

The complaint

Mrs C complains that IG Index Limited ('IG'):

- unfairly encouraged her to convert her contracts for difference (CFD) and spread bet trading account to elective professional client (EPC) status. She says that this resulted in her losing a number of protections, magnifying the losses she made.
- Mrs C also says that IG failed to act in her best interests and ignored the warning signs that she was a vulnerable client. She went on to say that IG actively encouraged her trading activity and subsequent loss making.

Mrs C would now like IG to refund 90% of the losses that she's incurred since starting trading with them and pay compensation for the stress that she's incurred.

What happened

In August 2004, Mrs C opened an account with IG and began trading a range of instruments including options, currencies and shares. Some 13 years later, in December 2017, Mrs C applied to change her account from IG's normal 'retail' offering to EPC status.

After trading for several more years, Mrs C decided to formally complain to IG. In summary, she said that she was unhappy with her "account status, its management and the strange mechanics of the IG platform". Mrs C went on to say, in summary, that IG had failed to safeguard her against substantial losses but moreover, their business practices had actively contributed to them. To put things right, Mrs C asked IG to refund the previous 12 years of deposits along with the commission and charges that she'd paid.

After reviewing Mrs C's complaint, IG concluded that they were satisfied they'd done nothing wrong. They also said, in summary, that based on what they'd seen of Mrs C's circumstances, she met the regulator's criteria to be classified as an EPC. In addition, given the losses she'd incurred only amounted to around 10% of her stated wealth, and that Mrs C had never told them about her mental health concerns, IG explained that there weren't any indicators which they feel they missed to have spotted her concerns sooner.

In addition, IG also explained that because Mrs C had told them about the impact that the losses had had on her personal circumstances, they were going to close her account.

Mrs C was unhappy with IG's response, so she referred her complaint to this service. In summary, she repeated the same concerns that she'd set out to IG, that is she felt she'd been manipulated into applying for EPC status, resulting in her losing the normal retail client protections. She went on to say that IG had actively encouraged her to place highly leveraged bets which as a retail client, she wouldn't have been able to do. Mrs C explained that she wanted 90% of the losses that she'd suffered over the last 12 years since becoming an IG customer refunded.

The complaint was then considered by one of our Investigators. She concluded that whilst she could look at Mrs C's complaint, she wasn't able to consider all of the events that had taken place over the full 12 years. That's because, in summary, the regulator places time limits on what this service can and cannot consider.

After reviewing Mrs C's complaint, she also concluded that IG hadn't treated Mrs C unfairly. That's because, from what she'd seen, she didn't think the account that IG had provided to Mrs C was inappropriate for her. In addition, our Investigator also said that from the evidence presented, she didn't think IG had acted unreasonably when approving Mrs C's application to move her account from their retail offering. She said that she'd not seen any evidence where IG had acted inappropriately by trying to induce Mrs C to make trades nor any indication that Mrs C had exhibited markers of being potentially vulnerable that would've allowed IG to have put a stop to her trading sooner.

Unhappy with that outcome, Mrs C 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 Mrs C 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 the crux of Mrs C's complaint, which is whether IG inappropriately allowed her to open an account that was suited only for a professional client, meaning that she was not provided with the protections normally given to a retail customer.

My role is to consider the evidence presented by Mrs C 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 not upholding Mrs C's complaint - I'll explain why below.

The time limits on Mrs C's complaint

In her complaint to this service, Mrs C stated that she'd like to be recompensed for 90% of the losses that she's sustained over the last 12 years. However, our Investigator explained that

when considering the events that had occurred, this service could only look at the six-year period prior to Mrs C raising her concerns with IG, and that's because the regulator, the Financial Conduct Authority, places strict time limits within which a complaint can be brought to this service and what we can consider. In her view, she said that because Mrs C had only raised her complaint with IG on 19 July 2022, she could only consider events that had occurred from 19 July 2016 onwards.

For completeness, I've looked again at the full timeline of events; the rules applying to this service say that I can't look at a complaint made more than six years after the event being complained about – or (if later) more than three years after the complainant was aware, or ought reasonably to have been aware, of their cause for complaint. Unless that is, the business being complained about agrees. This is Dispute Resolution rule 2.8.2R(2) – which can be found online in the Financial Conduct Authority's handbook. But, in this case, IG hasn't agreed to us considering what happened with Mrs C prior to the six year period (before 19 July 2016), because they believe for us to be able to consider issues prior to that period, she should have raised her concerns before 19 July 2022, but she didn't.

