Financial Ombudsman Service

The complaint

Mr A’s complaint is that Admiral Markets UK Ltd (“Admiral”) shouldn’t have classified him as an elective professional client (“EPC”), allowing him to trade with excessive leverage.

Background

Admiral says Mr A applied for an Admiral account in September 2020. His application said he had traded CFDs and currencies for over two years and traded daily. He was also able to explain what leverage was and how it worked in broad terms. He passed an appropriateness test, which qualified him for a retail account.

Admiral says Mr A applied to be treated as an EPC and on his application indicated he had carried out transactions, in significant size, on a relevant market at an average frequency of 10 per quarter over the previous four quarters and that his financial instrument portfolio, defined as including cash deposits and financial instruments exceeded EUR 500,000.

Mr A says his application for EPC status and 1:500 leverage was rejected initially. What is clear is he traded for a time with a leverage allowance of 1:30, according to account records. Mr A says he traded with 30 leverage until April 2021 and 500 leverage from May 2021. He has sent us emails from April 2021 saying he had been accepted as a professional client and that an account with leverage of 1:500 was starting.

I gather Mr A deposited – and largely lost - around EURO 72500 in total during his trading. Mr A has calculated for trades in which he lost around EURO 46,000 as an EPC, he might have lost only around EURO 3000 had he traded as an ordinary retail client due to lower leverage allowances. I don’t know if that is right or not, but lower leverage usually means lower losses if there are losses.

Mr A’s EPC status was withdrawn as set out to him in an email of 26 January 2022. His account was later closed when he didn’t provide Admiral with information it was seeking from him about the origin of the funds with which he had been trading. Admiral says analysis of bank statements Mr A had provided showed deposits he made to Admiral originated from funds received from a relative. It says it asked for proof of where the funds came from and to say in writing whether he was trading for others. Emails were sent to him in April 2022 about this. But Mr A didn’t provide what Admiral was seeking so it closed his account in June 2022.

Our investigator considered the complaint and thought Admiral shouldn’t have classified Mr A as an EPC. She thought Mr A *had* traded in significant size an average of 10 times per quarter over the previous four quarters but *hadn’t* worked in the financial sector and *didn’t* have a large enough portfolio of financial instruments to qualify as an EPC.
Our investigator thought Admiral should therefore assess Mr A’s trades and refund to him any extra loss these caused him compared to the loss they would’ve caused if they had been conducted on the terms – and with the lower leverage - available to a retail customer.

I wrote to the parties to say if the complaint were upheld it might be fair to reduce redress by 20% to reflect Mr A’s share of responsibility. I reached that view, noting the following:

- The answers Mr A gave about leverage on his application show he understood the potential risks of trading with higher leverage. He had also traded using higher leverage on a previous account, which gave him experience of the workings of higher leverage. He must have known larger leverage carried the risk of larger losses.

- Mr A's criticism that Admiral *"allowed me to proceed simply by selecting answers without any verification of their accuracy"* suggests his answers weren't accurate. He says the trades he had conducted before were *"small in size"* - so it isn't clear how he could have believed it was right to agree he had carried out transactions in significant size. He says he didn't know real estate couldn't be included to reach the EURO 500,000 total, but it isn't clear how he could have believed property could be a 'financial instrument'. It seems Mr A gave the answers he gave so he would qualify to be an EPC rather than because the answers were accurate.

- Admiral couldn't have classified Mr A as an EPC had he not given the answers he gave about his past trading and portfolio size. He initially applied for EPC status on his own initiative, knowing it would allow him extra leverage. His main reason for applying to be an EPC was to obtain this higher leverage. While Mr A couldn't have traded as an EPC had Admiral not agreed to classify him as one, losses he suffered while trading as an EPC were in part the result of his desire to trade with additional leverage – and trading decisions he made after this.

