

The complaint

Ms G complains that Admiral Markets UK Ltd incorrectly classified her as a professional client, which led to her having a higher leverage limit and losing more than she otherwise would have, in her derivative trading account.

What happened

In January 2019 Ms G opened her account with Admiral and provided the following information about herself in answer to Admiral's questions:

- She had traded CFDs, stocks commodities and currencies for over 2 years.
- She hadn't traded options or futures.
- Frequency of trading – weekly.
- Volume of trading - up to 10 trades.
- The purpose of her investment was speculation.
- When asked “*Are you employed (or have been employed during the last 12 months) in a professional position which requires knowledge of margin trading?*” she said no.
- When asked “*Do you have any educational qualifications in margin trading products (e.g. Forex and CFD's)?*” she said yes.

She also correctly answered some questions designed to test her knowledge of investing. As a result of the above, Admiral found it was appropriate for her to have a derivative trading account. The same day, Ms G applied to be an elective professional client. Admiral asked her to provide evidence of her chosen eligibility criteria, but Ms G didn't supply any. Regardless, Admiral then approved her application and allowed her to trade as a professional client.

In 2023 Admiral closed Ms G's account. In 2024 Ms G complained, via a representative, that Admiral had allowed her to trade as a professional, as the leverage allowed amplified her losses. Admiral didn't uphold her complaint, saying that Ms G had confirmed when she applied that she had sufficient trading experience and had worked in a relevant field. They admitted that due to a technical error they didn't ask for evidence of the trades. However, they felt Ms G was responsible for her trading as she had applied for the professional status. Ms G remained unhappy and referred the complaint to our service.

Admiral told our service that Ms G's account had been closed in 2023 for several reasons. They said they were concerned about Ms G's source of funds. They had also reviewed the professional client application and found that Ms G had not worked in the financial sector for at least a year, nor managed a portfolio of financial instruments exceeding EUR 500,000.

An investigator at our service considered the complaint and upheld it. As Admiral had admitted Ms G shouldn't have passed the elective professional client test, the investigator recommended that Admiral should calculate what Ms G's losses would have been had she been trading as a retail client instead. He also recommended that Admiral pay Ms G £400 for distress and inconvenience caused.

In reply, Ms G's representative accepted the complaint should be upheld, but suggested an alternative method of putting things right, as the calculation would be complex and they felt it would be difficult to ensure it is carried out correctly. Admiral didn't accept the investigator's opinion, in summary because:

- The terms and conditions governing the account say that it's a client's responsibility to inform Admiral about a change to their status.
- Initially, they offered 10% of some of the losses incurred, which amounted to EUR 2,606.87, but they withdrew that offer and changed their position on the complaint. They said they no longer felt they had made an error and said it was reasonable for them to rely on the information Ms G had given them.
- They raised concerns around the way Ms G had used the account, which they said was the main reason it had been closed.
- They argued that Ms G had raised her complaint too late for it to be considered.

The investigator considered the objection and found the complaint had been brought within the time limits allowed as the complaint was raised in 2024, within six years of when Ms G applied to be a professional client. He also explained he wasn't persuaded to change his mind about the outcome of the complaint. As no agreement was reached, the complaint was passed to me for a decision.

I issued a jurisdiction decision, finding that we could look at the complaint. I then issued a provisional decision setting out my findings on the merits, which included the following:

My provisional decision

"I've considered Admiral's assessment that Ms G met the criteria to be considered an elective professional client. The Financial Conduct Authority's (FCA) Conduct of Business rules (COBS), which are set out in its Handbook, are clear about the criteria that needed to be met for a firm to categorise a retail client as an elective professional. In 2019, COBS 3.5.3 said:

"A firm may treat a client other than a local public authority or municipality as an elective professional client if it complies with (1) and (3) and, where applicable, (2):

- (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"); and*
- (3) the following procedure is followed:*

- (a) the client must state in writing to the firm that it wishes to be treated as a professional client either generally or in respect of a particular service or transaction or type of transaction or product;
- (b) the firm must give the client a clear written warning of the protections and investor compensation rights the client may lose; and
- (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.”

