

The complaint

Mr S complained about IG Index Limited (IG). He said IG shouldn't have agreed to him being an elective professional client. He said it wrongly incentivised him to change his account and this led to him making substantial losses. He said IG are responsible for this and it should pay him compensation for his losses.

What happened

Mr S had a contracts for difference (CFD) and spread betting trading account with IG. He said he joined as a retail client in September 2021. Mr S said he took several months to get used to the service, and whilst doing so he achieved stable returns on his trades. He said he was then incentivised to become a professional client. He said shortly after he agreed to do this, he suffered substantial losses of around £98,727. He said it was clear to him that the losses he made were due to the upgrade to professional status on his account.

Mr S said he received monetary and non-monetary incentives to upgrade including receiving volume-based rebates and lower margins. He said trading in volume dramatically led to the heavy losses he incurred. He said he shouldn't have received the incentives. He said had he not been incentivised to upgrade, then he would not have tried to.

Mr S said he also didn't think he was eligible in the first place to be a professional client. He said one of the criteria that IG said he met, this of having knowledge of spread betting and CFDs, he didn't. He said even though he worked in the financial sector, it wasn't ever in derivatives. He said if he had clearly understood the losses that were possible with leverage without protection in a professional account, he wouldn't have taken such risk. Mr S complained to IG about all of this.

IG in response gave a timeline of what happened with Mr S's account. It said he opened his account as a retail client in September 2021, but shortly afterwards in November 2021 and again in April 2021 he applied to be a professional client. It said after carrying out checks and contacting him for further information, it rejected his applications.

IG said Mr S applied to be an elective professional client on a third occasion on 14 September 2022. It said he had completed 12 months' worth of trading and on this occasion had met two of the three criteria it applied on application. It said 13 days later, on 27 September 2022, Mr S contacted it and asked to be reclassified as a retail client. It said he had made losses due to automated closure of several positions on his account due to triggered stop losses regarding volatility of currency he was trading in.

IG said Mr S passed two of the three criteria in its quantitative test. It said he made enough qualifying trades within the previous 12 months that he held his account with it. It said it took at face value what Mr S had said about his experience and qualifications although it also validated the information via the FCA's financial services register. It said it could see Mr S had held several roles within the financial services industry over the previous 15 years as he had stated. It said Mr S had passed its tests for him to successfully open a professional account, based on what he had told it and the information it held.

IG said it clearly provided information regarding Mr S obtaining a professional account. It then gave examples of how it said it did this on its website. It said Mr S would have been able to see the information it provided on any of the three applications he made.

IG said it offers incentives such as rebates for volume trading to professional clients only. It said the FCA restricts monetary incentives on retail client accounts, but it does not do this and offers incentives to its professional clients only. It said any mention to incentives for professional clients on its website, is also balanced with information about loss of protection too. It said that it asks the client to confirm in writing if they want to be considered to be a professional client and provide a clear warning to the protections they may lose if they do so. IG did not uphold Mr S's complaint.

IG did refund the negative equity balance on Mr S's account though of £12,850. It said it offered to do this as a gesture of goodwill.

Mr S was not happy with IG's response and said he would like IG to compensate him for his remaining losses of around £85,876 and so referred his complaint to our service.

An investigator looked into Mr S's complaint. He issued his first view in June 2023 and initially upheld Mr S's complaint. He concluded IG hadn't acted fairly. He said he wasn't persuaded there were sufficient significant sized trades carried out by Mr S over the previous year to satisfy FCA criteria for being recategorised as an elected professional client.

IG responded and disagreed. It said it had agreed internally what a 'significant sized trade' could reasonably be considered to be, as the regulation wasn't definitive on this point, and said Mr S had carried out trades of that nature across the four quarters of the years previous to his application. It gave its definition of what a significant sized trade was and applied this to clients that were seeking elective professional client status.

The investigator issued a second view in July 2023 having changed his mind on the basis of the additional information from IG and said he didn't think IG needed to take any further action. He said IG provided its internal criteria for assessing what a significant transaction size was and Mr S's trading history showed that he met those criteria. He said it carried out its assessment in line with its terms and conditions and he was satisfied it met its regulatory obligations.

