

The complaint

Mr C complains that Plus500UK Ltd re-categorised him as an elective professional client despite him not meeting the required criteria. He has a gambling addiction, and feels Plus500 should've recognised and acted upon this, as the increased leverage the professional status provided him with led to increased losses on his trading account.

What happened

The circumstances of the complaint will be familiar to both parties, so I won't repeat them in detail here. Instead, I'll briefly recap the key points:

- Mr C opened an account with Plus500 as a retail client in 2017.
- In April 2018, prompted by an announcement that the European Securities and Markets Authority (ESMA) was to introduce new protective measures for the provision of CFDs to retail clients, Mr C enquired about what this would mean for leverage limits on his account.
- Plus500 provided some information about the new measures, which among other things set maximum leverage levels for retail accounts. It also highlighted that these maximums wouldn't apply to professional clients.
- A couple of months later in July 2018, Mr C applied to be re-categorised as an elective professional client. However, his application was turned down at that point because he didn't demonstrate that he met the necessary criteria – specifically, sufficient trading activity over the previous four quarters.
- Mr C indicated his dissatisfaction with Plus500's decision to turn him down. He highlighted his extensive trading experience with other providers in previous years along with his financial status. But his application was still not approved. He was reminded on several occasions over the following weeks that he needed to provide further evidence of his trading activity, but nothing was forthcoming.
- Mr C continued to carry out a significant volume of trading with Plus500 and in August 2018 it pro-actively completed his application process and re-categorised him as a professional client. This was on the basis that, by this point, he had demonstrated the required trading activity on his Plus500 account alone. Mr C was informed of the re-categorisation of his account.
- Mr C then continued to trade with Plus500 as a professional client in very significant volumes for the next two years.
- In June 2020, following an issue with making deposits to the account, Mr C complained to Plus500 that the issue had caused him a loss. He also began to raise more general concerns about the account and Plus500. He indicated he had a gambling problem and thoughts of harming himself. In response, Plus500 refunded losses caused by the deposit problems, restricted his account, then closed it shortly

after.

- In January 2021 Mr C made a more detailed complaint to Plus500, covering a variety of issues – his account status, risk warnings, leverage, advertising and fees. Plus500 didn't uphold any aspect of the complaint as, in brief, it was satisfied Mr C had been correctly re-categorised as a professional client and that his account has been administered correctly in all other respects.
- Mr C then referred the matter to this service in March 2021.

An investigator considered the evidence and Mr C's concerns but also didn't think the complaint should be upheld. She said, in brief:

- She was satisfied Mr C's account had been correctly assessed for appropriateness at the outset and that the process had demonstrated his knowledge and experience of this type of trading.
- Plus500 provided an execution-only service, so there'd been no requirement that the account and Mr C's ongoing trading activity be monitored.
- It had explained why Mr C's application to be re-categorised as a professional client had been initially turned down, what it had required for the application to be successful and how this requirement had been met by August 2018.
- Plus500 had also cross-referred Mr C's trading activity with the information he'd provided to it and felt that the account funding was consistent with what it had been told about Mr C's income and the size of his portfolio.
- The application process included the provision of information to Mr C about the risks associated with the features of a professional account compared with a retail account – particularly in respect of leverage levels.
- She was satisfied all other related processes had been properly followed – there'd been no excessive marketing, no approaches made to Mr C once the account was closed, and any bonuses paid to his account had been in line with ESMA guidance.
- Plus500 had restricted the account once it had been aware of Mr C's difficulties, then closed it. There'd been no reason prior to this for it to suspect any issues.

Mr C didn't accept the investigator's view. He maintained that he shouldn't have been re-categorised as professional as his financial position hadn't been as he'd indicated. He said he was borrowing money to fund his trading and checks Plus500 should've carried out would've shown this to be the case. He said it couldn't have checked his company accounts at the time of his professional application in 2018 – this had only been done in response to the complaint.

He felt that Plus500 shouldn't have proceeded further with the application once he'd failed to provide the requested additional evidence of trading activity. And it should've been aware he had a gambling addiction, as his behaviour and trading history was well-known, including to many people within the industry.

Although she sympathised with Mr C's situation, the investigator wasn't persuaded to change her opinion. So as no agreement could be reached, the matter's been referred to me to 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.

Having done so, while I recognise that Mr C will be very disappointed, I've reached the same conclusion as the investigator and for broadly the same reasons. I'll explain why in more detail.

Although, as noted above, Mr C's main complaint to Plus500 made in January 2021 covered several issues, I think it's fair to say that his primary concern centres on the re-categorisation of him as a professional client in August 2018. He feels that Plus500 wrongly and unfairly created a situation whereby the subsequent losses made from his high volume of trading were significantly magnified by the absence of the restricted leverage levels that applied to retail accounts.

Looking in more detail at the circumstances around Mr C's application to be re-categorised, it appears that he first asked Plus500 about the new leverage restrictions at the end of April 2018. He was given some information, which pointed out that a professional account would not be subject to the new restrictions.

