

## The complaint

Mr R complains that Spreadex Limited allowed him to spread-bet when it knew or should've known he had a gambling addiction. This caused him to suffer significant financial losses.

## What happened

In April 2021 Mr R opened a fixed odds betting account and a spread-betting account with Spreadex. According to Spreadex, Mr R's spread-betting account was activated initially. However, it was de-activated following a safer gambling call shortly after his account was opened. Mr R did not place any spread-bets during this time.

Mr R placed fixed odds bets between April and June 2021, and then again between September and October 2021, accumulating losses of over £30,000.

In October 2021 Spreadex activated Mr R's spread-betting account. Between 2 October 2021 and 27 November 2021 Mr R placed over 730 trades and lost more than £80,000. In November 2021 Mr R complained and as a result of his disclosures around his problem with gambling, Spreadex suspended his account.

Spreadex looked into Mr R's complaint, but concluded it had done nothing wrong. It said that it was *"difficult to immediately detect a new account has a history of problem-gambling unless the customer volunteers that information"* and it said there was no evidence that he did before his complaint. It said that it mitigated the risk of giving accounts to clients who had experienced gambling-related harm by providing self-help tools, and these were clearly signposted in the welcome email and on its website.

It said that Mr R was given risk warnings about sports spread-betting, including that it was high risk and losses could exceed deposits, and Mr R was asked to confirm that he understood the risks involved. It said that Mr R was reminded of the risks in an affordability call on 1 May 2021. It explained that Mr R's account was *"reviewed and your spread betting function was made active"* in October 2021. It summarised Mr R's losses and said that having reviewed his account for affordability, the amounts he deposited versus the financial declarations he had made weren't inconsistent. It said that Mr R was given ample risk warnings around fixed odds, and several calls at times when he reached his deposit limits.

Mr R remained unhappy and referred his complaint to this service. One of our investigators looked into his complaint, but didn't think it should be upheld. In short he concluded that Spreadex wasn't aware of Mr R's vulnerability in relation to gambling, and it therefore didn't do anything wrong in activating his spread-betting account.

Mr R didn't agree with the investigator and asked for an ombudsman's decision, so the case was passed to me.

## Further information

Before considering this case, I asked Spreadex for some more information around how Mr R

came to open his spread-betting account. It said:

- COBS 10.2.6 said that a firm may be satisfied that a client's knowledge alone is sufficient for him to understand the risks involved in a product or service. It said that in respect of sports spread-betting, *"the client's affirmation that they understood the risks of the product and the ability to lose more than they deposited is, when combined with his claimed financial resources and lack of any declared vulnerabilities, sufficient confirmation of his suitability"*. It said that when Mr R applied to open his account he was provided with a number of risk warnings and he was required to confirm his understanding of the risks involved.
- It did not agree with my inference that the account was not appropriate for Mr R. It said that *"a lack of experience in spread-betting would not mean that the account was not appropriate"* because if this were the case *"it would be impossible for anyone to have begun trading in CFDs or Spread Bets after November 2007 as they would be considered inappropriate owing to a lack of experience"*. It said that *"the client was issued with numerous risk warnings throughout both the application process, as indicated in the screenshots below, and on essentially every item of communication thereafter"*.
- It concluded by saying that Mr R *"was not assessed as being inappropriate and he had attested to his knowledge of the risks involved in such trading"* and was nonetheless provided with risk warnings. It said that all this *"combined with the successful completion of standard electronic background checks"* meant that Spreadex *"had no reasonable justification not to proceed with allowing [Mr R] to open his account"*.

I also asked Mr R for some further information. He said:

- There was a restriction placed on the opening of his spread-betting account at the time he opened his fixed odds account. He referred to an email he received from Spreadex on 1 May 2021 which said *"as per our discussion your spread-betting access shall remain disabled"*. He also referred to a document which showed that financial spread-betting and Contracts for Difference (CFD) trading was not open to him.
- His spread-betting account was opened by Spreadex in October 2021.
- He had never traded spread-bets before, and his understanding was that sports spread-betting was no riskier than fixed odds when applied to sports betting. He said that he used spread-betting to continue his fixed odds betting when his limit had been reached, and Spreadex were complicit in this by allowing him to spread-bet, bearing in mind what it knew about him, his losses and his vulnerability.
- He did not recall a telephone conversation in May 2021 where the difference between spread-betting and fixed odds was discussed and confirmed as per the email above that his spread-betting account was disabled at that time. He recalled telling Spreadex that spread-betting was neither necessary nor appropriate for him.
- His deposit limits were increased over time, and not decreased. He reached this limit a number of times, in particular in May/June 2021 when his account was suspended due to his losses. This allowed him time to move away from gambling and his compulsive behaviour, but it was Spreadex that approached him again in

September with a relaxation of the fixed odds deposit limits – so he was being enticed to continue losing more money. He provided the email he received. This said, among other things:

*“I wanted to make contact as your account has been inactive since June 2021 after communication with our compliance department. Our new CFO took over in June and has spent a lot of time on this part of the business. We now have more appropriate intelligent tools in place that enable us to make the correct decision rather than the blunt overly prudent compliance led binary approach that we’d temporarily had in place. With this in mind we have been able to reactivate your account and based on this new approach we have set you 180 day Fixed Odds Deposit Limit (FODL) at £17,184.”*

- He said his previous communications with Spreadex showed that it was aware that the rate of his losses had been “*unsustainable*” and further could be “*evidence of gambling related harm*”. Given these circumstances, how could Spreadex justify allowing him to spread-bet in October 2021.
- In or around October 2021 Mr R had reached the new deposit limit for fixed odds betting, and this is why once Spreadex allowed him to spread-bet, he only placed spread-bets between October and November 2021. He said this showed that Spreadex activated his spread-betting account when it knew he had exhausted his fixed odds limit, knowing that he would otherwise not have been able to bet with it for a further 6 months.
- He didn’t agree it was reasonable to conclude Spreadex had no awareness of his vulnerability, even if it wasn’t disclosed. He said that there had already been multiple acknowledgments that his funds were being exhausted at an unsustainable rate and his deposits were high given his income.
- He said that it also would have known he was showing gambling behaviours by constantly asking for deposit limits to be increased, and likely knew that he would carry on gambling with spread-bets once his fixed odds limit had been reached.

I issued a provisional decision in February 2024. In it I set out the applicable standards, and then I said:

### **My provisional findings**

In reaching my provisional findings on what’s fair and reasonable in the circumstances of this case, I’m required to take into account the relevant law and regulations, regulators’ rules, guidance and standards and codes of practice, as well as what I consider to have been good industry practice at the relevant time. In Mr R’s case, I’ve taken the above into account when deciding:

- How Mr R’s spread-betting account was opened and whether any relevant assessments of Mr R’s knowledge and experience were fair and reasonable; and
- Whether it was fair and reasonable for Spreadex to activate or reactivate this spread-betting account so as to allow him to trade

### The opening of Mr R’s spread-betting account

I’ve carefully considered Spreadex’s response. I don’t consider its response is in line with the rules it is required to adhere to, the spirit of the communications from the FCA about spread-

betting or consistent with its obligations to act in its client's best interests at all times.

