

## **The complaint**

Mr L complains that Sporting Index Limited let him trade using a trading facility without carrying out appropriate checks. He also says that it let him trade throughout the years without picking up on his vulnerability. He says that he lost a significant amount of money as a result.

## **What happened**

Mr L had a spreadbetting account with Sporting Index which he had opened in 1997. He was given a credit facility of £1,500 that he could use for trading, and throughout the years placed thousands of trades.

In 2021 Mr L's account had a negative balance which Mr L was unable to pay back immediately. Initially the account was suspended – having cleared the balance, Mr L asked the account to be allowed to trade again, but this was declined. Sporting Index explained that this was based on some of the communications from Mr L which suggested gambling had caused significant losses and financial difficulties. Mr L complained about this decision, and alleged he should never have been allowed to trade in the first place – especially with the trading facility. Sporting Index didn't agree Mr L had been treated unfairly nor that he was entitled to compensation, and so Mr L referred his complaint to this service.

One of our investigators looked into Mr L's complaint. She concluded that given the nature of his complaint, Mr L ought to have complained about the opening of his account much earlier than he did. She therefore concluded that under the rules that govern which complaints this service can look into, she could not consider anything Sporting Index did or didn't do in relation to Mr L's account prior to September 2015 – that being 6 years before Mr L raised his complaint.

In looking at the period 2015 to 2021, the investigator concluded that Sporting Index knew or should've known that Mr L had a vulnerability such that spreadbetting was not in his best interests. She concluded that the trades on his account, the persistent negative balance as well as his use of the trading facility all indicated he had financial difficulties.

She said that Sporting Index therefore ought to have stepped in and stopped Mr L from trading – and if it had done so, he would've avoided the significant losses he sustained from 2015 onwards.

Sporting Index didn't agree. It said:

- The trading facility Mr L had was for £1,500 only and was based on his longstanding relationship with the firm.
- Mr L never made Sporting Index aware of any issues or problems until he mentioned he was borrowing money to pay back the debt. At this point it said it immediately acted.
- As per the terms of the account, Mr L was trading on an execution only basis and this means it was his responsibility to ensure he had sufficient funds in his account to cover his losses.

Mr L agreed with the investigator, and provided some additional comments. In short, he said that it should've been obvious from his statements that he was struggling and had a gambling problem. He said as with any addiction it was difficult to tell Sporting Index about it, and it should've been its responsibility to check his vulnerability. He said he has consistently had a terrible credit rating throughout the years, and this would've been apparent to Sporting Index had it checked. And he said that he didn't really have any relationship with Sporting Index, as it consisted only in emails its credit department sent chasing him for payment. He also said that he could've lost £10,000 in his last trade and was fortunate to have only lost £4,000. He sent two emails showing an agreement to repay his negative balance in instalments.

As agreement couldn't be reached, the case was passed to me to decide. Before issuing my provisional decision, I asked Sporting Index for some further information. In particular, I asked it to explain how it reviewed Mr L's account over the years, and what its process was for identifying vulnerable clients. I also asked it to give some information around the number of clients, in the period in question, who had a negative balance.

Sporting Index provided the following information:

- It said that it treated all credit customers on an account by account basis. It said that Mr L was a very long term customer 'who had a track record of always making payments even if there were occasional delays'. It said that there never any alarms around vulnerability due to the relatively low level of his credit limit and his 'general good standing with us'. It said he had never suggested or acted in a manner that caused any concern around vulnerability.
- It said that he was rejected a higher limit on occasion, but it said that 'this was mainly because [...] we have very few credit account customers and there would only be appetite to extend in the period in question for ultra high net worth individuals'. It said that its decision not to increase his credit was down to 'an abundance of caution' given that he had occasionally taken longer to pay back.
- It said that it offered a number of player protection tools on its platform, including deposit limits, time outs, cool downs and self exclusion – and these links are displayed throughout its website. It explained that it had a 'dedicated player protection team' who were trained in spotting player vulnerability 'with a focus on looking for spikes in playing time, spend, changes in playing patterns'.
- It said that on 31 December 2021, it had over 700 accounts with a negative balance of £100 or more. This amounted to around 5% of its active customers. It said it wasn't possible to identify customers who had a persistent negative balance during the period 2015-2021.

