

The complaint

Mr D complains that Sporting Index Limited allowed him to open a spread betting account when it was inappropriate for him.

What happened

Mr D had an account with Sporting Index Limited. He placed a number of fixed odds bets but also incurred losses playing virtual games. Sporting Index explained the virtual games were a form of spread betting and Mr D complained. He explained that he was registered with GAMSTOP and would've failed any credit check. He said because of this he felt he shouldn't have been able to make spread bets.

Sporting Index Limited explained that Mr D's account had access to both fixed odds and spread betting. It said it was "limited risk" which meant Mr D couldn't lose anything more than his initial deposit. It said it offers its services on an execution only basis and Mr D had confirmed he'd read the risk statement and terms of the account. Sporting Index Limited said it closed Mr D's account as soon as it was aware he was vulnerable so it hadn't done anything wrong.

I sent my provisional decision on 28 April 2023 setting out why I intended to uphold this complaint. The relevant extract, which forms part of this decision, is as follows:

"GAMSTOP

Mr D has explained he's registered with GAMSTOP, which ought to prevent him from opening gambling accounts. Sporting Index Limited is registered with the Gambling Commission and has shown evidence that it checked the register but that Mr D's details didn't show up. Our Investigator was satisfied there were differences in the way Mr D had input his information which meant his details didn't come up in the search. It hasn't been disputed that this is the reason Mr D's GAMSTOP registration didn't come up in Sporting Index Limited's check and so I find this wasn't Sporting Index Limited's fault.

Should Mr D have been allowed to place spread bets?

The crux of this complaint is that Mr D incurred losses playing a virtual spread bet game. When Sporting Index Limited highlighted this to Mr D, he complained as he knew he didn't understand how spread bets worked. I've thought about whether Sporting Index Limited has complied with regulations here.

The relevant regulations I've taken into account here is COBS 10 which relates to a firm which arranges or deals in relation to a non-readily realisable securities, speculative illiquid securities, derivatives or warrants. In this case Sporting Index Limited arranges deals in relation to derivatives – contracts for differences, a future or an option. It arranges spread bets to enable its clients to bet that the future event would be better or worse than a prediction. And it settles that bet based on the difference realised as a result. In Mr D's case, he was making spread bets based on a random number generator.

COBS 10.2 places clear obligations on firms to assess a consumer's appropriateness before they open an account within which they can place spread bets. It obliges firms to ask its client to provide information regarding his knowledge and experience in the investment field

relevant to the type of service it offers. And it obliges firms to determine whether the client has the necessary experience and knowledge to understand the risks involved.

COBS 10.3 says “If a firm considers, on the basis of the information received to enable it to assess appropriateness, that the product or service is not appropriate to the client, the firm must warn the client.”

Sporting Index Limited has told us that appropriateness questions were asked. I’ve looked at the account opening procedure and I can see the following questions were asked:

“Has experience with spread betting?” – to which Mr D answered “no”.

“Has read risk disclosure?” – to which Mr D answered “yes”

“Understands can lose more than deposit?” to which Mr D answered “yes”

“Has accepted terms and conditions?” – to which Mr D answered “yes”.

COBS 10.2.1 says “a firm must ask the client to provide information regarding his knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded so as to enable the firm to assess whether the service or product envisaged is appropriate for the client.” But Sporting Index Limited merely asked Mr D whether he had experience with spread betting. There’s no other questions asked which would enable Sporting Index Limited to have assessed whether the account was appropriate for Mr D. However, I’m mindful from the first question, it’s clear that Mr D had no experience. In situations such as these, it’s very likely that a firm would conclude that spread betting wasn’t appropriate for Mr D. So, I’ve considered what Sporting Index Limited then did.

I can see that it had a link to its Risk Disclosure Statement, and that Mr D confirmed he’d read it. That disclosure statement refers to the types of risk relating to various features of its platform. But I’ve seen no evidence that Sporting Index Limited told Mr D it had assessed that a spread betting account was inappropriate for him and warned him that he should not proceed. This is what is required under COBS 10.3 – which was confirmed more recently by the FCA in 2017 in a review in which it said that firms should “use clear language to communicate that a specific product or service is not appropriate for the applicant because the applicant’s answers lead the firm to the view that the applicant does not have the knowledge and experience to understand the risks involved, with a clear recommendation against proceeding with the transaction.”

I’ve not seen that Sporting Index Limited provided this warning to Mr D. I acknowledge its argument that it would only carry out that level of assessment if Mr D tried to remove the stop loss/win function from his account. However, I’ve not seen anything from Sporting Index Limited, with reference to the specific COBS rules, as to why it wasn’t obliged to carry this out for Mr D’s account – especially as it confirmed that all new accounts, including Mr D’s, give access to spread betting. If it believes that these regulations do not apply to this account I invite it to explain, with reference to specific COBS regulations, as to why that is the case in response to this decision.

Detriment to Mr D

I’ve thought carefully about what position Mr D would be in had Sporting Index Limited not made an error. I understand that Mr D would like the losses he’s incurred through spread betting back, but realistically this account would always have enabled Mr D to place spread bets as Sporting Index Limited has said all its new accounts do.