I find that its conclusion that ticking a box that says 'I understand the risks' means he had 'sufficient knowledge' as per the test required in COBS 10 is disingenuous at best. The rules are clear that Spreadex needed to assess the information Mr R provided, and not merely a box that he ticked. COBS sets out the type of information Spreadex needed to pay due regard to:

- (1) the types of service, transaction and designated investment with which the client is familiar;
- (2) the nature, volume, frequency of the client's transactions in designated investments and the period over which they have been carried out;
- (3) the level of education, profession or relevant former profession of the client.

But Spreadex didn't obtain any of this information about Mr R. It didn't test his knowledge of spread-betting, and how different it was from fixed odds betting – and if it had done, I'm satisfied Mr R would've showed that he did not understand the difference between them. It didn't ask Mr R to tell it how often he had undertaken spread-betting before – and if it had, Mr R would've confirmed he had never carried out any spread-betting before. And there was nothing in Mr R's background, which Spreadex didn't ask for anyway, which would've allowed it to conclude he had an understanding of spread-betting such that he had sufficient knowledge to understand the risks involved.

In other words, Spreadex did not undertake a fair and reasonable assessment of Mr R's knowledge and experience as required under COBS 10, and consequently, I'm not persuaded its conclusion that spread-betting was appropriate for Mr R was fair and reasonable.

Spreadex has sought to justify this interpretation of the rules by saying that if its interpretation was not correct, any client who had never undertaken spread-betting before would've been unable to open an account after 2007. I'm not persuaded this is a reasonable explanation for its incorrect interpretation of COBS 10:

- The rules do not require a client to be forbidden from opening an account where they have never undertaken spread-betting before.
- The rules do require consumers who have never undertaken spread-betting before and have no knowledge of this type of trading to be warned that it is not appropriate for them.
- Spreadex itself says, in its terms and conditions, that clients should not deal in these products unless they understand them and the risk involved, and furthermore that they are unsuitable for many members of the public. It follows therefore that a proper assessment, under COBS 10, ought to identify consumers who do not understand the risks – and this is precisely what that assessment involves.

In my view it's clear that an assessment under COBS 10 must include either an assessment of the consumer's previous spread-betting experience, an assessment of the consumer's actual knowledge of spread-betting or both.

I'm not persuaded COBS 10 can be complied with where no assessment has been carried

out whatsoever – and this is what happened in Mr R's case.

I'm persuaded by Mr R's testimony that he had never carried out spread-betting, and his explanation for why he thinks it's essentially the same as fixed odds betting shows, in my view, that he didn't have sufficient knowledge to understand the risks involved.

So I'm satisfied that a fair and reasonable assessment of Mr R's knowledge and experience would've concluded, on balance, that spread-betting was not appropriate. Spreadex would therefore have been required to send Mr R a warning to that effect.

#### Was it fair and reasonable to open or reactivate Mr R's spread-betting account in October 2021

I'm satisfied that if Mr R had received a warning in April 2021 that spread-betting was not appropriate for him when he opened his fixed odds account, he would've declined to open a spread-betting account. I think it's clear that Mr R was not keen on spread-betting, and the fact that he did not ask for the account to be activated at any point, and did not spread-bet until October 2021, shows that this was not something he was interested in.

My finding on this point may change if Spreadex suggests, in response to this provisional decision, that Mr R could only have opened a fixed odds account if he also agreed to open a spread-betting account. Given Mr R's gambling compulsion, I consider it likely that he would've agreed to do whatever was necessary to allow him to open a fixed odds account, especially given that Spreadex was able to keep his spread-betting account deactivated.

However, in that scenario, Spreadex would also have needed to assess, with regard to all the circumstances, whether Mr R ought to be allowed proceed despite the fact that spread-betting was not appropriate for him – in line with the FCA's guidance at COBS 10.3.3.

So I've considered the point at which Mr R's account was activated for spread-betting in October 2021 – given that it isn't in dispute that no spread-betting occurred before then, I consider this is a key aspect of Mr R's complaint. The starting point here is that Spreadex made this decision without Mr R's input. I've seen no evidence that Mr R asked for his spread-betting account to be activated or that he requested it at any point.

But even if there was such evidence, I've also seen no evidence of Spreadex's decision-making here, and in particular, why it considered this to be in Mr R's best interests – and it would've been required to take Mr R's best interests into account regardless.

In weighing up whether Spreadex acted fairly and reasonably by taking this action, I've taken into account the following matters:

- Mr R had a pre-existing relationship with Spreadex which showed he had already suffered considerable financial losses when gambling with it.
- Mr R's fixed odds account had twice been paused due to reaching fixed odds deposit limits, and the evidence shows that Mr R's betting habits had already caused Spreadex to consider 'gambling related harm' in his case:
- An email from 1 May 2021 to Mr R said people "*who spend more than they can afford are at greater risk of experiencing gambling-related harm and as such all operators in the UK are now expected to ensure betting is affordable and sustainable*". He was provided some further resources on gambling and how to manage his gambling.

- Mr R provided some payslips and in a further email, he was told that *“if you are using your savings and income to deposit with us and continue at your current rate then you will exhaust your available funds quickly”*. It said that exhausting *“funds at an unsustainable rate can be a sign of gambling related harm”*. It declined to remove the fixed odds deposit limit.
- As a result of some further evidence Mr R provided, his deposit limit was increased to £5,000 over a 30 day period. However, the email confirmed that *“as per our discussion your spread betting access shall remain disabled”*.
- On 5 June 2021 Mr R’s account was again reviewed due to his *“deposits [being] high against your stated financial information”*. Mr R did not undertake any further fixed odds betting after this.
- On 10 September 2021 Spreadex proactively wrote to Mr P to change his fixed odds deposit limit. Mr R proceeded to start betting again and by October he had reached this limit and was no longer able to place any further bets for 6 months.
- The FCA’s guidance around identifying vulnerabilities indicates that Spreadex needed to be alert to Mr R’s behaviour and whether it demonstrated a vulnerability. That guidance required Spreadex to be alert both to Mr R’s individual situation, as well as the potential harm that its services might cause him – in this case spread-betting.
- Mr R did not ask for his spread-betting account to be opened.
- Spreadex knew, or should’ve known, that Mr R had no spread-betting experience and had demonstrated no knowledge of it. It also knew that the vast majority of its customers lost money spread-betting.

Furthermore, given the nature of its fixed odds service, Spreadex likely knew that the fixed odds deposit limits which are mandated by the Gambling Commission were not mandated by the FCA with spread-betting. And it knew, because the Gambling Commission required it to be aware of this, that a proportion of its fixed odds betting customers were likely to be problem gamblers. This means that, given everything it knew about Mr R, including his accrued losses, his deposits, its concerns about his deposits, and the possibility that he may be a problem gambler, it knew or should’ve foreseen that in allowing Mr R to start spread-betting there was a risk that it would be exposing a vulnerable customer to additional economic harm.

I’ve seen insufficient evidence that Spreadex took any action to mitigate this risk and it’s clear, given the losses Mr R subsequently sustained, that this risk materialised. I’ve considered overall whether there was any relevant consideration that ought to have outweighed all the factors above, such that I could conclude, on balance, that allowing Mr R to spread-bet was in his best interests. And I’m not persuaded such a consideration exists.

In my view, deciding to allow Mr R to undertake a form of trading which was more likely than not to cause him financial loss, when he had already lost over £30,000 in fixed odds betting, had had his account suspended twice for reaching deposit limits, and had reached it again most recently after it had been raised, was not fair and reasonable. And most importantly, I’m satisfied it was not a decision that was taken with Mr R’s best interests in mind.