I issued a provisional decision in September 2023. In it I said:

*'I think it's important that I clarify some aspects of this case and my remit first, before I go on to explain why I disagree with the investigator.'*

*Sporting Index has not caused Mr L's financial losses. These losses were the result of spreadbets which Mr L placed on various sporting events throughout the years, and which*

*didn't go in his favour. Mr L losing money spreadbetting isn't unusual, most consumers do, and it wasn't unlawful for Sporting Index to have offered this type of trading to him.*

*My role is to look at what Sporting Index did or didn't do, and decide whether its actions or inactions were fair and reasonable, taking into account the law, relevant regulations and industry good practice. But my role does not extend to making new rules, or applying rules retrospectively.*

*Finally, I do agree with the investigator that only the 6 years preceding Mr L's complaint to Sporting Index are within this service's jurisdiction. Consequently, I will not make any finding on how the account was opened, or anything that happened on the account before 2015.*

*Most of the rules which governed Sporting Index's relationship with Mr L were about when to allow a consumer to open a spreadbetting account.*

*There weren't any particular rules about whether accounts such as Mr L'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 Sporting Index needed to comply with.*

*The first overarching rule which Sporting Index was required to comply with at all times was in the Financial Conduct Authority's Conduct for Business Rules (COBS) COBS 2.1 – Acting honestly, fairly and professionally. In short, this rule required Sporting Index 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, FG21/1 'Guidance for firms on the fair treatment of vulnerable customers'.*

*In considering how Sporting Index complied with these rules, I've had to weigh up several different factors:*

- In deciding what was in its client's best interests Sporting Index was required to weigh up what Mr L clearly wanted to do with his money, and what he had been doing for almost 20 years by that point – 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 spreadbetting, 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'.*
  - The guidance also says firms should 'proactively tell consumers about the options of help and support they offer'.*
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- Spreadbetting is inherently a high risk form of trading, and for most consumers is not in their interests – but that's because most consumers don't have the knowledge or experience to understand the high risks, and therefore, the significant negative financial impact such trading can have. Mr L was not in this category – he was fully aware of the risks and how spreadbetting worked because he had been doing it for so long.*

*Taking the above into account, I'm not persuaded there were particular obligations on Sporting Index to evaluate Mr L's losses in terms of affordability, or to proactively contact him about his losses or his trading.*

*So for me to conclude that Sporting Index ought to have limited or stopped Mr L trading at some point between 2015 and 2021, I'd need to be persuaded that there was something inherently untoward in the way that Mr L was managing his account – the FCA's guidance highlights this when it talks about signs to look out for, such as 'unusual activity on an account' or 'payments stopping suddenly'. In the context of spreadbetting, I'm satisfied that the guidance required Sporting Index to be alert to something so obvious that it ought to have prompted it to seek assurance, from Mr L, that spreadbetting was still in his best interests.*

*Mr L's main arguments appear to be that he should never have been given a trading facility to trade with. And the size of his losses, as well as his negative balance, ought to have prompted Sporting Index to suspend or close his account much sooner than it did.*

*The investigator agreed with Mr L, and concluded that this should've happened in September 2015 – so that all losses between 2015 and 2021 would be refunded. But I don't currently agree that's fair and reasonable.*

*In relation to the trading facility that Mr L was given, I'm not persuaded I have sufficient evidence to conclude that Sporting Index did something wrong by offering it to him. I'm also not persuaded that it made much difference to Mr L's trading because the amount of credit available for trading was very limited, compared to the overall amount he invested between 2015 and 2021.*

*I've also carefully considered Mr L's trading, and whether the way he managed his account, both in terms of his balance and his trading, ought to have prompted Sporting Index to take further action.*

