

The complaint

Mr U complains that Spreadex Limited shouldn't have allowed him to open a spreadbetting trading account. As a result he suffered financial loss.

Mr U is being represented by a Claims Management Company (CMC).

What happened

Mr U opened a spreadbetting account with Spreadex in December 2016. Between 2016 and 2017 Mr U placed around 454 trades and lost around £3,760. He complained, with the help of the CMC, to Spreadex in 2021 and asked for £10,000 compensation.

Spreadex looked into Mr U's complaint, but didn't agree it had done anything wrong. In short, it said that Mr U was repeatedly warned about the high risks of spreadbetting, and in particular the risks of losing more than his initial deposit. He declared on the initial application form that he had some experience in trading shares and Contracts for Differences (CFD). It said that as a result, it concluded that under COBS 10 Mr U had the necessary knowledge and experience to understand the risks involved in the service he was asking Spreadex to provide him.

It noted that Mr U was not being advised by Spreadex, nor was his attitude to risk relevant to the assessment – or even asked. It concluded that it didn't consider it needed to pay him compensation.

Mr U remained unhappy and referred his complaint to this service. One of our investigators looked into his complaint, but didn't think it should be upheld. In summary, he concluded that Spreadex was entitled to rely on the information Mr U provided to it, which suggested he had enough knowledge and experience to understand the risks. He was also provided with a number of risk warnings that clearly outlined the risks of trading.

Mr U asked for an ombudsman's decision but did not provide any further comments.

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 evidence I've seen includes Mr U's statements, showing how he traded, his initial application questions and the complaint made on his behalf to Spreadex.

I've also considered the rules as they were set out in COBS 10 when Mr U opened his account. Although there's been some reference to COBS 10A, which are the current rules in relation to financial spreadbetting, they didn't apply in 2016. However, that distinction is broadly immaterial.

In 2016, when Mr U opened his account, Spreadex needed to ask him to provide information

regarding his knowledge and experience, relevant to the specific type of product or service demanded, so as to enable it to assess whether the service or product was appropriate for him.

This assessment included determining whether Mr U had the necessary knowledge and experience in order to understand the risks involved in the product or service demanded.

COBS 10 allowed Spreadex to rely on the information provided by Mr U, unless it was aware that the information was manifestly out of date, inaccurate or incomplete.

COBS 10.2.6 allowed Spreadex to be satisfied that Mr U's knowledge alone was sufficient for him to understand the risks – and in other circumstances, Spreadex could also infer knowledge from any relevant experience.

If Spreadex concluded that the account was not appropriate for Mr U, it needed to warn him of this fact under COBS 10.3. And if, despite this warning, Mr U still intended on opening his account, guidance under COBS 10.3.3 said that it would be 'for the firm to consider whether to [allow him] to do so having regard to the circumstances'.

My role in looking at Mr U's complaint isn't to substitute my decision-making for Spreadex's when looking at the information Mr U provided when he opened his account. Instead, I'm considering whether its decision to deem the account appropriate, as it did do, was fair and reasonable taking into account the above and the answers Mr U gave it.

In looking at the appropriateness assessment, I'm not persuaded it was in fact robust enough for Spreadex to have concluded, fairly and reasonably, that Mr U had sufficient knowledge and experience to understand the risks of spreadbetting. To be clear, I'm not finding that the account was not appropriate – the fact that Mr U had traded CFDs before shows that he had some experience of derivatives and leverage, and further questions or information from him may well have been sufficient for Spreadex to reach the same conclusion.

From the evidence I've seen, Spreadex knew very little about his actual experience - all it knew was that he 'sometimes' traded CFDs. It had no information about how long he had traded CFDs for, how frequently or how long before he opened his application. And in terms of his knowledge, Mr U wasn't asked to demonstrate any – so it isn't clear to me how Spreadex satisfied itself of this. In my view, these questions gave precious little information to Spreadex.

However, even if I thought that Spreadex's conclusion that this account was appropriate wasn't fair and reasonable, I'd need to go on and consider what would've happened had it gathered more information by conducting a better assessment. It's possible Mr U would've provided additional evidence of his trading, satisfying Spreadex that he had sufficient knowledge and experience to understand the risks. In which case nothing would've changed. If a more adequate assessment would've concluded that Mr U did not have sufficient knowledge and experience to understand the risks, then COBS 10 would've required Spreadex to provide a warning to Mr U explaining this to him. In that case, I'd need to be satisfied that this warning would've been enough to stop Mr U from opening his account altogether, thereby avoiding the losses he sustained.

Given the evidence available, I'm not persuaded that a warning would've made any difference to Mr U's desire to proceed. I say this for the following reasons:

- He was clearly told when he filled out the application that he could lose more than his initial deposit or credit limit, and that spread betting involves a higher level of risk.

- He received warnings on all correspondence sent to him, as well as in the terms of the account. The Risk Warning Notice in particular sets out the 'high risk' to Mr U's capital and that this product was 'unsuitable for many members of the public'. It explained that the high degree of leverage meant that a small adverse market movement could 'quickly result in the loss of your entire deposit'. It outlined several other specific risks which Mr U was required to accept.
- I've consulted an archived version of Spreadex's website that also shows numerous risk warnings, including that 'spreadbetting carries a high level of risk to your capital and can result in losses larger than your initial stake/deposit'.
- Within a day of opening his account, he asked to double his credit limit to £1,000 – but this was declined.
- He placed numerous trades from January 2017 with small wins, and then lost over £1,800. This did not deter him from continuing to trade – and a few days later made another sizeable loss of over £1,300.
- Despite this, he continued to trade for the remainder of 2017, increasing his overall losses and making small wins.

In my view, given the level of information Mr U was provided at the outset and all the risk warnings he was given, I'm not persuaded an additional warning would've made any difference to his desire to trade. The fact that he had some experience in trading CFDs supports this, as in my view it demonstrates that he already knew that this was a high risk venture – but was happy to pursue this in order to generate higher returns.

The final element of COBS 10 is the guidance at COBS 10.3.3 which suggests that firms ought to consider, taking into account the circumstances, whether or not to let a consumer proceed despite a warning that the service requested isn't appropriate.

The FCA hasn't provided any specific scenarios of when firms ought to exercise this discretion to unilaterally prevent consumers from opening an account. And I'm satisfied that if the regulator didn't want consumers, who didn't pass the appropriateness assessment, to still request the service or product, it would've said so. The fact that firms are guided to consider all the circumstances indicates that in the regulator's view, firms need to balance the best interests of their customers by weighing up the risks of the product or service demanded, versus the customer's interests in doing something they clearly want to do.

So I've looked at Mr U's circumstances at the time. I'm not persuaded that in the specific circumstances of Mr U's case there were any particular reasons that ought to have prompted Spreadex to unilaterally stop Mr U from doing something he clearly wanted to do – and for which he had some experience, and ample warning of the risks.

Taking all this into account I don't consider Spreadex is required to pay any compensation to Mr U – although I have some misgivings about the fairness of the process it followed to determine whether the account was appropriate for him, I'm satisfied his account would've been opened regardless, and the losses sustained were therefore trading losses incurred by Mr U's trading decisions, and not caused by something Spreadex did or didn't do.

My final decision

My final decision is that I don't uphold Mr U's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr U to accept or

reject my decision before 5 January 2024.

Alessandro Pulzone
Ombudsman