

## The complaint

Mr D complains that IG Index Limited ("IGIL"):

- Changed margin requirements on active bets to his detriment.
- Restricted bets to his detriment after accepting the bet.
- Failed to adopt a fair and reasonable approach when the platform operated erratically.
- Relies on unseen and unsigned customer agreements that allows it to do as it wants.

## What happened

Mr D has a spread betting account with IGIL through which he placed various bets in January and February 2021. He opened three cryptocurrency bets one on Bitcoin and two on Ethernet. IGIL gave notice that it had reached its internal product limit for exposure to cryptocurrencies and would be removing these from its offering to UK retail clients. It requested that clients close any open bets by no later than 3pm on 24 March 2021 after which it said it would close any open positions. It also warned that in the meantime the margin requirement would be increased.

He also had opened positions in Gamestop (GME) when IGIL decided that it was no longer going to provide certain small-cap stocks for spread betting or CFD accounts, including GME. It gave notice of this to its clients, including Mr D, and warned that the margin requirement would increase to 100% as of 26 February 2021 and that it would start closing any positions remaining open after 29 March 2021. It thereafter closed Mr D's open positions in GME in accordance with the warning it had given.

Mr D complained to IGIL but it didn't uphold the complaint. In its final response it explained that it was entitled under its terms to take the action it had taken. Mr D referred his complaint to our service and it was considered by one of our investigators. She didn't think it should be upheld and in short made the following points:

- IGIL informed Mr D in January 2021 that it was no longer going to offer bets in cryptocurrencies, as a result of an FCA decision that such products shouldn't be available to retail clients.
- IGIL emailed Mr D on 19 February 2021 saying that as from 3pm on 22 February 2022 there was going to be an increase to the margin requirement for existing cryptocurrency positions to 100% and that all open bets had to be closed by 3pm on 24 March 2021.
- The short notice and changed margin requirements meant Mr D had to increase the funding of his account at short notice but this was something he had accepted could happen when he agreed to IGIL's terms and conditions and she can't say it did anything wrong.
- IGIL closed an open position Mr D had in GME that he wanted to keep open but it had emailed on 24 February 2021 and again on 23 March 2021 warning that the

positions would be closed if still open on 29 March 2021. As IGIL gave warning of what it was going to do and it was entitled to take that action under the terms and conditions, it didn't do anything wrong.

- She hadn't seen any evidence the platform was unstable or how this affected Mr D's trading and IGIL make clear they don't guarantee an uninterrupted service.
- Mr D accepted IGIL's terms and conditions and we can't tell a business how it delivers and obtains acceptance of its terms and conditions as we can't tell a business to change its processes and procedures.

Mr D didn't agree with the investigator. In summary he made the following points.

- The investigator appears to rely heavily on the terms of the customer agreement which basically allow IGIL to do anything.
- IGIL closed his open GME bets causing him a loss and then reinstated the bet at a later date and this cannot be fair or reasonable.
- It was IGIL that claimed the GME bet was volatile but volatility can be a part of any bet, sporting or not.
- He accepted IGIL's terms when he opened the account some 20 years ago when those terms didn't include the clauses the investigator has referred to.
- The above arguments may also apply to his complaint about the Cryptocurrency bets he made but the main issue is IGIL's actions in relation to GME.

The matter has now been referred to me for review and decision.

### **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.

In doing so, I've taken into account relevant law and regulations; relevant regulators' rules guidance and standards; codes of practice; and, where appropriate, what I consider was good industry practice at the relevant time. But I think it's important to note that while I take all those factors into account, in line with our rules, I'm primarily deciding what I consider to be fair and reasonable in all the circumstances of the case.

The purpose of my decision isn't to address every point raised and if I don't refer to something it isn't because I've ignored it but because I'm satisfied I don't need to do so to reach what I think is the right outcome. Our rules allow me to do this, and it simply reflects the informal nature of this service as a free alternative to the courts.

Having considered the evidence and arguments of the parties, I agree with the conclusion of the investigator that this complaint shouldn't be upheld and for broadly the same reasons. There are two main issues in this complaint, whether IGIL did anything wrong in relation to increasing the margins on Mr D's bets in cryptocurrencies and whether it did anything wrong in relation to closing his GME bets. However, before I consider those two issues I will

address Mr D's argument that he didn't agree the terms IGIL rely on in taking the action that it did.

### *The terms of the customer agreement*

Mr D argues that he agreed the terms on opening his account some 20 years ago but not subsequent revisions. IGIL has provided a record of the various revisions to the customer agreement since he opened his account. Mr D says he hasn't been directed to or pressed any acceptance button when new terms have been introduced but IGIL points out that he doesn't need to for the revised terms to apply to his account.

This is because it didn't need Mr D to take any active step to accept new terms as the existing terms contained a provision which meant he was deemed to accept the amended terms 10 days after notice of amendment unless he gave notice to the contrary. In other words he didn't have to indicate he accepted the changes for these to take effect, he had to indicate the opposite and from what he has said he didn't do so.

