

## **complaint**

Mr S' complaint to this service, about IG Index Limited (IG), began on the following basis:

- IG did not self-regulate its service in terms of the appropriateness of his execution only spread betting account, which he opened in 2000.
- In this context and under its duty to safeguard his best interests, IG failed to address indications of his problem gambling when his losses went beyond his £5,000 credit limit. He said IG should have stopped his trading in this respect.
- IG compounded its failure in 2007 when his credit limit was increased to £10,000 without his request or consent. He used the increased credit limit thereafter and his losses continued.
- IG's closure of his open positions in December 2015 crystallised losses in excess of his credit limit.

## **background**

IG did not uphold the complaint on merit. However, given the dated nature of some of the issues, it did not consent to this service considering the complaint if it was made out of time. One of our investigators considered whether (or not) the complaint had been made in time and concluded that it had not. In summary, he said:

- The regulator's rules require that a complaint is made within six years of the relevant event or, if later, within three years of when the complainant knew or ought reasonably to have known of cause for complaint.
- The crux of Mr S' complaint is the credit limit increase in 2007. He was aware of it at the time and he wilfully used the increased limit for his trading.
- His complaint in 2017 was more than six years after the event in 2007 and more than three years after 2007 when he knew about his allegation that the credit limit was increased without his request or consent, and knew or ought reasonably to have known of cause for complaint about it.

Mr S disagreed with this outcome and asked for an ombudsman's decision on the matter. He said his complaint was wider than the credit limit increase in 2007 and that it covered alleged regulatory breaches, in terms of appropriateness, by IG throughout the life of his account and up to the position closures in 2015. He argued that the account was inappropriate for him and IG's responsibility for that was worsened by its failure to address his problem gambling. He said he learnt about the regulations pertinent to the alleged breaches shortly before his complaint so his complaint is in time.

An ombudsman considered our jurisdiction to consider the complaint in relation to the regulator's time limits. He considered that the issues based on the events between the opening of Mr S' account (in 2000) and the increase in his credit limit in 2007 are outside the regulator's six years time limit. He said those events are also the basis of Mr S' concerns that the account was not right for him, so his awareness in this respect during the same period means the complaint ought to have been raised much sooner. He concluded that the only complaint we can consider is about the closure of Mr S' positions in 2015 – which was made within six years of when it occurred.

An investigator proceeded to consider the merits of the complaint about the closed positions. She noted that the positions had been closed because Mr S' account had gone into a margin call that he had not addressed. She also noted email correspondence between both parties

at the time suggesting that the margin call was known to him and had gone unaddressed for some time, and showing that he had the chance to address the margin call but could not. The investigator referred to IG's right, under the terms for the account, to close the positions as it did. She concluded that the complaint should not be upheld.

Mr S did not accept this outcome. He submitted a number of responses but none of them appear to have addressed the outcome of the issue about the 2015 closed positions. His responses related to his initial wider complaint about IG's alleged failings and the inappropriateness of the account. The matter was then referred to an ombudsman.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

It appears that Mr S retains the position that the merits of his overall complaint about IG, including all of the issues I summarised above, should be addressed. I have read the ombudsman's decision which concludes that all but the 2015 trade closures issue are out of time. As is to be expected, his consideration of the matter, and that of the investigator before him, was subjective to the facts of Mr S' case. Overall, the level of awareness that Mr S had about his spread betting up to 2007 and thereafter appears to be undisputable. I note his reference to more recent knowledge about regulations that have allegedly been breached by IG, however the time limits relate to when events took place and when a complaint knew or ought reasonably to have known about cause for complaint.

In this context, specific knowledge about technicalities or legalities that could potentially support a complaint is not necessary. What is necessary is awareness of the cause for complaint. In Mr S' case his awareness of the losses in his trading, of losses that went beyond his credit limits and of the increase of his credit limit without his request or consent all took place between 2000 and 2007. Hence the ombudsman's conclusion that the issues arising from such awareness were out of time in 2017. 2017 was more than 6 years after the relevant events and more than three years after Mr S' awareness.

The only surviving complaint issue is about the closure of Mr S' positions in December 2015. The implication of having an execution only account, as he did, is that he retained responsibility to oversee and manage the account, its margin requirement(s) and all trades placed within it. Sections of the terms for the account catered for the following:

- There is a section that gives notice that an account holder's credit limit does not limit his/her potential losses in relation to a bet and that such loss could exceed the credit limit.
- There is a section that requires account holders to add funds to the account where the account's credit facility is not enough to cover the margin requirement.
- There is a section that says breach of an account's margin requirement is an "Event of Default".
- There is a section that says an Event of Default entitles IG to close open positions in the relevant account.
- There is a section that reminds account holders to monitor their accounts, margins and open positions, and that says IG is not obliged to give notice of margin requirements or breaches to account holders.

The margin breach in Mr S' case is not in dispute. As the investigator noted, there is email correspondence to support this conclusion. In an email exchange of 30 November 2015 IG reminded Mr S that the deadline to address the breach was at 3pm on that date. He was also reminded that his open positions were at risk of being closed if the breach was not repaired by the deposit of funds into the account. IG's second email, later on the same date, acknowledged that Mr S had closed some positions. For that reason IG said it had decided to extend the deadline to address the margin breach to 8am the following day, 1 December. Around 10 minutes thereafter Mr S replied to thank IG for the extension. The margin breach was not addressed before the deadline so the positions were closed.

Evidence supports the conclusion that IG was within its rights to close Mr S' open positions as it did. It was not contractually obliged to give him prior notice but it did. It was not obliged to give him an extension of time to address the margin breach, but it did. Overall, I am not persuaded that there are grounds to conclude that IG did anything wrong in this matter.

### **my final decision**

For the reasons given above, I do not uphold Mr S' complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 20 December 2018.

Roy Kuku  
**ombudsman**