*I should say first of all that I don't agree September 2015 is a fair to date to say that Sporting Index ought to have taken action. I say this because from July 2015, when Mr L had a negative balance of just over £2,100, to April 2016, Mr L didn't carry out any trades. He regularly paid a set amount from his debit card until his balance was cleared. In looking at this period, I don't agree I can make any inferences or conclude that Sporting Index should've known something was wrong. Mr L stopped trading of his own volition, and was paying his negative balance off every month using a debit card. Neither of these actions, in my view, inherently indicate a vulnerability that Sporting Index needed to explore. Sporting Index had thousands of clients, and I don't agree there's anything in this instance that ought to have alerted them to Mr L doing something that was not in his best interests.*

*Furthermore, Sporting Index has said that it had 100s of clients, at any given point, that had a negative balance – and so Mr L's account would not have been unusual. It had a process in place for dealing with clients on a case by case basis, and I'm satisfied this was fair and reasonable.*

*From April 2016 until early 2021, Mr L placed around 1800 trades on a variety of sporting events. This shows that Mr L was fully aware of what he was doing, was very active, and was trading consistently.*

*Of the 1800 trades he placed, over 800 were profitable, netting him around £77,000 – whilst the other 1000 were loss-making, totalling around £115,700. Looking at these numbers, I remain of the view that there was no indication that Mr L was doing something that he*

*shouldn't, or was exposing himself to more economic harm than he could handle.*

*As I mention above, spreadbetting is an inherently high risk type of trading, and most consumers lose money doing it. A typical trader may have many more losing trades than winning ones, and Mr L's ratio of winning trades to losing trades isn't, in my view, exceptional or atypical. And, given the sums involved, it's clear to me that Mr L did have some success trading. So Mr L's trading itself, or his limited success doing it, is not in my view enough to conclude that Sporting Index ought to have been alerted to Mr L's situation.*

*As the guidance from the FCA indicates, frontline staff ought to have been alert to signs Mr L might have a vulnerability – but they were not required to proactively identify it. I don't agree that Mr L was treated unfairly by Sporting Index not identifying that he had or may have had a vulnerability during this time period.*

*I've therefore also considered his account balance. Between 2015 and 2021, Mr L's balance was in negative the majority of the time, usually between £-1000 and 0. Until 2019, Mr L's balance never fell below £-1,500, and his highest negative balances were in 2020 and, in particular, 2021.*

*It isn't for me to set a limit or specify at what point a negative balance ought to prompt Sporting Index to take action, particularly given that negative balance protection, which is a regulatory requirement for financial spreadbetting, is not a requirement for sport spreadbetting. In my view, a consistently rising negative balance, combined with consistently loss-making trades and lack of any ability to pay the majority of the debt back, may indicate financial difficulties. But again, this wasn't Mr L's case. His statements show that he regularly deposited money in his account – almost £56,000 during the period in question. And during that same period, there were over 100 occasions when he was able to withdraw sums from his account, over £15,700.*

*So I'm not persuaded that Mr L's account showed anything that ought to have prompted Sporting Index to treat him differently, or question whether allowing him to continue to trade was in his best interests. And even if I thought Sporting Index ought to have contacted Mr L to 'check in' at some point between 2015 and 2021 (bearing in mind that there was no regulatory requirement for that to happen), it's clear to me that Mr L was determined to trade. The size of his losses, his negative balance or his losing trades did not stop him trading regularly. And so I'm not persuaded there's anything he would've disclosed to Sporting Index that would've prompted it to unilaterally stop him trading – and for me to conclude that his losses ought to be refunded, that's what I'd need to be persuaded would've happened.*

*The first opportunity Sporting Index had to recognise that Mr L had a vulnerability and was also in financial difficulties was in early 2021. At that point his balance was higher than it had been, and he clearly indicated to Sporting Index the lengths he had gone to in order to pay back the debt – including borrowing from family and friends.*

*I'm satisfied that this was the point when Sporting Index had enough information to decide whether spreadbetting remained in Mr L's best interests – and I'm satisfied it was fair and reasonable for it to conclude, at that point, that it no longer was in Mr L's best interests to continue trading on its platform.'*

Mr L didn't agree with my provisional decision. He said:

- He received 100s of emails from the credit department chasing money and this should've been considered a red flag. He said that paying back the loss over a year was a red flag, and all he could pay was £20 a month towards at the time.
- He also said that the size of his losses weren't normal and the business should have

checked.

