

The complaint

Mr W's complaint relates to his derivatives trading account provided by Tickmill UK Limited, his primary concern being that Tickmill categorised him as an elective professional client, which led him to incur excessive losses.

What happened

The background to the complaint will be well known to both parties, so I'll only give some key details here.

In February 2017 Mr W opened a contract for differences ("CFD") execution-only trading account as a retail client with Tickmill. He proceeded to trade using the account, then in April 2018 applied to be re-categorised and treated as an elective professional client ("EPC").

EPCs can access increased leverage but are afforded less regulatory protection than retail clients. Because of this, businesses are required to ensure that clients who wish to be treated as EPCs meet certain criteria regarding their expertise, experience and knowledge of trading.

These criteria are set out in the Financial Conduct Authority's Conduct of Business Sourcebook (COBS) at 3.5.3R, which says, in part, that a firm may treat a client as an EPC if they meet the requirements of two tests -

(1) the firm undertakes an adequate assessment of the expertise, experience and knowledge of the client that gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the client is capable of making his own investment decisions and understanding the risks involved (the "qualitative test");

(2) in relation to MiFID or equivalent third country business in the course of that assessment, at least two of the following criteria are satisfied:

(a) 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;

(b) the size of the client's financial instrument portfolio, defined as including cash deposits and financial instruments, exceeds EUR 500,000;

(c) 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; (the "quantitative test")

In respect of (2), the quantitative test, Tickmill determined that Mr W satisfied criteria (a) and (c), so he was re-categorised and proceeded to trade as an EPC, so with increased leverage, for several years.

However, in 2023 Mr W complained to Tickmill about his re-categorisation, seeking repayment of his deposits and amplified losses incurred as a result being treated as an EPC. But Tickmill didn't uphold the complaint. It revisited its process and concluded that Mr W had

clearly met the required criteria, having himself initiated the request for recategorisation.

The complaint was then referred to this service. Initially an investigator felt it should be upheld because he felt Tickmill had failed to follow the correct administrative process when re-categorising Mr W. So, he recommended it should refund the additional losses Mr W had incurred as a result of being treated as an EPC.

But Tickmill didn't accept the investigator's findings, so the matter was referred to one of my ombudsman colleagues to review.

She issued a provisional decision in which she also concluded that the complaint should be upheld, but for different reasons. She felt that Tickmill had failed to carry out an adequate assessment (as required by COBS 3.5.3R) of Mr W regarding his recategorisation, primarily in respect of the quantitative test.

She didn't think Tickmill had done enough to demonstrate Mr W had met the required criteria. She noted that he'd asserted that he met all three, and while his trading history would have been evident to Tickmill, that was not the case with the other two criteria. Particularly in respect of (c) concerning his work experience, she felt Tickmill's reliance upon the result of an internet search that gave only a brief reference to Mr W having spoken at a financial conference was insufficient, so it wasn't fair or reasonable for Tickmill to have relied upon it without carrying out further checks, or at least checking with Mr W.

The ombudsman concluded that in light of its mistake Tickmill should compensate Mr W, based upon the additional losses he'd incurred from trading as an EPC as opposed to a retail client. But she felt that amount should be reduced by 50% to acknowledge factors relating to Mr W's part responsibility for the situation; that he'd actively applied to be recategorised, been warned about the loss of consumer protection, and his sustained trading following his recategorisation.

Neither party accepted my colleague's provisional decision, so the matter was then passed to me to further review. Having considered the evidence and both parties' arguments I wrote to Tickmill to explain that my thoughts generally concurred with those of my colleague. I said, in part –

"Having considered the matter afresh, as things stand, I've reached a similar conclusion...

I agree that the recategorisation assessment carried out by Tickmill hasn't been shown to be adequate. Focussing on what was, or wasn't, done at the point Mr W applied to be recategorised in April 2018, I can't see that Tickmill reasonably ensured he satisfied criteria (b) and/or (c).

(Tickmill has) acknowledged the absence of records from the time showing what was checked in respect of his portfolio size or his professional experience. What has been said relies upon retrospective consideration of a variety of information. But even this retrospective consideration doesn't in my view really support Mr W having met the criteria in 2018.

In respect of criteria (b), when Mr W first opened his account with Tickmill – only 14 months prior to re-categorisation – he declared a fairly low income and a total net worth of between \$250,000 and \$1million. I can't see there was anything subsequent to that, bar Mr W's own assertion, that would've adequately satisfied Tickmill that his portfolio exceeded €500,000 at the point of recategorisation. He certainly wasn't asked to demonstrate this. (Of note is the 'Tickmill – Client Categorisation' email sent to Mr W on 18 April 2018 confirming his application for recategorisation had been accepted. It said the application was accepted "given your trading activity, your investment portfolio, and relevant professional experience",

so actually all three criteria, and went on to say, "Kindly note that we may contact you requesting for evidence for the answers you have submitted.")

In respect of criterion (c), Tickmill's final response letter said, 'At the time of the application to upgrade to Professional Client status, there was abundant evidence in the public domain you met your professional standing requirement of at least a year's experience in the capacity of your trading in the industry as a professional FX trader and speaker.' I think it's fair to say that the information (Tickmill has said it) relied upon in this respect – the reference to Mr W having spoken at an event (abroad) - doesn't really represent an abundance of information. And moreover, I don't think it would've given reasonable assurance to Tickmill that Mr W worked or had worked in the financial sector for at least one year in a professional position, which, as COBS 3.5.3(2)(c) sets out, "requires knowledge of the transactions or services envisaged". It gave no indication or confirmation that he had been involved in derivatives trading."

