

The complaint

Mr L has complained that IG Index Limited ('IG') should have prevented him from trading in contracts for differences (CFDs) and closed his account following the contact he had with it in March 2016.

What happened

This complaint is one of two that Mr L has brought to this service about the actions of IG. To understand the complaint being considered in this decision, it is helpful to firstly explain some of the background relating to Mr L's other complaint about IG.

Mr L's other complaint related to a decision made by IG in November 2022 to stop him placing new trades on his account, and to take steps to close his account. It made this decision following a call between Mr L and one of its account managers. IG said that comments Mr L had made in the call about the impact trading on his account was having on his wellbeing led it to close the account.

One of our investigators looked at Mr L's complaint about the actions of IG in November 2022 and concluded that they'd been reasonable. When responding to this assessment, Mr L mentioned a new issue which had not been raised previously. This was that from 2016, IG had known about the financial and personal difficulties Mr L's CFD trading was causing him, but rather than stopping him, it had given him incentives to trade. It is this complaint that this decision relates to, and I will now provide further background to it.

Mr L provided this service with an email he had sent to IG on 16 March 2016, which was written just after he had suffered some substantial trading losses on his account. Mr L highlighted a number of the comments he had made in this email which he said showed that IG was aware from 2016 that trading was affecting his health. He said that rather than closing his account in 2016, IG instead offered him compensation for some of the trading losses he had recently suffered, and also offered him an incentive to keep trading. Mr L complained that IG knew from 2016 that he was a vulnerable consumer whose wellbeing was being adversely impacted by his trading but allowed him to continue to trade because it was making substantial profits from his account.

This complaint was referred to IG for its formal response, as it had not previously been raised with it directly. IG issued its response on 28 June 2023. This confirmed that in March 2016 Mr L's account was on margin call, leading to several positions held being closed. When Mr L had spoken to his account manager at the time, it had been suggested that the account could be upgraded to one which potentially allowed more time to provide funds when on margin call.

IG confirmed that Mr L had rung on 11 March 2016 and requested that he be refunded some of his losses. It accepted that during the call Mr L had commented that he'd been continually losing money on his account, describing himself as a 'loyal loser' and saying that he had 'lost a fortune'. However IG's view was that these comments were made by Mr L with the aim of receiving a partial refund of his losses. Taking into account the regulatory requirements at

the time, IG stated that Mr L's comments from March 2016 did not indicate that he was vulnerable and should be prevented from trading.

IG also stated that its view was that this complaint had been referred outside this service's rules relating to time limits because it had been raised more than six years after the events complained about in March 2016.

Unhappy with IG's response, Mr L confirmed that he wanted this service to consider this complaint. He highlighted comments he'd made in his March 2016 emails to IG about being in despair when his positions had been closed and he'd sustained losses, and how this had been "*a disaster for me*". Mr L pointed out that he'd also told IG in 2016 that he'd lost his job. He said that IG's stance that he was in an appropriate mental state to trade in 2016 was inconsistent with its later decision in 2022 to stop him from trading to protect his wellbeing.

Mr L stated that in reviewing his two cases, IG had chosen to conclude that his March 2016 comments were not a genuine reflection of his vulnerability, but were instead an attempt to gain compensation for his trading losses. He said that in contrast, when IG had reviewed his comments made in November 2022, it had taken them literally and decided he was vulnerable and should be prevented from trading. Mr L commented that applying its thinking in 2022 to the events that occurred in 2016, IG should have identified him in 2016 as a client with a gambling problem.

IG reiterated that it considered Mr L had referred this complaint to us too late, and it did not consent to us investigating it. Our investigator's view was that we could consider the complaint but IG disagreed, and so an ombudsman then assessed the issue of jurisdiction.

The ombudsman noted that Mr L referred the complaint to us within six months of receiving IG's response to it in June 2023, so satisfying this time limit. Mr L did raise his complaint more than six years after the event he was complaining about happened in March 2016. But the ombudsman concluded he only became aware that he had cause for complaint about the events of 2016 after he received the investigator's assessment of his other complaint about the actions of IG in November 2022. That assessment was made in 2023, and Mr L raised this complaint within three years of that. The ombudsman's conclusions were that Mr L had made this complaint within the required time limits, and that we could investigate it.