In my view, Sporting Index Limited ought to have assessed that a spread betting account was inappropriate for Mr D and provided a sufficient warning that this was the case, warning him that he shouldn’t proceed. Had that been the case, I’m not persuaded Mr D would’ve opened this account. I say this because his immediate reaction to being told he was placing spread bets was to complain, explaining he didn’t understand how they worked. I’m also mindful that he’s vulnerable and registered with GAMSTOP. As such, I don’t think it’s likely

he'd have taken an account where he could risk losing everything he's deposited with spread bets – something he's explained he doesn't understand.

So, to put things right, I think Mr D ought to be put in the position he'd have been in had he not opened the account. As such, all transactions he made in his account (inclusive of the fixed odds bets) should be reversed. If there is a loss, this should be refunded to Mr D.

I've thought about whether interest should be awarded on this refund. However, I'm not persuaded that Mr D would've kept hold of this money, I think it's likely it would've been used for similar purposes to some of his other transactions. As such, I don't think it would be fair for Sporting Index Limited to pay Mr D interest on the refund.

I do think Mr D has been caused some distress by Sporting Index Limited's error, and I think the £150 compensation recommended by our Investigator is fair and reasonable. It's clear that finding out he was exposed to spread betting caused Mr D concern for which I think the recommended compensation is fair and reasonable."

Responses to my provisional decision

Mr D accepted the provisional decision. Sporting Index Limited provided additional comments to be considered. These can be summarised as follows:

- Its appropriateness assessment was more thorough than outlined in the provisional decision. It also assessed Mr D's employment status and nature of work. It believed his role as an analyst implies financial understanding.
- It performed an affordability check on Mr D.
- It didn't issue a warning of inappropriateness as per COBS 10.3 as it believed it wasn't required in this specific situation. This is because it had assessed the limited risk spread betting account was appropriate for Mr D.
- Sporting Index Limited employs this approach as industry standard practice for inexperienced traders, allowing them to gain exposure and understanding of spread betting within a controlled risk environment. Without this approach, it believes new traders would be excluded from understanding and accessing spread betting services.

Mr D later submitted further comments to say that his work doesn't require financial understanding and that he doesn't understand what a stop loss function is. He maintains the account posed too high a risk.

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.

I've thought carefully about Sporting Index Limited's response and I've addressed its points below.

I've noted that it obtained information on Mr D's employment – but this still isn't sufficient to assess whether a spread betting account is appropriate for him. I'd also disagree that Mr D's job title implies any financial understanding as it has said. COBS requires Sporting Index Limited to ask Mr D details about his experience in the investment field relevant to the specific type of service it is providing. In this case it's a spread betting service, and the only question that related to Mr D's knowledge and experience in this field was *"Has experience with spread betting?"* to which Mr D answered "no".

Sporting Index Limited said that it felt it had sufficient information to deem the account appropriate for Mr D, and so it didn't issue a warning as set out in COBS 10.3. It said that given the limited risk with this specific account, it felt it was appropriate for Mr D. I've thought very carefully about this.

COBS 10.2.2 says *“When assessing appropriateness, a firm must determine whether the client has the necessary experience and knowledge in order to understand the risks involved in relation to the product or service offered or demanded.”*

I’ve covered off in my provisional decision why I don’t think Sporting Index Limited asked sufficient questions to understand Mr D’s knowledge and experience. But in any event, it was clear that he didn’t have any experience in spread betting. I understand the service being offered to Mr D was for “limited risk spread betting” – which Sporting Index Limited has explained has built in stop losses to ensure Mr D doesn’t lose any more than the money he has in his account. But I’m not persuaded that Mr D had the knowledge or experience to understand the risks of this account. I’ll explain why.

I’ve looked at the bets Mr D made using Sporting Index Limited’s virtual spread bet games. I’m satisfied that this isn’t akin to a fixed odds betting account – which is what Sporting Index Limited has said. Mr D could place a spread bet with a specific stake and still lose any available balance he has in his account – even under this “limited risk” account. He could lose up to the amount he’s got available rather than just the stake he placed on the virtual game. I don’t think he understood how this worked – which is clear from his emails relating to it. And given he’d told Sporting Index Limited that he had no knowledge or experience in spread betting, it ought to have provided him with the warning in line with COBS 10.3. Had it done this, I think it would’ve alerted Mr D that he was opening account with more risk than he was comfortable taking and he wouldn’t have proceeded.

I do note that Sporting Index Limited believes that without its approach, inexperienced traders would be excluded from understanding and accessing spread betting services but I disagree. Clients are often able to access provided there’s been sufficient warning, and there are a number of demo accounts and educational tools out there to gain some experience and exposure. In any event, I’m not persuaded that Sporting Index Limited complied with the regulations in this specific case. It didn’t ask sufficient questions to Mr D to understand his experience and knowledge in relation to spread betting, and even with the limited information that it had, it ought to have provided a warning to Mr D given he had no experience. It didn’t do this, and because of this Mr D was able to open an account that led to him making transactions he didn’t have the knowledge to understand. And had he been warned, I don’t think it’s likely he’d have opened the account. So I’ve reached the same findings as set out in my provisional decision – the relevant extract of which is copied above and forms part of this decision.

Putting things right

Sporting Index Limited must do the following:

- Reverse all transactions Mr D made in his account with it and, if there’s a loss, refund that to Mr D.
- Pay Mr D £150 compensation for the distress and inconvenience.

My final decision

My final decision is that I uphold this complaint. Sporting Index Limited must follow the instructions I’ve set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr D to accept or reject my decision before 14 July 2023.

Charlotte Wilson
Ombudsman