I’m also satisfied that Spreadex already had sufficient information available to it to show that Mr R was likely suffering from a vulnerability that placed him at even greater risk of economic harm.

The fact that the actions it took when it was concerned about his level of deposits occurred in the context of an activity, fixed odds betting, which is not regulated by the FCA does not mean I can't take them into account.

This was information that Spreadex ought to have used when ensuring it treated Mr R fairly and paid due regard to the guidance the FCA issued on vulnerable customers. Taking all this into account, I'm therefore satisfied that Spreadex's decision to activate Mr R's spread-betting account in October 2021 was not fair and reasonable. I've therefore considered how to put things right for Mr R.

### **Putting things right**

My role in putting things right is to put Mr R in the position he would've been had Spreadex not activated his spread-betting account or had he chosen not to open one following the warning Spreadex should've given him had it carried out a fair and reasonable appropriateness assessment.

Mr R could no longer place any fixed odds bets with Spreadex. In my view this means that if he had simply been unable to gamble any further, he would not have incurred any further losses – because this is what had previously happened when he could no longer place any bets.

So I'm satisfied the fair and reasonable way to put things right for Mr R is to refund all the losses he suffered while spread-betting from October 2021 until the end of November 2021. Allowing Mr R to incur such significant losses also likely had a considerable impact on a wide range of other spending and financial commitments that Mr R had at the time, and has had since. In my view he would not have been deprived of this money had Spreadex acted fairly and reasonably. So I'm satisfied that Spreadex ought to add 8% per year simple on this sum from the date it suspended or closed Mr R's account, to the date of settlement.

I'm also satisfied that Spreadex's actions have caused Mr R distress and inconvenience and the feeling that it has sought to financially capitalise on his vulnerability. I'm therefore satisfied that Spreadex ought to pay Mr R an additional £500 compensation for this distress.

### **Spreadex's response to my provisional decision**

Spreadex disagreed with my provisional decision and provided the following comments. I've grouped those comments as relevant to avoid duplication.

#### On Mr R's vulnerability

*"Spreadex contends that it had no indication that Mr R had a 'Gambling Addiction' until the point at which it received his complaint, and he divulged this information. The financial losses suffered by Mr R were of his own making and indeed there were periods during his spread betting activity where he made significant financial gains and had he chosen to halt his activity at these times he would have made a notable profit from his spread betting activity."*

*The basis of Mr R's complaint that he was a problem gambler, that no affordability and risk checks were conducted and that he was never contacted regarding problem gambling and personal well-being. These claims are demonstrably false as outlined in our previous responses and reiterated below. The nature of Mr R's complaint is based on the premise that Spreadex Limited should have identified his vulnerability and that the firm did not conduct sufficient affordability checks, Mr R's complaint did not pertain to whether or not the account was suitable for him nor that he had insufficient knowledge of spread betting. These factors*

*nonetheless seem to be the basis of the Ombudsman's decision.*

*We would note that, at the time of Mr R's complaint, he had conducted over 730 spread bets and so, by this point, would have had significant spread-betting experience and an excellent understanding of the nature and functionality of spread betting: Indeed Mr R placed both his first losing and first winning spread bet on the 2nd October 2021 and thus was aware of the potential to lose more than his initial stake. On the 3rd of October Mr R was briefly around*

*£10k down on his spread betting (having been around £2700 up following his first day of spread betting) so was keenly aware from the outset of the potential to lose multiples of his stake yet continued to spread bet for several more weeks. N.B. We provide further detailed examples of the activity on his account below that support his detailed understanding of spread betting, indeed in many instances he exhibited the behaviour of a sophisticated spread bettor, actively managing positions and placing a large variety of spread bets with different pay out mechanics on multiple occasions."*

It reiterated that Spreadex was not aware of Mr R's vulnerability and didn't agree that it could've drawn any conclusions about Mr R's vulnerability based on the information it had available at the time, and without the benefit of hindsight. It said that *"importantly losses on both fixed odds and spread betting are a universally accepted possible and indeed likely outcome of such gambling/financial activity"*. It further said that as long as *"the client is in control of their actions and such losses are affordable, based upon information provided by the client, a firm would have no reason to prevent an individual from spending their discretionary funds how they see fit"*.

Spreadex said that Mr R did not present *"any obvious signs of vulnerability"* when using Spreadex's account – and when affordability concerns were raised, Mr R provided sufficient information to allay Spreadex's concerns. When Spreadex spoke to Mr R on 1 May 2021, there were no *"evident vulnerability displayed"* by Mr R.

It didn't agree that Mr R's requests to increase deposit limits or reaching them was indicative or behaviours associated with gambling harm.

Spreadex also said that previous decisions about other cases showed that it was reasonable for it to have relied on information provided by clients on their financial position where that supported the level of trading and hadn't provided any indication of an addiction through another medium. It provided extracts of those decisions.

It said that its staff had extensive experience dealing with individuals suffering from gambling related harm and said that the *"calculated and cognizant manner in which Mr R spoke with Spreadex's compliance officer on the telephone is atypical of a gambling addict"*. It said that the fact of losing money was not, of itself, indicative of a vulnerability or financial harm.

Spreadex also gave more information about the way it assessed gambling related harm for its fixed odds service. It described the multivariate behavioural health model that it used, and how it helped identified the risk of harm for all clients – giving a score. It said that whenever a score was below a certain threshold, it took action to mitigate the risk of harm. It confirmed that in Mr R's case, he *"was not exhibiting the same behaviours as those customers who had been harmed by gambling"*. So although it said that there shouldn't be a read across between these two differently regulated products, if it had used this information, it would've supported its assessment that Mr R was not vulnerable.



### On activating or re-activating Mr R's spread-betting facility

It also said that it wasn't correct to say Mr R couldn't place any spread bets in April 2021. It said that Mr R activated his fixed odds account on 22 April 2021, and "*actively upgraded his account to enable spread betting on 26 April 2021*". It said that the "*requirement to actively apply for Sports spread betting is a deliberate measure to mitigate the risk of a client inadvertently opening a spread betting account instead of a fixed odds account*". Spreadex said that Mr R was made aware that he needed to separately activate his spread betting account after his fixed odds account application was accepted.

It provided a screenshot to show the type of screen Mr R would've needed to click through, including clicking on the button "*activate spread betting*" and said that Mr R also had to accept the terms and conditions of Spreadex's service. It said Mr R declared being employed with annual salary of £100,000 and savings of £50,000. He accepted a spread-betting risk warning.

Spreadex said on 26 April 2021 spread betting was activated on Mr R's account, so Mr R could have placed spread bets "*had he wished to do so*".

Spreadex accepted that Mr R's background relating to his fixed odds activity was relevant to an overall assessment, but said "*these products are governed by the Gambling Commission which dictates different rules to those of the FCA*". It said it "*could not and must not*" conflate the rules of one regulator with another.

In terms of his spread betting account, Spreadex reiterated that his account was opened on 26 April 2021, but restricted on 1 May "*due to Spreadex being required to ask additional questions of the customer to meet sustainability concerns*". It said Mr R "*was immediately able to provide additional documentation in the form of payslips and bank statements corroborating explanations that assuaged these concerns*".