Mr A replied to say he didn't agree with a 20% reduction. In short, he emphasised that in his view Admiral ought to have done more to verify his eligibility for EPC status before granting it to him – and that he lost regulatory protections and was exposed to excess risk as a result. This in his view was the primary cause of his losses. He accepted he wanted the higher leverage, but he emphasised that this didn't mean he fully understood the true scale of the risk and potential consequences.

Admiral didn't agree that it ought to pay Mr A anything at all. In its view:

- Its assessment of Mr A's eligibility for EPC status wasn't faulty because it was entitled to rely on what he told them on his application form. In the absence of something objective to indicate Mr A didn't have a portfolio of financial instruments whose value met the threshold, the rules didn't require Admiral to independently verify Mr A's claim that he did. No such objective indicators were identified when Mr A applied.

- Mr A continued to add to his account and trade and lose, so he was aware of the risks and any losses are attributable to his own trading decisions.

- Even if its assessment of Mr A's eligibility for EPC status was faulty, it would be wrong to award Mr A any redress because his conduct undermines his claim and his losses didn't arise from the fault, bearing in mind:
  - Mr A knowingly provided inaccurate information to obtain EPC status.
  - Mr A actively sought the higher leverage and knew it magnifies gains and losses.
  - The losses resulted from Mr A's trading decisions made without input from Admiral.
  - Mr A traded with funds he hasn't demonstrated were his and used his account *"in a manner inconsistent with the declared source and ownership of funds"* and *"failed to cooperate with mandatory anti-money laundering and source-of-funds verification requests".*
  - The ombudsman must have regard to the integrity and objectives of the regulatory framework. Awarding redress where a client knowingly provided inaccurate information, used third-party funds without adequate explanation and failed to cooperate with anti-money laundering verification requirements, would undermine the

purpose of the elective professional client regime and conflict with FCA emphasis on client responsibility, truthful disclosure, and effective financial crime controls.
    - Admiral shouldn't be responsible for losses arising from a status the client actively sought and obtained on the basis of information he has since accepted was incorrect. This is central to liability and causation and weighs strongly against any award of redress.

- Admiral hadn't coached Mr A on the phone on how to answer the EPC questions, like he has claimed. It had no such phone records and its recorded communications with Mr A at the time were emails which didn't include coaching of this kind. The EPC classification was the direct result of Mr A's own representations and choices.

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.

Mr A's complaint isn't that he was allowed to trade at all, but only that he was allowed to trade with the higher leverage allowed to EPCs. So what is at issue is his status as an EPC.

Conduct of Business Rule (COBS) 3.5.3 R in the Financial Conduct Authority's (FCA) handbook provides that a firm is entitled to treat a consumer as an EPC so long as 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. This is referred to as the 'qualitative test'.

The rule provides that in the course of the assessment, at least two of the following criteria are satisfied (and this is referred to as the 'quantitative test'):

- 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 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.

In addition to the above, certain warnings must also be given to and agreed by the client as provided for in COBS 3.5.3(3). That those warnings were given here isn't in dispute and Admiral says these were given to and agreed by Mr A as part of its EPC application process.

Rule COBS 3.5.6 R 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."* So in an assessment of that kind, the firm must take all reasonable steps to ensure the client satisfies the quantitative tests where they are relevant, as they are here.

I note also Section II.2 of Annex II of MiFID II says: *"…investment firms must be required to take all reasonable steps to ensure that the client requesting to be treated as a professional client meets the relevant requirements…"*

In guidance on this, the European Securities and Markets Authority (ESMA) said: *"Whilst investment firms should use their discretion to determine the reasonable steps needed, they should avoid relying solely on self-certification by the client and should consider obtaining further evidence to support assertions that the client meets the identification criteria at that point in time, notably when they consider that the documents or statements received from the clients are not sufficiently conclusive."* It also notes that meeting two or more of the criteria doesn't automatically mean a client should be given EPC status.

ESMA also gave guidance on how firms assess whether transactions are of significant size:

"When assessing whether a client transaction is of a significant size, investment firms shall, inter alia, take into account the size of transactions on the relevant market. For the purpose of determining the relevant threshold, the scope of the analysis should not be limited to (the size of) transactions previously carried out by the relevant client or by clients of the relevant investment firm on the relevant market."

