

The complaint

Mr P complains that Blackwell Global Investments (UK) Limited incorrectly categorised him as an elective professional client in respect of a Contracts for Difference (CFDs) trading account. He's particularly concerned that the resulting loss of negative balance protection, which he feels he was not made aware of, led him to incur a significant financial loss. He also says that money he then applied to his account was misappropriated.

What happened

Mr P opened several trading accounts as a retail client with Blackwell in December 2018 and shortly after requested recategorisation as an elective professional client (EPC). Although the administrative process for this change started at this point, it wasn't completed until much later, in June 2019, once Mr P had provided documentation to support his application, requested by Blackwell in line with the rules regarding recategorisation as an EPC found in the Financial Conduct Authority's COBS Conduct of Business Sourcebook.

Later, in March 2020, Mr P opened some large trading positions, just prior to the market closing for the weekend. When it reopened on the following Monday there'd been a significant price gap – this being at the height of the Covid pandemic market turbulence – and the positions were automatically closed, resulting in a large loss and an outstanding balance on his account of just over €290,000.

Mr P had a pending withdrawal request of €50,000, which Blackwell instead redirected towards the account balance, in accordance with its terms and right to offset. This left an outstanding amount of just over €240,000. Shortly after, in May 2020, an arrangement was made that Mr P would continue to trade with Blackwell, but as a retail client, and make a deposit of €200,000, half of which would be used to part offset the outstanding amount with the remaining €140,000 waived as a gesture of goodwill. Some months later, in June and October of 2020 Mr P closed the accounts he held with Blackwell.

He then applied to open a new account in December 2021 and at the same time made a complaint along the lines as that set out above. Blackwell didn't uphold it. In short, it felt it had appropriately dealt with Mr P's recategorisation as an EPC, seeking supporting documentation to confirm his trading history and work experience and making him aware, by way of a document he signed in acknowledgement, of the protections he would be losing as a result of the recategorisation. Blackwell was also satisfied it had made clear the terms of the arrangement to deal with the debt, which Mr P had accepted, and as such there was no evidence there'd been any misappropriation of funds.

Mr P referred his complaint to this service, but our investigator reached broadly the same conclusions as those reached by Blackwell.

Mr P didn't accept the investigator's view. In brief, he said he had not in fact met the required criteria for recategorisation as an EPC and further questioned where he had explicitly acknowledged that recategorisation would mean he lost negative balance protection. He also maintained that the money he'd deposited to his account after the loss incurred in March 2020 had not been correctly applied and that €100,000 remained unaccounted for.

As no agreement could be reached, the matter was referred to me to review.

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.

In reviewing the complaint my role is to make a final determination primarily by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case. I do so while taking into account relevant: law and regulations; regulator's rules, guidance and standards; codes of practice; good industry practice at the time - where I consider it appropriate to do so.

As is clear from the background set out above there are two main aspects to Mr P's complaint. The alleged incorrect recategorisation of him as an EPC and the misappropriation of funds. I'll first consider the former.

As referenced earlier, there are specific regulatory rules relating to a business' treatment of a client as an EPC. COBS 3.5.3 sets out the detail of the 'qualitative test', which requires a business to undertake *"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 rules go on to say that, in the course of that assessment, two of three criteria regarding trading history, portfolio size and work experience must be met – the 'quantitative test'. There is also detail in the rules regarding the administrative procedure that must be followed in respect of any recategorisation, which includes the need for the business to provide a clear written warning of protections that may be lost as an EPC.

Mr P has said that in his case Blackwell failed to carry out the assessment as it was required to, which led to him being treated incorrectly as an EPC and in turn losing important protections that resulted in a significant loss. As such, I've considered carefully the approach that Blackwell took to Mr P's request for recategorisation.

As noted, the request came very soon after Mr P initially opened his accounts with Blackwell as a retail client. It was acknowledged by Blackwell on 13 December 2018 in an email that explained to Mr P the criteria (as per the quantitative test) that he would be required to demonstrate he met and the documentary evidence that would need to be submitted in support of this.

The email went on to say *"We would like to remind you that as a professional client you may lose the protections and investor compensation rights that you receive as a retail client. A document that contains a full disclosure in regards to these changes will be sent to you separately"*. The document in question was sent to Mr P, which he duly signed and returned, confirming that he had read and understood the terms of becoming a professional client and was aware of the consequences of losing such protections and want to proceed under the professional client categorisation.

However, as noted, Blackwell didn't action the recategorisation at that point as Mr P hadn't satisfied all the requirements of the process. It was not until six months later that the change was made, only once Mr P had provided documentation relating to his employment and trading history with other brokers.

I note Mr P now disputes that the documentation he supplied demonstrated that he met the

relevant criteria. But looking at what was provided I don't think it was unreasonable for Blackwell to accept the documentation in good faith. It confirmed his employment with a securities broker and detailed a trading history going back over the previous four quarters, across several other brokers.

So, this was not a situation where Blackwell 'waved through' a request for recategorisation based simply on Mr P self-certifying that he met the requirements. It didn't proceed until it had obtained supporting documentation and then took additional steps to verify Mr P's background through social media activity that demonstrated his employment and finance-related education. This being so, I'm satisfied Blackwell acted reasonably in respect of the recategorisation. It appears to have carried out an adequate assessment of Mr P's circumstances that gave it reasonable assurance he understood the investments and associated risks.

Mr P has also disputed that he was warned of the loss of negative balance protection (the mechanism that ensures retail traders don't lose more than the balance on their account). I accept that neither the email sent to him acknowledging his request for recategorisation, nor the document he signed to confirm his understanding that he may lose protections, made explicit reference to the loss of negative balance protection.

But given how clearly Blackwell explained that protections afforded to retail clients may be lost for EPCs I don't think it can be reasonably held responsible for Mr P not being aware of the loss of this particular type of protection. Blackwell's terms made clear that negative balance protection only applied to retail clients and there was nothing preventing Mr P from seeking further clarification of what protections would be lost if he was at all unclear on this point. I note also that he traded for nine months without the protection in place before it became an issue for him, in March 2020, when he placed the trades that led to the losses about which he's complained. In all the circumstances, I think it's reasonable to conclude that, even if Blackwell had been more explicit about the loss of negative balance protection, Mr P would more likely than not still have proceeded with his request for recategorisation.

Turning lastly to the matter of the funds that Mr P feels were misappropriated, Blackwell has explained how the payment of €200,000 made by him in May 2020 was dealt with. It confirmed to him that same month, in writing, that, as agreed between the parties, €100,000 would go towards settling the outstanding balance on the account, with the remainder of just over €140,000 being written off. Again, I've not seen that Mr P took issue with this at the time, or in any way disputed that an agreement had been reached. It was only raised when his complaint was made to Blackwell 18 months later in December 2021. In all the circumstances, I'm not persuaded that the evidence shows that Blackwell acted other than in good faith in making and dealing with this offer.

As I explained at the start of my finding, my role is to determine the complaint first and foremostly by what is, in my opinion, fair and reasonable in all the circumstances. In that context, even if I were to agree that there'd been failings in the way Blackwell conducted the process of recategorising Mr P as an EPC, given his clear desire to be recategorised having been made aware of the loss of protections, I would be of the view that the settlement provided to him was a fair and reasonable means by which to address any issues.

My final decision

For the reasons given, my final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 2 February 2024.

James Harris
Ombudsman