It explained that Mr R's account was reactivated in September 2021 "*with the intent that both his fixed odds and spread betting be reactivated at this date as the firm had new risk systems in place to address the previous affordability concerns*". However, as Mr R's spread betting account had been "*manually restricted in May 2021*", the spread betting functionality remained inactive. This was noticed during an exercise reviewing restricted accounts and the functionality was then reactivated in October 2021 as part of this review. It said the "*reactivation was in no way influenced by Mr R's fixed odds status or level of spend*".

Spreadex said that Mr R's account was restricted in May 2021 owing to "*sustainability concerns not vulnerability concerns*". It said that the concerns it had were addressed by its new alert system, so "*there was no reason for Spreadex to maintain the spread betting restriction on Mr R's account*". It said that during its call with Spreadex on 1 May, "*Mr R had left the reactivation of his spreads account to Spreadex's discretion*".

Spreadex confirmed how Mr R's account was reactivated. It said:

*"Mr R confirmed he read and understood the above web message on 02.10.2021 at 11.13am. This message explicitly made him aware of the reinstatement of his spread betting functionality and that if he had any queries or wished to reinstate the restriction, he could contact us through a variety of media. Mr R confirmed that he had read and understood this message prior to him commencing spread betting. Mr R went on to deposit £500 into his spreads wallet at 14.31pm and placed a spread bet at 14.48pm. Mr R had various open lines of communication with the firm, that he had previously used, and could have deactivated his spreads account at any time had he wished to do so, he of course also had the option of simply not using his spread betting account."*

It disagreed with Mr R's evidence that he didn't know spread betting was any riskier than fixed odds, and said that Mr R acknowledged a number of risk warnings during the account application process. The nature of spreads betting was also discussed with him on 1 May during which he was told that this was a "*much riskier product*".

Furthermore, Spreadex said that shortly after opening the account, Mr R placed several losing bets with significant losses – so he had "*near instant knowledge of the ability to lose more than his initial stake yet continued to spread bet for several weeks thereafter*".

Spreadex gave additional detail about fixed odds and spread betting are separated on its website in order to support its contention that Mr R must have known the difference between the two.

Spreadex also said that it had it had recently acquired another firm and had access to its historical client base – it noted that Mr R had opened a spread betting account with this other firm in June 2021 and said that this cast doubt on Mr R's assertion that he had "*no interest*" in spread-betting or had no understanding of it.

It said that as it told Mr R on its call with him on 1 May 2021, based on his responses at the time, "*Spreadex felt it would be prudent to keep Mr R's spread betting functionality deactivated as it felt the controls it had in place at the time would not be sufficiently effective in managing Mr R's spreads AML and affordability risks*".

Following a Gambling Commission review Spreadex "*took robust action including suspension of its online Casino offering and restriction of a large number of accounts who met certain criteria so that the firm could take remedial action in relation to its systems and ensure it was in full compliance with Gambling Commission expectations*". Mr R's account was restricted in June 2021 not due to any activity on his part, but rather as a result of a blanket deactivation of clients who met certain criteria.

It said that by "*September 2021 the firm had implemented improved risk controls including AML deposit triggers across its systems as well as additional training for staff reviewing such alerts*" and therefore "*the firm were now in a position to reactivate Mr R's fixed odds and spread betting account as the alert trigger system would ensure that his deposits were limited to levels that were appropriate based upon the information that he had provided*".

Spreadex disagreed that acting in the client's best interests meant not permitting a client to undertake a form of trading which is more likely than not to cause financial loss. It said if this were the case, "*a majority of firms the FCA regulate would be out of business*". It said that it interpreted client's best interest as "*ensuring that the client has access to a safe platform where they can invest or spend their money in a safe, convenient and user-friendly environment*".

Spreadex had demonstrated that Mr R could afford the investments, and his self-declaration of his resources showed that he would be able to cover any losses without placing him in a financially vulnerable position. It said that although his losses across the two accounts were high, they were within the discretionary level of savings and funds that he demonstrated were available to him.

It also said that had Mr R stopped trading after the first 41 trades, he would've made a profit – and if that had been the case at the end "*he and any other observer would agree that opening the account was in his best interest*".

In addition to other warnings, Mr R was given a "*stake*" warning on 16 October 2021 because he had placed a large stake on a particular horse race that was more than his

previous stakes. This showed that Spreadex was providing active intervention and acting in his best interests. Mr R read the stake warning but proceeded nonetheless, therefore demonstrating that he understood the nature of the product he was using. Spreadex offer stake warnings despite this not being required by any relevant regulations.

Spreadex also disagreed with my conclusion that Mr R would not have gambled any further had his account not been reactivated was not plausible. It said that while Mr R would not have spent any money with Spreadex, he would've spent his money with another betting provider. Spreadex said that he said this himself in the call in May 2021. It reiterated the evidence that Mr R opened an account with another firm in June 2021.

#### On the deposit limits on Mr R's account

In relation to the restrictions on Mr R's account, it said:

- Mr R's fixed odd deposit limits were increased when he provided documentary evidence – and Spreadex reiterated that these activities are not regulated by the FCA and therefore not in jurisdiction.
- As above, Mr R opened an account with Sporting Index and “*gambled*” with it in June 2021, so he hadn't “*moved away from gambling*” as I said in my provisional decision.
- It did send Mr R an email in September 2021 re-assessing Mr R's account based on its new affordability model, and believed that Mr R would be pleased with the outcome of this. It said Mr R could have chosen to deactivate his account if he had wanted to, or simply not used it.
- Spreadex said that Mr R's account was reactivated “*due to the firm having ‘more intelligent tools in place’ to better manage client risk*” and it said that these tools included “*a new affordability model and introduced system improvements including strict AML deposit alert triggers and additional training to staff reviewing such alerts (which it had not previously had in place – thus influencing the firm's decision not to reactivate Mr R's spread betting in May 2021)*”.
- Mr R's own claims regarding his finances and the evidence he supplied “*indicated that [his] losses were affordance for him and subsequently would not cause him a financial vulnerability*”.
- Mr R assured Spreadex in its call on 1 May 2021 that he had “*significant financial resources*” and that in relation to his deposit limits, he said it was his responsibility if he wanted to use that limit entirely. Spreadex said Mr R came across as someone fully able to manage his own financial affairs.
- Spreadex confirmed that it was unaware of any vulnerability concerns until Mr R raised them in his complaint of 30 November 2021.

#### On the appropriateness of the account

Spreadex said that appropriateness was not the basis of Mr R's complaint. It said it understood my provisional conclusions on its compliance with COBS 10, but said “*there were a number of mitigants in this respect and that the level of warnings provided and general assessment covered meet the spirit of the requirements and the requirements as written especially with respect to COBS 10.2.6, 10.2.8 and 10.3*”.

It said it had previous cases go to decision where the ombudsman concluded that *“the historic onboarding process did go some way to alerting the risks of sports spread betting and the appropriateness test is not a deep drive into a client as an individual”*.

It provided a quote of this decision for my consideration.