"To assess whether transactions are of a significant size, investment firms should consider whether the transactions were individually large enough to provide the client with meaningful exposure to the relevant market so that it contributed to the client's acquiring the required expertise, experience and knowledge of the transactions or services envisaged."

It also provides guidance as to how firms can assess the value of leveraged positions when working out if a portfolio meets the EURO 500,000 threshold.

"If an investment portfolio contains leveraged positions, or financial instruments for which a margin is deposited, the net equity of the specific position or positions (i.e. the margin deposited or paid for the financial instrument plus any unrealised profits or unrealised losses due to changes in the value of the underlying) should be used in order to determine the size of the financial instrument as part of the portfolio. An investment firm should not use the notional value of the financial instruments, as this value does not reflect the actual size of the portfolio of the client."

Admiral says, of its assessment: *"Mr A… declared that they had conducted 10 transactions of significant size per quarter over the past year in relevant markets. Additionally, they stated that the size of their financial instrument portfolio exceeded EUR 500,000.00. These declarations satisfy the criteria set out in COBS 3.5.3 for elective professional clients, which requires both qualitative and quantitative assessments."*

But it is apparent from the ESMA guidance that assessing whether transactions are of significant size (for (a)) has a technical and objective element requiring expert judgment –not just the subjective judgement of the applicant as to whether he thinks the transactions were of significant size. Likewise, it is apparent that in assessing whether a portfolio value meets the size requirement (for (b)), technical questions arise as to how to value some instruments – on top of the fact that not all assets can be counted as cash or financial instruments. For (c), deciding if a job is professional in nature, requires similar exercise of judgement.

Mr A declared he met the criteria in (a) and (b) above – by ticking boxes to say he met them. Admiral says this satisfied the rules and the rules didn't require it to independently verify Mr A's declarations, as it had nothing objective to suggest they might not be so. But it is plain from the rules, bearing in mind the guidance available relating to them, that by simply relying on Mr A's own declaration Admiral could not fulfil its obligations to adequately assess and

take the steps it needed to take to satisfy itself that Mr A did meet those criteria. I also say this noting that in deciding what is fair I must take account of relevant regulatory rules and guidance, such as the ESMA guidance, and following such guidance would have been good industry practice at the time.

I think it self-evident the ESMA guidance contemplates that it would be for Admiral to assess whether the transactions carried out by Mr A were sufficiently large to be significant for the purposes of criterion (a) – *"firms should consider whether the transactions were individually large enough to provide the client with meaningful exposure to the relevant market…"* Admiral plainly couldn't begin to do that based only on Mr A's own judgment of the size or significance of the transactions, without details of the transactions themselves. Likewise the guidance on valuing leveraged instruments for the purposes of assessing portfolio size for criterion (b), indicates that the guidance contemplated the assessment would be based on some sort of information or evidence that Admiral would obtain and assess.

I'd add that ESMA guidance was clear firms *"should avoid relying solely on self-certification by the client"* and I don't see any grounds for concluding Mr A ought to have been an exception. My view is only reinforced by the fact Mr A did not claim to meet criterion (c) – so Admiral knew from his answers that he was without meaningful experience in a professional role that required knowledge of the kind of trading he was applying to do with Admiral. So he was, in essence, a lay person as far as those transactions were concerned. But Admiral still relied on Mr A to judge whether he met the other criteria. It seems to me the potential problems of this are self-evident – and so by relying on Mr A in this way, Admiral cannot in my view be considered to have met the requirements in the rules I've discussed above. Rather it is plain in those circumstances the rules and guidance required Admiral to do more as a matter of course than just accept Mr A's own assessment of matters such as the value of his portfolio. Admiral had nothing to suggest Mr A was a finance professional such that Admiral might be assured that his assessment of his portfolio size included only assets that should be included and valued them as they should be valued.