COBS 3.5.6 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.”

Ms G has not complained about the qualitative test specifically. Nonetheless, I’ve considered the answers she gave when opening the account, which I’ve set out above. Based on those answers, I’m satisfied Admiral undertook an adequate assessment of Ms G’s knowledge and experience to give themselves reasonable reassurance that Ms G was capable of understanding the risks and making her own decisions.

My focus here is on the quantitative test. To comply with the rules, Admiral needed to satisfy itself that Ms G met at least two of the three quantitative criteria. When she applied, Ms G confirmed she met the criteria at COBS 3.5.3(2)(a) and (c) – but Admiral allowed her to trade as a professional without seeing any proof. Based on the guidance available at the time, in my view Admiral ought to have done more to check Ms G met the criteria, rather than simply taking her word for it.

The European Securities and Markets Authority (ESMA) produced questions and answers which gave further guidance about how to assess clients, and this approach has been endorsed by the FCA. Of relevance to this case, it says that when firms are considering a client’s professional role, firms should:

“ensure that the position was professional in nature and held in a field that allowed the client to acquire knowledge of transactions or services that have comparable features and a comparable level of complexity to the transactions or services envisaged.”

There’s no evidence that Admiral knew what Ms G’s occupation was, so they couldn’t have complied with the ESMA guidance. In her appropriateness test the same day, Ms G had confirmed that she hadn’t worked in the profession, but in the professional client application she confirmed she had. So, Admiral reasonably ought to have known something might have been wrong with her answers in the professional client application.

Also, I can see that Ms G was 18 years old at the time of the application. While it’s possible she worked in the investment field, in my view it would have been reasonable for this to cause Admiral to think about the likelihood of whether she had held a job for at least a year that gave the required level of knowledge and experience of complex instruments. Regardless, I can see Ms G’s representative has confirmed that she didn’t work in such a field. So overall, I’m satisfied that if Admiral had asked what her job was, no sufficient evidence would have been provided to fulfil the criteria.

I’ve considered whether Ms G could have still passed the test due to the other two criteria. In relation to the transaction history, Ms G wasn’t asked to provide her trading history, so I can’t be sure of what it would have shown. However, I’m persuaded that Ms G didn’t have a portfolio of EUR 500,000 because, when asked about her source of funds, Ms G provided

evidence of access to EUR 60,000 and not the significantly higher amount needed. So she wouldn't have passed the quantitative test, had proof been requested in 2019.

Taking all this into account, I'm not satisfied it was fair and reasonable for Admiral to have classified Ms G as an elective professional client. In my view, Ms G did not fulfil the criteria as set out in COBS. As a result, her application should have been declined and as it wasn't, she was exposed to more risk than she would have been as a retail client.

I've considered Admiral's point about what the terms say about clients notifying them about any change in status. In my view, their argument doesn't change anything – Ms G applied for professional client status and that was granted by Admiral. I do not see why it would have been necessary for her to point out to Admiral that it had been granted, or that it would have changed anything, given Admiral already knew about it.

Admiral have put forward various arguments about Ms G's use of the account and the reasons why they closed the account. However, their arguments aren't relevant to Ms G's status as a professional client. They don't have anything to do with whether she ought to have been allowed to trade as an elective professional client. The only relevance they have is regarding closure of the account, which has not been complained about.

Putting things right

In considering how to put things right for Ms G, my aim is to put her as close as possible to the position she would be in, had her account not been recategorized. In other words, had her account remained a retail client one. The investigator set out that Admiral should consider how much Ms G's account would have been worth on closure, had she traded with the lower leverage limits available for retail clients compared to professional. This is the key part of the outcome that I wanted to clarify within this provisional decision.

As well as leverage, there are several important differences between the two account types, which must all be considered when Admiral calculates the amount Ms G may have lost here. For instance, retail clients benefit from negative balance protection. Professional clients are able to trade CFDs on certain instruments that retail clients can't, like the ability to trade CFDs on cryptocurrencies.

