

The complaint

Mr J complains that IG Index Limited unfairly closed his spread betting positions and then his account. He also says that IG's actions resulted in a significant loss to him.

Mr J would now like IG to reopen his account and reinstate his closed positions.

What happened

In June 2019, Mr J opened an account with IG after buying a small flat overseas. The aim of the account was to use it to hedge currency between Pound Sterling (GBP) and other foreign currencies.

In September 2022, Mr J logged into his account and found c£270,000 had been wiped from his portfolio. In addition, IG had closed several of his positions as a result of a margin call due to a drop in value of GBP against several other currencies. After transferring £25,000 into his account the next day, IG debited £7,000 from those funds.

Mr J then drew down £200,000 from his mortgage and added it to his account to mitigate his losses and tried to re-open his positions.

Shortly afterwards, Mr J decided to formally complain to IG. In summary, he said that he was unhappy that his positions had been closed because of a margin call on 26 September 2022 resulting in significant loss to him of around £300,000. Mr J said that he was also unhappy that IG didn't notify him about the margin call in advance and that they'd left him in a 'catastrophic financial position'.

Mr J was also concerned that IG had then restricted trading on his account, preventing him from opening up any new positions in an attempt to recover his losses.

After reviewing Mr J's complaint, IG concluded they were satisfied they'd done nothing wrong. They also said, in summary, that on the morning of 26 September 2022, there was a rapid drop in the value of GBP against several currencies. That resulted in the equity in Mr J's account falling below the 50% of his required margin. IG went on to say that the closure of Mr J's positions was therefore valid. In addition, IG also said, in summary:

- That under the terms of the agreement that they had with him, it was Mr J's responsibility to ensure that he was aware of his margin at all times on bets that he had open. IG also highlighted that Mr J was still obligated to cover the margin, regardless of whether they contacted him or not.
- IG also explained that they believed they were right to restrict Mr J's ability to undertake further trades and considered it appropriate to return his recently deposited funds to him in light of the comments he'd made to them in his complaint and subsequent interactions. They went on to say that his comments raised concerns about his ability to sustain such

significant losses and as such, they considered closing his account to be in his best interests.

Mr J was unhappy with IG's response, so he referred his complaint to this service. In summary, he repeated the same concerns that he highlighted to IG, namely that they unfairly closed his positions and then his account.

The complaint was then considered by one of our Investigators. He concluded that IG hadn't treated Mr J fairly because, in his opinion, it wasn't appropriate for them to have treated Mr J as an elective professional client (EPC). He explained that whilst Mr J hadn't expressly raised that as a complaint point, the inquisitorial remit of our service allowed him to do so. Our Investigator also explained that by treating Mr J as a professional investor, rather than a retail investor, he had lost a number of protections that would have been afforded to him and exposed him to the possibility of significantly larger losses.

However, our Investigator also felt that on balance, Mr J would've still more likely than not have opened a spread bet account given the nature of what he intended to use the account for.

After our Investigator issued his view, IG provided further insight into Mr J's circumstances. IG explained that it was Mr J who had requested his account be upgraded to EPC. IG also highlighted that the margin call closed Mr J's positions on the third attempt, but had they closed it at the first attempt, he would've been better off by £15,236. In an attempt to resolve the complaint, IG explained that they would offer Mr J this amount to bring matters to a close. IG explained that their offer wasn't in recognition of any wrongdoing but an attempt to draw a line in the sand.

Despite IG's further submissions, our Investigator wasn't minded to alter his initial view. However, he did issue an updated view, reinforcing his original thinking, confirming that he was of the opinion that Mr J hadn't been treated fairly and shouldn't have been categorised as an EPC. The Investigator asked IG to undertake a comparison of the position that Mr J would've been in had they treated him as a retail customer.

After undertaking their comparison calculations, IG determined that no compensation was due to Mr J as a consequence of them treating him as an EPC rather than a retail consumer. IG explained that he would have lost £51 more if they had treated him as a retail customer on one of his accounts and made £243 less profit on his other account, had he been treated as a retail customer. IG went on to say that because their calculations showed that Mr J hadn't lost out because of their actions, they were withdrawing the £15,236 offer that they'd originally tabled to settle the complaint.

In response, Mr J said that he didn't feel IG had treated him fairly because he was told by them that in some circumstances, they do reinstate customers' positions, and therefore, he couldn't see any reason why IG wouldn't do the same for him. Mr J felt that IG weren't treating their customers consistently and he also said that he couldn't understand how the calculation that IG had undertaken was correct. That's because, he says, the margin criteria for retail and professional clients are substantially different. Mr J said that he was unhappy that there was no compensation payable to him as a consequence of IG's calculation.