I note ESMA guidance suggests firms consider obtaining further evidence where they consider the *"documents or statements"* they receive from the client are *"not sufficiently conclusive".* In my view this doesn't detract from what the guidance had already said about relying solely on self-certification (and I'd add in passing that the reference to documents or statements seems to assume there would be some sort of collection of evidence). But in any event, without having details of the transactions or cash or financial instruments Mr A had in mind when making his declaration, I don't see that Admiral could reasonably take the view that his declaration was sufficiently conclusive. I'm entirely unpersuaded by the suggestion that Mr A's declaration must have been 'sufficiently conclusive' so long as Admiral found nothing to positively contradict or undermine it (even if I put aside that it hadn't asked for evidence to support or undermine it).

Also, regardless of what the rules and guidance implied in general, Mr A's application told Admiral he had traded leveraged instruments in size, so there was a likelihood, and Admiral couldn't rule out, that the value Mr A gave for his portfolio included such instruments. The existence of ESMA guidance for valuing such instruments highlights a risk that these might not be valued correctly otherwise. So it can't have been sufficient under the rules for Admiral to assume Mr A had valued those instruments, or otherwise valued his portfolio, correctly and in line with the relevant guidance, without obtaining from him evidence he had done so.

So for each of the reasons I've given, and with all I've said above in mind, I agree with our investigator's view that Admiral didn't have evidence that Mr A had met the relevant criteria (aside from Mr A's own declaration) and that without that evidence, Admiral couldn't have discharged its duties under the rules and so shouldn't have granted Mr A an EPC account.

This view is only reinforced by consideration of the information Admiral did have from and about Mr A, as discussed above (and touched upon also below).

Moving to consider what would have happened had Admiral instead done what it should have done, in Mr A's case our investigator found – and Admiral does not dispute – that the size of his portfolio was insufficient to meet criterion (b). So had Admiral discharged its duties it wouldn't have granted Mr A an EPC account. So I concur with the conclusion reached by our investigator.

I note our investigator found Mr A had in fact traded sufficiently in size to satisfy criterion (a) – although Mr A has argued his transactions were actually too small to qualify. But given he did not meet criteria (b) and (c), and there is no dispute on those points - I need not decide here whether Mr A did in fact meet criterion (a). I've discussed that criterion above to help illustrate why I don't agree with Admiral's suggestions that what was required of it under the rules and relevant guidance was merely to accept Mr A's declaration so long as it had nothing to show it was wrong. I've explained that the quantitative criteria have aspects requiring judgment or an expert view to be taken – and Admiral couldn't discharge its responsibilities by relying on Mr A to judge for himself whether he met the criteria.

So I agree with our investigator's view that Admiral, relying on Mr A's self-certification and without supporting evidence, did not do enough to ensure Mr A satisfied the criteria to be eligible for EPC status – and if it had done enough it would have reached the conclusion that Mr A could not be granted EPC status because he did not have enough relevant assets.

It follows that had Admiral done what it ought to have done, Mr A would not have traded with EPC status and would have lost only the sums he could have lost by placing the same trades as a retail client (insofar as they were allowed to a retail client), with leverage limited to that allowed to a retail client.

So the starting point in assessing the loss Admiral's fault caused Mr A is the difference between what he actually lost and what he would have lost on the basis I've outlined above as a retail client.

However, as I've pointed out to the parties, I need to consider not only whether Admiral did something wrong under the rules, but what redress is fair and reasonable. My remit (set out in DISP 3.6.1) requires me to determine a complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case. It is plain the extra leverage may have led Mr A to suffer extra loss. It is plain Mr A shouldn't have been allowed that leverage by Admiral. I've decided Mr A obtained that leverage due to a fault by Admiral. I said Mr A potentially bears some responsibility too. I've also suggested that Mr A's contribution should disqualify him from redress for part of the loss the extra leverage caused. I suggested Mr A's contribution might be fairly placed at 20%, for reasons summarised above.