It said that Spreadex did *“conduct a broad assessment of the client’s background including occupation and financial stability”* and based on his responses during the application process and his comments in the call that was held on 1 May 2021, *“it is evident Mr R possessed the key knowledge of the risks of spread betting that an individual may lose more than their original stake”* which it said was *“unarguably the most important consideration when considering whether the client has the requisite understanding/knowledge to partake in spread betting”*. It said that the warnings it provided to Mr R were sufficient to fulfil its obligations in COBS 10.3, and specifically the warning in its terms and conditions which said:

- *“You should not deal in these products unless you understand their nature and the extent of your exposure to risk”*.
- *“Spread Bets carry a high risk to your capital. They differ markedly from the more common form of fixed odds betting where your potential losses are pre-determined in advance, and you should not engage in this form of betting unless you understand the nature of the transaction you are entering into and the true extent of your exposure to the risk of loss”*.
- *“This product is unsuitable for many members of the public”*

It said Mr R accepted these terms and acknowledged these warnings when he opened his spread betting account.

It said that at the time Mr R complained, he had placed 730 spread bets over a variety of sports and markets – he had made 214 winning spread bets, 7 where he broke even and 515 losing ones. His largest win was over £6,000 and his largest loss over £3,300. It gave some further figures:

*“The cumulative total of Mr R’s 214 winning spread bets was £204,071.95 whilst the cumulative total of his losing spread bets was -£284,111.49 leading to his net loss of -£80,039.54. The vast majority of Mr R’s losing spread bets (446 of 515) were relatively smaller losses of under £100 which cumulatively totalled -£186,333.91 with only 13% of his losing bets being over £1000 conversely 35% of Mr R’s winning bets were in excess of £1000.*

*Spread bets are considered by the FCA to be investment products falling into the same category as Contracts for Difference (CFDS). Spreadex is an execution only broker and unable to provide advice to clients. Whilst Mr R’s losses were significant these were affordable based upon the information that he provided, and his winnings were equally significant and indicative of someone aware of what they were doing.*

*[Mr R] further demonstrated his understanding of spread betting through “managing positions”: for example, there are numerous instances where Mr R opened a position and then closed it “early” to mitigate further losses”*

Ultimately it said that by the time Mr R complained, he *“had extensive experience and was well versed in the functionality of spread betting”*. It said that given his initial trading, including some large losses (for example a £5 trade leading to a £125 loss), *“Mr R would have been able to determine extremely quickly the risks and rewards of spread betting and*

*had access to a wealth of online resources through the Spreadex website including educational materials, key information documents and tools to control or close his account”.*

#### Mr R’s understanding of spread-betting

Spreadex “*strongly*” disputed Mr R’s evidence that he didn’t know what spread betting was or that he thought it was similar to fixed odds betting. It said that the risk warnings and documentation it had already outlined Mr R received were sufficient to warn him about the risks of spread betting and that this was a different type of product. Furthermore, after placing over 700 trades it said he must have known this was the case.

It said that given “*Mr R claims he is a gambling addict, the suggestion that advising Mr R that spread betting was not suitable for him would have stopped him from spread betting seems highly unlikely*”. It said that Mr R was under no obligation to use spread betting when he was told the functionality had been reactivated.

#### The relevant rules – fixed odds versus spread-betting

Spreadex emphasised that fixed odds betting and spread-betting were two different products, governed by different regulators – and it “*rejected the Ombudsman’s conflation of the two and drawing conclusions relating to activity on one product based on past activity on a different product*”. It said that although it appreciated it’d used Mr R’s previous fixed odds betting to form the basis of a vulnerability assessment, it “*strongly*” refuted the suggestions that the information available was indicative of a vulnerability and “*the firm had no reasonable cause to view Mr R as vulnerable until he advised of his addiction as part of his complaint in November 2021*”.

#### Conclusions

Spreadex said that Mr R’s actual complaint was not that he was allowed to lose money with no affordability checks – but it said this was “*demonstrably false as email, telephone and documentary evidence clearly show that concerns over affordability were directly addressed by Spreadex and Mr R provided evidence confirming such losses were affordable*”.

Spreadex didn’t agree with the assertion “*that it had sufficient information available to it to show that Mr R was ‘likely suffering from a vulnerability that placed him at greater risk of economic harm’*”. It said that with the benefit of hindsight, there were some “*red flags*” in terms of his behaviour, these weren’t evident at the time, and the affordability issues were addressed by the documentation that Mr R provided. Spreadex said “*his losses were well inside his displayed disposable income*”.

It repeated its submissions that:

- His behaviour didn’t give rise to any safer gambling concerns;
- The FCA didn’t expect Spreadex to actively seek out Mr R’s vulnerability, and if he had been forthcoming with his circumstances it would’ve handled his account in line with its “*Vulnerability handling procedures*”.
- Mr R had periods of profit on his spread-betting account, and had he stopped at those points, the account would’ve been considered “*beneficial to him*” and it wouldn’t have been reasonable for Spreadex to seek to reclaim those winnings because spread-betting wasn’t appropriate for him.
- Mr R was responsible for his own financial losses, but was not taking any

responsibility for them. When he was told his spread-betting account was reactivated he didn't have to use it – and could've told Spreadex he didn't want it.

- Mr R received numerous warnings in relation to spread-betting as well as information about safer gambling, and subsequently had numerous opportunities to amend or close his account yet chose not to do so.

### **Mr R's response to my provisional decision**

Mr R agreed with my provisional decision. He acknowledged opening an account with Sporting Index but confirmed no spread-betting took place. He provided evidence of this. This information was shared with Spreadex before this final decision, but it didn't provide any comments in relation to that evidence.

### **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.

As in my provisional decision, I've firstly set-out any relevant standards and guidance which I consider apply to Mr R's case. I've then explained in what way I've taken those standards and guidance into account when deciding Mr R's complaint.

### **Applicable standards and guidance**

The Financial Conduct Authority's (FCA) Handbook sets out the FCA's expectations of firms, including guidance and regulations, as well as the high level principles which it expects all firms to follow. These are called the Principles for Businesses, and 'are a general statement of the fundamental obligations of firms under the regulatory system' (PRIN 1.1.2G).

Principle 6 is of particular relevance to this complaint. It says:

- Principle 6 – Customers' interests – A firm must pay due regard to the interests of its customers and treat them fairly.

### **Conduct of Business rules**

The Handbook also sets out the FCA rules for firms carrying on regulated activities. These are contained in the Conduct of Business Sourcebook (COBS) which are relevant to this complaint. In particular, COBS 2.1.1R (1) (the client's best interests rule) is relevant to this complaint. It says:

*"A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule)."*

The type of trading Mr R wanted to engage in is regulated by the FCA and involves sports spread-betting. In 2021 Spreadex needed to comply with certain rules before it allowed Mr R to engage in this type of spread-betting, and these rules were set out in COBS 10:

#### ***COBS 10.2 Assessing appropriateness: the obligations***

- (1) When providing a service to which this chapter applies, 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.

- (2) 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.

#### *COBS 10.2.2*

The information regarding a client's knowledge and experience in the investment field includes, to the extent appropriate to the nature of the client, the nature and extent of the service to be provided and the type of product or transaction envisaged, including their complexity and the risks involved, information on:

- (1) the types of service, transaction and designated investment with which the client is familiar;
- (2) the nature, volume, frequency of the client's transactions in designated investments and the period over which they have been carried out;
- (3) the level of education, profession or relevant former profession of the client.

#### *COBS 10.2.3*

A firm must not encourage a client not to provide information required for the purposes of its assessment of appropriateness.