Admiral should recalculate the trades Ms G placed as if she had placed them as a retail client, taking into account all the differences between the trades that would have occurred. This includes applying the leverage she would've had access to had she been a retail client and includes the trades she made losses on, as well as the ones she made profits. I'm unsure if Ms G traded any assets that retail clients cannot, like cryptocurrency CFDs. If she did, Admiral needs to assume that her cryptocurrency trades would not have been placed – and therefore both profitable and loss-making trades would need to be cancelled.

This will give Admiral an overall figure of the loss Ms G would have made as a retail client. If that loss is smaller than the loss she made as an elective professional client, Admiral needs to pay that difference to Ms G. They should provide Ms G with details of their calculation in a clear and simple manner.

I appreciate that Ms G's representative has said that this method is complex and has put forward a different method of putting things right – asking for either an exact monetary amount or a percentage of the overall losses. However, I don't believe I could fairly put forward a figure that would put Ms G in the position she'd be in now, but for Admiral's error, without the calculation I've set out above being carried out. This is because Ms G's gains must be considered as well as her losses, so it wouldn't be fair to simply award the amount (or a percentage of the amount) she lost during her time trading as a professional client.

Nor am I awarding any interest to any loss Admiral needs to pay, because I consider that Ms G is somewhat responsible for this situation. She applied for the account and for the elective professional client status and enjoyed use of the account for around four years. There's no suggestion that Admiral prompted or advised her to apply for elective professional client status. In my view, not awarding interest reasonably accounts for the contribution Ms G has made to her losses.

Lastly, I agree with the investigator that Admiral should pay Ms G £400 compensation for the distress and inconvenience caused as a result of failing to safeguard her from such high levels of risk and the anxiety caused as a result of the increased losses."

Replies to my provisional decision

Admiral disagreed with the outcome, in summary because:

- Based on the evidence they have, they believe that Ms G had allowed her mother, who I'll call Ms G2, to open an account in her name. So, Ms G wasn't actually the controller or executor of the trades on the account. This was based on the following:
 - In an email dated 17 March 2020 they were told by the person using the account the following: "*My daughter accidentally touched a button on the computer and executed a trade.*" This statement prompted their initial suspicion that the account might have been controlled by another individual, fraudulently impersonating Ms G. If Ms G2 did not have an active trading account, an accidental click on her account could not have resulted in a trade being executed by her daughter, which led them to suspect deliberate misuse of credentials or fraudulent activity.
 - Ms G2 had logged into her own account from the same IP address associated with activity on Ms G's account.
 - The funds used by Ms G to trade were provided by Ms G2 through a loan.
- Against that background they felt the complaint should not be upheld because they were convinced that the individual who opened and operated the account was not Ms G and therefore it was fraudulently operated.

Ms G's representative made the following submissions:

- Admiral should have a deadline to carry out the calculation. If the deadline is not met, then an alternative method of calculating redress ought to be put in place.
- Admiral should pay interest on the compensation, regardless of method.
- They asked that a clause be included in the final decision stating that, should a dispute arise regarding the calculation, our service would be available at short notice as a mediator and reviewer of the calculation formula.

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've not been persuaded to depart from the findings I set out in my provisional decision above and will explain why.

To my knowledge, Admiral have not asked Ms G about their suspicions regarding third party involvement in the account. While they mentioned their suspicions to our service previously, they did not argue their case in the way they have in reply to the provisional decision and

only talked about it in the context of their reasons for closing the account. In my view, the submission that the complaint should not be upheld because of those suspicions, is unreasonable because their suspicions are not supported by sufficient evidence.

There are many explanations for what has happened, and Admiral has put forward the explanation that puts Ms G's actions in the most negative light, and based on the evidence they are replying on, I'm not convinced that's fair. For instance, Ms G credibly could have been at the same address as her mother when using the account. Ms G herself may have a daughter, which could explain the email sent in 2020.

