

The complaint

Mr Z complains IG Index Limited ('IG') shouldn't have treated him as an elective professional client. He wants IG to refund losses he made while trading as an elective professional client.

What happened

In October 2008 Mr Z applied for a spread betting account with IG. IG carried out an appropriateness test by asking Mr Z various questions about his trading experience and knowledge.

Mr Z made his first trade in the account in December 2008.

In May 2018 Mr Z applied to be classified as an elective professional client. IG asked him for some more information. It said it needed to understand whether his employment position was a professional one he'd worked in for more than a year and which gave him working knowledge of the relevant derivative products. Mr Z said he worked as an executive director for a CFD broker looking after risk, operations and finance and he'd worked in that industry for the past 10 years. And he indicated his work had given him knowledge of CFD trading, spread betting or forex trading.

As part of making the application online Mr Z was required to scroll through information about risks and information which set out the regulatory protections he'd lose by ceasing to trade as a retail client. He was required to agree he'd read the written warnings and wanted to proceed.

In 2023 Mr Z asked IG how it had determined he met the test to become an elective professional client. In its answer IG said Mr Z had declared employment experience and trading history that met the requirements. Mr Z said he disagreed that his trading history met the requirements because, he said, at the time he applied he hadn't done enough relevant trades in each of the preceding four quarters.

In December 2023 Mr Z complained to IG. He said IG shouldn't have categorised him as an elective professional client.

IG didn't think it had done anything wrong. In summary it said the following:

- In the first place IG had assessed whether a spread betting account was appropriate for Mr Z and found it was.
- IG provided an execution-only service so Mr Z's trading decisions and the management of his account were his responsibility.
- IG had periodically requested Mr Z update the wealth information IG had on file for him. Mr Z did that on four occasions between 2014 and 2018. Each time his earnings were at least £75,000 and his savings were more than £94,000. Mr Z wasn't flagged in any of IG's systems which monitored whether a client appeared to deposit more than their earnings and savings.

- Mr Z traded regularly after opening his account in 2008.
- As part of applying to be treated as an elective professional client Mr Z declared he'd carried out more than 30 qualifying trades per quarter over the last four quarters which was the highest option available for him to select. And he said he'd worked in the financial sector for a least one year in a professional position requiring knowledge about relevant investment products.
- Under COBS 3.5.3R (1) IG had to undertake a '*qualitative test*' to assess whether Mr Z was capable of making his own investment decisions and understood the risks involved. And under COBS 3.5.3R (2) it had to undertake a '*quantitative test*' which required at least two of the following three criteria to be 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.*
- At the time of the application Mr Z declared he had relevant professional experience working as an executive director at a CFD broker and had ten years of experience in the industry where he acquired sufficient knowledge of relevant products. And he declared he'd undertaken more than 30 relevant trades per quarter.
- IG determined the qualitative and quantitative tests were satisfied based on the information Mr Z declared in his application, historical information IG reviewed, and IG's trading records for Mr Z's account.
- COBS 10.2.4R said IG could rely on the information Mr Z provided unless IG was aware the information was manifestly out of date, inaccurate or untrue.
- Mr Z had applied through IG's online portal to be categorised as an elective professional client and as part of that the following steps which were required by COBS 3.5.3R (3) had been followed:
 - (a) *The client must state in writing to the firm that it wishes to be treated as a professional client*
 - (b) *The firm must give the client a clear written warning of the protections and investor compensation rights the client may lose*
 - (c) *The client must state in writing, in a separate document from the contract, that it is aware of the consequences of losing such protections*

Mr Z wasn't satisfied with IG's response. So he referred his complaint to this service. In summary he said the following:

- When he applied to be a professional client IG approved his application without truly satisfying itself that he met two of the three criteria required under COBS 3.5.3.

- Mr Z didn't have a portfolio over EUR 500,000 and he hadn't done more than 10 trades per quarter on average over the previous four quarters. His trading record showed he started trading in August 2017 so he had only three quarters in which he averaged more than 10 trades per quarter.
- Classifying Mr Z as a professional client increased his confidence and meant IG gave him more leverage, both of which encouraged him to trade more and led to losses which he estimated to total more than £150,000.
- Mr Z wanted IG to reimburse him for the losses he'd made since being classified as a professional client.

