

The complaint

Mr W complains that IG Index Limited ('IG') unfairly disrupted his contracts for difference (CFD) and spread betting trading strategy by insisting his funds were remitted back to their original source account when making withdrawals.

Mr W would now like IG to refund all of his losses since opening his account, which he says amount to around £154,000. In addition, he'd like IG to lift all of the restrictions that they've placed on his account so he's able to trade again.

What happened

In March 2020, Mr W opened a CFD and spread betting account with IG and immediately started trading over the months that followed. In April 2021, Mr W then applied to alter his two accounts to elective professional client (EPC) status, which was subsequently approved by IG in June 2021 based on Mr W's work experience and trading history.

In May 2023, Mr W became increasingly frustrated with IG when they insisted that any funds he wanted to withdraw from his account be sent back to the source account. As some of Mr W's monies were from a credit card, he was concerned about the length of time this could take.

Shortly afterwards, Mr W decided to formally complain to IG. In summary, he said that IG were obstructing the trading strategy that he'd devised to recover the losses he'd suffered. Mr W said that to mitigate the losses incurred in 2021 and 2022, he'd opted to transfer funds from his credit card to execute small trades. Mr W said he was unhappy that IG wanted to send the monies back to the funding source when he wished to make withdrawals. Mr W went on to say that he should have the flexibility to trade as he saw fit and if IG were placing limitations on him, they should cover his losses.

After reviewing Mr W's complaint, IG concluded they were satisfied they'd done nothing wrong. They also said, in summary, that the requirement to remit funds back to their original source is covered in their terms and conditions which Mr W had agreed to at the time he signed up to the account.

Mr W was unhappy with IG's response, so he referred his complaint to this service. In summary, he said that in 2021, he had the flexibility to transfer funds from multiple sources to compensate for his losses, which were approximately £154,000. Mr W went on to explain that at the time, he was closed out of trades and losses without the support or guidance from IG. Mr W said that he'd developed a controlled strategy to recuperate some losses over a longer timeframe, but IG made it difficult to execute the strategy because of the restrictions that they placed on the account. Mr W also said that:

- IG did not adequately carry out their duty of care.
- He did not believe that IG provided suitable risk management tools or support during his

substantial losses.

- He feels that IG provided inadequate risk warnings.
- He doesn't believe that IG completed the appropriate checks before allowing him to engage in high-risk trading.
- He also believes that IG had a permissive attitude when he suffered losses but implemented restrictions when he developed a strategy to recuperate those losses.
- He said that IG had conducted a lack of due diligence.

The complaint was then considered by one of our Investigators. She concluded that IG hadn't treated Mr W unfairly because from what she'd seen, IG's terms allowed them to insist any payments are reverted back to their original source. In addition, she also explained that having looked at Mr W's application to change his account to EPC status, she didn't think IG had acted inappropriately in approving the alteration.

Mr W, however, disagreed with our Investigator's findings, in summary, he said that he didn't believe that IG had acted in his best interests or in accordance with the regulator's expectations. He also said:

- IG had an ongoing duty of care to ensure the continued appropriateness of his EPC status, particularly in light of his substantial losses.
- IG had lacked in their duty of care towards him by failing to provide adequate risk warnings to him, particularly during his loss-making periods.
- He had highlighted his financial hardship to IG as early as 2021, but they delayed their response to the issue until mid-2023.
- Having looked at previous Ombudsman decisions, Mr W said he'd seen a case where this service had ruled in favour of a consumer where a firm's 'rigid withdrawal policy' had unduly disrupted their trading strategy.
- He said that IG's fees had eroded his returns and he felt that this service should look into the fairness and transparency of what he'd been charged.
- Finally, he pointed towards what he felt was case law on the topic that was relevant to his circumstances and said that this proved his complaint should be upheld.

Our Investigator was not persuaded to change her view as she didn't believe that Mr W had presented any new arguments she'd not already considered or responded to. Unhappy with that outcome, Mr W 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 W 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 issues here, which are:

- Whether IG were fair and reasonable to restrict where Mr W could remit his withdrawals to.
- Whether it was appropriate for Mr W's account to be amended to EPC status.
- Whether IG should have spotted Mr W was a potentially vulnerable customer and put a stop to his trading sooner.