Mr S was not in agreement with the investigator's view. He made the following points:

- Performance of his trading account was stable over several months and then suddenly was highly unstable and loss making immediately after he became a professional client.
- The quantitative test was too easy to pass. He said the bar was set too low within IG's own methodology and using the criteria within FCA's rules. He said:
 - very few people in financial services have knowledge of CFDs or spread betting through their jobs. He said he doesn't, and he holds a job in an unrelated part of the financial services market.
 - he did not meet the criteria based on the liquid assets he held at the time.
 - the volume and size of his trading that was assessed by IG, was not comparable to what he ended up losing because of the leverage he was offered as an elective professional client.

- Whilst he had some experience of trading with IG as a retail client, he said he was not knowledgeable or aware of the risks exposed to as a professional client. He said he assumed he would most likely still have the same protection as he did when he was a retail client.
- A key reason for him applying for a professional account was because of incentives namely volume-based rebates and lower margins than those given to retail clients. He said both of these are restricted by the FCA under its rules. He said it was because of these incentives, that he ended up carrying out high volume trading and then subsequently losing a significant amount.

As the parties are not in agreement, Mr S's complaint has been passed to me, an ombudsman, to look into.

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.

I have looked at Mr S's trading activity from him opening his account in September 2021 through to him making the losses stated in September 2022. I acknowledge the point he has made to our service that he was making stable returns as a retail client and then made a significant loss shortly after he became an elective professional client. I have seen the graph and it is clear that that is what happened. I empathise with Mr S about this and I'm sorry that he has had a difficult time after this happened in the way that he has described.

Mr S said he made his losses shortly after he became an elective professional client. He said IG shouldn't have agreed to upgrade his account in September 2022. Mr S said it shouldn't have incentivised him to apply for it in the first place either. So, I have looked into both of these two issues, that Mr S has made clear are the crux of his complaint about IG.

Should IG have accepted Mr S's application to be an elective professional client?

Mr S applied to be an elective professional client on 14 September 2022. It was his third application after having his application by IG rejected in November 2021 and April 2022.

IG carried out an assessment of Mr S's circumstances, and the criteria was based on Financial Conduct Authority (FCA) regulation, that it was obligated to adhere to.

IG assessed Mr S met two of the three criteria in September 2022 and it agreed to upgrade his account. Mr S however thinks that he didn't meet some of the criteria and shouldn't have been given the professional account upgrade.

I can see the parties do not have a dispute about some of the criteria that Mr S was assessed on. So, I have not felt I have needed to make any comments about the criteria that is not in contention. What I have considered in more detail is what criteria Mr S feels he didn't meet and what he thinks IG has made a mistake about in its assessment. Mr S said this is in relation to COBS 3.5.3 (2). I will list out what this FCA rule states to be clear as to what Mr S said is contentious. The rule states:

(2).....at least two of the following criteria are satisfied:

- a) The client has carried out transactions, in significant size, in the relevant market at a 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 EURO 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.*

Both parties agree that Mr S didn't meet the criteria as laid out in part b). Mr S said he didn't have a financial instrument portfolio exceeding EUR 500,000 and IG agreed with him. IG said, when it assessed Mr S's application it noted at the time that he didn't meet this criteria. It said it did, however, assess Mr S as meeting parts a) and c). Mr S said that he didn't meet the other two criteria listed.

Mr S said that he hadn't carried out significant enough transactions over the past twelve months trading with IG as a retail client. He said IG was the only broker he was trading with during this time period. Mr S said the volume and size of his trading as a retail client was not comparable to the volume and size of trades, he was able to do as a professional client, due to the leverage on offer, and IG should have seen that his trading was not significant enough, to warrant him being eligible for an upgrade.

IG shared its expanded criteria as to how it assesses what significant transactions are and what it assessed Mr S's trading history against. It said it considered a significant trade to be above £10,000 in size for equity trades and £50,000 for forex and commodities. It said it could see Mr S had carried out 87 trades as a retail client that met its criteria to be classed by it as significant transactions. It said this was above the threshold that Mr S needed to reach to be considered for an upgrade to his account.