Where, as a result of an assessment under COBS 10, a firm decides that the product or service being demanded is not appropriate for the consumer, it needs to comply with COBS 10.3.

#### *COBS 10.3 Warning the client COBS 10.3.1*

- (1) 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.
- (2) This warning may be provided in a standardised format.

And the FCA provides guidance to firms, in the event that a consumer chooses to go ahead with the service or product despite the warning:

#### *COBS 10.3.3*

If a client asks a firm to go ahead with a transaction, despite being given a warning by the firm, it is for the firm to consider whether to do so having regard to the circumstances.

#### FCA Guidance on vulnerable customers

In February 2021, the FCA produced 'FG21/1 Guidance for firms on the fair treatment of vulnerable customers'.

Whilst all of the guidance is applicable to Spreadex, I've quoted below the sections that I consider most relevant:

#### *Product and service design*

- 4.5 While some product and services may not be seen as harmful, they could have features that are harmful to vulnerable consumers (...)
- 4.6 If a firm's business model intentionally exploits vulnerable consumers, this would be a clear breach of our Principles. However, harm to vulnerable consumers might occur unintentionally and firms should actively consider the likelihood of any unintended effects when they are developing products and services to avoid potential harm. Firms should proceed with additional care for characteristics of vulnerability present in their target market or customer base. This includes cases where the product is targeted at vulnerable consumers or where the firm sells to a broad cross-section of people, which will include vulnerable consumers. Overly complex products and service can be hard for consumers to understand and can make it difficult for them to buy the product best suited to their needs.
- 4.7 An 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.

(...)

4.30 Failure to recognise when consumers are struggling to make decisions or act in their own interests and provide the right support, can result in harm. For example, cognitive disabilities, mental health conditions or addiction can lead to harmful financial decisions, vulnerability to scams and buying unsuitable products.

(...)

- 4.33 Frontline staff should have the skills and capability to recognise characteristics of vulnerability and response to individual consumer needs where a consumer has shared a need or whether there are clear indicators of vulnerability. See Chapter 3 where we describe staff skills and capabilities in more detail.
- 4.34 Firms should be proactive in offering support. They should enable consumers to tell them about any additional needs they have so they can deliver appropriate customer service. This includes in digital or paper-based customer journeys where there may be no direct interaction with frontline staff.

#### Spreadex's Terms and Conditions

Mr R agreed to certain Terms and Conditions that applied to his account. Particularly relevant to his complaint is the 'Spread-betting risk warning notice' which is set out on the penultimate and last page of the terms – pages 44 and 45. Among other risks, this notice says:

- "You should not deal in these products unless you understand their nature and the extent of your exposure to risk".
- "Spread Bets carry a high risk to your capital. They differ markedly from the more common form of fixed odds betting where your potential losses are pre-determined



in advance, and you should not engage in this form of betting unless you understand the nature of the transaction you are entering into and the true extent of your exposure to the risk of loss”.

- “This product is unsuitable for many members of the public”.

## **My findings**

Spreadex has provided detailed comments which I’ve summarised above. Whilst I’ve taken into account everything it has said in response to my provisional decision, for the reasons I explain below, I’ve not been persuaded to change my provisional conclusions. In my view, Mr R wasn’t treated fairly and his complaint should be upheld. I’ve focused on the two key issues in this complaint – but, where relevant, I’ve commented on Spreadex’s submissions. However, although I have taken everything it has said into account, the purpose of my decision isn’t to respond to all the points it has made. It is to explain my reasons for my findings on the key issues I’ve identified.

Before I do, I must acknowledge that Spreadex’s submissions rely heavily on its conclusion that the losses Mr R sustained, before in terms of fixed odds betting and in terms of spread-betting were affordable for him. It has said that it was satisfied this was the case based on the information provided. In my view, it is helpful to highlight both what Mr R declared to Spreadex as well as what his actual losses ended up being.

By the time of his complaint, Mr R had lost £30,901.86 in fixed odds betting and £80,039.54 in spread-betting. A total of £110,941.40.

When Mr R opened his account, he declared:

- Earning £100,000 annual income (gross);
- Being a homeowner with £20,000 equity in his home;
- Having £50,000 total savings.

He was later asked for some additional evidence to increase his fixed odds deposit limits and provided a statement showing that a property had been sold and he had around £153,000 in his account. No further questions were asked about the sale, or how it related to his initial account application.

As a result of this additional information, Spreadex agreed a £5,000 monthly deposit limit, and later in September updated his deposit limit to around £17,000 for a 180 day period. Once this limit was reached, Mr R was no longer able to place fixed odds bets with Spreadex. What all this means is that by the time his account was suspended, Mr R had lost more than half (and possibly more) of his liquid assets with Spreadex. I explore the relevance of this later in my findings.

### The opening of Mr R’s spread-betting account

I remain of the view that there are two key issues in this complaint, the first of which is the opening of Mr R’s account. The second is the activation, or as Spreadex refer to it, the “*reactivation*” of Mr R’s spread-betting account.

In terms of the opening Mr R’s spread-betting account, I note that Spreadex has at various points indicated that this was not the main thrust of Mr R’s complaint initially.

It says his main complaint was the checks, or lack of checks, that meant that he was allowed to do something which he couldn't afford.

But my remit is inquisitorial in nature, and in reviewing the concerns Mr R raised about Spreadex, it is clear to me that at its heart, his complaint is about being allowed to do something which carried such a high degree of risk – and consequently caused him such significant losses. In my view this is fair and reasonable, particularly in view of the fact that consumers may not know all the rules which underpin the services they are receiving from firms. In this case, since Mr R was not provided a warning in line with COBS10, he wouldn't have even known that Spreadex needed to assess his knowledge and experience before allowing him to open a spread-betting account. So I'm satisfied I can look at the opening of his account, particularly when it's so key to Mr R's complaint.

Having reviewed Spreadex's submissions about the assessment it carried out, I'm not persuaded Spreadex has provided any reasons that ought to change my provisional conclusions that it wasn't fair and reasonable for it to have concluded that spread-betting was appropriate for Mr R. Whilst the assessment didn't need to be a deep-dive into Mr R as an individual, it did need to obtain the basic information about his knowledge and experience of spread-betting. The assessment did not do this.

Spreadex has said that it was "*evident*" that Mr R possessed key knowledge of the risks of spread-betting that an individual may lose more than their original stake. I'm not persuaded by how it has come to this conclusion. Furthermore, knowing the risk and "*understanding*" the risk are not the same thing. COBS10 didn't merely require Mr R to know that there was a risk he might lose more than his original stake – or that the risk of losing his money was high. Spreadex needed to determine that Mr R had the necessary experience and knowledge in order to *understand* that risk – whilst the regulator isn't prescriptive about what that means, in my view an understanding would involve some degree of knowledge over the risk itself, how to potentially mitigate or avoid it and some indication, either through knowledge or experience, about the likelihood of that risk materialising.

But Spreadex did not test Mr R's knowledge in any way. It did not ask him any questions about spread-betting in order come to this conclusion.

It didn't ask him what other experience he had, whether spread-betting or anything else, that might lead him to understand the concepts of leverage and how it can inflate losses. If merely displaying generic warnings about these risks was sufficient, the assessment under COBS10, required by the FCA, would be redundant – I'm not persuaded that is a credible position to take.