One of our investigators looked into Mr Z's complaint. Mr Z confirmed to the investigator that he'd been an executive director of a broker firm at the time of his application and his job was to '*oversee the operation of the company*'. IG provided information about the process it had gone through when accepting Mr Z as an elective professional client and information showing Mr Z's trading history since opening his account. The investigator concluded IG hadn't done anything wrong. In summary he said the following:

- Mr Z hadn't disputed he had the necessary employment experience and on balance his experience was enough that IG could reasonably conclude he met the qualitative test to be treated as an elective professional client. And it wasn't unfair for IG to have concluded Mr Z satisfied the third limb of the quantitative test because he'd worked in the financial sector for at least one year in a professional position.
- Evidence from IG showed it wasn't unfair for IG to conclude Mr Z had carried out at least 10 relevant transactions on average per quarter for the past four quarters. Although Mr Z made only five trades in total in the first two quarters, he made 340 and 177 trades in the third and fourth quarters respectively. So on average Mr Z had done more than 10 trades per quarter in that year. And Mr Z had traded for many years prior to that. Taking into consideration the purpose of COBS 3.5.3R to protect consumers with insufficient knowledge and experience, it was reasonable to conclude Mr Z had done enough trades to justify his account upgrade.
- IG had followed the procedure required by COBS 3.5.3R (3).

Mr Z disagreed with the investigator's view. In summary he said the following:

- IG induced him to apply for elective professional status. He said: '*I distinctly remember being prompted by IG, either through a dedicated application page or an email. While I do not have these records, IG should have them.*'
- He hadn't done an average of more than 10 trades per quarter over the relevant four quarters because in two of the quarters, he'd done fewer than 10 trades. He didn't start trading until August 2017.
- In the five years prior to the qualifying quarters he made only 3 to 24 trades per year.
- A decision from this service on a different complaint had found the quantitative test wasn't passed because the consumer had been trading for less than a year and her trades shouldn't have been averaged out over the four quarters.
- Mr Z was employed to oversee operations which wasn't the same as the specific knowledge and experience needed to manage the risks of professional trading. The qualitative test should've been more rigorously applied.

- IG didn't clearly warn Mr Z what the impact would be of losing retail client protections. The warnings were brief and generalized, and didn't enable him to fully understand the ramifications, as evidenced by the substantial losses he incurred.
- In May 2018 the European Securities and Markets Authority (ESMA) updated its guidance with information about how firms should apply the tests for an elective professional client in '*Questions and Answers On MiFID II and MiFIR investor protection and intermediaries topics*'. Even if the guidance wasn't in force when IG decided his application for professional status in May 2018, the principle behind it should've applied – that clients shouldn't be exposed to higher risks without robust and clear safeguards in place.

The investigator considered Mr Z's comments but didn't change his view of the complaint, for the reasons he'd already given.

Because no agreement could be reached, this complaint was passed to me to review afresh and make 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.

Having done so, I'm not upholding the complaint. I'll explain why.

The purpose of this decision is to set out my findings on what's fair and reasonable, and explain my reasons for reaching those findings, not to offer a point-by-point response to every submission made by the parties to the complaint. And so, while I've considered all the submissions by both parties, I've focussed here on the points I believe to be key to my decision on what's fair and reasonable in the circumstances.

Having looked at all the evidence I'm satisfied – for essentially the same reasons as those given by the investigator – that IG didn't act unfairly or unreasonably by deciding to categorise Mr Z as an elective professional client.

Mr Z has said IG didn't apply the required qualitative test rigorously enough. He said his employment hadn't given him the specific knowledge and experience needed to manage the risks of trading as an elective professional client. In considering this I've kept in mind that COBS 3.5.6R required IG to '*take all reasonable steps*' to ensure the test was satisfied. The ESMA guidance that was updated in May 2018 (shortly after Mr Z was categorised as an elective professional client) said firms should avoid relying solely on self-certification '*notably when they consider that the documents or statements received from the clients are not sufficiently conclusive.*'

Irrespective of whether ESMA's guidance was in force at the time IG decided Mr Z's application I think IG took reasonable steps to consider Mr Z's application and so treated Mr Z fairly. IG said that when applying the qualitative and quantitative tests it considered the information Mr Z declared in his application, historical information which it reviewed, and IG's trading records for Mr Z's account. IG also asked Mr Z some follow-up questions instead of relying solely on what he declared on the application form. I haven't seen that IG had any reason to consider that documents or statements received from Mr Z weren't sufficiently conclusive. Mr Z's employment was evidently in the field of derivative trading, and he evidently had a senior role which he indicated was related to risk and finance as well as operations. On balance, I think IG did more than simply rely on the answers Mr Z gave in his

application for professional client status and I think that was reasonable. I don't think IG ought necessarily to have thought the information it had received wasn't conclusive enough.