Following this, Mr L explained that he estimated he'd lost around £300,000 on trading with IG since March 2016. Of that amount, he calculated that IG had received around £100,000 in fees. Mr L said that calculating this loss figure had been a distressing experience for him. He commented that IG had ignored evidence of his vulnerability from the comments he'd made in March 2016, and he'd also told it about his difficulties with trading within emails he'd sent it in June 2019.

Our investigator did not uphold this complaint. In terms of Mr L's emails sent in March 2016, her view was that these would not have raised concerns with IG about his mental health being harmed by trading. Noting that Mr L had also explained at this time that he had recently lost his job, the investigator considered IG had asked appropriate questions about Mr L's income and assets, and had received satisfactory responses which indicated trading remained affordable to him.

With regard to emails sent to IG in June 2019, the investigator's view was that these showed that Mr L was considering stopping trading due to market conditions. But she didn't think that these showed that Mr L's mental health was being adversely affected by trading. The investigator drew a distinction between the state of mental health that Mr L's 2016 and 2019 communications portrayed, compared to the concerns about his wellbeing that resulted from what he had said to IG in November 2022.

Mr L did not agree with the investigator's assessment. He highlighted wording he had used in his 2016 emails about being in total shock, psychologically confused and exhausted. Mr L questioned why these comments would not lead to the conclusion that trading was affecting his mental health. He said it was not reasonable to consider that his comment about exhaustion related only to his interactions with IG attempting to negotiate a goodwill payment. Instead Mr L said that it related to a general state of mental exhaustion.

Mr L also referred to other comments made in his 2016 emails, including: he'd been "*emotionally and financially hammered*"; was in "*a weak position*"; "*The fact I have other sources does not mean I can continue to put all of it at risk*"; "*psychology and confidence are important not to make silly choices.*" He said his remarks in 2016 showed mental distress.

Mr L commented that being in a state of psychological shock and emotional distress has an inevitable impact on a person's ability to act rationally. He said that within his comments made in November 2022, he had not explicitly said that his mental health was being affected by trading, but it had been implied. This had led the investigator to conclude that IG had acted fairly in 2022 when taking steps to stop Mr L trading. But Mr L said the investigator had not taken the same approach to his comments made in 2016, which he said also implied that his wellbeing was being affected by trading.

Mr L highlighted that his 2016 comments were made in writing, whereas in 2022 he had spoken to IG over the phone. He said that written comments can be reviewed to check what you've said, whilst when speaking you can sometimes use expressions that you wouldn't put in writing. Mr L commented that what he had said in 2022 about suicide was an exaggeration, to give a sense of his frustration about trading, and that this "*was exactly the same sense of stress and frustration that emerges from my 2016 emails.*" He said the situations in terms of his levels of stress and frustration in 2016 and 2022 were very similar.

In terms of whether trading remained affordable to Mr L in 2016 after he had lost his job, he highlighted comments in his emails about needing to financially support his daughter, and maintain his properties. He questioned why IG had disregarded the fact he was unemployed and depleting his savings. In assessing each aspect of his complaint, Mr L suggested the investigator had given IG the benefit of the doubt. He repeated his estimate that he had lost about £300,000 trading, whilst IG had benefited by about £100,000. In light of these figures and the circumstances of the case, Mr L asked how the investigator could not have any doubts that the assessment she had reached was fair.

Mr L referred to IG's June 2023 response to this complaint, in which it had said that when his 2016 comments "*are considered in today's regulatory climate, they would require further scrutiny.*" He said that this shows that IG recognise his 2016 comments were alarming, and he therefore questioned why the investigator had concluded that they were not.

Mr L stated that regulations in 2016 required IG to identify people with gambling problems, to protect them from harm. He said that by 2016 he had already "*lost a fortune*" with IG, and it knew this. In this situation, Mr L commented that it is a classic pattern for an individual to ask to keep their account open as they seek to recover some of their losses. He said this affects the mental state of the individual in question. Whilst acknowledging that in 2016 he had asked IG for a rebate or goodwill payment so that he could continue trading, Mr L said that this does not detract from the fact it was evident that he had a serious problem at this time.

Further to this, Mr L said that a firm like IG should recognise the signs if one of its customers has lost substantial sums trading and has a gambling addiction. He commented that disclaimers from the customer that they understand the risks involved in CFD trading, or reassurances from the customer about their trading, should not be sufficient. Mr L accepted

that when he told IG that he had lost his job, it asked him to confirm his assets. But he suggested that this meant his only means of continuing to trade were his savings, and these were being depleted.