In reaching that view, I noted Mr A had claimed to have carried out trades of significant size when he says they were actually "small". There is some difference between "small" and "significant" – which I considered supported the view that Mr A's answers weren't accurate and that he gave the answers he gave in order to obtain the EPC status. Similarly, Mr A said he didn't know real estate couldn't be included for the 500,000 EURO threshold, but hasn't clarified why he believed this, given he was asked about financial instruments or cash. Also he said Admiral "*allowed me to proceed simply by selecting answers without any verification of their accuracy". And "failed to verify the accuracy of the information I provided…."*
Mr A also said: *"I did not hold €500,000 in financial instruments or cash at the time and Admiral… failed to verify this information adequately".*

In light of all this, Mr A appeared to me motivated primarily by a wish to obtain EPC status rather than by his obligation to give accurate answers. Inaccuracies in his answers in my view contributed to Admiral granting him EPC status, so they contributed to Mr A's losses. While Admiral's failings were plainly the primary cause, I considered Mr A's contribution could reasonably be put at 20%. My view took into account also the degree of understanding Mr A had of the trading he was wanting to carry out as an EPC, and his knowledge that leverage increases losses or gains.

Admiral in its response has suggested that for the reasons I thought a 20% reduction should be made, a reduction in redress of 100% should be made. I don't agree, as this would be to ignore Admiral's contribution – which is the primary contribution as the party that offered the risky EPC trading status and whose failing led to Mr A suffering harm from engaging in trading using that status, when the rules were there to protect retail consumers like Mr A from that harm. The reduction I proposed to redress wasn't because the rules weren't designed to protect Mr A from suffering losses due to being given EPC status to which he wasn't entitled. It was to reflect Mr A's contribution to Admiral's fault in granting him that status, and so his contribution to losses caused by this.

I note in passing that rules to prevent consumers being harmed by excessive leverage, are not designed to protect only consumers not attracted to such leverage or who wouldn't use that leverage or would use it successfully. So the fact Mr A's losses arose from him seeking leverage he was attracted to and using it in his own unsuccessful trading decisions, isn't in my view a reason why, having regard for the rules and regulatory framework, I ought to reduce to zero redress for losses caused by the leverage he shouldn't have been allowed.

I said Mr A understood the potential risks of trading with higher leverage. But the rules require also an understanding from practical experience (as Mr A claimed to have and our investigator accepted he had) as well as a much more substantial financial portfolio than Mr A had. So his understanding of the potential risks and his past trading experience are not sufficient to relieve Admiral of its other responsibilities under the rules, or of liability for losses suffered by Mr A that flow from Admiral's breach of rules. So Mr A's understanding of the potential risks and his past experience don't in themselves disqualify Mr A from redress.

What Admiral says about the possibility Mr A's trading was funded by a relative or carried out for them, I find supportive of the notion that he lacked the scale of financial assets to qualify as an EPC. But Admiral hasn't in my view given a reason why I ought to consider this relevant to Mr A's responsibility for his losses or his claim for redress. I don't share Admiral's view that this ought to mean Mr A doesn't recover redress for losses caused by having been given EPC status wrongfully by Admiral. If Mr A was, as Admiral says, using funds received from a relative, I don't see this bears on whether Admiral was at fault for granting him leverage, or on Mr A's contribution to that fault.

Receiving funds from a relative isn't illegal of course, even if one uses those funds to trade contrary to the terms of a particular trading account. If he received funds on the basis that losses would be carried by a relative, I don't see that this materially reduces the degree of responsibility Admiral should carry for letting Mr A trade as an EPC with excessive leverage. If Mr A owes money to a relative by virtue of some domestic arrangement he has, I don't see that this would bear on the material features of this dispute. How rights, responsibilities and obligations are owed and enjoyed within families varies and has many different forms and Admiral hasn't said anything that persuades me I need to seek to unravel Mr A's domestic arrangements to reach a fair and reasonable decision on his complaint.

