

The complaint

Mr M complains that Interactive Brokers (UK) Ltd didn't do enough due diligence when he opened his accounts, and that the amounts he deposited were well outside the amount of assets and income he declared. He feels that the accounts were not appropriate for him, and he should not have been allowed to trade.

Mr M further complains that IB failed in its responsibilities in relation to money laundering regulations given the size of his deposits, and that once he told IB that he was vulnerable it took no action. Mr M also complains about the commissions he says IB took.

What happened

Mr M opened an account with IB in February 2021. He traded for over a year and suffered significant financial losses. In April 2022 Mr M made a complaint to IB, claiming among other matters, that it had failed to properly monitor how much he was depositing versus what he had declared to it were his liquid assets – and furthermore had failed to close his account when he had asked it to after disclosing his gambling addiction.

IB didn't think it had done anything wrong. In short it outlined the process it had followed in allowing Mr M to open the account and trade. It explained the options available to Mr M to close his account, including closing his existing positions and requesting any residual balance be transferred to his bank account.

Mr M referred his complaint to this service, and one of our investigators looked into Mr M's complaint. In summary:

- She didn't consider there was anything wrong with IB allowing Mr M to open an account.
- She thought that there was no breach of anti-money laundering regulations, and that the deposits Mr M made did not amount to complex or unusually large' transactions.
- As Mr M agreed to the commissions IB charged on trades, she didn't think there was anything wrong these charges.
- She did consider that IB ought to have stopped Mr M trading after 6 April 2022, when he told it that he had a 'huge gambling addiction' and that he also suffered from 'manic periods and depression'. She considered that IB's decision to take no further action wasn't fair and reasonable, and recommend it:
 - Refund all of the deposits Mr M made after 6 April 2022;
 - Add 8% per year simple interest on those funds.
 - Pay Mr M £750 for the distress and inconvenience he was caused.

IB provided no comments in response to the investigator's view. Mr M provided detailed

comments.

He corrected a mistake in the investigator's view around his deposits, and claimed this meant her whole assessment ought to be invalidated. In summary, he also said:

- The financial circumstances he outlined to IB did not match his subsequent deposits. Therefore, how could 'the investment be appropriate' if he didn't have the liquid net worth to support it. He queried why this information was provided if it wasn't 'to assess account suitability'.
- He was only earning £719.90 per week, even though his deposits were consistently far more than this. He disagreed with the investigator around the enhanced due diligence, and argued that his deposits amounted to an unusual pattern of transactions for the purposes of anti-money laundering regulations.
- He said he changed his financial information in September 2021, but before that the amount he had deposited was far more than he had indicated his net worth was.
- He said he made several changes to his knowledge and experience after opening his account which ought to have alerted IB to a problem.
- He reiterated that the discrepancy was the 'main reason why the account should never have been allowed to deposit such vast amounts of money'.
- He said that the investigator had quoted a rule in COBS which said that IB was entitled to rely on what he had told it – given the discrepancy in the information he provided it and the way he deposited money in the account, this showed that IB had failed.
- He maintained that between February 2021 and September 2021 when he amended his details, he had not informed IB that he had a 'wealth of experience'.
- He provided payslips to show his earnings during the relevant period, and said that at no point did IB request this information when his deposits exceeded what he had declared was his net worth. He said this was a 'violation of FCA principles and regulations'. He made further points around his deposits, the lack of enhanced due diligence, discrepancies in the investigator's assessment and the reasons behind why he changed 'the account value'.

As agreement couldn't be reached, the case was passed to me to decide.

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.

Mr M has provided detailed comments throughout the course of the investigation, and in response to the investigator's assessment.

I understand there was an error in her original assessment, which she later corrected and confirmed it did not change the outcome. I'd like to thank Mr M for his submissions around this, and other aspects of his case. I want to confirm to him that I've read and considered all of his submissions, but my role isn't to respond to each issue individually. So if I don't address something he has raised, it isn't because I haven't taken into account. I have. But my role is to focus on the key issues in the complaint and provide reasons for my decision.

In this case, the key issues are the opening of the account, Mr M's subsequent management of the account and whether it ought to have prompted IB to recognise he had vulnerabilities sooner, and finally how it dealt with Mr M once it was told that he had a gambling addiction.

