

The complaint

Mr T has complained about problems he experienced with FXPRO Limited's ('FXPRO') platform which he says caused him to suffer a loss for nearly £73,000. He would like to be compensated for his losses.

What happened

Mr T shorted a Nasdaq 100 position on 16 March 2023 on his FXPRO account.

On 18 May 2023 when Mr T was accessing FXPRO's trading platform he was provided with incorrect information about the margin that was available on his account. He had experienced intermittent problems before. FXPRO provided Mr T with a different way to access the platform which solved the issue.

Prior to that different platform access method there was a margin call on Mr T's account caused by the Nasdaq 100 position and the margin fell to just below 50% and the position was closed at 13,912.05 as a result of a stop out. Mr T suffered an overall loss of approximately £73,000. Mr T blamed the losses he had suffered on the incorrect margin information he had been given. He wouldn't have known that his account was nearing margin call and complained to FXPRO.

FXPRO issued its final response to Mr T's complaint on 23 August 2023. It said;

- It confirmed there was an issue with how the margin was displayed on its platform on 18 May 2023 and Mr T had been advised of two alternative ways to monitor his positions.
- In between the opening date of Mr T's Nasdaq 100 short position on 18 March and the stop-out of 19 May Mr T traded a total of 38 more positions (in Nasdaq and other instruments). So, he would have seen that the market was going against him on his Nasdaq 100 short position and the impact that would have had on the margin available on his account.
- It was a possibility that Mr T had only notified FXPRO when he was close to a stop out with the hope of a reversal that would have allowed him to keep the position open.
- So, it couldn't uphold his complaint as it couldn't attribute the loss of £72,900 directly to the technical issue. However, it acknowledged the technical issue and offered him £3,000 in compensation to be credited to his trading account.

Unhappy with the outcome, Mr T brought his complaint to the Financial Ombudsman Service. Our investigator who considered the complaint initially thought the offer of £3,000 was fair and didn't think FXPRO needed to do anything more;

- The margin level of Mr T's account had fallen below 50% to 49.8%. FXPRO's terms and conditions explained that if margin was 50% or less it would automatically close positions in line with regulatory obligations.

- It was accepted there had been a problem on FXPRO's platform on 18 May, but the investigator wasn't persuaded Mr T was unaware of the true position of his account on the night of 18 May.
- Nor was she satisfied Mr T could have deposited further funds to prevent his account from being subject to margin call.
- Her opinion was strengthened when she considered the information Mr T had provided about the liquidation of another position in July 2023 which suffered a loss of nearly £84,000 when the account margin level fell to 50%.
- Overall, Mr T could have ascertained the true margin position on his account if he wasn't already aware of it by asked FXPRO during his interactions with it on 18 May.

In response Mr T explained that he usually maintained margin of 80% and he had done so up until the margin call on 18 May. He also explained that when he deposited funds to his account, they were credited immediately but FXPRO had changed its procedures, so the funds were deposited into a wallet and Mr T then had to transfer them to this account which caused further delays.

In response to this the investigator asked for further information from FXPRO but despite reminders it didn't reply. In the absence of a reply from FXPRO and after reviewing the additional points made by Mr T, she issued a further opinion on the complaint;