He then began the process of applying for re-categorisation some months later, in early July 2018. Over the course of the next couple of days there was correspondence between Mr C and Plus500 in which he was informed that his application couldn't proceed as he hadn't demonstrated sufficient recent trading activity.

The requirements for a business to treat a client as an elective professional client are set out in the Financial Conduct Authority's Conduct of Business Sourcebook at COBS 3.5.3. In brief, a business is required to assess the knowledge and experience of a client to reasonably assure itself that they can make their own decisions and understand the risks involved. Further, the client must satisfy at least two of three criteria around previous trading activity, the size of their financial portfolio and their financial sector work experience.

Mr C didn't have the relevant work experience, so it was the first two criteria that were pertinent to his application. Upon receipt of it Plus500 was satisfied he met the portfolio criteria, based on the figures he'd provided when he opened the account at the end of 2017 and when he made the application to be re-categorised. However, as noted, Plus500 didn't feel that he'd provided sufficient evidence in respect of his trading activity, for which the specific criterion was the need to have *"carried out transactions, in significant size, on the relevant market at an average frequency of ten per quarter over the previous four quarters"*.

Mr C explained that he'd had a break from trading prior to opening his account with Plus500 in 2017. But he supplied documentation showing his considerable trading activity prior to this break. He also voiced his dissatisfaction with Plus500's decision, highlighting his professional background and stressing his considerable experience of trading very significant, highly leveraged positions. But Plus500 maintained its position and reiterated the need for it to be demonstrated that he met the trading activity criteria as set out in COBS.

Plus500 followed up with several reminders of the evidence that was needed but as noted, there was no response from Mr C. Despite this, some weeks later in August 2018, it reviewed the situation and concluded that by this point the trading he'd carried out on his Plus500 account alone by was sufficient to satisfy the criteria – he'd traded significant volumes over four quarters, well in excess of the requirement for an average frequency of 10 significant transactions per quarter. He was sent a message by Plus500 explaining that his professional account application had now been approved.

I've thought carefully about the approach Plus500 took to Mr C's application. While it clearly had regard for the rules and relevant criteria – demonstrated by it seeking further evidence of his trading activity – I'm conscious that it chose to pro-actively complete the application despite Mr C failing to respond to its requests for further evidence.

But that said, Plus500 had received a formal application from him, following which he made it very clear that he felt he satisfied the criteria, providing evidence to support his view, and strongly voicing his dissatisfaction with Plus500's decision not to proceed. He subsequently gave no indication that he'd changed his mind and that he no longer wished to be re-categorised. He continued to trade at very high volumes and was clearly informed when Plus500 reviewed the matter and re-categorised him. He didn't say at that point that he no longer wanted to be re-categorised, and he would've been aware of the higher leverage that was available to him as he continued to trade for the next two years.

Clearly given Mr C's situation and his gambling issues it's clear why he might not have acted to prevent the re-categorisation and I accept that the change to the account would've magnified losses (and gains) for his subsequent trading. But having reviewed the way in which Plus500 handled the application for re-categorisation, despite the somewhat unusual circumstances, I don't think I can reasonably conclude that it acted incorrectly such that it should be held responsible for any losses incurred by Mr C.

I note also that Mr C has challenged that he met the criteria regarding portfolio size, saying that he didn't at the time of the application, or indeed at any time, have the required €500,000 portfolio. But he stated he did have this size of portfolio when he originally applied to Plus500, and he confirmed it in more detail when he applied for his account to be re-categorised. In the context of the level of deposits he was making to his Plus500 account, the information provided by Mr C would've been plausible. So, I also don't think it acted unreasonably in this respect.

I have great sympathy with Mr C's situation and entirely understand why he feels the way he does about what happened. This has clearly been a very difficult situation for him as the amounts of money involved are substantial and his health has been impacted.

But in the context of what Plus500 knew about his circumstances and given the type of trading involved – and with the facility being provided on an execution-only basis – I don't think there was anything that would, or should, have acted as a red flag to suggest there might be an issue. For instance, the problem with depositing to the account that Mr C encountered in June 2020 – caused by him hitting the daily limit on numbers of deposits (as opposed to size of deposits) – had not previously happened in over two years of trading.

Once Plus500 was made aware of Mr C's situation and problems in June 2020 it acted to restrict his trading and I've no reason to think it wouldn't have done so sooner if similar information had come to light. This is what I would expect it to have done, in line with its overarching responsibilities to act fairly, responsibly and in the interests of a consumer.

Mr C has indicated that he told Plus500 on multiple occasions about his issues prior to June 2020. But having carefully reviewed all the evidence I've seen nothing to support a finding that it had previously failed to respond or act when asked for help with his issues while he was trading with it.

My final decision

For the reasons 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 Mr C to accept or

reject my decision before 28 April 2023.

James Harris
Ombudsman