

The complaint

Mr L complains StoneX Financial Ltd trading as City Index (“StoneX”) caused him losses by wrongfully approving his application to be treated as an elective professional client (“EPC”).

What happened

Mr L opened a trading account with StoneX in 2015 as a retail client. The account allowed leveraged trading on a range of assets including equity indices and foreign exchange.

In April 2018 he applied to be treated as an EPC rather than a retail client. He had made losses of around £40,000 by that time.

StoneX approved Mr L’s EPC application. He went on to lose a further £130,000 over the course of around 5000 trades from then until StoneX withdrew his EPC status in April 2023. This followed Mr L’s account being flagged due to significant losses and a high amount of margin closes. Mr L then lost another £7000 as a retail client between then and May 2024.

Mr L complained StoneX shouldn’t have approved his EPC application. StoneX replied saying Mr L was capable of making his own investment decisions and understanding the risks involved and so met the “*qualitative test*”. It said his trade history and profession demonstrated he was an experienced trader who knew what markets he wanted to trade and how much he wanted to invest.

StoneX also said evidence at the time of his application demonstrated Mr L had carried out enough transactions of sufficient size and had the relevant financial sector experience to pass the “*quantitative test*” and so be eligible for professional status as set out in Financial Conduct Authority (FCA) conduct of business rule COBS 3.5.3R.

Regarding this financial sector experience, StoneX said Mr L stated on his EPC application that he worked in the role of “*VP-Fixed Income*” for a large international bank between 2008 and 2015 – and had provided further explanation that he worked closely with brokerage houses and investment banks on a regular basis covering derivative products.

StoneX noted Mr L’s EPC application confirmed he wished to be treated as a professional client. This had highlighted Mr L would lose certain protections as a professional client – and Mr L had acknowledged the consequences of this. StoneX’s complaint response mentioned that these included that minimum starting margin rates agreed by The European Securities and Markets Authority (ESMA) wouldn’t apply to Mr L and his leverage limits and margin rates wouldn’t be affected by ESMA rules changes – as set out in a “*Notice of Change to Your Regulatory Protections*” he was given.

Our investigator agreed Mr L passed the ‘qualitative test’ given his trading since 2015. But he didn’t think StoneX had taken all reasonable steps to ensure Mr L met the quantitative test criterion set out in COBS 3.5.3R (2) (c) of having held a professional position requiring knowledge of the transactions it was envisaged he would be carrying out with StoneX. Our investigator didn’t think what Mr L had given or could’ve given StoneX showed or could have showed he met this criterion.

Our investigator thought the title of the job cited by Mr L in his EPC application - for a role he had held some years earlier – of “*VP – Fixed Income*” didn’t itself show that the job required knowledge of the transactions envisaged (in essence leveraged derivative trading in spread bets or contracts for difference). Mr L had performed the role at an international bank which was FCA registered but our investigator didn’t think anything could be conclusively inferred from this about the nature of that role. He noted Mr L was never listed on the FCA register and his job hadn’t required FCA approval or involved controlled functions. He also noted that StoneX had acknowledged at the time that the qualification Mr L cited in his application, which was conferred by an accountancy body, wasn’t trading related.

Mr L on his EPC application stated: “*I work closely with brokerage houses and investment banks on a regular basis covering such these products*”. Our investigator said this related to Mr L’s past “*VP – Fixed Income*” role but he thought StoneX ought to have done more to check this claim than viewing Mr L’s social media profile. Also our investigator didn’t think any previous positions or skills listed on the profile had relevance to leveraged derivatives like spread bets or contracts for difference.

Our investigator noted that StoneX viewed Mr L’s social media profile to check his EPC application. The profile showed when he made the EPC application his position was Regulatory Assurance Director for certain internet and digital processes, working for a professional services consultancy.

Mr L was trading at a loss at the time of his application – and had his professional status withdrawn by StoneX years later after increased losses. These points reinforced our investigator’s view that Mr L didn’t meet the conditions of a professional client in April 2018.

So overall our investigator didn’t think StoneX ought to have inferred that Mr L had worked in a position requiring knowledge of leveraged derivatives trading. Our investigator didn’t think Mr L met the requirements of COBS 3.5.3R (2)(c) so he Mr L’s complaint should be upheld.

