

The complaint

Mr R complains that Spreadex Limited should have gained a better understanding of his finances before allowing him to trade in his spread betting account and in failing to do so, contributed to his financial overcommitment and the losses he incurred.

What happened

Mr R opened a spread betting account with Spreadex Limited in June 2011 and continued to trade until May 2021. In November 2018, Spreadex approved a £5000 credit limit increase on his trading account, and this is the period the complaint relates to. Mr R says this credit increase followed with many high value deposits over a short space of time and resulted in him becoming financially overcommitted.

He says that one of Spreadex's compliance team's functions is to ensure that clients don't become overcommitted. He says they should have obtained a better understanding of his financial situation before allowing him to trade and at least before his credit limit increase in 2018. He says Spreadex would have seen the high value deposits he was making and should have known he couldn't afford this. He says they never challenged the information he provided and there was no sense checking or further examination of the information. He strongly feels that without doing these further checks, there was no way for Spreadex to determine his affordability. Given that he says the compliance team knew about his salary, net income and residual income and share-holdings, he doesn't think Spreadex have acted reasonably in allowing these payments.

To resolve his complaint, he would like acknowledgement or admission from Spreadex for their part in not monitoring his affordability and making his path to financial overcommitment easier and has asked to be compensated.

In November 2021, Spreadex issued a final response letter saying they had carried out know your customer due diligence as required by the regulator, the Financial Conduct Authority (FCA). They say they obtained updated information on his financial situation at the time the credit limit was approved. They say he also provided updated online information regarding his income, savings and investments held in April 2019, January 2020, and January 2021. In addition, they say Mr R never contacted them to advise that he was suffering from any harm or financial difficulties as a result of the activity on his Spreadex account.

They rejected his complaint, so he brought his complaint to this service.

Our investigator acknowledged that Mr R's expectations hadn't been met but was unable to conclude that there was any wrongdoing on Spreadex's part. He said Spreadex had asked for updated financial information (usually annually), but it wasn't for them to decide how Mr R spent his money. He said that Mr R expected some type of intervention in relation to the information he provided them and even though this wasn't a requirement, Spreadex had sent him notifications regarding the amounts he deposited. He said there was no regulatory or contractual requirement for Spreadex to have intervened in Mr R's trading and didn't uphold the complaint.

Mr R didn't agree with the investigators findings and so this was referred to me for a 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.

Although I haven't commented on every single point, I'd like to assure Mr R that I have considered everything. Having done so, I won't be upholding this complaint and for similar reasons as the investigator. I will explain further.

Before I do, I'd like to address Mr B's complaint in relation to his fixed odd betting. Fixed odd betting cannot be considered by this service as it relates to gambling. Gambling interactions are regulated by the Gambling Commission, not the FCA, so I will not be looking at this element of the complaint. If he wishes to pursue this further, he should contact the Gambling Commission.

In relation to Mr B's spread betting complaint, he held a non-advisory, execution only account so there was no requirement for his account to be monitored and any trading he conducted was a decision for him to take himself. This is also stated in the Client Agreement of the spread betting account under section 5 (2) of "dealings between you and us".

What Spreadex were required to do was to keep up to date information in relation to their consumers financial situation to ensure compliance with anti-money laundering legislation, but how this is done is not prescribed. This is a decision which each business takes itself and incorporates into their processes. We wouldn't interfere with a business's internal processes, their commercial decisions or tell them how they should operate. However, what we would consider is whether their actions were within the requirements of the FCA and if the business was fair and reasonable in their conduct.

I have started by looking at what financial information Spreadex did obtain and whether this was satisfactory. In 2018 following his request for a credit limit of £5000, Mr R confirmed his annual income was £45,000 and his total savings were £138,000 as well as having various other investments. Spreadex kept the financial information they held up to date by serving a "source of funds" online message (usually annually). In 2021, Mr R confirmed his annual income to be £56,100 with savings of £200,000. Spreadex also contacted him to consider safer gambling, affordability, and his deposits via email web message in April 2020 and twice in June 2020. So, I am persuaded that Spreadex did obtain updated financial information in compliance with legislation and to ensure the credit Mr R was given was still affordable.

I note Mr R's comments in relation to Spreadex portraying the checks as being about affordability and not about money laundering or know your customer. He didn't think the information he'd initially provided pointed to his affordability without Spreadex considering whether the funds he declared were liquid and what his commitments/liabilities were such as tax and national insurance. He has told us some of the information about his finances that he's provided Spreadex over the years hasn't been accurate. He says his declared savings were unlikely to be accurate beyond the first year and takes responsibility for being "culpable" in not declaring a fair reflection of what his underlying savings position was.

As a regulated firm Spreadex are subject to the rules set out in the regulators handbook, the conduct of business (COBS). COBS 10.2.4 says *"[a] firm is entitled to rely on the information provided by a client unless it is aware that the information is manifestly out of date, inaccurate or incomplete."*

I understand Mr R had expected the compliance team at Spreadex to challenge or verify the information he'd provided and felt this would have prevented him from incurring the losses he did - but this didn't happen. The COBS rules don't require a business to verify the information a customer provides them unless it is aware the information is manifestly out of date, inaccurate, or incomplete. As I have mentioned above, the information was updated periodically and there was no reason to doubt the information presented. Despite Mr R now saying his financial situation was different to what he initially presented to Spreadex, they were entitled to rely on what he'd told them and to make any credit decisions based on this information. Under the circumstances, I've been unable to establish that there was any wrongdoing on Spreadex's part.

In understanding whether Spreadex should have intervened, I've also looked at the deposits Mr R made. Spreadex provided details of Mr R's net deposits inbetween the financial updates noted above. Between the November 2018 credit limit increase and January 2020 his net deposits were a total of £73,511.41. Between January 2020 and January 2021 his net deposits were £129,016.00 and between January 2021 to when he ceased trading in May 2021 his deposits were £29,959.00.

Whilst these deposits seem particularly large, Mr R himself stated he has around 25 years of experience in this type of trading and had been trading with Spreadex since 2011. He'd declared his annual income to be £45,000 and had other savings and investments. I know Mr R feels quite strongly that the information should have been challenged but the high deposits or volume of trading were not unusual with this type of trading and so this alone wouldn't have raised any concerns nor meant that Spreadex should have intervened.

I also think any further queries into his financial situation as Mr R suggests would not support the view that he would have been prevented from making any further deposits. In 2021, the tax returns he provided Spreadex covering the same tax period as his losses show a significantly higher income than what he had declared. It showed income of £118,000 for the tax year 2018-19, £115,000 for the tax year 2019-20 and a P60 showing income of £56,000 for the tax year 2020-21. Given the significantly higher income evidenced, I'm not persuaded any further challenge of his financial information would have given Spreadex any reason to intervene.

Having considered everything, I haven't seen any evidence that Spreadex was made aware by Mr R or should have been aware of any financial concerns beyond what he presented to them. So, I don't think Spreadex did anything wrong in relying on the information he had provided them, nor do I think it was unreasonable of them to increase Mr R's credit based on that information. Without any evidence that he did inform them of any issues with affordability, I can't fairly say they had cause to intervene or should have. I know Mr R will be disappointed with my decision, but from everything I've seen, I'm unable to find Spreadex responsible for any losses he's incurred.

My final decision

For the reasons given above, I don't uphold this complaint against Spreadex Limited. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 5 January 2023.

Naima Abdul-Rasool
Ombudsman