Our Investigator was not persuaded to change his view as he didn't believe Mr J had presented any new arguments he'd not already considered or responded to. Unhappy with that outcome, Mr J then asked the Investigator to pass the case to an Ombudsman for a decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I have summarised this complaint in less detail than Mr J has done and I've done so using my own words. The purpose of my decision isn't to address every single point raised by all of the parties involved. If there's something I've not mentioned, it isn't because I've ignored it - I haven't. I'm satisfied that I don't need to comment on every individual argument to be able to reach what I think is the right outcome. No discourtesy is intended by this; our rules allow me to do this and it simply reflects the informal nature of our service as a free alternative to the courts. Instead, I will focus on what I find to be the key issue here, which is whether it was appropriate for IG to treat Mr J as an EPC, whether IG should have pre-warned Mr J about their plans to apply a margin to his positions and whether they have treated him fairly by closing his account. Finally, I will also cover whether the proposed redress approach and outcome is fair and reasonable.

My role is to consider the evidence presented by Mr J and IG in order to reach what I think is an independent, fair and reasonable decision based on the facts of the case. In deciding what's fair and reasonable, I must consider the relevant law, regulation and best industry practice. Where there's conflicting information about what happened and gaps in what we know, my role is to weigh up the evidence we do have, but it is for me to decide, based on the available information that I've been given, what's more likely than not to have happened. And, having done so, I'm upholding Mr J's complaint in part and it's largely for the same reasons as our Investigator.

Whilst Mr J's original complaint to IG was anchored around the fact that they'd closed out his positions because of a margin call, I'm satisfied it was appropriate for our Investigator to consider whether Mr J should have been categorised as an EPC. That's important because as an EPC, Mr J wouldn't benefit from certain protections afforded to retail clients. Whilst EPC's typically benefit from better terms, the protections offered to retail clients normally result in smaller losses.

In his view to both Mr J and IG, our Investigator set out in detail the Financial Conduct Authority's (FCA) Conduct of Business Sourcebook (COBS) rules that need to be met which would allow a firm to treat a consumer as an EPC. I don't intend to repeat those rules in any level of detail here as they've been debated in significant detail between IG and our Investigator and in any event, it seems that IG have agreed with our Investigator's view and Mr J hasn't challenged this point. But I will comment on them for completeness.

The regulator's COBS rules explain that a consumer must meet any two of the following three criteria to be granted professional status –

- The client has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters.
- The size of the client's financial instrument portfolio defined as including cash deposits and financial instruments, exceeds €500,000.
- The client works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged.

From what I've seen, Mr J worked in financial services for a number of years in a regulated position and holds qualifications in securities and investments. I'm satisfied that Mr J met the latter criterion under COBS 3.5.3 because he shared evidence of his qualifications and IG were able to see that he was also noted on the FCA's register as having worked in a large investment bank for a number of years.

However, guidance issued by the European Securities and Markets Authority (ESMA) said that businesses shouldn't rely solely on self-certification when assessing clients for recategorisation. And, COBS 3.5.6 requires businesses to take all reasonable steps to ensure the applicant satisfied the requirements. So, whilst I can see that Mr J held the requisite knowledge to be treated as an EPC, I've not been persuaded that IG gathered the same evidence around his prior transactions or his personal wealth. Had they done, IG would have seen that Mr J had limited savings (of around £15,500 and £79,750) and hadn't undertaken the volume of trades necessary to qualify as it would appear that he didn't hold any other spread betting accounts prior to opening his IG account.

Whilst it would seem that Mr J didn't meet the regulator's criteria to be classified as an EPC, given the nature of his intended use for the funds, I'm of the view that he would've still more likely than not have opened an account with IG. I'm also satisfied that he would have still made the same trades but as a retail consumer – I say that because, despite having his account restricted, Mr J pressed IG to reinstate his positions, explaining that he typically always ended up better off as a result of his bets/trades and that's despite them closing out his last position (in September 2022) due to margin calls.

Margin call

There's no dispute that Mr J was trading as an execution only client – this meant IG was not responsible for advising him or managing his positions. He alone was responsible for deciding how much money to deposit, when to open bets and on what markets, monitoring those positions, and when to close them. So, despite what Mr J may have said in his complaint, IG were not responsible for keeping him abreast of when his positions may close out because of a change in the markets he was betting on – that responsibility rested with him. Whilst I acknowledge that Mr J may have credited his account with additional monies the day after IG closed his positions out, at that point, it was too late.

I'm satisfied that margin expectation is covered in IG's Customer Agreement that Mr J would've been provided a copy with at the time he opened his account. Section 15.4 (on page 10) of the agreement states: *'(a) that it is your responsibility to be aware of, and further you agree to pay, the Margin required at all time for all Bets that you have open with us; (b) that your obligation to pay Margin will exist whether or not we contact you regarding an outstanding Margin obligation; and (c) that your failure to pay any Margin required in relation to your Bets will be regarded as an Event of Default for the purposes of Term 17'.*

In addition, within section 15.7 (again on page 10) of IG's Customer Agreement, it states that: *'We are not under any obligation to keep you informed of your account balance and Margin required (i.e. to make a 'Margin call')'.*

Whilst the margin rules for retail clients are slightly different to that of an EPC – offering more protection: *'(3) Where we have categorised you as a Retail Client and only to the extent required by Applicable Regulations, we may close or part close any open Bets on your account if your account balance, taking into account P&L is equal to or less than 50% of the total initial Margin requirement for your open Bets'*, the onus is still on Mr J to closely monitor his positions.