In light of this, I'm not going to comment on whether or not anti-money laundering regulations were followed or how they applied to him. I say this because I'm not persuaded that these regulations, even if they weren't technically followed (and I'm not making this finding), would mean that Mr M receives compensation. That's not the purpose of those regulations. If Mr M believes that IB's anti-money laundering processes are not up to the standards expected by the regulator, the Financial Conduct Authority (FCA), I'm satisfied that is a regulatory matter and not something that I need to decide in order to resolve this complaint – given that there's no suggestion in this case that any money laundering actually took place.

The account opening

The investigator has correctly explained that IB was entitled to rely on the information Mr M gave it when he opened the account. I should be clear that COBS10A, which deals with appropriateness, is not concerned with Mr M's wealth. That is not a part of the assessment. What COBS10A required IB to do is determine whether Mr M had sufficient knowledge and experience to understand the risks involved in the service he was asking IB to provide to him. Furthermore, COBS10A did not apply to all the services Mr M was asking IB to provide to him. For example, it did not apply to buying and selling listed shares.

If, in carrying out the assessment required by COBS10A, IB decided that the type of service Mr M was requesting was not appropriate for him, it needed to warn him that this was its assessment. If Mr M still wanted to this service despite this warning, the guidance from the FCA in COBS10A.3.3 suggests that it was for IB to decide whether to allow him to do so, having regard to the circumstances.

Mr M amended his information between 5 February 2021 and 7 February 2021. He has not explained why he felt he needed to do so, but given the short delay I'm not persuaded it makes any difference.

I also want to make clear that Mr M's subsequent trading with IB shows that he was an active and experienced trader. So I'm not persuaded, on balance, that the information recorded on 5 February 2021, which basically suggested he had very little investment experience with the exception of one year trading stocks and two trading on margin, is accurate.

IB has explained that when Mr M opened his account on 5 February 2021, he requested margin permissions for which he failed the appropriateness assessment. He received a warning that said:

'Based on the experience and knowledge information you have provide we consider that Margin products are not appropriate for you'.

He was presented with two options:

- To 'remove margin' as an option or;

- Click continue, where after account approval he'd be able to trade subject to 'completion of a task'. IB has explained that this task was product specific and consisted of a tutorial, consisting of explanatory narratives and sets of questions used to illustrate the features of the product and associated risks.

Mr M decided that despite this warning, he still wanted to trade on margin and proceeded with opening his account on that basis. In doing so he also had to read and accept IB's Margin Risk disclosure notice which outlined the significant risks associated with margin trading.

IB has explained that IB uses 'client's knowledge and experience on a client basis' and not per account, and further, that Mr M was 'required to provide information when trading certain permissions for the first time'. This would explain why his information was amended on 7 February 2021.

The evidence I've seen shows that he started trading on margin and with stocks on 5 February 2021 – the two areas where he had provided information. At that point, he had declared two years trading on margin and one year trading with stocks.

On 7 February 2021, he received further trading permissions for a variety of assets, including Contracts for Difference (CFD), options and futures. For each of these he amended his form, and declared:

- 4 years and between 51 and 100 trades in CFDs;
- 5 years, and between 26 and 50 trades in futures;
- 3 years, and between 11 and 25 trades in options

He passed IB's appropriateness assessment for each of these products, and was therefore able to trade them with no additional steps required. As part of this process, Mr M was presented with terms and risks warnings which he was required to read and accept. I've seen evidence that he did so.

In my view, the process IB followed in relation to Mr M's account opening shows that he was treated fairly and reasonably. It assessed the information he provided to it, in light of the services he was requesting, and properly warned him when it found a particular service was not appropriate for him. In balancing whether or not to allow Mr M to continue to trade it needed to weigh up all the circumstances, including Mr M's clear wishes. I'm not persuaded there was any reason, at that time, to have prevented Mr M from opening a margin account.

As a result of requesting further trading permissions, Mr M then amended his information two days later. As I've said above, I'm not persuaded there's any inferences I can draw from this, nor that IB ought to have seen this as some sort of indication that there was something untoward with Mr M's application. It has explained how Mr M was required to provide additional information when requesting to trade certain permissions for the first time and this is what he did on 7 February 2021. Based on the information he did provide, I'm persuaded it was fair and reasonable for IB to conclude that he had sufficient knowledge and experience to trade the various products he asked to trade.