A key point is that Ms G has never disputed opening and using the account – so is not arguing that her identity has been stolen or misused. Admiral's arguments in this regard are not persuasive, particularly because of the potential for alternative credible explanations, and the fact they've never asked Ms G about it. Even when considered at the same time as the information about Ms G2 lending Ms G the money 18 months prior to her opening the account, that was later used to trade, these suspicions do not build a persuasive enough overall picture.

I can see Admiral had concerns over the source of funds Ms G used to open the account and they say these concerns ought to mean the complaint shouldn't be upheld. They've not provided any evidence of conversations with Ms G about source of funds except for the agreement signed between Ms G and Ms G2 setting out the terms of the loan. Similarly to the above, they've not evidenced their concerns any further than stating that they felt they were suspicious.

Admiral has had many opportunities to provide further evidence in support of their position and has not done so. It is not our service's role to tell firms how to defend themselves, just like it isn't our role to tell complainants how best to argue their complaint. We can't provide indefinite opportunities for the parties to provide evidence and arguments. In the circumstances I won't be giving Admiral a further opportunity to submit anything more.

Admiral haven't provided sufficient evidence for me to be convinced that their allegations are fair and reasonable, to the point where I would conclude the complaint shouldn't be upheld. So, I remain satisfied that had Admiral done what they should have in 2019, Ms G wouldn't have been allowed to trade as a professional, and she ought to be put in the position she'd be in now, but for that error.

I've also considered Ms G's representative's points about the redress method I set out. Once a final decision is issued and it has been confirmed as accepted or rejected by the complainant, that is usually our last involvement in a complaint. Admiral will have a deadline of four weeks from the date we notify them that Ms G has accepted my final decision, to pay Ms G. We do not provide a formal mediation service regarding redress calculations after the final decision has been issued. If a complainant accepts a final decision, it is legally binding on the parties. So, if a firm doesn't comply with it, then the complainant can enforce the decision through the court process.

I appreciate the calculation may be lengthy – but it is essentially recreating each trade Ms G placed as though it was carried out as a retail client on a line-by-line basis. I'd expect Admiral to explain the factors used in their calculation in a way that Ms G and her representative can easily understand and answer any reasonable questions they have about the calculation. I see no reason why Admiral can't carry it out or employ a third-party expert to do so if they find they can't complete it themselves. It's not unusual for our service to direct firms to carry out this sort of calculation, so I don't agree that an alternative method should be put in place.

I understand that Ms G's representative feels interest ought to be added to any loss, from the date the account was closed. I set out my reasons for not awarding interest in my provisional decision, and I haven't received any compelling arguments in reply about those reasons. Ms G contributed to the situation she is now in, by applying for professional client status and by choosing to trade at that level of risk, for several years. In the circumstances of this case, I remain satisfied that a fair way to account for that contribution, is to not award interest on the loss from the date the account was closed (other than as set out below in relation to late payment of the redress).

Putting things right

Admiral should recalculate the trades Ms G placed as if she had placed them as a retail client, taking into account all the differences between the trades that would have occurred. This includes applying the leverage she would've had access to had she been a retail client and cancelling any trades that wouldn't have been possible at all, for instance cryptocurrency CFDs. This should include the trades she made losses on, as well as the ones on which she made profits.

This will give Admiral an overall figure of the amount of gain or loss that Ms G would have made as a retail client. That amount should be compared to the total amount she actually received back from the account, and if she would have received more as a retail client than she did as a professional, then Admiral needs to pay that difference to Ms G. They should provide Ms G with details of their calculation in a clear and simple manner. In addition, Admiral should pay £400 for the distress and inconvenience caused.

Admiral must pay the compensation within 28 calendar days of the date on which we tell it Ms G accepts my final decision. If Admiral fails to pay the compensation by this date, it should pay 8% simple interest per year on the loss, for the period following the deadline, to the date of settlement.

My final decision

I uphold the complaint. My final decision is that Admiral Markets UK Ltd should pay Ms G the amount calculated as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms G to accept or reject my decision before 13 February 2026.

Katie Haywood
Ombudsman