in fact it fell, is what caused her losses. What those rules required IG to do was to ensure that in closing her positions, IG offered her a price that was reflective of what was happening in the underlying market. This is what best execution means – she needed to be offered the best available price at the time the closeout of her positions was triggered.

I have looked at the times of when her account was flagged as in margin deficit, and when her positions were closed – and I have then considered the data IG has provided of the prices it was receiving, versus the charts from the underlying market. Taking all this into account, I'm satisfied IG has acted fairly and reasonably and offered Ms M the best available price at the time. The level of equity in her account at this point is not relevant to IG's obligations, as long as she did not have a negative balance – which she did not. I note that shortly before the closeout Ms M closed a trade out herself – so if she had wanted to limit her losses, she could've decided to close all of her trades at that moment in time.

Finally, I've considered whether IG has misled Ms M in any way. I'm not persuaded by her submissions that IG did not warn her about losses or the risks of spreadbetting. I'm afraid I do not find her submissions credible. IG's website has many warnings about the high risk of losses, including a banner outlining that the majority of IG's clients lose money spreadbetting.

The terms and conditions explicitly say, on the first page after the contents page, that 'Bets carry a high level of risk and can result in losses' – and further referred her to IG's Risk Disclosure Notice that sets out the risks in detail. I'm satisfied there was ample warning to Ms M that she ran the real risk of losing money spreadbetting.

Having looked at IG's statements about what happens when the equity in an account drops below 50%, I'm not persuaded by Ms M's submissions that it misled her. In my view there is nothing in the statements IG make which ought to suggest she couldn't lose more than 50% of the equity in her account. The only claim IG makes is that 'standard trading accounts will be triggered for position closure when your equity drops beneath 50% of your margin requirement'. It's clear, particularly in view of the rules I have quoted above, that this means positions will be closed once that level is reached – but there is no guarantee or promise that losses won't exceed that 50%.

I note that Ms M has made numerous submissions about a chargeback she initiated and which she says she was successful in pursuing. I've seen no evidence as to why that chargeback was successful nor do I consider it in any way relevant to my assessment of whether IG acted fairly and reasonably in the particular circumstances of Ms M's case.

For the reasons I've given above, I'm satisfied IG hasn't done anything wrong and therefore does not owe Ms M any compensation.

My final decision

For the reasons I've given, I do not uphold Ms M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 24 October 2023.

Alessandro Pulzone
Ombudsman