

## **The complaint**

Mr A complains that Activtrades Plc unfairly persuaded him to make an application to be treated as an elective professional client ("EPC") for contracts for difference ("CFD") trading, then incorrectly assessed him as meeting the required criteria. As a result, he incurred significant losses of both his own money and that borrowed from friends, a situation he believes was compounded by Activtrades trading against him.

## **What happened**

Mr A opened a CFD trading account as a retail client with Activtrades in March 2012. He traded regularly and in July 2018 made a successful application to be treated as an EPC. He then continued to trade until early 2022, at which point he ceased trading and complained.

Initially Activtrades told us that it didn't think we had the jurisdiction to look at Mr A's complaint. It said he had been acting in a professional capacity so didn't meet the criteria of being a consumer. That matter has been considered by another ombudsman who decided that we could consider Mr A's complaint. I agree with those findings, so will not be making any further findings in this decision on the matter of our jurisdiction.

Mr A complained to Activtrades about its decision to recategorise him as an EPC. He said that Activtrades unfairly induced him to apply for that status, by taking him out to dinner, and providing gifts of electronic equipment. He says the increased leverage allowed on professional accounts meant that his losses were significantly greater. And Mr A complained that his losses were compounded by the ways Activtrades operated in the markets, carrying out transactions in its own name. Activtrades didn't agree it had done anything wrong, so Mr A brought his complaint to us.

The merits of Mr A's complaint have been assessed by one of our investigators. She thought that Activtrades had properly assessed whether a professional account was appropriate for Mr A. And she thought that Activtrades had been transparent throughout about how its business was conducted – something that Mr A had accepted via the terms and conditions of his account. So she didn't think the complaint should be upheld.

Mr A didn't agree with that assessment. So, as the complaint hasn't been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process.

## **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.

In deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mr A and by Activtrades. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

At the outset I think it is useful to reflect on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority ("FCA"). Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

In 2018, Mr A's account status with Activtrades changed from a retail customer to that of an EPC. It is from that point that Mr A's complaint starts. So in this decision I am not considering whether anything went wrong when Mr A's relationship with Activtrades first started, or in any of the trades he placed as a retail customer.

I think it is fair to say that Mr A's initial relationship with Activtrades hadn't been entirely successful. He says that in the trading period before he became an EPC he had lost his entire investment capital. But as I will now go on to explain, I don't think those losses in themselves are a reason why Activtrades shouldn't have continued its relationship with Mr A.

Mr A lives in a European capital city. He says that he was invited to an evening meal at a local restaurant by Activtrades. And he says that during that meal he was given inducements in the form of electronic equipment to restart his trading relationship. He says that Activtrades encouraged him to become an EPC so that he could invest using money he sourced from other parties.

I've looked carefully at the emails that were exchanged between Mr A and Activtrades setting up the meeting over dinner. I think I should firstly say that I don't think there is anything inherently wrong in holding a meeting of that nature – businesses will often meet with valued customers in a more relaxed environment such as a restaurant. And I can see in the emails that Activtrades told Mr A that it would be giving him his "rewards orders" at the meeting. I think it clear from the tone of the messages that Activtrades valued Mr A as a customer, and that Mr A was very happy with the relationship he had with the firm.

I obviously have no way of knowing what was discussed during the dinner meeting. But on the following day Mr A sent an email to Activtrades asking to set up what he called a "company account". He explained in that email why he thought he would meet the eligibility criteria that the regulator required applicants to demonstrate when applying for an EPC account. Those criteria can be found in section 3.5.3 of the FCA's Conduct of Business Sourcebook ("COBS").

Activtrades told Mr A that his previous transactions with the firm would satisfy one of the criteria. It told Mr A that he would also need to demonstrate either one year's experience in a relevant financial role, or to have more than EUR 500,000 of liquid assets. Mr A replied explaining that he would be able to meet either criteria. And later he sent Activtrades a letter from his previous employer confirming his period of employment, that Mr A said included working with products including leverage.

I have seen nothing to make me think that Activtrades unfairly persuaded Mr A to apply to become an EPC. The evidence that has been provided suggests that Mr A made that request and provided Activtrades with all the information it said it needed to make a fair

assessment, in line with its regulatory responsibilities, that Mr A met the relevant criteria. I am satisfied that the information Activtrades held, and that Mr A provided, was sufficient to suggest it would be appropriate for Mr A to be designated an EPC.

Once it had designated Mr A as an EPC, Activtrades was required to take further steps to ensure that Mr A was sufficiently aware of the risks of operating an account of this nature. Again, the relevant rules can be found in section 3.5.3 of COBS. In summary, once Mr A had indicated in writing that he wished to be treated as an EPC, Activtrades needed to give him a clear written warning of the protections and investor compensation rights that Mr A might lose, and Mr A needed to confirm he was aware of those consequences. I have seen emails that would lead me to conclude that each of those steps were followed.

The account that Mr A held with Activtrades was in his sole name. He gave no indication that the funds he was using were being sourced in a professional capacity – that is he was dealing on behalf of his own clients. Instead it appears that Mr A, without the involvement of Activtrades, simply borrowed money on an informal basis from friends and relatives. Whilst I have no doubt that the loss of those funds has placed Mr A in a very difficult position, I cannot conclude that those losses were the responsibility of Activtrades.

Mr A's relationship with Activtrades was always on an execution only basis. So Mr A was entirely responsible for the investment decisions that were taken. Becoming an EPC allowed Mr A the opportunity to trade with greater leverage than he had enjoyed whilst a retail customer. I can see that Mr A asked Activtrades, shortly after becoming an EPC, to apply a leverage of 1:200 on his trades. Whilst that leverage no doubt increased the losses that Mr A has experienced, again I must conclude that it was appropriately offered by Activtrades, and specifically requested by Mr A.

As part of its terms and conditions Activtrades explained to Mr A that it would act as principal when carrying out transactions and therefore deal in its own name. And its order execution policy expanded on that by saying Activtrades was the only execution venue it offered for client's trades, acting as principal and dealing on its own account. I think those terms are clear, and were accepted by Mr A before he started trading as an EPC.

I have considered the information that Mr A has provided to us about an employment tribunal ruling in relation to one of Activtrades' employees. Whilst, as Mr A suggests, in that instance there might be a suggestion of improper conduct, I haven't seen anything to make me think those issues were more widespread, or had any impact on Mr A's trading account. As our investigator has explained to Mr A, I am required to consider individual complaints on their own merits. Here I haven't seen any evidence to suggest that Activtrades created any conflict of interest on the trades placed by Mr A, or that any conflicts caused him to lose out.

I appreciate that my decision will be very disappointing for Mr A. His losses from his trading relationship with Activtrades have been significant. But in summary I don't think Activtrades acted inappropriately when categorising Mr A as an EPC – it followed the regulator's rules and gathered the necessary evidence to support that decision. And I haven't seen anything to make me think that any conflicts of interest arose, or that they caused Mr A to lose out, in the way Activtrades managed Mr A's dealing instructions.

**My final decision**

For the reasons given above, I don't uphold the complaint or make any award against Activtrades Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 9 May 2024.

Paul Reilly  
**Ombudsman**