My role is to consider the evidence presented by Mr W 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 Mr W's complaint, and whilst it's largely for the same reasons as our Investigator - I'll explain why below.

Whilst Mr W's original complaint to IG was anchored around his view that they'd unfairly disrupted his trading strategy by insisting his funds were reverted back to the original source account when making withdrawals, our Investigator also considered whether Mr W should have been allowed by IG to re-categorise his trading account to that of an EPC. I think it's important to recognise here that this second particular issue wasn't raised as a specific point by Mr W in his complaint to IG on 26 May 2023.

However, I think it was reasonable for our Investigator to look into the EPC alteration because of the comments that Mr W made in his complaint to ourselves and subsequent correspondence – specifically about the losses that he'd incurred and why he was undertaking the particular trading/withdrawal approach he'd adopted and his allegation that IG had ignored his alleged vulnerability (which is when he changed to EPC status). Our inquisitorial remit allows us to do this. I am, however, satisfied that IG have been given adequate opportunity to provide their input on these issues.

Did IG inappropriately change Mr W's account to EPC status?

Before addressing this point, it's worth clarifying here that IG is an execution only provider. That is to say, IG does not provide advice to its customers, nor is it required to assess the suitability of the trading decisions made by the consumer. Instead, IG is required to assess whether the trading account is 'appropriate' for their prospective client, given the client is usually looking to trade with leverage in high-risk products. But to be clear, the spirit of the FCA regulations that are in place for retail clients who wish to trade high risk leveraged products isn't to prevent them from trading if that is what they ultimately wish to do, rather, it is to ensure that they are made aware of the very real possibility of higher-than-normal losses which comes with trading leveraged products.

When Mr W initially became an IG customer, he was offered a retail account which he operated for around a year before requesting an EPC revision. Mr W has said that he doesn't believe IG completed the appropriate checks before allowing him to engage in high-risk trading. But, from what I've seen, Mr W was given a retail account based on the

appropriateness assessment that IG completed with him – having seen his application form from the time (on which Mr W stated that he'd traded OTC derivatives and exchange derivatives), he had the requisite knowledge and was provided with a detailed risk disclosure notice that he acknowledged he'd read and understood. So, from what I've seen, I don't think IG acted unreasonably in opening a retail customer trading account for Mr W.

A consumer would typically transition from being a retail customer to EPC to unlock better terms with 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. Whilst EPC's typically benefit from those better terms, the protections offered to retail clients often (but not always) result in smaller losses. That's why the regulator, the Financial Conduct Authority (FCA), has a robust framework of hurdles in place that consumers must pass in order to migrate to an EPC offering.

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. The rules at the time of Mr W'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 Mr W's circumstances at the time of his EPC application. IG shared a copy of Mr W's trading history covering the one-year period prior to his EPC application. That statement demonstrated that Mr W 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. I'm therefore satisfied that he met the first criterion.

I'm also satisfied that Mr W met the third criterion – that's because he confirmed to IG that he worked in financial services as an adviser and had done so for more than year. When probed further by IG about how his job role gave him specific investment experience, Mr W stated that he was level six qualified in financial planning, had certificates in securities, and provided advice to customers on derivatives including currency futures, currency swaps, options CFD, futures for hedging purposes, forward contracts and swaps.

Guidance issued by the European Securities and Markets Authority (ESMA) said that businesses shouldn't rely solely on self-certification when assessing clients for re-categorisation. 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 Mr W's LinkedIn profile and CV which they obtained from Mr W at the time which appears to back up his work history, but in any event from what I've seen, Mr W hasn't disputed that he worked within financial services which IG relied upon to meet criterion three.