I note Mr D has suggested that the process that IGIL has in place for changing terms of the customer agreement are unjust and possibly illegal but as long as notice of the change has been provided I am not persuaded that IGIL has done anything wrong as regards changing its terms and I am satisfied that Mr D accepted and is bound by the terms in force at the beginning of 2021.

### *The increase to margin*

The FCA introduced rules in October 2020 which came into force as from 6 January 2021 which meant firms could no longer offer cryptocurrencies including Bitcoin and Ethereum to retail clients.

IGIL emailed its clients on 19 February 2021 notifying them that any open bets would be closed by it after 3pm on 24 March 2021. It also informed clients that the margin requirement would be increased by 100% for open bets as from 22 February 2021. From what I have seen that increase took Mr D's margin requirement from 2000 GBP to 10,000 GBP for his Bitcoin bet and from 200 GBP to 2,000 GBP for Ethereum and he subsequently closed his bets.

The terms allowed IGIL to change the margin on active bets. In particular, clause 15(8) of the terms allowed it to increase or decrease margin on open bets at any time - subject to applicable regulations and it doing so where it considered it reasonably necessary. I am not persuaded that terms allowing IGIL to change the margin where this is reasonably necessary are unfair or unreasonable.

IGIL has explained that the increase to the margin requirement was because its internal product limit for exposure to cryptocurrencies was reached. Mr D doesn't accept IGIL's reasons for increasing margin as he believes that the real reason was to force clients to close their bets, which is what he ended up doing. However, I am not persuaded that there was some reason for increasing the margin beyond the reasons given by IGIL and whilst I note that Mr D has argued that IGIL acted in its own interests, it was entitled to take steps to manage its own risk and exposure.

IGIL also makes the point that if Mr D wanted he could have gained exposure to the cryptocurrencies the subject of his bets elsewhere if he wanted. In short, he didn't have to increase his margin and keep his bets open before ultimately closing them, he had the option of closing those bets when he received the notice of margin increase and going elsewhere.

### *The closing of open bets*

Mr D has said the main issue is the closure of his GME bet that he had placed on the basis he was going to hold it long term. However, once again I am not satisfied that IGIL did anything wrong in closing the bet. IGIL explained in the notice it sent to clients on 24 February 2021 that following a review of its products it had decided to withdraw around 900 small-cap shares for spread betting and CFD accounts one of which was GME. It requested that open bets be closed by 29 March 2021 and warned that from that date it would close any remaining open positions. IGIL sent a reminder to clients on 23 March 2021 to close open position by 29 March 2021 and repeating the warning that it would close open position from then. Mr D didn't close his positions in GME by the deadline that IGIL had notified him of and it thereafter closed them as it had told him it would do.

Mr D suffered a loss as a result of his bets being closed and I appreciate he is unhappy that this was the result of IGIL unilaterally deciding in February 2021 that GME would no longer be available after 29 March 2021. I understand he thinks this is unfair but there is nothing unusual in a firm deciding it is no longer going to provide certain products or services.

However, having considered IGIL's terms and conditions I am not persuaded that it has done anything wrong. In particular, clause 28(3) of the terms states:

*"This Agreement and any arrangements hereunder may be Suspended or terminated by you by giving us written notice of Suspension or termination which will take effect no later than 10 business days after actual receipt by our head office, unless a later date is specified in the notice. There is no obligation on you to enter into Bets with us and there are no restrictions on you closing any open Bets or cancelling any Orders and no restrictions on you withdrawing any money available on your account. Subject to Terms 27(1) and 28(4) we may terminate or Suspend this Agreement and any arrangements hereunder with you by giving you 30 days' written notice."*

This gives both the client and IGIL the right to terminate or suspend the agreement 'or any arrangements' upon giving notice – in the case of the client the notice period is only 10 days whereas for IGIL it is 30 days. The word 'arrangements' isn't defined within the terms but I am satisfied that a bet can amount to an 'arrangement' under the agreement and is therefore capable of being brought to an end under clause 28(3). In this case Mr D was given more than 30 days' notice by IGIL that his GME bet would be closed and as such, in accordance with the above clause, it was entitled to bring the bet to an end once the notice period expired.

I also think that a 30 day notice period is a fair and reasonable period that allowed Mr D enough time to decide what he wanted to do. Even if the terms and conditions hadn't included such a clause I would likely have found that it was fair and reasonable for IGIL to close a bet for a product it was no longer going to provide as long as it gave reasonable notice.

For the avoidance of doubt, as the right to terminate or suspend the agreement or arrangement is stated to be subject to clauses 27(1) and 28(4) of the terms I have considered those terms and am satisfied they aren't relevant to IGIL's actions in this case.

### *Issues with the platform*

Although Mr D has referred to issues with the platform he has provided no persuasive evidence to support this and in any event, as IGIL don't guarantee that it will provide an uninterrupted service, even if there were issues with the platform this doesn't mean that IGIL

did something wrong.

### **My final decision**

I don't uphold this complaint for the reasons I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 3 May 2024.

Philip Gibbons  
**Ombudsman**