It therefore seems very clear to me that given the agreement that Mr J entered in to with IG, he alone was responsible for regularly checking his positions and ensuring that he had adequate funds in his account to ensure IG didn't close out his positions.

I therefore can't conclude that Mr J was treated unfairly when IG closed his positions; albeit for the avoidance of any doubt, when those positions were closed would have likely been different had Mr J been correctly categorised as a retail customer.

Reinstatement of positions and account closure

Mr J says that he's unhappy that IG won't reinstate his positions and have closed his account. IG explained that they took the decision to close Mr J's account because he'd explained to them the 'catastrophic' impact such losses would have on his standard of living if they didn't reinstate his positions. Whilst Mr J later explained that he may have embellished his comments in order to encourage IG to reconsider their decision, I can't conclude that IG have acted unreasonably by refusing to reinstate his positions or close his account. I'll explain why.

Whilst as a retail customer, IG would likely have had to close out Mr J's positions earlier than that of an EPC because of the differing margin requirements, I've not seen any evidence to persuade me that IG closed Mr J's positions out incorrectly.

But, I can understand IG's reluctance to allow Mr J to continue trading given the comments he's made to them and the nature of his current financial circumstances. Spread betting is high risk in nature and consumers should only typically invest monies that they can afford to lose and importantly, funds which won't have an impact on their standard of living. Whether embellished or not, Mr J has intimated that losing these funds will impact him and outside of the monies he held with IG, he has little other financial means to draw on so losing these monies would likely have a disproportionate impact on Mr J.

In any event, whether to accept trades or bets from a consumer is a commercial decision for each firm and is not one that this service will be drawn in to. Despite what Mr J states IG told him about them being prepared, in some instances, to reinstate certain consumers' bets, I'm not persuaded that IG are being inconsistent by not re-opening his positions. That's because I well suspect each decision is taken purely on the merits of each consumer's circumstances.

I'm therefore not going to ask IG to revisit their decision making in respect of this particular issue.

Putting things right

Mr J must be put in the position he'd have been in if he hadn't been re-categorised as an EPC. I think that, on balance, he would more likely than not still have placed the same trades if he'd remained as a retail client. So, it wouldn't be fair for me to direct IG to refund all his losses, as these were down to his trading choices, not his client status. But Mr J was able to trade with greater leverage and this means IG facilitated him potentially losing more money than he might otherwise have done, as he traded as an EPC without the greater protection afforded to retail clients. As such, I think it's likely his losses were greater as an EPC than as a retail client.

I think that fair compensation should be calculated as follows:

IG should rework Mr J's account to show what losses he would've incurred had he been trading (between when he opened his account and September 2022) with a lower amount of leverage, as is the case with retail client accounts. IG should then pay to Mr J the difference between what those losses would've been had his account been a retail client account, and what they actually were as an elective professional client.

After receiving our Investigator's second view in July 2023, IG agreed to undertake the comparison calculation above. That calculation showed that no compensation was due to Mr J as a consequence of them treating him as an EPC rather than a retail consumer. IG explained that he would have lost £51 more if they had treated him as a retail customer on one of his accounts and made £243 less profit on his other account had he been treated as a retail customer. IG went on to say that because their calculations showed that Mr J hadn't lost out because of their actions, they were withdrawing the c£15,000 offer that they'd originally tabled to settle the complaint. Mr J was unhappy with that outcome and considered that he'd been treated unfairly.

When mistakes occur, it's not the role of this service to punish businesses; that's the responsibility of the regulator, the FCA. Our role is to instruct firms to put the consumer back into or as close as possible to the same position that they would've been in were it not for the original error. IG's calculations have sought to do that. So, whilst Mr J is unhappy about IG withdrawing their earlier c£15,000 offer to resolve his complaint, I'm not going to instruct them to pay him that money. That's because it's not an amount he would ever have been entitled to were he correctly classified as a retail customer. The c£15,000 represented the difference between the first attempt, when IG should have closed Mr J's positions and their third attempt, when they did manage to close his positions. However, the comparison that IG have now been asked to undertake compares what his position would've been as a retail consumer instead of an EPC – which I believe better reflects what should have happened.

Whilst this service doesn't provide a checking and validation service of firm's redress calculations, having carefully reviewed IG's comparison calculations, I don't believe they're as clear as they could be. I therefore require IG to provide a detailed explanation to Mr J covering their approach and methodology so he can better understand how they reached their conclusion. IG must provide this information to Mr J within 14 days of my final decision.

IG must also pay £250 to Mr J to compensate him for the distress and inconvenience caused to him by its decision to allow him to trade as a professional client.

I consider this to be fair and reasonable in all of the circumstances.

My final decision

I'm upholding Mr J's complaint in part and require IG Index Limited to put things right for him in the manner that I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 17 May 2024.

Simon Fox
Ombudsman