In relation to the quantitative test Mr Z took particular issue with IG's assertion that he'd satisfied the first limb of the test which related to the number of transactions he'd made in the previous four quarters (at the time of his application). I can see how the rules and guidance could be interpreted in different ways – and I understand Mr Z believes they required a minimum number of trades in each quarter. But the rule referred to an 'average' rather than minimum number of trades per quarter – requiring '*an average frequency of 10 per quarter*'. And I'm satisfied it wasn't unfair or unreasonable for IG to think Mr Z's trades over the four quarters could be converted to a per quarter average for the year in question to determine whether his trading history was sufficient for him to be treated as an elective professional client. Considering the circumstances of Mr Z's trading history – which dated back much further than four quarters – I find that it was generally fair and reasonable for IG to conclude that Mr Z had enough relevant trading experience to be treated as an elective professional client.

The ESMA guidance said the following about how a firm should determine whether a client has carried out the required number of trades:

'Clients who have been trading on the relevant market for less than a year cannot fulfil the conditions imposed by the first limb in the [quantitative test].

II. This is because, to assess whether a client meets such conditions, investment firms shall review the client's trading history on the relevant market over the past four quarters. For the avoidance of doubt, a lack of one-year trading history on the relevant market does not prevent clients from meeting the conditions set out in limbs two and three of the fifth paragraph of Section II.1 of Annex II of MiFID II.'

Again, irrespective of when this guidance came into force, I don't find that IG acted inconsistently with it in Mr Z's case, or that it acted otherwise unfairly or unreasonably. The guidance says a client who's been trading on the relevant market for less than a year can't meet the conditions required by the quantitative test. But Mr Z had been trading on the relevant market for many years at times in significant volumes. As I've said, it was reasonable for IG to look at Mr Z's trades as an average across his four most recent quarters bearing in mind that he had traded for years previously.

Mr Z cited another ombudsman's decision in which that ombudsman found IG shouldn't have treated the consumer as an elective professional client because, amongst other things, the consumer hadn't carried out the required number of relevant trades over the required time. It's important to note that this service considers each complaint on its merits. This complaint is to be decided on the basis of what is – in my opinion – fair and reasonable in the circumstances of this case. And the circumstances of the complaint Mr Z cited, such as the client's trading history and declared employment, featured material differences from Mr Z's circumstances.

Mr Z also said IG didn't clearly warn him what the impact would be of losing the regulatory protections that exist for retail clients. He said IG's warnings were brief and generalized, and didn't enable him to fully understand the ramifications, as evidenced by the substantial losses he incurred. I've seen the information Mr Z would've seen when he completed his application to become an elective professional client. I think it told him clearly what protections he would lose – such as negative balance protection. And it told him clearly what the implications of that could be for him – such as owing money to IG if his account fell into negative balance. I've seen that Mr Z had to agree to a clearly worded acknowledgement if he wanted to proceed with his application, saying understood the consequences of the

changes to the protections that would apply to him once he was an elective professional client. Although Mr Z said he made large losses after he began trading as a professional client, that itself doesn't show he was unaware of or didn't understand the associated risks.

In response to the investigator's view Mr Z added that IG had induced him to become an elective professional client. I haven't seen that Mr Z has previously raised this point as part of his complaint to IG – which was about IG's assessment of his application as an elective professional client – or his subsequent referral to this service. So as a standalone issue it's not within the scope of the complaint Mr Z brought to this service. And what Mr Z has now said about inducement doesn't give me reason to say IG's assessment of his application was unfair or unreasonable. Mr Z acknowledged in his application that he wanted to be treated as an elective professional client and – as I've said – he acknowledged the risks.

Overall, I haven't found that IG treated Mr Z unfairly or unreasonably in the circumstances of this complaint. So I won't be asking IG to do anything.

My final decision

For the reasons I've set out above, my final decision is that I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Z to accept or reject my decision before 11 April 2025.

Lucinda Puls
Ombudsman