As both parties have agreed with our Investigator's assessment on this particular point, I see no reason to revisit this aspect in any level of detail, other than to say that I'm in agreement with her position. That means in my decision, I will only consider the events (and transactions) that occurred from 19 July 2016 onwards. I will then focus on Mrs C's application to alter her account to EPC status in December 2017 and whether IG should have identified that she was a potentially vulnerable consumer earlier than they did.

Did IG act appropriately between 19 July 2016 to 1 December 2017?

Whilst I've already explained that my decision will only focus on events that took place after 19 July 2016, Mrs C's account has been open since August 2004. Given that timeframe, I've not looked at the retail account opening process which Mrs C went through with IG in 2004. So, whilst I don't know what was or wasn't disclosed to Mrs C about the risks that she was entering into at the point at which she started trading, I'm satisfied that after a very short period of time, she would've very much understood the consequence of trades going against her. I say that because from what I've seen, she's traded regularly since 2004 and sustained losses throughout that period. It therefore follows that had Mrs C been unaware of the risks of the trading she was undertaking, she would have complained much sooner than she did in 2022.

But in any event, I've seen no evidence to suggest that Mrs C raised any concerns to IG during the period of 19 July 2016 to 1 December 2017 (which is the point at which she applied for EPC status) about either the losses she was suffering or her personal financial circumstances. And, had she done, I well suspect IG would've intervened to put a stop to her trading and loss making sooner.

Mrs C has explained that IG should have undertaken an annual review with her and had they done, her losses could've been stemmed earlier, but it's not that simple and that's because of the nature of the relationship that she had with IG. There's no dispute that Mrs C was trading as an execution only client – this meant IG was not responsible for advising her or managing her positions. She alone was responsible for deciding how much money to deposit, when to open trades and on what markets, monitoring those positions, and when to close them. Had Mrs C wanted direction or advice on what to do with her trades, she'd have needed to engage an adviser who specialises in this area and paid for that advice.

But in any event, I'm content that Mrs C appreciated the risks of what she engaged in. I say that because from what I've seen, she was employed at a number of globally recognised investment banks between 2003 to 2015, working in derivatives-based roles. Given the

complex nature of those positions and the responsibilities that she stated she undertook, it's clear to me that she would've been in no doubt about the risks of trading complex financial instruments.

Given the nature of Mrs C's trading and her stated occupation, I'm therefore satisfied that she was very much aware of the risks of trading leveraged instruments and also accepted the prospect that there was a high likelihood of losing her funds. I therefore can't conclude that the retail account IG provided to Mrs C was inappropriate for her.

Did IG inappropriately change Mrs C's account to EPC status in December 2017?

A consumer would typically transition from being a retail customer to EPC to unlock better terms at the provider. This could include, but isn't limited to, lower charges, better leverage options and smaller margin requirements. However, in doing so, they immediately give up a number of protections afforded to them as a retail client. That's why the regulator, the FCA, has a robust framework of hurdles in place that consumers must pass in order to migrate to an EPC offering.

Mrs C has said that IG specifically encouraged her to switch to EPC status and had they not allowed her account to be altered from an ordinary retail offering, she'd have avoided the volume of losses she incurred. She says that IG employees contacted her on multiple occasions from their personal mobile devices (so calls weren't recorded) to get her to apply for EPC status. Mrs C also says that one of the criteria used to determine her status was whether she was making large trades – she went on to say that, in her mind, that didn't constitute experience or knowledge, especially when there were large losses attached to those trades.

The FCA's Conduct of Business Sourcebook (COBS) rules (in 3.5.3) set out the criteria that needs 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 Mrs C and our Investigator, but I will comment on them for completeness.

The regulator's COBS rules at the time of Mrs C's application explain that a consumer must meet two of the following three criteria to be granted professional status:

1. 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.
2. The size of the client's financial instrument portfolio defined as including cash deposits and financial instruments, exceeds €500,000.
3. 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.

Having carefully considered the regulator's criteria, I've looked closely at Mrs C's circumstances at the time of her EPC application. IG shared a copy of Mrs C's trading history covering the one-year period prior to her EPC application. That statement demonstrated that Mrs C traded on a regular basis across a number of different instruments and did so in excess of 10 per quarter over the previous four quarters. Mrs C has said that, in her mind, that didn't constitute experience or knowledge, especially when there were large losses attached to those trades, but I don't agree.

If a consumer has traded on an exchange on a regular frequency and suffered losses during that period, it's very clear that they would come to understand very quickly about the

consequences of their actions. And, that's why the regulator sets out the minimum transaction levels over a quarter because, whilst there'll likely be gains within that period, there'll also be losses too, which Mrs C had. And, from what I've seen, after opening her account with IG, Mrs C undertook nearly 8000 trades, 750 of which were of a significant level. But, in the 12-month period immediately prior to the EPC application, she'd traded 265 times, all of significant size. I'm content therefore that Mrs C satisfied the regulator's first criterion, and it would seem that she also satisfied the latter.

