

The complaint

Mr J's complaint concerns spread betting accounts held with IG Index Limited. He says he was wrongly categorised as a professional client, then pressured to refer new clients to IG and trade on their accounts using monies solicited from these clients.

What happened

In 2018 Mr J opened a retail spread betting account with IG. Later that year he says a member of IG's staff began encouraging him to become a professional client. He says he made clear this wasn't appropriate for him, and in any event he wouldn't qualify. However, the staff member indicated they could nevertheless arrange the change to the account by sidestepping normal processes.

Mr J says the resulting change in status led to him trading financial products he had little experience of and which exposed him to an unsuitable level of risk, with a disregard by IG of regulatory requirements and its duty of care towards him as a customer.

He further says the staff member then aggressively encouraged him to solicit friends to open accounts with IG in return for rewards. The staff member tried to circumvent IG's processes, but as the people Mr J introduced to IG failed to qualify as professional clients, they were instead signed up as international clients, meaning that Mr J received nothing from IG. He says he was also persuaded to solicit money from these friends, to use to trade on his own account.

Mr J says the subsequent closure of these accounts caused strain on his friendships, as these people were unable to recoup their losses. They are now pressuring him to reimburse them, which has had a very serious effect on his mental health and well-being.

Our investigator considered the matter and concluded that the complaint should be upheld, in part. In brief, he said:

- He wasn't persuaded that the evidence supported a finding that Mr J was coerced into applying for professional status. It showed he'd asked for a professional account and was provided with information about the process by IG. No calls took place with the member of staff alleged to have pressured him until after the account was changed.
- The investigator had then considered the relevant rules from the Financial Conduct Authority's (FCA) Conduct of Business Sourcebook (COBS) (at 3.5.3), along with the rules of The European Securities and Markets Authority (ESMA) that said that firms should avoid self-certification by the client and seek a more thorough analysis of their knowledge and experience. The COBS rules set out the conditions that needed to be met for a client to be granted professional status – any two of three criteria, those being:
 - The client has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters.
 - The size of the client's financial instrument portfolio defined as including cash

- deposits and financial instruments, exceeds EUR 500,000.
 - The client works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged.
- The investigator noted that IG had determined that Mr J didn't meet the portfolio size criteria, but it was satisfied by his trading history. In respect of the third criterion, professional experience, he initially said he'd worked for a financial institution carrying out financial analysis. This prompted IG to seek more detail of his experience, specifically in 'spread bets, CFDs, Forex and derivatives'. In response, Mr J confirmed he'd worked as a customer manager and provided a copy of a contract showing his job title as 'Customer Advisor'. He also said, in part, that his role *"as a customer manager/adviser allowed me to gain knowledge about risk-based investments which included stocks and shares, commodities, Gilts, indices and more. (my employer) saw me undertaking investment training so that I was able to advise my clients on how to make the best of their investment portfolios."*
- The investigator wasn't persuaded that the information provided to IG by Mr J regarding his professional experience had been sufficient to meet the criteria of having *"knowledge of the transactions or services envisaged"*. There was nothing in it that demonstrated knowledge of the 'spread bets, CFDs, Forex and derivatives' that IG had specifically asked about.
- This being so, the investigator concluded that IG should not have allowed Mr J to become a professional client.

The investigator also considered the other issues raised by Mr J. He said that he didn't feel the evidence supported that the IG staff member had acted aggressively. He could see that IG's 'recommend a friend' scheme had been discussed with Mr J but not that anything had been forced upon him.

The investigator said he wasn't able to consider Mr J's concerns about the set up and management of accounts based abroad, as they would need to be looked at by the appropriate bodies in the relevant countries. Further, complaints about accounts belonging to other individuals would need to be brought by the account holders.

In respect of the IG staff member encouraging Mr J or others to borrow money with which to trade, the investigator said he'd seen nothing in the evidence – specifically the transcripts of communications – that showed there'd been any encouragement. While the staff member had appeared to be aware of money being borrowed, it didn't appear to have been at his suggestion. The investigator conceded that there'd been a degree of ambiguity in some of the staff member's comments and he could've been clearer, but overall he felt there was nothing to show that he'd encouraged Mr J or anyone else to lie as part of the application process.

As the investigator concluded that Mr J's complaint should be upheld in part, specifically in respect of IG incorrectly categorising Mr J as a professional client, he proposed that the matter be put right by IG calculating what Mr J's losses would've been if he'd continued to trade as a retail client rather than a professional client and the difference paid to Mr J. The investigator also felt that IG's decision to categorise Mr J as a professional client had caused him a degree of distress for which a payment of £500 was warranted.

Mr J broadly accepted the investigator's opinion. However, IG disagreed with the conclusions he'd reached regarding Mr J's professional upgrade.

In brief, IG said:

- The investigator had misstated the professional experience criteria as requiring an '*in-depth*' knowledge of the transactions or services envisaged. It said this was not the case. Rather, it was simply knowledge of the transactions and services in a professional role that was required.
- In any event, Mr J hadn't complained that he'd not had the requisite professional knowledge. His complaint was focussed on his treatment by the IG member of staff.
- It was not correct to say that there'd been nothing to suggest that Mr J had the requisite knowledge. He'd provided evidence and information regarding his financial career and while there was an unavoidable degree of subjectivity the relevant rules allowed firms to use discretion when determining whether the criteria had been satisfied.
- It had been reasonable to conclude from what Mr J had told it about his experience that his role would have required knowledge of the transactions or services envisaged. It noted that the business he worked for in the role of customer adviser had been involved in derivatives and other forms of complex trading. And there was nothing to suggest the information provided by Mr J had been inaccurate, or that it shouldn't be accepted in good faith.
- An audit performed in 2018 and a FCA review in 2019 had shown no failings on the part of IG's professional upgrade processes.