Mr A says he borrowed money from his family. What Admiral has said and sent us doesn't show this wasn't the case. But, as our investigator said, this doesn't show that Mr A was or acted as a professional trader. I'd mention that Mr A's application referred to various sources

of funds, including a loan, an inheritance and business funds – so how exactly he was going to fund his trading was not at all clear. The lack of information and curiosity Admiral had for this before granting an account and EPC status, doesn't in my view help to add weight to the suggestion that this is of crucial import now. It is also grounds that reinforce my view that Admiral ought to have asked more questions than it did at the outset about Mr A's assets.

Similarly, Admiral says Mr A didn't provide anti-money laundering information it asked for, but Mr A wasn't under any obligation to give Admiral information he did not wish to give. Of course, if Admiral wasn't able to obtain the confirmation it needed, Admiral might be obliged, or decide, to not allow Mr A to use its service – so not providing information would have that potential consequence. But Mr A wasn't under any obligation legal or otherwise to provide Admiral with answers to its questions. The fact he chose not to do so – or could not satisfy Admiral with what he did provide – wasn't in breach of law or evidence of illegality.

As Mr A didn't give Admiral evidence it needed for checks it has to carry out, Admiral closed his account, which is to be expected. But that isn't Mr A's complaint, and I'm not persuaded it has a bearing on Admiral's responsibility for losses Mr A suffered due to excess leverage granted by Admiral while his account was still open. I don't see that it is relevant to Mr A's status as an EPC or to whether Admiral was at fault for allowing Mr A that status.

Admiral says *"redress is not appropriate where the losses complained of arise from a complainant's own informed decisions, rather than from any act or omission on the part of the firm".* In this case the losses do arise from Admiral's acts or omissions, so even if I agreed with the first part of the statement (which I need not discuss here), it wouldn't apply or have the import Admiral implies. It follows that I'm not persuaded by Admiral that established authorities support its view that it would not be fair and reasonable for me to award Mr A the redress I've suggested.

In reaching the view that 20% is a fair proportion to deduct to reflect Mr A's contribution – or the extent to which his loss might reasonably be viewed as being caused by his fault – I note neither party has suggested an alternative proportion – only that none or all should be taken. This tends to reinforce my view that the proportion I proposed is a fair and reasonable answer – which I've reached for the reasons, and having given consideration to the various largely factual and case specific points and considerations, I've discussed already above.

So for each and all of the reasons I've given, and in light of what I've said above, I uphold Mr A's complaint – to the extent and on the basis I've explained above.

Putting things right

I uphold Mr A's complaint. To put things right, Admiral Markets UK Limited must:

- Recalculate the results of the trades Mr A placed as an EPC, as if he had placed them instead as a retail client. This should take account of all differences this would have made (including leverage limits and negative balance protection if relevant). If anything Mr A traded wouldn't have been available to a retail client, it should be assumed those trades wouldn't have taken place (I'm not sure there were any such trades).

- If the result of the above recalculation is that it makes a positive difference overall to the calculated account value, Admiral Markets UK Limited must pay 80% of this difference to Mr A. This represents a refund of the extra loss Mr A suffered due to being classified as an EPC, but reduced by 20% to reflect his contribution to that loss.

Admiral Markets UK Limited should complete the calculation and pay the redress to Mr A within six weeks of receiving from us notification that Mr A has accepted my decision. If the

redress is still outstanding after that time, Admiral Markets UK Limited must pay Mr A simple interest on the redress at the gross rate of 8% from the date of this decision until the date the redress is paid.

Admiral Markets UK Limited must also give Mr A details of its redress calculation in a clear and simple form.

I've referred above to Mr A's 'account', as did Admiral, but I understand Mr A's account was made up of a number – from what I've seen three – of separate accounts (or sub-accounts) with distinct reference numbers. When referring in this decision to Mr A's account, I refer to all those accounts, and my decision applies to all those accounts collectively.

My final decision

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

Admiral Markets UK Ltd must put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 27 March 2026.

Richard Sheridan
Ombudsman