Whilst I'm satisfied that Mr W met the regulator's first set of hurdles to be re-categorised as an EPC, I'm also content that section 3 of COBS was met too. That's because it was Mr W that initiated contact with IG, asking for his account to be altered to EPC status in April

2021. Separate risk warnings were then issued to Mr W and he was then asked to confirm that he understood the protections that he was giving up by relinquishing his retail client status. Having looked closely at the detail within the screenshots that Mr W was presented with at the time of his application, I think it's clear that he would have been under no doubt about the risks of the endeavour he was undertaking. They clearly set out the differences between the two types of account (retail and EPC) and specifically, that he would not benefit from negative balance protection. Yet despite this, he still chose to proceed with the EPC application and account alteration. Importantly, Mr W acted independently, and IG provided no advice to him about the merits or otherwise of altering his account.

So, whilst Mr W feels that IG provided inadequate risk warnings about the nature of what he was entering into and did not adequately carry out their duty of care, I don't agree. I'm satisfied that Mr W went into this with his eyes very much wide open. In any event, 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 quickly about the consequences of their actions. So, if Mr W was, as he says, unaware of the risks, he consciously opted to continue to trade for several years before raising any concerns with IG.

I therefore don't think it was unreasonable for IG to have approved Mr W's application to alter his account to EPC status.

Should IG have known that Mr W was a vulnerable customer and stopped him trading sooner?

Mr W states that, as a result of his losses, his mental health has suffered significantly and it's impacted his family life and put a significant strain on his finances. Mr W also says that IG should have intervened earlier than they did to put a stop to his loss-making, particularly when he says he told them about his worries as far back as 2021. He also says that IG have been bullying him to close his account following his revelation to them about his mental health.

The regulator, the FCA, recognises that CFDs and spread betting generally isn't suitable for most 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 Mr W's adviser, that doesn't mean that they don't have a responsibility towards him. 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 Mr W'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 Mr W alerted IG prior to his email to them in July 2023 that he was

suffering from a mental health issue. Once IG were advised of this, they started the process of closing his account.

It was Mr W's email in July 2023 that seems to have first alerted IG to the fact that something wasn't quite right with his mental health. Mr W wrote to IG explaining that *"these recent changes and challenges with withdrawals are causing me significant mental distress and impacting my well-being. I have had to alter my trading plan and approach due to the constraints imposed, which has further compounded the stress I am experiencing"*. IG responded the same day explaining that in light of the impact their services were having on him, they'd decided allowing him to continue operating a trading account wasn't in his ongoing best interests and as such, they were closing his account. IG explained that their terms and conditions allowed them to do this.

Mr W contacted IG, explaining that asking him to bring his affairs to a close within 30 days wasn't reasonable. On 31 July 2023, IG wrote to Mr W explaining that they were happy to extend the close out period in light of his comments. And then again, IG granted a further extension of another 30 days on 31 August 2023 until 16:00 on 1 October 2023.

At the same time, IG asked Mr W for a progress update – Mr W says that IG were bullying him, but having looked at the messages IG have sent, I think they were measured and reasonable in what they were asking. If IG were bullying Mr W as he says, I don't think they'd have sanctioned multiple extensions to the closure of his account, and the messages I've seen were seeking to understand Mr W's progress towards winding the account down in an orderly manner and offering him any support that he may need in doing so. A further extension was then granted to Mr W until 31 December 2023.

I've been provided with no evidence to corroborate Mr W's claim that IG have bullied him or not treated his vulnerability with dignity. Rather, from what I've seen, they've provided multiple extensions to his request for additional time to wind his account down and have been respectful towards him.

Despite what Mr W has said about flagging his vulnerability to IG earlier than July 2023, I've not been presented with any evidence such as emails or heard any calls which suggests otherwise. And, I think on balance, it's more likely than not that Mr W didn't flag his vulnerability to IG in 2021 as he says because had he done, I think it's improbable that IG would have approved his account alteration to EPC status.