Mr L said that once he had started to express his frustrations and psychological difficulties about his trading to IG, it should have done more. And whilst commenting that individuals bear the responsibility for their actions, Mr L also said that it was not fair to conclude that he was at fault for his trading, and IG bore no responsibility. He said that it was not enough to consider only what IG was required to do in this situation, but also assess what it would have been sensible for IG to do. He suggested there was 'reasonable doubt' about how IG had acted, and that there should therefore be a mediated settlement to his complaint.

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.

At outset I should emphasise that this decision relates to Mr L's complaint that IG should have taken steps to prevent him trading prior to when it actually did so in 2022. In particular Mr L has highlighted the interactions he had with IG in 2016 and 2019, stating that these showed trading was impacting his mental health. Mr L has also mentioned that in 2018 he received a refund from IG of £1,000 that he said was designed to encourage him to keep trading.

An ombudsman has already issued a jurisdiction decision relating to time limits on this case. For completeness, I should confirm that I have reached a similar view on time limits, for the same reasons as outlined above.

The Financial Conduct Authority ('FCA') as industry regulator issued guidance to firms about the fair treatment of vulnerable customers in February 2021. However, prior to Mr L and IG's interactions in March 2016, the FCA had issued an occasional paper in 2015 which aimed to help firms develop and apply strategy for vulnerable consumers. I have borne this in mind when considering the events that occurred in this complaint in 2016 and 2019.

In March 2016, IG placed Mr L's account on margin call when the market Mr L had a number of open trades on moved against him in a very short period of time. Mr L did not have sufficient funds in his account at the time to keep all his positions open, and so a number were closed, causing him to suffer significant losses.

Mr L contacted IG to ask for his positions to be reinstated. IG responded that the trades had been closed correctly, but it said that if Mr L held an 'upgraded' Select account, this would give him longer to cover margin calls following market price movements. Mr L replied that having the Select account would have allowed him to have maintained his positions overnight, and by the following morning he would have been £20,000 better off. He accepted that his positions had been closed because he'd needed further margin in his account, and that IG's automated system had closed the trades. However, in light of the sudden movements in the market, Mr L asked if IG would consider reimbursing him some of the money he had lost.

IG's view was that even if Mr L had had a Select account, it was likely his positions would still have been closed because he had limited funds in his account. However, it said that in light of Mr L having traded with it for a number of years, it was offering him a 'goodwill gesture' of either £2,500, or a rebate of £5,000 of the price spread paid over the next six months. Mr L responded that his intention was to continue trading with IG, but he asked that

it make him an improved goodwill offer. At the same time, he provided IG with financial information so that it could consider his request to upgrade his account.

In bringing his complaint, Mr L has highlighted the content of his email to IG on 16 March 2016. In this, he told IG that he needed *“to have the psychological motivation to start back trading”*, and that he did not want to finance his trading by immediately taking funds from other sources. Although Mr L said he did have other funds available, he commented that this did not mean he could put all of his funds at risk. He explained that he had other financial responsibilities including his child, and also properties to maintain. The email said: *“I have to set myself some limits...psychology and confidence are important not to make silly choices...I have to be much more disciplined.”*

Mr L continued: *“[T]he bottom line is because of my bad trading I have lost a fortune but in the process I have also paid a fortune to IG.”* He reiterated his request that IG improve its goodwill offer. In the event that it wouldn't, he said: *“I've been emotionally and financially hammered...it means that no matter what IG would not be interested in putting me in the conditions to continue to do business with you...let alone upgrading my account.”*

IG responded that it was prepared to make a new goodwill offer, which was to pay Mr L £2,500 in cash, and to rebate 100% of the next £2,500 incurred in price spreads over the next three months. It said this reflected that Mr L had been *“a good client of ours over the years.”* Mr L replied asking for some clarification about how the rebate would work, and he also suggested a different goodwill figure. IG did not alter its offer, but provided some further explanation about the rebate. Mr L then accepted the offer.

In his complaint, Mr L has highlighted some of the phrases he used in 2016. He says these show he was in a state of mental and emotional distress, and psychological shock, after incurring the financial losses that he had. He also says that the implications of his 2016 comments were that his wellbeing was being affected by trading, and that IG should therefore have acted to stop him using his account.