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. IG have provided a copy of Mrs C's LinkedIn profile from the time which appears to back up her work history but, in any event, from what I've seen, Mrs C hasn't disputed that she worked in either of the roles within which IG relied upon to meet criterion three.

Whilst Mrs C has explained that her transaction volumes didn't provide her with the knowledge or experience to understand the risks of what she was doing, I'm satisfied from the nature of her role at one of the investment banks clearly demonstrated she knew what she was getting herself into. Mrs C's LinkedIn profile states that she worked on the controls and products of the trading desks and built risk and profit and loss analysis tools by utilising proprietary analytics. I'm therefore satisfied that Mrs C met the latter criterion under COBS 3.5.3 because of the specific nature of the roles she undertook at a number of large investment banks in a derivatives-based position for a number of years. So, whilst Mrs C may be of the view that IG staff encouraged her to falsify her application form for EPC status, based on the information that's been presented to me, she didn't need to be untruthful because she already appeared to meet the minimum two of the three hurdles to qualify as an EPC. Importantly, Mrs C had previously declared savings of £1,500,000 and earnings of £75,000; that was sufficient to have met criteria two as well but it would seem that IG didn't need to use that criterion because she'd already satisfied the other two of the three.

IG have shared details of the risks that were provided to Mrs C at the time of the account alteration to EPC status. They clearly set out the differences between the two types of account (retail and EPC) and specifically, that she would not benefit from negative balance protection. So, given Mrs C's transaction and employment history, I therefore don't think it was unreasonable for IG to have approved Mrs C's application to alter her account to elective professional client status.

Whilst I'm content that from the information I've seen, the EPC account alteration was not unreasonable, I've also considered Mrs C's claim that IG pressurised her into applying. IG have provided a large volume of recorded telephone calls between themselves and Mrs C covering a period of two years prior to her application to switch to EPC. Those 200 or so telephone calls cover a range of issues from problems with the website/IT related, questions linked to trades that Mrs C wished to place, charges and meeting proposals. But, from the calls that I've listened to, I've heard no evidence of any IG colleague promoting their EPC account or attempting to coerce Mrs C into switching away from their retail account offering. In addition, I've also heard no evidence during those discussions that Mrs C was either unclear or didn't understand the nature of what she was doing.

There were multiple instances of IG colleagues offering to meet up with Mrs C for a coffee or inviting her along to hospitality events that they were running for their customers but she typically declined those opportunities so I can't say that Mrs C felt induced to trade because of those offers as she didn't accept them.

Mrs C says that IG employees contacted her on multiple occasions from their personal mobile devices to get her to apply for EPC status. Given those calls weren't recorded and there's no record of those conversations, Mrs C hasn't been able to substantiate those claims. The decisions I make are based on the evidence presented to me but where the facts are unclear, conflicting or information is missing, I have to decide what I think is more likely than not to have happened. Whilst there is no record of those calls having taken place, I can't therefore be certain when, or if those discussions took place, nor what was or wasn't discussed during those interactions. To be clear, I'm not doubting that Mrs C may have held a discussion(s) with IG outside of their normal recorded call system, but I do have to place weight on the evidence that I do have which all points to the fact that IG didn't pressurise Mrs C into switching to EPC.

From what I've seen, I've not been persuaded that IG acted inappropriately in any way in the run up to or the point at which they converted Mrs C's account to EPC status. I think based on what IG knew of Mrs C's transaction background and experience of trading complex leveraged investments over a sustained period (of 12 years), they could take assurance from the fact that when combined with Mrs C's stated occupation, she was very much alive to the risks of the enterprise that she was entering into, particularly when in her email to them in December 2017, she stated that she was working with 'complex derivative products'.

Should IG have known that Mrs C was a potentially vulnerable customer?

Mrs C states that IG didn't take into consideration her mental health and encouraged her to undertake trades that weren't suitable for a customer of her background. She went on to say that when she was made redundant, IG misused that information and advised her that if she didn't change her account to EPC status, she could lose access to her account. As part of her submissions to this service, Mrs C has also explained that she "suffers from mental illness and is on the spectrum, I feel that IG took advantage of my vulnerability".

The regulator, the Financial Conduct Authority (FCA), recognises that CFDs generally aren't suitable for most retail consumers. That's because they're complex in nature and they typically involve a high degree of risk because, more often than not, leverage is involved which as well as magnifying profits, can also magnify losses. So, there's a very real possibility that the consumer could lose all of their investment.