- His credit history showed that he had a history of being in debt management, and he had taken out numerous payday loans to 'satisfy his addiction'. He said it wasn't an excuse to say they had 100s of people in arrears given his very clear signs.
- He maintained that he shouldn't have been allowed to make the bets he did, including his last which lost him £4,000.
- Nothing had changed in 2021 compared to previous years and Sporting Index knew full well that he was vulnerable and had a gambling addiction. He said he'd spend a year of borrowing money from family and friends to pay back the debt.
- Sporting Index even made him a gold WIP member which entitled him to competition and prizes, and he queried how he qualified for that without any checks other than his many losses – which he said was why Sporting Index wanted him to continue trading with it. He said that Sporting Index had met him many times and knew his job and that he wasn't a big earner.

### **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 carefully read Mr L's comments, and I understand that he profoundly disagrees with the reasons I gave for not upholding his complaint. And I do sympathise with the difficult circumstances he found himself in, and the reasons he has given for why he believes Sporting Index ought to have picked up on his vulnerability despite him never raising it directly with it.

But my role is to be impartial and ensure that I take into account all the circumstances that are relevant when deciding what's fair and reasonable.

And whilst I've taken into account Mr L's comments in response to my provisional conclusions, I don't agree they make a difference to the circumstances I laid out previously.

Ultimately, Sporting Index knew Mr L was an experienced and active spreadbetter, it knew his ratio of winning to losing trades, and the overall size of his profits and losses. It had processes in place to identify if Mr L was displaying vulnerable characteristics, and Mr L didn't meet those.

Mr L has asked me to hold Sporting Index entirely responsible for all of his losses – but I don't agree that's fair. Mr L has powerfully made his point about the effect of his addiction and the irresistible compulsion he had to place trades, even large ones. But if the regulator wanted firms like Sporting Index to take responsibility for trading losses sustained in such circumstances, it would've said so.

Instead, the rules which the FCA required Sporting Index to comply with set out broad guidelines on circumstances its staff needed to be alert to, and in particular have processes in place to identify. And it also required it to have tools in place which consumers like Mr L could have access to in order to manage their own circumstances appropriately.

Mr L remained responsible for managing his account and making use of the tools which Sporting Index made available to him – for example deposit limits, timeouts or self-exclusion.

It is a matter of fact that Mr L never made use of those tools, and the reality is that, in my view, the only way Mr L's losses with Sporting Index could've been avoided is if Sporting Index proactively and unilaterally decided to stop Mr L from trading.

Whilst Sporting Index may have been entitled to take such action under the various principles and rules I've set out above, there was no legal or regulatory obligation that required it to do so. Furthermore, for the reasons I've given, I'm not persuaded that in the particular circumstances of Mr L's case, there was sufficient grounds for it to take such unilateral action – so I'm not persuaded it treated Mr L unfairly by not doing so.

I've also considered the fact that negative balance Mr L had with Sporting Index at various times during the relevant period was not incurring any interest, charges or penalties – so I'm not surprised that Mr L took his time to pay it back when necessary. The key issue, as Sporting Index has said, is that Mr L had consistently managed his account in ways which did not suggest, clearly, that he was struggling, until 2021.

Taking all this into account, including the reasons I gave in my provisional decision, I'm not persuaded Sporting Index ever had sufficient information to unilaterally prevent Mr L from trading or close his account until it did so in 2021.

I understand this will come as a disappointment to Mr L, but for the reasons I've given I'm not persuaded to uphold his complaint.

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 1 December 2023.

Alessandro Pulzone  
**Ombudsman**