I have carefully considered the content of Mr L's emails to IG in March 2016. Whilst I acknowledge how Mr L has said these should be understood, on balance I don't consider they should have caused IG to contemplate stopping Mr L from trading. It's clear that Mr L was upset about the scale of his financial losses at this time, and that was understandable. In my view that would, at least in some part, explain why Mr L referred to being in shock. But I'm also mindful that the correspondence Mr L had with IG in 2016 focused on his request that it consider offering him a payment to reflect that he was a long standing customer who had just suffered a large loss. In other words, Mr L wanted his loyalty as a customer to be reflected with some sort of financial concession by IG following the loss.

And although I accept that IG offered a goodwill payment to maintain its relationship with Mr L, and so this could reasonably be described as IG providing an incentive to trade, Mr L had asked that IG consider making such an offer to him. As a result, I'm not persuaded that IG acted unreasonably when it made this offer to Mr L.

Mr L has said that his request for a goodwill payment was the result of his addiction to gambling, and reflected his mental state in 2016. Once he had explained to IG that he was unhappy with the losses he had incurred trading, Mr L says IG should have done more to protect him from harm. In my view Mr L's 2016 comments demonstrated that he was unhappy about his losses. But I don't consider his comments about needing to get his psychology into a state whereby his trading decisions were more 'disciplined' should reasonably have alerted IG to the possibility that Mr L was vulnerable. Instead in my view Mr L's comments appeared to show that he was thinking about how he might make changes to the way in which he was trading.

Mr L did also make IG aware in 2016 that he had lost his job. This led IG to ask Mr L whether he would be back in work soon, and it also asked a variety of questions about the assets he had available to him. In part IG's enquiries were the result of Mr L asking it to consider upgrading his trading account. I also appreciate that, as Mr L has said, trading when he was not working meant that he was using sources other than his employment income to fund his account. But it seems to me that the information Mr L gave IG in 2016 about his finances indicated that he was able to trade without being caused financial difficulties. Consequently my view is that IG did not act inappropriately by allowing Mr L to continue trading after he had confirmed he was not in work at the time.

Mr L has said that in February 2018 IG paid him a further £1,000 as a result of its systems closing some of his positions without giving him time to resolve the situation. He says that IG did not do this for any other reason than it wanted to keep him as a client. As I noted above in respect of the 2016 goodwill payment, I do not consider it's unreasonable that IG might take actions to maintain its client relationships. And in my view it's not been shown that IG did anything wrong in this instance in terms of allowing Mr L to continue to trade at this time.

Mr L has said that his difficulties with trading should also have been clear to IG from the content of his June 2019 emails to it. This email correspondence started when IG contacted Mr L to let him know about a trading incentive it was running at the time. In response Mr L suggested he would stop trading because "*overnight charges have been killing me and the market is totally a farce*". He said that even in normal market conditions, trading was "*mostly a losing game but in this mkt it has become impossible*." IG responded by suggesting a way in which Mr L could reduce overnight funding costs, and acknowledged his frustration with market conditions.

The 2019 correspondence shows Mr L's frustration with the way in which the markets were moving at the time. But in my view on balance the content was not sufficient to lead IG to be concerned about whether Mr L should be allowed to trade on his account. It doesn't seem to me that his unhappiness with market conditions suggested that Mr L's wellbeing was being adversely affected by using his IG account. Consequently I do not consider that IG should have prevented Mr L from trading following his 2019 emails.

Mr L has said that after he had told IG about his frustrations with trading, and had mentioned his psychological state to it, both in 2016 and 2019, IG should have taken some action. He says that it's not fair to conclude that IG bears no responsibility for what happened during the time he traded with it, and that there is 'reasonable doubt' around its handling of his account. In light of this, he has suggested there could be a mediated settlement to his complaint.

I acknowledge Mr L's comments, but I should clarify that my role is to consider complaints based on the balance of probabilities. That means that I need to assess whether on balance IG acted reasonably, based on the weight of evidence provided. Overall my conclusions are that both in 2016 and 2019, taking into account the correspondence Mr L and IG had, it was reasonable for IG to continue to allow Mr L to trade on his account. I'm not persuaded that the correspondence should have led IG to take steps to prevent Mr L using his account due to concerns about his wellbeing.

The actions that Mr L has complained IG took in November 2022 have been considered under a separate complaint, looking at the circumstances relating to those events in 2022. I am sorry to learn about the losses that Mr L experienced on his trading account from 2016. However, I do not consider it's been shown that IG has been at fault in this matter, and I therefore do not require it to take any further action.

My final decision

My final decision is that I do not uphold this complaint, and I make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 2 July 2024.

John Swain
Ombudsman