I'm satisfied Mr R had no experience spread-betting, and I've seen no evidence that he had ever undertaken this form of trading before. Given that Spreadex didn't ask Mr R any knowledge questions about spread-betting, it could not have been satisfied he had sufficient knowledge to understand the risks – and as he had no experience (and didn't declare any to Spreadex), he didn't have sufficient experience either. So I'm satisfied that it was not fair and reasonable for Spreadex to conclude, in line with COBS10, that spread-betting was appropriate for Mr R. Instead, I'm persuaded that Spreadex ought to have warned Mr R that spread-betting was not appropriate for him because he did not have sufficient knowledge and experience to understand the risks involved.

Spreadex has mentioned the other warnings it provided to Mr R. But these other warnings were generic risk warnings, and not based on an assessment of Mr R's knowledge and experience – which is what COBS10 required. Given that Mr R was not intent on spread-betting, and in fact did not do so for many months after opening the account, I'm not persuaded those warnings would've had the same impact as a COBS10 warning.

In response to my provisional decision, Spreadex has said that Mr R could have opened a fixed odds account without opening a spread-betting account.

It said that Mr R “*actively upgraded his account to enable spread betting*” and this requirement was in place to ensure that clients didn’t “*inadvertently*” open a spread-betting account instead of a fixed odds account.

In my view, this clearly means that Spreadex’s failure to adhere to COBS10 and properly warn Mr R that spread-betting wasn’t appropriate for him is the primary cause of his subsequent spread-betting losses. As I said in my provisional decision, in my view, if Spreadex had provided a warning under COBS10, Mr R wouldn’t have agreed to activate this aspect of his account. I’m satisfied his interest in spread-betting was, at best, superficial or incidental to his fixed odds account. In my view, had Mr R been particularly keen on spread-betting, such that he would have ignored a specific warning that he had insufficient knowledge and experience to understand the risks, he would’ve immediately begun using it. He didn’t. Furthermore, the evidence shows that when that function was de-activated in May following a safer gambling call with Spreadex, Mr R never asked for it to be re-activated. In my view, this shows that it’s more likely than not that Mr R would simply have decided not to open or activate a spread-betting account had Spreadex warned him as it should’ve done.

In response to my provisional decision, Spreadex has supplied evidence that Mr R opened an account with Sporting Index, another firm. I asked Mr R about this, and he confirmed (and showed evidence from Sporting Index) that although he opened an account, he didn’t place any spread-bets at any point. Given that this account was opened in June 2021 and he didn’t use it, and Mr R didn’t place any spread-bets with Spreadex until October 2021 when his account with was activated (or re-activated), I’m satisfied this confirms that spread-betting was not something Mr R would’ve wanted to do had he been properly warned that it was not appropriate for him by Spreadex.

So I’m satisfied, in summary, that if the very firm Mr R was opening an account with had warned him in the strong and unambiguous terms which COBS10 required that spread-betting wasn’t appropriate, it’s more likely than not that Mr R would’ve decided not to activate or open the spread-betting part of his account. Given that Mr R never asked for his spread-betting account to be activated (or reactivated), I’m satisfied it’s more likely than not that Mr R would simply not have undertaken any spread-betting with Spreadex, and thereby avoided the losses he eventually sustained.

Spreadex has said that by the time Mr R made his complaint, he had placed several hundred bets – and that his trading demonstrated an understanding of spread-betting. I’m not persuaded that two months of trading gave him such an understanding. But regardless, his trading post-dated his application – and did not form part of Spreadex’s initial assessment to deem spread-betting appropriate, nor its subsequent decision to re-activate his spread-betting account. In my view, all that Mr R’s trading between October and November shows is that he knew how to operate Spreadex’s service – but the question is not how quickly he subsequently gained sufficient knowledge and experience in spread-betting, but whether he should’ve been exposed to the high risks this type of trading involves in the first place.

#### Was it fair and reasonable to open or reactivate Mr R’s spread-betting account in October 2021

The second key issue, as I’ve mentioned above and that I addressed in my provisional decision, is whether Spreadex’s decision to open or reactivate Mr R’s spread-betting account in October 2021 was fair and reasonable.

As I’ve said above, I’m satisfied that on balance, had Spreadex followed COBS10 and done

what it required, Mr R's spread-betting account would never have been in a position to be opened or reactivated. However, I've gone on to consider the fairness of Spreadex's decision – and the majority of Spreadex's comments in response to my provisional decision are about this aspect of Mr R's complaint.

In my provisional decision I explained that in weighing up whether Spreadex acted fairly and reasonably by deciding to activate (or re-activate) Mr R's spread-betting account, the following factors were relevant – and in my view continue to be relevant:

- Mr R had a pre-existing relationship with Spreadex which showed he had already suffered considerable financial losses when gambling with it.
- Mr R's fixed odds account had twice been paused due to reaching fixed odds deposit limits and the evidence shows that Mr R's betting habits had already caused Spreadex to consider "*gambling related harm*" in his case.
- An email from 1 May 2021 to Mr R said people "*who spend more than they can afford are at greater risk of experiencing gambling-related harm and as such all operators in the UK are now expected to ensure betting is affordable and sustainable*". He was provided some further resources on gambling and how to manage his gambling.
- Mr R provided some payslips and in a further email, he was told that "*if you are using your savings and income to deposit with us and continue at your current rate then you will exhaust your available funds quickly*". It said that exhausting "*funds at an unsustainable rate can be a sign of gambling related harm*". It declined to remove to the fixed odds deposit limit.
- As a result of some further evidence Mr R provided, his deposit limit was increased to £5,000 over a 30 day period. However, the email confirmed that "*as per our discussion your spread betting access shall remain disabled*".
- On 5 June 2021 Mr R's account was again reviewed due to his "*deposits [being] high against your stated financial information*". Mr R did not undertake any further fixed odds betting after this.
- On 10 September 2021 Spreadex proactively wrote to Mr R to change his fixed odds deposit limit. Mr R proceeded to start betting again and by October he had reached this limit and was no longer able to place any further bets for 6 months.
- The FCA's guidance around identifying vulnerabilities indicates that Spreadex needed to be alert to Mr R's behaviour and whether it demonstrated a vulnerability. That guidance required Spreadex to be alert both to Mr R's individual situation, as well as the potential harm that its services might cause him – in this case spread-betting.
- Mr R did not ask for his spread-betting account to be opened.
- Spreadex knew, or should've known, that Mr R had no spread-betting experience and had demonstrated no knowledge of it. It also knew that the vast majority of its customers lost money spread-betting.
- Furthermore, given the nature of its fixed odds service, Spreadex likely knew that the fixed odds deposit limits which are mandated by the Gambling Commission were not mandated by the FCA with spread-betting. And it knew, because the Gambling

Commission required it to be aware of this, that a proportion of its fixed odds betting customers were likely to be problem gamblers. This means that, given everything it knew about Mr R, including his accrued losses, his deposits, its concerns about his deposits, and the possibility that he may be a problem gambler, it knew or should've foreseen that in allowing Mr R to start spread-betting there was a risk that it would be exposing a potentially vulnerable customer to additional economic harm.

Taking all the above into account, I'm satisfied that in order to be fair and reasonable, Spreadex's decision to re-open or re-activate Mr R's spread-betting account needed to be aligned to his best interests. I say this because Spreadex was making a decision to proactively offer Mr R a service which he wasn't using at the time, but which carried with it a high risk of capital loss.