But, just because a consumer is losing money, it doesn't necessarily follow that they're vulnerable. By virtue of the trading that Mr W was undertaking, its very nature is high risk and there's a high likelihood that the consumer would lose money. But, from what I've seen, at no point did Mr W make IG aware that his trading actions were impacting his wider health or that his finances were under strain until July 2023. I do appreciate that Mr W feels IG could have done more to put a stop to his losses sooner, but consumers also have a responsibility too - there is an onus on customers to mitigate their losses and if Mr W was concerned about the monies he was losing and the impact it was having on him, he could have approached IG sooner. Whilst Mr W says that IG were actively encouraging him to lose money, he's not presented any facts to prove that's the case.

Despite stating that he has suffered from mental health issues because of the result of his trading losses and IG's unwillingness to alter their approach to where monies are remitted to, Mr W wants IG to allow him to continue to trade. However, given the impact that these events have had on Mr W, I don't believe IG have acted unreasonably by withdrawing their services from him. Now that they're aware of Mr W's position, arguably, allowing him to trade further and potentially accrue further losses could result in a deterioration of Mr W's mental wellbeing, so I don't think they've been unfair by drawing a line in the sand.

Were IG fair to restrict where Mr W could remit his withdrawals to?

Mr W says that he'd developed a trading strategy that allowed him to start making small gains, something which he was utilising to recuperate some of his losses. But, when attempting to make withdrawals, Mr W was unhappy that IG wanted to send the funds back to the credit card from where they originated. He said that then added delays and impacted his ability to trade. Mr W went on to explain that this was a new approach IG had adopted and as such, they were treating him unfairly.

I've looked at the Customer Agreement that Mr W was provided a copy with at the start of his relationship with IG. That agreement sets out what Mr W could expect from them whilst being a customer. Importantly, on page 11, the basis for how any funds will be returned to the customer are covered within the 'Remitting Money' section. It states:

'(5) The manner in which we remit monies to you will be at our absolute discretion, having utmost regard to our duties under law regarding the prevention of fraud, countering terrorist financing, insolvency, money laundering and/or tax offences. We will normally remit money in the same method and to the same place from which it was received. However, in exceptional circumstances we may, at our absolute discretion, consider a suitable alternative.'

It therefore seems to me that IG have acted fairly, within the terms of their agreement with Mr W. In his complaint, Mr W also said that IG acted differently when he was making gains compared to when he was making losses when imposing this rule. As he's presented no evidence to support his claims, I can't conclude that IG have treated him unfairly.

Costs and charges

As part of his complaint to this service, Mr W explained that he is unhappy with the "astronomical charges" that IG applied to his account. Mr W then shared copies of statements that IG had sent him over the course of their relationship showing the costs and charges that had been applied to his account since inception. As Mr W didn't raise the issue of charges in his original complaint to IG, if he remains unhappy about this particular point, he must first raise this with IG to allow them the opportunity to respond. If, having received their response, he remains dissatisfied, Mr W can then raise his concerns with this service to consider.

Summary

Mr W's issues with IG around their unwillingness to remit monies back to a different account from where they came from appear to have occurred in the later stages of his relationship with them. But, because of this, Mr W says that he'd like IG to refund all of his losses since opening his account. However, for me to make an award, I'd need to conclude that IG have done something wrong. And, from what I've seen, they've not. I'm satisfied that based on the information IG was provided with by Mr W, the CFD and spread betting accounts that were opened weren't done so inappropriately.

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

So, I think on balance, based on the information that IG knew of Mr W, I can't conclude that they treated him unfairly. I'm not persuaded that in the specific circumstances of Mr W's case there were any particular reasons that ought to have prompted IG to unilaterally stop him from doing something he very clearly wanted to do – and for which his background suggested that he had significant knowledge of and ample warning of the risks.

I'm satisfied that the losses sustained were therefore trading losses incurred by Mr W's trading decisions, and not caused by something IG did or didn't do and furthermore, I don't think IG acted unfairly by insisting that payments were remitted back to where they came from – which is set out in their terms which Mr W agreed to. As such, I'm not upholding Mr W's complaint.

My final decision

I'm not upholding Mr W's complaint and as such, I won't be instructing IG Index Limited to take any further action.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 19 September 2024.

Simon Fox
Ombudsman