

The complaint

Mr M complains that Sporting Index Ltd should not have reopened his account for him to make sporting spread bets and failed to manage his account properly once it was reopened.

What happened

Mr M opened a sports spread betting account with Sporting Index in 2001 which was closed by it in 2005 due to Mr M not paying a debit on his account amounting to £358 which was paid by him only after the involvement of collection agents.

Mr M then applied again to open an account with Sporting Index around nine years later, in June 2014. Sporting Index accepted his application and reopened his previous closed account. Mr M traded through his account from when it was opened until the end of 2018 at which point there was a debit on his account which he was unable to pay as he was no longer working.

There was ongoing correspondence about the repayment of the amount owing for the next 14 months with Mr M making some payments in that time and bringing the amount owing down from £2,209 to £1,809. On 5 March 2020 Mr M wrote to Sporting Index explaining he was in very difficult financial circumstances and his account was subsequently closed.

Mr M complained to Sporting Index because he didn't think it should have reopened his account and that it had failed to manage his account as it should have done. In its final response letter Sporting Index said that it had deemed it appropriate to reopen his account following it carrying out various checks which included a search for defaults and county court judgments – although it said it removed the credit limit that was on the account previously.

Sporting Index didn't agree that the activity on his account was something that should have acted as an indicator of problem gambling on the part of Mr M. It said that its internal account monitoring and intervention procedures had developed significantly in recent years but that it had always acted within its regulatory obligations.

Mr M referred his complaint to us and it was considered by one of our investigators, who didn't uphold it. In short the investigator said that it wasn't unreasonable for Sporting Index to reactivate his closed account on him making application to open an account in 2014. The investigator explained the credit search carried out on opening the account was to validate his identity and check for any significant debt history by reference to whether there was any history of county court judgments. He said Sporting Index wasn't required to check his overall financial circumstances when opening an account.

The investigator said Sporting Index didn't have reason to know Mr M had a problem with gambling until he contacted it in March 2020 and he wasn't satisfied it had information that meant it should have stepped in sooner.

Mr M didn't agree with the investigator. In summary he made the following key points:

- Sporting Index hadn't acted in his best interests or with diligence.

- Sporting Index should have been aware he had a gambling problem given the delays in settling debits on the account and a clear pattern of problem gambling on a monthly cycle - frantic activity leading to debit to the account followed by no activity and payment to the account with this being repeated.
- There was a clear pattern which was easy to detect.
- He was invited to sporting events by Sporting Index to encourage further gambling when his account was in debt.
- Between May 2016 and October 2017 there were 14 occasions when a debit left on the account was covered by a payment between the 14th and 17th of the month. In all but one case on those 14 occasions his account fell back into debit within eight days of the account being credited.

The investigator wasn't persuaded to change his opinion so the matter has been referred to me for review.

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 sympathise with the position that Mr M finds himself in. He incurred significant losses because of the sporting spread bets he made over several years from when his account was reopened in 2014. I can see from his email of 5 March 2020 just how distressed he was about the financial position he found himself in at that time as a result and it is clear from his correspondence with us this is an ongoing problem for him.

However, to uphold Mr M's complaint I need to be satisfied that it is more likely than not Sporting Index did something wrong - either in reopening his account or in allowing him to continue to trade and incur the losses that he did - and I am not persuaded that it did, for reasons I explain below.

Should the account have been reopened?

I acknowledge that Mr M's account was closed in 2005 following a debit accruing on the account of £358 and collection agents being instructed to recover this. However, just because he didn't pay a small outstanding amount in 2005 didn't mean that it wasn't appropriate for him to open an account in 2014.

The fact that Sporting Index had to instruct collection agents to collect a small outstanding amount in 2005 wasn't evidence that he was a problem gambler at that time such that it was on notice about this in 2014.

And given this took place around nine years before he applied to open the account in 2014 I don't think what happened in 2005 is something that precluded Sporting Index reopening his account.

What Sporting Index had to satisfy itself of on the application in 2014 was that the account was appropriate for Mr M at the time he applied - in that it was appropriate based on Mr M's knowledge and experience of the underlying product that he wanted to use the account for, in this case spread bets.

The information provided to Sporting Index on account opening isn't available so I can't say

what information Mr M provided that satisfied it that he had the necessary knowledge and experience. However, given he had operated a spread betting account previously between 2001 and 2005 there is nothing to suggest the account wasn't appropriate for him based on his knowledge and experience.

Under the rules that Sporting Index need to comply with there was no requirement on it to carry out a review of Mr M's financial circumstances before reopening the account. I note what Mr M has said about having outstanding payday loans at the time but I have seen nothing that suggests Sporting Index was aware of this at the time it reopened his account in 2014.

I acknowledge Sporting Index did do a credit search at the time but it has said this was a 'soft' credit check, so it didn't involve looking at his full credit history. In short the credit check by Sporting Index was to check his identity and for any CIFAS marker – which is a potential fraud warning – and whether there were any county court judgments.

Sporting Index wasn't required to do a full search of Mr M's credit history before reopening his account and from what it has said there was nothing in the information it was provided which indicated there was reason not to reopen his account.

In the circumstances I have seen no persuasive evidence that suggests Sporting Index shouldn't have reopened the account.

Should Sporting Index have been aware that Mr M was a problem gambler?

After opening his account in 2014 Mr M proceeded to place sporting spread bets over the course of the next few years up to December 2018. He has calculated that he incurred total losses over this period of around £87,000. I have not checked this but have no reason to think he has got this wrong.

I think it is important to make clear that Sporting Index provided an execution only service to Mr M, so decisions to place sporting spread bets rested entirely with him and it had no responsibility so far as those decisions were concerned. In providing the service it did Sporting Index had to treat Mr M fairly but allowing him to make sporting spread bets through which he incurred losses didn't mean it didn't comply with that duty.

Mr M argues that Sporting Index should have picked up on what he thinks was a clear pattern of behaviour which indicated he was a problem gambler. I understand why he has argued this but I don't agree that the way he used his account showed a pattern of problem gambling and that Sporting Index should have realised this.

The fact that he fell into debit on his account on a regular basis and often paid this off around the middle of the month wasn't obviously an indicator of him being a problem gambler in my view. I acknowledge there were occasions when he needed a bit more time to bring his account back into credit but generally he paid off the debit on his account within a reasonable time.

There is nothing to show that Sporting Index had reason to think he was borrowing to make the payments. The payments he made into his account were by way of debit card and from what he has said he funded his account by way of income.

If this wasn't affordable this isn't something Sporting Index had reason to know, as it didn't have knowledge of Mr M's wider financial circumstances - and wasn't required to. In short it had no reason to think that he was a problem gambler simply because as a result of the bets he made he ended up in debit on his account on a regular basis and had to pay this off

before making more bets.

Mr M has referred to the offers that were made to him which he says encouraged him to gamble further. Such offers may have encouraged Mr M to place sporting spread bets, but there is nothing wrong with Sporting Index sending offers/promotions to existing clients. If I had been satisfied that it should have been aware that he was a problem gambler that would be different, but I haven't.

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 M to accept or reject my decision before 18 January 2023.

Philip Gibbons
Ombudsman