I then went on to say -

"So, in short, I'm currently of the view that, on balance, Tickmill failed to carry out an adequate assessment of Mr W in the course of which two of the three quantitative criteria were satisfied.

My colleague felt that had Tickmill's assessment been adequate it would probably have confirmed that he met the criteria. I don't necessarily agree and think it more likely than not that he wouldn't have. I accept that he was most likely a knowledgeable, experienced trader. But not everyone who can be described in those terms will necessarily meet the very clear (although I accept in parts somewhat subjective) criteria to be recategorised as an EPC, and in doing so gain access to higher leverage, the potential for much larger losses and the removal of valuable consumer protections.

So, if Tickmill's assessment had been more robust in 2018, I think more likely than not Mr W would've remained as a retail client. So, putting him back in the position he'd be in but for Tickmill's failing would be achieved (in line with this service's general approach in such circumstances) by reconstruction of his account such that he made the same trades he did post April 2018, but with the limited leverage and other protections afforded to retail clients.

But, as noted, my colleague suggested a reduction of 50% in any compensation due from such a calculation to acknowledge Mr W's part responsibility for the losses he incurred. And I agree with that approach.

While I think it's reasonable that Tickmill should bear some responsibility for enabling additional losses to be incurred by Mr W, I think equally that it's reasonable that Mr W should also bear some responsibility. I'm satisfied that he actively sought to be recategorised, asserted that he met the required criteria, was warned of the consequences and proceeded to actively trade as a professional client, knowing that he'd been granted that status.

I appreciate Tickmill feels that, given these points, it's unreasonable that it should bear responsibility for anything more than a nominal proportion of Mr W's additional losses...

But having given this a great deal of thought I remain of the view that the previously suggested 50/50 apportionment of the losses is in all the circumstances a fair and reasonable outcome given what I see as both parties' culpability. And in saying that, I think it's important to bear in mind that Tickmill was the regulated business here, with a responsibility to correctly implement the rules so as to protect consumers."

Tickmill responded to say that while it felt it could make further submissions, it was prepared

to settle the matter in line with what had been proposed in order to bring the matter to a close.

I explained this offer to Mr W, who essentially accepted the proposal, albeit while voicing concerns about Tickmill's ability to correctly and fairly carry out the required calculations, particularly in light of what he felt had been an overly aggressive initial response to his complaint by Tickmill. He also set out what he saw as the correct parameters within which the calculations should be made, in terms of retail leverage, etc.

There then followed ongoing correspondence between the parties relating to how the calculations would be carried out. Mr W also continued to reiterate more general concerns relating to the merits of the complaint – stressing that he had not met the criteria to be reclassified and voicing his disagreement with the apportioning of responsibility.

Tickmill provided Mr W with an offer figure and detail regarding how it had been calculated. However, Mr W continued to question its methodology and ultimately didn't accept the offer. So, as no agreement could be reached, I confirmed I would look at the matter afresh and proceed to issue a formal final 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.

In reaching my decision, I have, as my role requires, taken account of relevant law and regulations; relevant regulators' rules guidance and standards; codes of practice; and, where appropriate, what I consider was good industry practice at the relevant time. But I think it's important to note that while I take all those factors into account, I'm ultimately deciding what I consider to be fair and reasonable in all the circumstances.

Where matters are unclear or in dispute, I've reached my conclusions on the balance of probabilities – in other words, what I consider more likely than not to have happened based on the evidence available and the wider circumstances.

Since my initial review of the matter and throughout the subsequent correspondence with the parties (as part of which, as detailed above, I explained my reasons for concluding that the complaint should be upheld) I've seen nothing that persuades me to alter my initial conclusions.

In short, I remain of the view that the complaint should be upheld, and Mr W compensated, on the basis that Tickmill acted incorrectly in re-categorising him as an EPC and in doing so facilitated the amplification of the losses stemming from his trading decisions. But while at the same time acknowledging what I see as his part responsibility for those losses.

Having reached that conclusion, I must set out an approach for Tickmill to use to compensate Mr W that I think represents a fair and reasonable approach to resolving the dispute. As I've previously communicated to Mr W, what I'm directing is a form of redress commonly used in such circumstances by this service, which has been directed to and successfully implemented by many similar businesses. While I note Mr W's concerns with Tickmill's ability and/or willingness to follow my direction and carry out the redress calculations fairly and correctly, I've seen nothing that gives me cause to think it will fail to do so, should Mr W accept my decision.

Putting things right

To put things right Tickmill should compare the sum of the losses Mr W incurred while trading as an EPC with the sum of the losses he would've incurred had he placed the same trades as a retail client, so with the limited leverage and other protections afforded to retail clients.

Tickmill should then pay to Mr W 50% of the difference between those two amounts, the apportioning being because I'm satisfied Mr W should bear part responsibility for his amplified losses. This is because he actively sought to be recategorised, asserted he met the required criteria, was warned of the consequences and proceeded to actively trade as an EPC, knowing that he'd been granted that status.

For the same reasons, I don't consider Tickmill needs to add any amount of interest to the payment or further compensation for any distress and inconvenience caused.

My final decision

For the reasons given, my final decision is that I uphold the complaint and direct Tickmill UK Limited to pay compensation to Mr W as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 24 November 2025.

James Harris
Ombudsman