DRN-4169691

The complaint

Mr P complains that IG Index Limited trading as IG allowed him to open a spread-betting account despite him asking it to prevent him from doing so some years before. He says he suffered financial losses as a result.

What happened

Mr P has had a spread-betting account with IG for a number of years. In June 2014, after sustaining considerable trading losses, Mr P telephoned IG. He made reference to a prior request to close his account, but IG told him there was no previous mention of a permanent closure – only that he'd been unhappy with a dividend adjustment on his account and closed his account in response. He was told on the phone that IG could send him an email explaining that he could self-exclude from IG's services, and for how long, and he'd need to respond to that email to make it happen.

Mr P agreed and shortly after the phone call he received IG's email. This said:

'As discussed on the phone, we can close your account and self-exclude you from opening your account for a period of five years at your request because you are losing too much money. If you try to open your account during this time you will be blocked'.

Mr P was asked to respond to this email, which he did, and he then received a follow-up that confirmed his account had been closed and said:

'*We will note on our records that you do not want it to be reopened for a period of at least five years'.* It went on to say that this couldn't be guaranteed and explained that after the five year period IG would *'apply a one week cooling off period after receiving your written instruction before allowing access to gambling facilities'*. It directed Mr P to a website about gambling and gave him advice about how to block access to such sites on his computer.

In March 2020 Mr P applied to IG to open another account. He gave certain answers that weren't consistent with him previously having an account (for example saying he had never traded derivatives) and gave some personal information, some of which was also inconsistent. This meant that IG didn't identify he had previously had an account and consequently that he had previously asked to be excluded. It proceeded to open his account, with a warning about the risks of spread-betting.

In April 2022, Mr P complained to IG. In short, he said that IG had allowed him to open an account when it shouldn't have and said that he had been allowed to accumulate losses despite his vulnerability.

IG looked into his complaint, but didn't agree it had done anything wrong. It said at the time Mr P had opened his new account, his details hadn't matched his previous account profile, and that's why his previous request to self-exclude hadn't been identified. It said that he had been told at the time that this couldn't be guaranteed. It also said that having identified the information he supplied, and how he traded (including the losses he sustained), there were no issues which would've suggested Mr P was suffering a vulnerability that IG needed to be

aware of. It noted that Mr P had numerous conversations with staff during which no issues were mentioned, and the previous request to self-exclude was not based on disclosing a vulnerability.

Mr P didn't agree and referred his complaint to this service. One of our investigators looked into his complaint, but also didn't think it should be upheld. He said:

- The email Mr P originally received said that the self-exclusion couldn't be guaranteed.
- He saw there was a mis-match between some of the data he provided in 2020, and the data IG held about his previous account – this was the reason his self-exclusion wasn't picked up.
- In any event, as 5 years had passed since then, all that IG would've done differently is provide Mr P with a cooling off period. Based on how Mr P went on to trade for two years, he didn't think a one week cooling off period would've made any difference.
- Mr P had not previously mentioned a vulnerability or an addiction, and none of the calls he had with IG from 2020 onwards suggested this was a problem.
- When looking at Mr P's trading, he identified that:
    - Mr P had lost on average £17,000 per year, which was in line with his financial circumstances considering his income of £75,000.
    - He noted his account had been funded by credit card, but this alone would not have suggested a vulnerability – this was a common type of funding for an account of this nature.
    - He'd made around 7,500 trades, an average of 10 a day, which did not seem excessive – and had a ratio of over 57% winning trades. The timing of his trades did not appear erratic or uncommon.
- The investigator therefore concluded that there was nothing that suggested IG had acted unfairly and unreasonably in not identifying Mr P's vulnerability. As a result, he didn't consider IG ought to do anything further.

Mr P didn't agree. He disagreed that it was right for IG to have allowed him to 'run the account' the way he had after he had previously asked to be self-excluded – and he said that it wasn't right to say IG had no duty of care simply because he hadn't told anyone about his vulnerability. He said he was concerned about other people in his same position.

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.

I'd like to take this opportunity to explain that I fully understand Mr P's strength of feeling on his complaint, and I sympathise with the financial impact his trading losses with IG have had on him, and are likely still having on him. However, when looking at the circumstances

surrounding Mr P's complaint, my role is to be impartial and consider what's fair and reasonable. This means taking into account IG's role, its obligations as set out by the Financial Conduct Authority (FCA), but also the nature of the service it offers which involves a high risk form of trading which Mr P had significant experience in which he had accumulated over a number of years.