Whilst I've already explained that IG weren't acting as Mrs C's adviser, that doesn't mean that they don't have a responsibility towards her. Whilst the regulator doesn't obligate firms to undertake an *ongoing* appropriateness assessment where consumers are trading complex financial instruments, they do expect firms to have an awareness of what their customers are doing. Whilst there aren't any specific rules covering this, it is covered more broadly under the regulator's Principles rules (sometimes referred to as 'PRIN'). And, the two that are most relevant in Mrs C's case are PRIN2 and PRIN6:

- *PRIN 2: Skill, care and diligence – a firm must conduct its business with due skill, care and diligence.*
- *PRIN 6: Customers' interests – a firm must pay due regard to the interests of its customers and treat them fairly.*

And importantly, part of those responsibilities requires the business to look out for signs of potential vulnerability in their customers. However, under the FCA's COBS rule 10.2.4, a firm is entitled to rely on the information that a client provides to them. And, from what I've seen, there's no suggestion that Mrs C alerted IG prior to her complaint to them in July 2022 that she was suffering from a mental health issue. Once IG were advised of this, they started the

process of closing her account. By her own admission, Mrs C never sent IG any emails or telephoned them about how the losses were impacting her wellbeing.

Arguably, when a customer goes through redundancy, they could be considered a potentially vulnerable customer. However, despite what Mrs C has said about IG putting her under pressure at that point to trade, I've not been presented with any evidence such as emails or heard any calls where I've been persuaded that IG acted inappropriately such as suggesting she invest her severance monies or increase or undertake additional trading.

But, just because a consumer is losing money, it doesn't necessarily follow that they're vulnerable. By virtue of the trading that Mrs C was undertaking, its very nature is high risk and there's a high likelihood that the consumer would lose money. But, from the calls that I've listened to and the emails that I've seen, at no point did Mrs C make IG aware that her actions were impacting her wider health or that her finances were under strain until July 2022. I do appreciate that Mrs C feels that IG could have done more to put a stop to her losses sooner but consumers also have a responsibility to limit their losses too. Whilst Mrs C says that IG were actively encouraging her to lose money, she's not presented any facts to prove that's the case.

Mrs C has pointed to a number of emails that IG had sent her offering commission free share dealing as well as zero management fees on their range of smart portfolios. However, those messages appear to be of a commercial nature and were sent long after Mrs C had changed her account to EPC status. But, just because a business offers discounted or zero fees, or it sends a reminder to the consumer about the features of the account, it doesn't necessarily follow that they're placing them under duress to trade. So, based on what I've seen, I'm not persuaded that IG would have been aware of the difficulties that Mrs C was facing around her mental health or her finances until the point at which she raised her complaint.

Summary

By the very nature of the activity they're undertaking, CFD traders typically suffer large losses, and they also tend to trade frequently; Mrs C suffered large losses and from what I've seen, traded regularly. But, despite what Mrs C says, that doesn't necessarily always indicate a consumer is vulnerable.

IG can only act on the information provided to them, and from what I've seen, they acted in good faith based on what Mrs C shared with them when she opened her account and during the duration of their relationship with them. I think it's more likely than not that had IG understood the state of Mrs C's finances, they would have most certainly prevented her from continuing trade. And, I think on balance, Mrs C likely knew that too because she chose not to disclose the extent of her finances to them until she formally complained to them. And, when IG did learn of her vulnerability, they immediately gave notice of their intention to close her account and stop her from getting deeper into debt.

I do appreciate that the outcome of my decision will not be as Mrs C had hoped. But, as I've already explained, CFDs are high risk investments, and most retail consumers typically lose money when investing in them. Whilst IG made clear to Mrs C that trading in CFDs is high risk, I'm satisfied that based on her previous trading history, experience and occupation, she already understood this. And, having looked closely at the various email exchanges and telephone conversations that have been provided, I'm not persuaded that on reflection, there were indicators which should have alerted IG to the fact that Mrs C was a vulnerable customer that would have allowed them to put a stop to her trading activities sooner.

I don't think it was unreasonable for the business to rely on the information that Mrs C had provided to them about the level of savings that she held. So, I think on balance, based on the

information that IG knew of Mrs C, I can't conclude that they treated her unfairly. I'm not persuaded that in the specific circumstances of Mrs C's case there were any particular reasons that ought to have prompted IG to unilaterally stop her from doing something she clearly wanted to do – and for which her background suggested that she had significant experience of, and ample warning of the risks.

I'm satisfied that the losses sustained were therefore trading losses incurred by Mrs C's trading decisions, and not caused by something IG did or didn't do and as such, I'm not upholding Mrs C's complaint.

My final decision

I'm not upholding Mrs C's complaint and I'm not instructing IG Index Limited to take any further action.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 8 August 2024.

Simon Fox
Ombudsman