- The transaction statements were based on Cypriot time (a two-hour time difference with the UK), so the margin call took place on 18 May at 11.14pm UK time. The market was usually closed for trade between 10.00pm and 11.00pm and the margin call occurred shortly after the market re-opened in the UK where Mr T was based.
- Mr T didn't have accurate information about his account equity and couldn't take evasive action to prevent margin call. He was in contact with FXPRO multiple times on 18 May and just past midnight he called to complain about the margin call which he said was FXPRO's error. This wasn't immediately addressed but FXPRO offered £3,000 compensation.
- FXPRO said that Mr T was aware that the position he held had been moving against him since he placed it on 16 March, so it said he used the system errors as a pretext for reimbursement of the trade. But Mr T had deposited £4,000 on 18 May at 15.14pm which suggested he had made efforts to maintain the margin level on his account and this had been done hours before the margin fell to 49.8% when his positions were closed. This further suggested that Mr T would have deposited a larger amount if he had been aware of the true position.
- And Mr T had previously taken profits from his account but left sufficient for margin requirements which weakened FXPRO's argument that he was unable or unwilling to support a losing trade that he had originally placed on 16 March. So, on the balance of probabilities the investigator was persuaded that the problems on the platform on 18 May did affect Mr T's ability to credit sufficient funds to prevent the margin call occurring.
- But this didn't impact on any award because of how the Nasdaq 100 had traded since 18 May as it had continued to increase and move further against Mr T's original trade. So, even if he asked FXPRO to reverse the position, Mr T's running losses would only increase and it would be impossible to say how the trade would have performed over the longer term – either recovering or losses widening further. It wasn't possible to evidence this trade would have ever moved to a better position than it did on 18 May.
- So, the £3,000 was fair for the significant distress and inconvenience its actions

caused Mr T.

Mr T didn't think the outcome was fair, particularly when it was clear that FXPRO weren't ready to cooperate with the investigation. He asked that the complaint be considered by an ombudsman, so it has been passed to me to decide.

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.

After doing so I have reached the same conclusion as the investigator, and broadly for the same reasons. I'll explain why.

We know Mr T contacted FXPRO about the concerns he had about the margin on his account and sent videos to show this. I'm not sure at what time Mr T became aware of the inaccurate live information but I've seen Mr T's message to FXPRO on 18 May at 18.35pm attaching videos which he said 'I have been taking since yesterday.'

FXPRO messaged Mr T back at 18.52pm giving him alternative access to the platform – so before the stop out occurred – but I note Mr T continued to send videos as the problem wasn't resolved by the time he told us he went to sleep at around 22.00pm. Because of this I don't agree with what FXPRO said in its final response to the complaint that the inaccurate margin issue had been resolved prior to the stop out.

I've looked to see how Mr T managed the margin on his account and whether it was unusual for his positions to be closed because of lack of margin. FXPRO has provided us with a statement of Mr T's account for the period from December 2022 to August 2023. I can see that from the beginning of the statement to the date of the stop out in May 2023 there were no previous stop outs because of lack of margin.

I also note Mr T made ten withdrawals from the account between December 2022 and May 2023. I think it's fair to say that Mr T was capable of managing his account, taking profits out when he wanted to but also leaving sufficient equity for margin on his account to prevent any stop outs.

Because of this I've reviewed what activity there was on Mr T's account on 18 May and whether the inaccurate information Mr T was receiving about the margin more likely caused the stop outs on his account. Mr T had four open positions on his account at the time and;

- At 15.14pm (UK time) he deposited £4,000.
- At 20.44pm Mr T closed a £/¥ position.
- At 21.41pm Mr T closed a further £/¥ position.
- Mr T told us he waited until market close at 22.00pm and the problem wasn't resolved. He slept for an hour and woke to find that at 23.14pm his Nasdaq 100 position was stopped out.
- The other open position on Mr T's account was a further Nasdaq 100 short position taken in January 2023.

So even though Mr T was aware of the problems with the platform, in that he couldn't correctly assess the margin on his account, I think this would have been made more difficult because of the other open positions he had. I don't think he would have been able to

accurately assess the margin requirements for the Nasdaq 100 positions he had opened in March.

While Mr T knew there was a problem with the margin showing on his account the evidence suggests he was trying to manage the position by making the £4,000 deposit. By depositing the funds that he did, this indicates to me that Mr T was trying to, and capable of, safeguarding the equity and margin on his account. And I think if Mr T had been in possession of the true position, it is more likely than not that he would have deposited more than £4,000 in order to keep the positions open.