StoneX still didn’t consider it acted inappropriately in approving Mr L’s EPC application. It made a number of points including, in brief summary:

- The rule at COBS 3.5.3 and the criteria (especially (c)) and associated guidance are not definitive about what is required to meet the criteria. Also Mr L’s EPC application was approved in April 2018, before the implementation of ESMA’s intervention measures.
- It was satisfactory to re-categorise Mr L as a Professional Client given what StoneX knew about his circumstances. StoneX relied on the information Mr L supplied in support of his application. StoneX also verified some of this information on Mr L’s social media page and reviewed the FCA register.
- Mr L confirmed he had knowledge and experience of trading in CFDs in addition to a professional qualification in derivatives with his industry association (April 2018). He has experience spread across financial services for 20 years.
- Mr L’s social media profile said he was a Vice President in Fixed income where he was exposed to different financial instruments.
- What StoneX considered was Mr L’s experience in the risk management of certain digital processes. This risk management involves identifying and mitigating risks associated with complex digital processes used in various industries to enhance performance and decision-making. This digital risk management is a fundamental area of finance, as are derivatives. It requires a deep understanding of the underlying principles of financial

services and financial products, including derivatives, and is a critical aspect of modern financial services given the complexity and speed of markets. Derivatives can be complex and require sophisticated models to price and manage.

- Financial services and products each have distinct characteristics and unique risks and regulatory requirements. Effective digital risk management processes must recognise, and account for these various risks. It involves quantifying their potential impact using historical statistical models and data. It involves developing strategies to reduce or transfer risk, such as diversification, hedging, and insurance, continuously tracking risk exposures and adjusting strategies. Digital processes must be designed to comply with financial markets regulations.
- Risk management relies heavily on technology, including big data analytics, machine learning, and artificial intelligence. These technologies can enhance the accuracy and efficiency of risk management processes but also require a deep understanding of both the technology and the financial context in which it is applied. Further, risk functions in financial services firms provide support across business lines and are expected to have a solid understanding of the products and services offered by that business in order to carry out their roles effectively.
- In summary, StoneX handled Mr L's application correctly, as his experience of the financial services industry and exposure to the relevant financial instruments was sufficient to meet the knowledge and experience criteria of the test.

As the matter couldn't be resolved informally it has been passed to me to decide.

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.

The FCA's Conduct of Business Sourcebook ('COBS') rule COBS 3.5.3R – *"Elective Professional Clients"* provides that a firm may treat a client like Mr L as a professional client if certain processes are followed and criteria met.

These include a *"qualitative test"* where *"...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..."*

There was also a *"quantitative test"*, under which at least two of the following three criteria had to be met:

"(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;"

For clients like Mr L the rules are clear that both the qualitative and quantitative test must be passed. So it wasn't enough for StoneX to have reasonable assurance that Mr L was capable of making his own investment decisions and understanding the risks of the

transactions envisaged. StoneX also needed to satisfy itself that Mr L met at least two of the three quantitative criteria.

There's no suggestion StoneX considered Mr L to have financial investments of sufficient value to meet criterion (b) or that he did in fact have financial investments of that size. His 2018 EPC application recorded these as valued between £5,000 and £49,999. But StoneX considered Mr L met criterion (a) by virtue of his trading activity at StoneX. On that basis for StoneX to treat Mr L as an elective professional client he also had to meet criterion (c).

So, in addition to being a regular trader in large size, as Mr L didn't have a large enough portfolio of investments to meet criterion (b), he had to have also worked for at least a year in a professional position requiring knowledge of the transactions envisaged.

The key issue in this case is whether a position Mr L had held required knowledge of trades in leveraged derivatives. It was for StoneX to ensure the knowledge Mr L said he had was knowledge that satisfied the relevant requirements. This is clear from COBS 3.5.6R. It is also a practical reality given retail clients without the knowledge needed may well not realise they lack it. COBS 3.5.6R says: *"Before deciding to accept a request for re-categorisation as an elective professional client a firm must take all reasonable steps to ensure that the client requesting to be treated as an elective professional client satisfies the qualitative test and, where applicable, the relevant quantitative test."*

I accept digital risk management processes need to take account of the risks of the services or products whose risks are being managed, so knowledge of the characteristics of those risks would be an essential input into such systems – but there would be a lot of other inputs too. I've not seen anything to suggest Mr L was responsible for bringing knowledge of that kind to those systems or that his job required him to have that kind of knowledge. I can see that if the digital risk management processes Mr L was involved in included ones specifically directed at the sort of leveraged derivatives trading he was doing with StoneX, then Mr L ought to have dealt at least indirectly with persons who had that sort of knowledge, but it still wouldn't follow that his position required him to have that knowledge himself. Indeed, if Mr L not only had detailed foundational knowledge of the risk architecture of leveraged derivatives trading or products but also had made use of this as knowledge essential to his professional position at some point in the past, it seems to me he would've spelt this out within his EPC application in his supporting comments. But he did not.

Mr L's EPC application was in 2018. StoneX refers to what his job with his then employer might have required. But if his job there had required the relevant knowledge, Mr L would've surely cited it as the job that qualified him as a professional client in 2018 – given it was his current job at the time. But he didn't. The job role he chose to cite in his application as requiring the necessary knowledge was with an employer he'd left three years earlier.

I don't know whether Mr L's *"VP – Fixed Income"* position meant he could have been considered a professional in relation to fixed interest trading. The job title at least speaks to that possibility. But the envisaged trading involved leveraged derivatives. So the title of the job he chose to cite to support his application doesn't speak at all to Mr L having the relevant sort of knowledge.