I have seen a breakdown of Mr S's trades that he carried out over the previous 12 months subsequent to his application, and the ones that met IG's own criteria. I have also considered this next to what the FCA have stipulated in its regulations and in particular the relevant rule stated above. I think when I have done this, on balance, I don't think IG has been unfair to Mr S when it has assessed his previous trading against this rule. I can see that Mr S has traded with frequency in the relevant market, and IG has assessed the volume of trades and considered which of those were to it significant in size. So, it has looked to apply the rules here, and in doing so decided Mr S met those criteria. There isn't anything here, that I can conclude is concerning enough for me to consider IG made a mistake or treated Mr S unfairly.

Mr S also said he didn't meet criteria c) within the FCA rules that I have stated above. He said although he did have experience of working in the financial sector, he was in fact in wealth management and didn't have experience or knowledge of derivatives. He said very few people working in the financial industry had knowledge or awareness of CFDs or spread betting and he said that applied to him as well.

I acknowledge what Mr S has said here and understand the comments he has made. That being said, I think IG are entitled to rely on the information Mr S gave it and, to a degree at least, treat it at face value. Mr S stated in an email to IG at the time that he had knowledge and experience of trading in CFDs along with a professional qualification in derivatives with his industry association. IG also verified some of Mr S's information and looked on the FCA register where it could see he had several years' experience working in the financial sector. IG assessed Mr S as meeting the criteria in his application and when I consider the information Mr S told it and what it had verified, I don't think it did anything wrong when it did this.

The rule itself at COBS 3.5.3 (2) and the criteria, and the associated guidance, aren't definitive about what is required to meet the criteria. The qualitative test forms part of the general requirement on businesses to undertake what the rules describe as an 'adequate assessment' of the consumer that gives 'reasonable assurance' that they can make their own investment decisions and understand the risks. I think, on balance, that it was reasonable, given what IG knew about Mr S' circumstances, for it to proceed with his recategorisation.

So, in summary, I can see what information IG assessed when it considered Mr S's application and in doing so, I don't see that it treated him unfairly when it assessed that he was eligible for a professional account upgrade. So, I don't uphold Mr S's complaint about this.

Did IG incentivise Mr S to apply to be an elected professional client and did it treat him unfairly?

Mr S said a key reason why he applied to be an elective professional client was because of the incentives IG gave for him to do so. He said this included rebates he could potentially receive on larger volume trades and lower margins. Mr S said if IG didn't incentivise him then he wouldn't have applied for the account and wouldn't have gone on to make larger trades, which then led to the losses he made. Mr S referenced FCA rules around promotion and incentives.

I have first of all looked into what Mr S has said about the rules around promotion and incentives and can see that what he has referenced is in relation to retail clients. I haven't seen any evidence that IG looked to incentivise Mr S as a retail client to carry out more or larger trades, something which it is obligated through the regulator not to pursue. Rather, I think IG was instead displaying the benefits associated with having a professional account, something I think it is entitled to do. IG said when it did this, it also made clear the risks associated with upgrading.

I have looked at the information provided by IG, about this, that Mr S would have been able to see when he applied for a professional account on the three occasions that he did in November 2021, April 2022 and then successfully in September 2022. I can see that it has listed out the features associated with someone becoming an elective professional client. I think when I consider the information I have read in this regard, that it was reasonable for IG to state what the features were here so that Mr S could make an informed decision about whether to apply.

In any case, Mr S would still have needed to apply and be assessed as to whether he met the criteria to have the upgrade in order to receive the features and in doing so he would have been informed again of the risks associated with doing this.

In summary, I am satisfied that IG didn't do anything wrong when it approved Mr S to be an elective professional client in September 2022. I also don't think it treated Mr S unfairly with the information it provided, including how it communicated the incentives for him to have the upgrade and the risks involved in doing so.

I appreciate that my decision will be disappointing for Mr S, and I acknowledge the strength of his feelings in the submissions provided. I understand that what has happened here has been difficult for Mr S to deal with and I was sorry to read about the impact it has had on him. But based on everything I have read and the findings I have given, I don't uphold his complaint.

My final decision

My final decision is that I do not uphold Mr S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 10 June 2024.

Mark Richardson
Ombudsman