The investigator wasn't persuaded to change his view. He still didn't think there was enough to say Mr J's role was such that it "*requires knowledge of*" derivatives and margin trading. He didn't think the job title of "*customer advisor*" would necessarily have meant Mr J would've dealt with the relevant transactions and service in a professional capacity. He felt IG should have done some more research, as although the business Mr J worked for did have some involvement with complex products, there was nothing to suggest Mr J was personally involved in this. He also confirmed that Mr J had raised the issue of whether a professional status was appropriate for him in initial discussions about the complaint.

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, I've come to the same conclusions as the investigator and for broadly the same reasons.

As I've set out above, the investigator partly upheld the complaint based on what he saw as IG incorrectly recategorising Mr J as a professional client. Although Mr J made several other allegations concerning how he was dealt with by IG, specifically by one particular member of staff, the investigator didn't consider the evidence supported a finding that Mr J had been pressured, or otherwise unduly encouraged, to open his account, upgrade to professional status, persuade others to open accounts or borrow money to trade.

Looking at the evidence available, while I recognise Mr J has been very distressed by this matter, I too am unable to conclude, on balance, that the staff member acted incorrectly in the ways alleged by Mr J – although I can see that on occasion his behaviour and language could perhaps have been misconstrued, an issue that IG acknowledged and indicated it was taking internal action to address.

Turning to the issue of the categorisation of Mr J as a professional client, I don't consider that it was reasonable for IG to conclude from the information available to it that Mr J met the criteria of having *'worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged'*.

It's clear IG took steps to clarify Mr J's work experience, beyond the initial information he provided. It emailed him to say:

"for us to categorise you as a Professional, we need to understand more about your Professional experience. The criteria requires that you work or have worked in the financial sector for at least one year in a professional position, which requires knowledge of Spreadbets, CFDs, Forex or derivatives. Please could you give us more information as to how the position listed on your application required a knowledge of these products?"

In response, Mr J, as noted above, spoke of working in a role that allowed him to gain knowledge about risk-based investments. He mentioned *"stocks and shares, commodities, Gilts, indices and more"*. But despite having been specifically asked by IG about *"Spreadbets, CFDs, Forex or derivatives"* he made no reference to these more complex products.

It appears IG based its acceptance of Mr J's professional experience on the likelihood of his role as a customer advisor requiring knowledge of complex products, as his employer was a business engaged, to some extent, in business relating to such products. But I don't think that's a reasonable conclusion to reach.

It is, or course, quite possible that Mr J may, in carrying out his customer advisor/manager role have *acquired* some knowledge of more complex investment products. But I don't think it's likely it was a role that *required* knowledge of the products. I think the rule is intended to describe a professional role that cannot effectively be carried out without knowledge of the products – in other words, the knowledge is necessary for carrying out the role. A customer adviser role, particularly in respect of the products Mr J mentioned, does not seem to meet that criteria. At very least I think his response to IG's quite specific enquiry should've prompted it to seek further clarification.

I note IG's comment about there not being a need for the knowledge to be 'in-depth', but I nevertheless don't think it likely Mr J's role *required* knowledge of the products at all, in-depth or otherwise.

That being so, I find that IG acted incorrectly in categorising Mr J as a professional client and uphold the complaint in that respect.

Putting things right

I agree with the investigator that even if IG hadn't recategorised Mr J's account it's likely he would still have continued to trade in much the same way as he did.

Where I uphold a complaint, I can award fair compensation to be paid by a financial business of up to £160,000, plus any interest and/or costs/ interest on costs that I think are appropriate. If I think that fair compensation is more than £160,000, I may recommend that the business pays the balance.

Decision and award: I uphold the complaint. I think that fair compensation should be calculated as follows. IG should rework Mr J's account to show what losses he would've incurred had he been trading (between July 2018 and May 2020) with a lower amount of leverage, as is the case with retail client accounts. IG should then pay to Mr J the difference

between what those losses would've been had his account been a retail client account, and what they actually were as an elective professional client.

IG must also add to this a payment of £500 to Mr J to compensate him for the distress and inconvenience caused to him by its decision to allow him to trade as a professional client. I consider this to be fair and reasonable in all the circumstances.

My decision is that IG Index Limited should pay Mr J the amount produced by the above calculation – up to a maximum of £160,000.

Recommendation: If the amount produced by the calculation of fair compensation is more than £160,000, I recommend that IG Index Limited pays Mr J the balance.

This recommendation is not part of my determination or award. IG Index Limited doesn't have to do what I recommend. It's unlikely that Mr J can accept my decision and go to court to ask for the balance. Mr J may want to get independent legal advice before deciding whether to accept this decision.

My final decision

For the reasons given, my final decision is that I uphold the complaint and direct IG Index Limited to pay compensation to Mr J as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 26 August 2022.

James Harris
Ombudsman