I note Mr L also stated: *"I work closely with brokerage houses and investment banks on a regular basis covering such these products"*. The use of the present tense makes it unclear whether Mr L was referring to his then current job or his past "VP" role. Putting that aside, I'm assuming *"such these products"* referred to products of the kind Mr L envisaged trading such as spread bets or contracts for difference. I'm also assuming he meant that he, rather than the entities he referred to working with, 'covers' these products. But accepting all that, this statement is still vague and doesn't explain what this 'covering' involves or how or why it requires knowledge of leveraged trading in derivatives. Nor does it really claim explicitly that he had this sort of knowledge. This statement, in context, self-evidently required clarification and likely also more detail before StoneX could begin to consider relying on it.

It seems to me the most straightforward explanation for and inference to be drawn from the absence in Mr L's statement of the detail and clarity needed to show he met the criterion, is that Mr L did not meet the criterion and couldn't provide a clear statement that would've shown that he did.

I note Mr L said 'Yes' to a question about whether he had relevant qualifications in relation to spread betting or contracts for difference. In a space to give details he entered *"Chartered Accountant (ACA)"*. The ACA is an accountancy qualification. StoneX noted this wasn't a trading qualification. From what Mr L said about this in his application, I don't think it follows at all that the position he cited in his application, or any other he had held up to that point, must have required or likely required him to have knowledge of trading in leveraged derivatives or the like.

Mr L may have had knowledge of some complex areas, but the question isn't how complex his roles might have been, or how senior they were or what level of skill they required. The criterion was to have a professional position that required knowledge of the transactions envisaged, being trades in leveraged derivatives. From what I've seen, Mr L hadn't held a position that required knowledge of that kind when he made his EPC application.

Through his EPC application, Mr L was asking StoneX to treat him as a client capable of foregoing, in an already high risk type of trading, protections afforded to retail clients. From what I've seen, I'm not satisfied StoneX took all reasonable steps to determine Mr L met the criteria to be categorised as an elective professional client. If it had, I'm satisfied it ought to have concluded that Mr L didn't meet criterion COBS 3.5.3R(2)(c) of the quantitative test.

So for the reasons I've given, I'm not persuaded it was fair and reasonable for StoneX to conclude, as it did, that Mr L could be re-categorised as an elective professional client. I therefore uphold the complaint.

Putting things right

If Mr L's EPC application hadn't been approved by StoneX I find he most likely would've placed the same or similar trades to those he placed as an EPC but with lower leverage in line with the restrictions that would've applied to him as a retail client. I say this bearing in mind Mr L hasn't argued that his market predictions would've been significantly changed had his EPC application not been approved.

Our investigator suggested that to put things right Mr L's existing trades should be used as a basis for determining what his losses would've been as a retail client, with StoneX working out the size of the trades Mr L would've been able to place with retail leverage for the same amount of initial margin. While StoneX doesn't believe it ought to be liable, it hasn't made any comment on this proposed approach or proposed any alternative or any alterations to it.

With all this in mind, to put things right, StoneX Financial Ltd trading as City Index must work out the size of trades Mr L would've been able to place with retail leverage, rather than professional, for the same amount of initial margin. It should then adjust the corresponding profit or loss accordingly.

The resulting figure is to be treated as the overall loss Mr L would've made as a retail client. If this shows Mr L would've been left with an additional balance compared to his actual losses, my decision is StoneX Financial Ltd trading as City Index must refund this to Mr L.

If any related fees were paid separately and not reflected in the loss realised for the position, StoneX should also adjust these fees to reflect the reduction in leverage and borrowing costs implied by the adjustment above for the period in which Mr L was an EPC. It should add the reduction in fees to what is owed as redress to Mr L.

If StoneX made credits to Mr L's account by way of compensation, adjustments or goodwill payments, it may deduct this from what is owed as redress to Mr L.

StoneX should provide its calculation to Mr L in a clear and simple format so he can understand how it has come up with any figure due.

Our investigator suggested that interest for loss of opportunity shouldn't be payable on this sum, given broadly that Mr L was using the money he had to trade at a loss. Mr L has made no objection to this approach. I adopt that approach here for the same reason.

In line with our established approach, StoneX Financial Ltd trading as City Index should pay Mr L any redress due promptly. If redress is still outstanding one month from the date on which StoneX receives confirmation of Mr L's acceptance of this decision, interest at the gross rate of 8% simple must be paid by StoneX Financial Ltd trading as City Index (with tax deducted if legally deductible) from the date of that confirmation until the date the outstanding redress is paid.

My final decision

For the reasons I've given and in light of all I've said above, I uphold Mr L's complaint.

StoneX Financial Ltd trading as City Index must put things right by doing what I've said above and paying Mr L any redress found due in accordance with what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 30 September 2025.

Richard Sheridan
Ombudsman