Furthermore, looking at Mr M's trading from February 2021, I'm satisfied that the sheer volume of trading and the complexity and variety of financial instruments he traded shows that Mr M was, more likely than not, an experienced trader who knew what markets he

wanted to invest in, had a defined strategy and was evidently wanting to enact it.

Taking all this into account, I don't uphold this element of Mr M's complaint.

How Mr M managed his account and should IB have been alerted to a vulnerability sooner than April 2022

Mr M's complaint is that the volume of deposits, compared to what he had declared his financial circumstances to be, ought to have alerted IB to a problem. The issue is that, as I've explained above, the rules didn't require IB to have done this – they only required it to assess his knowledge and experience when he requested a specific type of service. There was no particular rule that required it to have assessed affordability, and therefore, for it to have continued to assess whether this type of account was affordable for him in light of what it knew about him.

Furthermore, it's not in dispute that Mr M never declared any information to IB that ought to have alerted it to a problem with the source of his money – for example that he was borrowing to invest or that funding the account was creating financial hardship.

At the time, there weren't any particular rules about whether or how accounts such as Mr M's ought to be monitored or whether a certain size of loss, or cumulated losses, ought to trigger the closure or suspension of trading. However, there were two relevant overarching obligations which IB needed to comply with.

The first overarching rule that IB was required to comply with at all times was in COBS 2.1 – Acting honestly, fairly and professionally. In short, this rule required IB to 'act honestly, fairly and professionally in accordance with the best interests of its client'.

The second was complying with the FCA's expectations on how to identify and treat vulnerable customers. The Finalised Guidance on this sets out these expectations: FG21/1 'Guidance for firms on the fair treatment of vulnerable customers'.

In considering how IB complied with these rules until April 2022, when it was directly notified by Mr M of his vulnerability, I've had to weigh up several different factors:

- In deciding what was in its client's best interests IB was required to weigh up what Mr M clearly wanted to do with his money, and what he had been doing, versus its own objective assessment of what it considered was in his best interests.
- The FCA's guidance on vulnerability makes it clear that while frontline staff 'should take steps to encourage disclosure where they see clear indicators of vulnerability' they 'are not expected to go further than this to proactively identify vulnerability'.
- The FCA's guidance directly discusses examples of complex trading on margin, and explains that before restrictions were placed, 'many consumers were unable to understand the complexities of the products or the impact of the leverage on the likelihood of the products making a profit'. But Mr M had experience in these products, and had already been warned about the risks and the complexities of trading on margin.
- The guidance also says firms should 'proactively tell consumers about the options of help and support they offer'.
- Even after over 12 months trading, and significant losses, Mr M was still requesting a margin account, and making additional deposits.

In looking at Mr M's trading statement, I'm not persuaded there was anything that ought to have alerted IB to an undisclosed vulnerability that it needed to encourage disclosure of. It's clear that he was trading large amounts of money, but there was no indication that he was struggling financially, nor have I seen evidence that he disclosed anything like this to IB during the time he was trading with it until April 2022. Furthermore, he had clearly been told about the risks of trading on margin, had been told IB didn't consider it appropriate for him, and still he proceeded to trade. It's clear to me, therefore, that even if IB had attempted to elicit more information from Mr M, for example about how he was able to fund his account, it's more likely than not that he would not have disclosed his vulnerability to it.

This particular aspect of Mr M's complaint relies on me accepting his evidence that the discrepancy between his actual deposits, and what he declared his liquid wealth to be, ought to have been enough for IB to prevent him from trading or to close his account. As a result, because it didn't do so, it ought to refund his losses.

But given what I've said above about Mr M's behaviour, his experience, his trading and the rules which IB was required to follow, I'm not persuaded either of those conclusions would be fair and reasonable.

In my view, the level of deposits was just one part of the information IB had about Mr M – which included how he traded, on what markets, how frequently, and what he said about his experience (which I've already found, by 7 February 2021 showed he had sufficient experience on the derivatives he was trading). But even if I thought that his deposits were such that IB ought to have done something, I don't agree that it would be fair and reasonable for me to conclude that it ought to have unilaterally closed or limited his account, in the absence of any other information. In my view, making IB liable for the very significant losses Mr M incurred during the life of his account would be to ignore the fact that these were his trading decisions – trades that he chose to fund, open and close, and for which in principle, only he was responsible for.