I say this because the stop out was triggered when the margin on Mr T's account fell below 50%, but only marginally so, as it fell to 49.8%. I think this further supports Mr T's argument that if he had had the facility to correctly assess the true margin position on his account, he would have added further deposits to prevent the stop out being triggered. So, if Mr T had been aware of the true margin available on his account, I don't find it unreasonable to conclude he would have added to the deposit he had made a few hours earlier and which would have prevented the stop out being triggered.

And I'm satisfied Mr T's historical behaviour with his account indicates he did monitor it sufficiently to ensure enough margin was maintained on his open positions in order to prevent them being closed. So, on the balance of probabilities, based on how Mr T managed his account and the points he has made, I'm persuaded that FXPRO's incorrect information caused Mr T to act differently in how he managed his account than he would otherwise have done if he had the correct information. Had he been given the correct information I'm persuaded he would have made a deposit which would have meant his account wouldn't have entered a stop out at the time it did.

FXPRO has an obligation to provide clear fair and not misleading information to its customers – and which would include the margin position. It didn't in this case so I'm satisfied that despite Mr T's attempts to add further margin to his account, and his awareness that the margin on his account may not have been showing correctly, the inaccurate margin did prevent Mr T from taking further preventative action and which led to the positions to stop out.

I think it more likely that if Mr T had been shown the accurate margin, he would have taken some action to prevent the stop out occurring by adding additional margin which he had already done earlier that day. Because of this, I find that FXPRO is responsible for the losses Mr T occurred as a result of the stop out.

That being said, I need to go on and consider the impact that the stop out had and what would most likely have happened if the stop out hadn't been triggered. FXPRO accepts that its platform didn't accurately reflect Mr T's account margin on 18 May 2023. So, I've looked at what potentially could have happened to Mr T's short positions if he had deposited enough to keep them open after that point and they had been left to run as he had intended.

Mr T opened his short positions at 12,401.65 on 16 March 2023. After Mr T's short positions were closed at 13,912.05 the Nasdaq 100 continued a pretty much steady rise to 15,800 in August before falling slightly but it hasn't returned to the levels that Mr T placed his short trades at, or lower. And in fact, it looks like only for a very brief period in October 2023 did it even trade close to or lower than the price at which he was stopped out in May.

So, Mr T's running losses would only have continued to accumulate. I can't know if Mr T would have been in the position to keep adding the necessary deposits to his account to ensure he had sufficient margin to cover those rising running losses. But bearing in mind Mr T has told us he is struggling financially and is having difficulty in paying what he owes,

this suggests to me that his ability to keep adding further deposits to maintain the margin above 50% would have been unlikely. And even if he had done, there are two likely options here.

Either Mr T would have continued to add margin and kept the positions open until now, with the price far worse from his perspective. So, if that were the case, he's not suffered a loss, because he's not had to support that losing position, and suffered the unrealised losses that go with the move in the Nasdaq and he can reopen trades at current levels which are more advantageous if he wishes to.

Alternatively, Mr T would have either run out of money to support the position by adding more deposit or decided to cut his losses and close out himself. Given what has happened in that instrument after 18 May 2023, while it's impossible to say for certain, I think that on balance it's more likely than not in this event Mr T would have crystallised even bigger losses than those suffered on 18 May.

So, taking all of the above into account, I don't think Mr T suffered a loss as a result of FXPRO's actions.

Overall, I uphold Mr T's complaint about the FXPRO's platform not correctly reflecting the margin on his account and which triggered the stop out of his position. But if the stop out was reversed Mr T would be in a worse financial position so FXPRO doesn't need to take any further action than it has already offered to do to put the matter right.

Putting things right

FXPRO has already offered Mr T £3,000 as it recognises that its trading platform did suffer from technical issues. And under the circumstances of this complaint, that offer is more than I would award. So, it is for Mr T to decide whether to accept that offer.

My final decision

My final decision is that I uphold Mr T's complaint about FXPRO Limited. But for the reasons outlined, FXPRO Limited doesn't need to do anything more.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 12 April 2024.

Catherine Langley
Ombudsman