The FCA has produced guidance for firms on the fair treatment of vulnerable customers (FG21/1). It says that staff '*should take steps to encourage disclosure where they see clear indicators of vulnerability (see below) but are not expected to go further than this to proactively identify vulnerability*'.

It also says firms '*should help frontline staff to understand how to actively listen out for information that could indicate vulnerability and, where relevant, seek information from vulnerable consumers that will allow them to respond to their needs*'.

It gives examples of the types of steps staff should take:

'The steps firms should take to seek information will depend on the type of interaction, the consumer, and the type of service provided. For example, if a consumer has briefly mentioned something that could indicate vulnerability, then staff should be proactive in following this up. For example, by sensitively asking if it might affect their needs or by offering a service that is available. However, if the consumer is clearly not willing to share further information, it may not be reasonable for staff to continue asking questions'.

In relation to spread-betting, the FCA gives a specific '*example of poor design that could result in harm to vulnerable consumers is contracts for difference (CFDs) offered to retail consumers. This can include financial spread bets. These complex, leveraged products are offered through online trading platforms. Before we imposed restrictions on how CFDs were sold to retail consumers, their projected returns made these high-risk, speculative products seem attractive. However, 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. This put consumers, particularly those with low financial resilience, at risk of significant financial losses that they would be unable to absorb*'.

The FCA also has rules which govern the way businesses provide their services to consumers and these are set out in the Conduct of Business Rules (COBS). COBS 2.1 says that a firm must act 'honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule)'.

Taking all the above into account, I'm sorry to disappoint Mr P but I don't have much to add to what the investigator has already told him. It should be clear the example about spread-betting is about a different type of consumer – one who is unable to understand the complexities of the product offered, or the likelihood of making a profit. But Mr P had knowledge and experience of spread-betting, and already experienced the risks of losing money doing so.

I've listened to the telephone call he had in 2014 when he asked for his account to be closed, and I'm satisfied he makes no reference to an addiction or any other type of vulnerability that might've caused IG to treat him differently. Nevertheless, it agreed to close his account and apply a self-exclusion marker and I'm satisfied that it made it clear to Mr P that this could not be guaranteed. When Mr P opened a new account with IG in 2020, it's clear that some of the information had changed. Whilst Mr P may not have done that deliberately, I'm satisfied this meant that it wasn't unreasonable for IG to have been unable

to match him to the previous account – particularly in view of the fact that he said he had never previously traded derivatives.

As the investigator pointed out, however, even if Mr P's previous account had been matched, all that would've happened is that Mr P would've needed to wait for a week before having his account opened – and given that Mr P went on to trade for 2 years, I'm satisfied that it's likely the cooling off period would not have made a difference to his desire to open the account at that moment in time. Once his account was opened, I agree that there was nothing in the way Mr P managed his account that ought to have caused IG to be alert to his vulnerability. The way he traded, the volume of trading, the amounts he lost and won, and the times at which he traded were not unusual in the sense that IG ought to have identified him as a potentially vulnerable client. And he did not disclose anything to IG which ought to have caused it concern or encouraged it to follow-up with him. As I've noted above, IG was not required to identify a vulnerability in the absence of any disclosure or other reasonable sign that Mr P had one.

In terms of his financial resilience, I agree that simply funding his account via credit card was not sufficient on its own. It's possible that a change in the way a consumer funds the account, combined with other factors, may be an indicator of a change in circumstance. But this was not Mr P's case. And the financial circumstances he declared to IG were not inconsistent with the amounts he was spending while spread-betting. So here too I'm not persuaded there were particular indicators which mean I can conclude, fairly and reasonably, that IG ought to have identified his vulnerability but didn't. I appreciate Mr P considers IG's obligations to be proactive, but that is not what the FCA expects. As I've noted above, IG was required to be alert to signs of Mr P's vulnerability – but it was not required to proactively identify his vulnerability. And as I've noted above, IG was providing a high risk type of service – which causes capital losses to the vast majority of its clients. So Mr P's account was not unusual in that regard either.

Taking all this information into account, I'm therefore satisfied that the losses which Mr P sustained on his account were trading losses not caused by something IG did or didn't do.

My final decision

My final decision is that I don't uphold Mr P's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 6 March 2024.

Alessandro Pulzone
Ombudsman