As the FCA have said, IB wasn't required to proactively identify Mr M's vulnerability – and I've seen insufficient evidence to persuade me that before April 2022, there was enough information for it to have concluded that Mr M had a vulnerability such that trading derivatives was not in his best interests.

The April 2022 disclosure

However, it's evident from everything I've said above, that once Mr M did disclose his vulnerability to IB, it was required and obliged to take action. It was clearly not good enough to place this burden back on Mr M, particularly when he very clearly told it that his compulsion was such that he found it impossible to take this action himself.

At this point, it ought to have been abundantly clear to IB that Mr M was unable to manage his account, close it or even manage any open positions.

There was numerous contact from Mr M during this time, but in particular an email sent on 6 April 2022 in my view was sufficient. It outlined areas where he felt IB had failed him, and then stated:

'I unfortunately suffer from a huge gambling addiction and find myself playing/gambling in ways that I just should not do, I suffer from manic periods and depression'.

In my view this email alone ought to have prompted IB to immediately review Mr M's account. At this point, a customer had disclosed to it a vulnerability and it wasn't enough to respond to Mr M's complaint and take no further action, which is essentially what IB did. It

needed to proactively review Mr M's account, from inception to that date – and had it done so, it would've identified the level of losses Mr M had sustained during that period, which would've made his disclosure, and his request to have his account closed, that much more urgent.

Whilst I accept that at that moment Mr M had some open trades, in my view it was clear that continued exposure to market risk via trading derivatives was not in Mr M's best interests at that moment in time – and his subsequent correspondence confirmed this. On 20 April he said *'I cannot control the urge to deposit more and have asked countless times for the account to be closed'*.

I'm therefore satisfied that IB's failure to take any action in relation to Mr M's disclosure, and in particular its failure to limit and close Mr M's account as soon as it was made aware of Mr M's situation, meant that it did not treat him fairly nor did it act in his best interests. I'm therefore satisfied that it is fair and reasonable to require it to pay compensation to him.

Putting things right

For the reasons I've given, I consider that Interactive Brokers (UK) Ltd needs to do more to put things right. I'm satisfied that it did not act in the way the regulator expected it to when Mr M notified it of his difficulties and vulnerability, and it didn't treat his situation with the urgency, care and customer focus it should have.

I've considered how to put things right, bearing in mind that it isn't possible for me to specify exactly what actions it should've taken. I'm satisfied that taking all of Mr M's circumstances into account, including his communications, and the importance of being able to provide some finality to Mr M's complaint, the fair and reasonable way to put things right is to award him his losses from the period 6 April 2022, until the account was closed, plus 8% per year simple on those losses until the settlement date. This is because had IB immediately proceeded to close his account, those losses would've been avoided. And since they were incurred as a result of a vulnerability that he disclosed to IB, specifically instructing it to take the action he could not by virtue of this vulnerability, I'm satisfied this is fair and reasonable.

This means Interactive Brokers (UK) Ltd needs to work out how much cash Mr M had in his account on 6 April 2022:

- a) add any additional deposits from that date;
- b) subtract from a) any withdrawals he made to his bank accounts and any residual balance refunded to him when the account was eventually closed),
- c) Refund him any difference – adding 8% per year simple interest from 6 April 2022 to the date of settlement. I've chosen this date as that's when the account should've been closed, and no further losses would've accrued had IB done this.

Interactive Brokers (UK) Ltd need to provide this calculation to Mr M in a clear and readable format.

I've also considered the distress and inconvenience Mr M suffered. I agree with the investigator that not all of this was caused by IB – some of it was clearly caused by Mr M's condition, and his own actions throughout the life of the account which, for the reasons I've given above, I don't consider IB was responsible for.

However, his communications with IB after 6 April 2022 clearly show the difficulty he was experiencing in getting his account closed, and I consider that his language could not have been any clearer. I'm therefore satisfied that an award of £750 is fair and reasonable compensation for this.

My final decision

My final decision is that I partly uphold Mr M's complaint and award the compensation I've outlined above. Interactive Brokers (UK) Ltd must pay the compensation I've awarded within 28 days of when we tell it Mr M has accepted this final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 31 December 2023.

Alessandro Pulzone
Ombudsman