In its comments, Spreadex has emphasised that it didn't have any information about Mr R's vulnerability. It has told me that the systems it has in place to comply with the Gambling Commission's rules did not identify Mr R's behaviour as that of a problem gambler. Although it cautioned against "*conflating*" two sets of rules (those mandated by the Gambling Commission and those by the FCA), it said that none of the information it held about Mr R would've led it to conclude that it shouldn't allow him to spread-bet.

But Spreadex's comments in my view don't address the heart of what's gone wrong here – it alone made the decision to activate the spread-betting function of Mr R's account, without him asking, and without warning him that it wasn't appropriate for him. And it did this after he had sustained significant losses already and, importantly, after his ability to continue placing fixed odds bets had been suspended due to depositing, and losing, too much.

Spreadex says that it didn't agree that acting in his best interest meant not permitting him to spread-bet – it said this would mean the majority of firms would be out of business. It said acting in Mr R's best interests meant ensuring he had access to a safe platform where he could invest and spend his money in a safe, convenient and user-friendly environment.

But the question here isn't about permitting Mr R to spread-bet or preventing him from spending his money in a way he wanted to. Spreadex proactively decided, without any request from Mr R, to re-activate his spread-betting account. An account which would allow Mr R to lose more than his deposits, doing something which the vast majority of its clients lose money, and which he had no knowledge and experience in. Spreadex has failed to explain how this decision was in Mr R's best interests – how it weighed up all the circumstances of Mr R's situation and decided that it was in his best interests to allow him to undertake this activity, versus leaving it up to him to decide whether or if he wanted to have this part of his account re-activated. As Spreadex has said, Mr R had numerous channels of communication – if he had wanted his spread-betting account to be reactivated, he would've asked it to do so.

As part of Spreadex's detailed explanations about why the spread-betting function of Mr R's account remained deactivated and the work it did on its fixed odds part of the business as part of a Gambling Commission view, there is a complete absence of anything that relates to an assessment of Mr R's circumstances. Spreadex has said, in response to my provisional decision, that "*Mr R had left the reactivation of his spreads account to Spreadex's discretion*" – but it has completely failed to show how it exercised this discretion by taking into account Mr R's particular circumstances, and the background I've highlighted above. I'm satisfied this is because it didn't, at any point, consider Mr R's particular circumstances when it made the decision to re-activate his spread-betting account. It did so because its systems allowed it to.

I'm satisfied it didn't weigh up the risks to Mr R of taking such action, nor did it take into account all the information it had about him. And so I'm not persuaded it can argue that it acted in his best interests, when it didn't even consider those interests prior to making this decision.

Furthermore, I think it's important to highlight that Spreadex did have, on the other hand, a clear commercial interest in activating Mr R's account – because it stood to gain both from his loss-making trades, as well as his overall trading activity.

Given the timing of its decision to re-activate Mr R's spread-betting account, which coincided with his inability to place any more fixed odds bets, it was even more important for Spreadex to clearly and unequivocally consider whether doing so was in Mr R's best interests – and it ought to have done this in a clear and transparent way.

On this note, I would add that the fact that Mr R was briefly in profit is entirely irrelevant to my conclusions – Spreadex wouldn't have known how successful Mr R was going to be spread-betting (and he was not in any event). What it did know is that the vast majority of its clients lost money spread-betting and that this percentage would likely be higher among those clients, such as Mr R, who had no knowledge and experience in this type of trading.

Given the losses Mr R had already sustained and his lack of interest or request to allow him to spread-bet at any point since he opened his account, I'm satisfied that making this decision proactively was not in his best interests. And I'm satisfied that if Spreadex hadn't re-activated Mr R's spread-betting function on his account, he would not have traded as he did – and consequently, lost the money that he did.

#### Concluding remarks

For these reasons, and those that I gave in my provisional decision (and which I also confirm here as final), I'm satisfied Mr R's complaint should be upheld. I'm satisfied his spread-betting losses were primarily caused by Spreadex failing to undertake a proper assessment under COBS10 and consequently warn him, as it should've done, that this type of trading wasn't appropriate for him. In addition, or in the alternative, I'm also satisfied that Spreadex's decision to proactively and unilaterally activate this function in October 2021 was not done with Mr R's best interests in mind – and instead, it ought simply to have let Mr R decide, for himself, whether this type of trading was something he wanted to pursue and left it to him to request to “re-activate” this part of his account. And even in that circumstance, it would still have needed to consider, at that point, the guidance at COBS 10.3.3 which required it to consider all the circumstances before agreeing to offer this service to him.

Given that Mr R did not display any inclination to spread-bet with Spreadex (or the other firm) at any point between April and October 2021, I'm satisfied he would not have done so but for Spreadex's actions. And so I'm persuaded it is fair and reasonable that Spreadex pay him compensation.

#### **Putting things right**

My role in putting things right is to put Mr R in the position he would've been had Spreadex not activated his spread-betting account or had he chosen not to open one following the warning Spreadex should've given him had it carried out a fair and reasonable appropriateness assessment.

Mr R would not have undertaken any spread-betting activity had he been warned it wasn't appropriate for him, or had his account not been reactivated in October 2021.

So I'm satisfied the fair and reasonable way to put things right for Mr R is to refund all the losses he suffered while spread-betting from October 2021 until the end of November 2021. I've considered whether this should be reduced in light of Spreadex's comments about the knowledge Mr R gained while spread-betting – but I'm not persuaded this would be fair and reasonable. In my view it's questionable what actual knowledge Mr R gained beyond the ability to operate Spreadex's system. Furthermore, I'm persuaded it would be profoundly unfair to reduce the compensation Mr R is entitled to because after a month or two months of trading he experienced, with his own resources, the high risks and complexity of this form of trading – when my core finding is that Spreadex should not have exposed him to such risks in the first place.

I've also considered Spreadex's claim that Mr R would have gone and traded somewhere else had it not re-activated his account in October, and whether the compensation should be reduced in light of this possibility. I should be clear that the compensation I'm awarding here is not for fixed odds betting. It is for spread-betting. And the evidence shows that at a time when he was unable to spread-bet with Spreadex, because his account wasn't activated, he did not spread-bet somewhere else. So I'm satisfied that, on balance, there's insufficient evidence to conclude that Mr R's losses, which he sustained while trading with Spreadex between October and December 2021, would've been sustained somewhere else. In my view, the evidence shows that Mr R would like not have traded somewhere else had Spreadex not reactivated his account in October.

Allowing Mr R to incur such significant losses also likely had a considerable impact on a wide range of other spending and financial commitments that Mr R had at the time and has had since. In my view he would not have been deprived of this money had Spreadex acted fairly and reasonably. So I'm satisfied that Spreadex ought to add 8% per year simple on this sum from the date it suspended or closed Mr R's account, to the date of settlement.

I'm also satisfied that Spreadex's actions have caused Mr R distress and inconvenience and the feeling that it has sought to financially capitalise on his vulnerability. I'm therefore satisfied that Spreadex ought to pay Mr R an additional £500 compensation for this distress.

### **My final decision**

I uphold Mr R's complaint and award the compensation I've outlined above. Spreadex Limited must pay the compensation I've outlined above within 28 days of when we tell it Mr R has accepted this final decision.

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

Alessandro Pulzone  
**Ombudsman**