

The complaint

Mr H has complained that Sporting Index Limited ('Sporting Index') allowed him to place bets over his limit by almost three times. He has also said that Sporting Index should have better monitored his account because the increase in the number and stake of bets he placed during lockdown may have suggested he was a problem gambler.

What happened

Mr H had an account with Sporting Index since 1997. In July 2020 he placed a bet on which he lost £3,201. He didn't think he should have been allowed to place the bets he did place leading up to that. He complained to Sporting Index about this and its monitoring of his account during lockdown when he said he wasn't working.

In its response Sporting Index didn't agree with Mr H. It said;

- It was fully committed to promoting responsible gambling and had tools and dedicated resources in place to assist clients and detect patterns of activity.
- Mr H's bet of 25 July 2020 was a buy bet of £33 at the price of 125 on a football match. The closing price was 28 which led to a loss of £3,201. When making the bet a balance of ten times the bet was required, so £330. Mr H had an available balance of £1,025 so the bet was accepted.
- The loss meant that Mr H exceeded his trading facility level of £1,500 but with spread betting it was possible to lose more than the deposit or pre-agreed trading facility.
- Mr H hadn't placed more bets between March and July 2020. There were around 50% less bets than the preceding five-month period.
- Mr H had placed a few bets at a higher than usual price, but they were mostly the type of bet which reduced the maximum liability of the bets.

Mr H didn't receive Sporting Index's letter and it transpired it hadn't been sent to him. Because of this error, Sporting Index reduced the amount Mr H owed by £676 to £3,000.

Mr H wasn't happy with the response and brought his complaint to the Financial Ombudsman. Our investigator who considered the complaint didn't think it should be upheld;

- Between March and July 2020 Mr H had placed 103 bets but within the three months prior to that he had placed 177 bets. So, the investigator didn't agree Mr H was betting more frequently.
- There was enough credit on Mr H's account when he placed the complained about bet in July 2020. But the credit limit wasn't a way of limiting losses on his account.
- While Sporting Index was obliged to check the appropriateness of an account when it was opened, it wasn't obliged to do so on a regular basis. And even if it did, those checks would be focused on his understanding of the workings of an account and its associated risks.

Mr H didn't agree. He said the focus of his complaint was the big rise in the stake of his bets. Historically his stake would be a maximum of £30 with the maximum potential loss of £1,500. When he tried to bet above that, Sporting Index would ask for more deposit.

More recently he started staking larger amounts towards the end of football matches which he said was a 'desperate strategy' to pay his mortgage. The strategy exposed him to massive risk. He said he was taking chances and Sporting Index was aware he wasn't working.

The complaint remains unresolved and has been passed to me for a decision in my role as ombudsman.

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 reached the same conclusions as the investigator, and broadly for the same reasons.

I am sorry to disappoint Mr H. He clearly feels strongly about his complaint and that Sporting Index shouldn't have allowed him to get into the financial position he now finds himself.

While I have sympathy for Mr H, I am required to consider the matter on the basis of what I think is fair and reasonable – and key to this is the extent to which I think Sporting Index has treated him fairly – or otherwise – and done what it was required to do.

As I understand it, Mr H has had an account with Sporting Index since 1997. It had a credit limit of £1,500 with a classic account meaning no stop loss was in place. By having had the account for over 13 years I don't think it's unreasonable to assume Mr H was aware of how his account worked and there was the potential that he could lose more than he put in.

Sporting Index had a responsibility to make sure the account was appropriate for Mr H when it was opened as required under the regulations – COBS 10.2 which seeks to establish the customer's experience and knowledge in order for the customer to understand the risks involved. But there weren't any requirements for Sporting Index to continue to check for appropriateness. However, I have considered how Sporting Index managed Mr H's account and whether it was fair in doing so.

Sporting Index has explained it takes the promotion of responsible gambling seriously and that it has dedicated resources in place to detect patterns of activity on a customer's account that might indicate a possible problem in order for it to intervene.

Mr H has said that Sporting Index had a duty of care. I can see that Mr H mentioned to Sporting Index he had been furloughed during lockdown, but I can't see that Mr H communicated his change in position to Sporting Index until after he raised his complaint. He has said that Sporting Index did '*NOT once ask[ing] if I was earning through lockdown or even earning at all*' and that it '*did not once check affordability at this level or even if I was still working.*' But Sporting Index had carried out its regulatory duties when taking on the account and it would be reliant upon Mr H making it aware of any changes in his circumstances which might impact on his spread betting account.

So, taking this into account, I don't agree that Sporting Index has done anything wrong. It didn't know about any change in Mr H's personal circumstances which might impact on his account as he did not make it aware that he wasn't working.

If Mr H feels that Sporting Index should have done more, in that he has been taken advantage of, that is only because his trades were not profitable. Mr H said that he was winning but then began losing. However, Sporting Index couldn't have known in advance how he would trade, or whether he would make losses. All it could do was ensure that he was aware of the risks – which his long-established relationship with Sporting Index would suggest this was the case – or respond to any new information Mr H gave it about its circumstances.

Sporting Index has agreed that the last bets on the account were placed on markets with a higher price than usual and therefore a greater risk of higher losses, but there were also bets placed before lockdown at similarly high prices. And I also note that in its final response to Mr H, Sporting Index explained that there were a few bets at a higher price, but on most of those occasions the 'so-far' scores were also higher than zero, which reduced the maximum liability of those bets. Overall, I'm satisfied Sporting Index didn't find anything unusual in Mr H's betting patterns to cause it concern.

Mr H has said Sporting Index should have asked for a deposit before taking a bet and that it historically would make sure the bet was covered. But that is not the nature of spread betting. Sporting Index monitored the credit limit on his account, which was £1,500, but not the potential win or loss – it wouldn't know in advance what bet he was going to make or whether that bet was going to win or lose. In spread betting the customer can lose a lot more than their stake or their trading limit – Sporting Index is very clear about those warnings. So, I wouldn't expect Sporting Index to ensure that a bet was covered.

I can't tell a firm how to run its business. But from what Sporting Index has told us, I'm satisfied that it's likely that Sporting Index's business model sufficiently facilitates the monitoring of its customers' accounts so as to pick up any inconsistent behaviour or unusual activity that would alert it to the potential that the customer may be struggling.

In the case of Mr H's betting patterns its systems didn't pick up anything out of the ordinary on his account, so I don't see that it had any reason to proactively seek information from him and whether he needed any assistance. I note that now it is aware of Mr H's concerns – and his request to close his account – that the account has been closed with a permanent self-exclusion applied to it.

Taking all of the above into account, I'm not persuaded it would be fair and reasonable to uphold Mr H's complaint and ask Sporting Index to erase his trading losses. But I would encourage Sporting Index to engage with Mr H having regard to his personal and financial circumstances.

My final decision

For the reasons given above, I don't uphold Mr H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 14 April 2023.

Catherine Langley
Ombudsman