

The complaint

Mr R has complained that Spreadex Limited ('Spreadex') allowed him to bet irresponsibly causing him financial loss and impacted on his personal life. He is a vulnerable consumer with a gambling addiction which he says Spreadex should have been aware of. He would like for his losses to be repaid to him along with interest.

What happened

Mr R opened a fixed odds account with Spreadex on 25 September 2021 and upgraded his account to include spread betting on 25 October 2021. Over the following six months Mr R deposited over £180,000, carried out 814 spread bets and lost a total of £37,501.27, £32,110.09 from spread betting. He says the trades were funded by loans and lending from family and friends.

Mr R complained to Spreadex. It rejected the complaint in its letter of 23 December 2022. It said;

- It outlined its account opening process, the customer agreement and risk warning notices.
- Further to an internal review of his account Spreadex had requested evidence of the source of Mr R's fund in January 2022 and reminded him in March that it was awaiting the documents.
- Mr R's deposits were made via a debit card rather than a credit card. The latter might have suggested to Spreadex there was an affordability issue. The deposits were consistent with the financial information Mr R had provided. Spreadex was satisfied it complied with its 'know your client' ('KYC') obligations.
- When Mr R was asked for the further documentation, his account was showing losses of just under £25,000. When Spreadex didn't receive the documentation, it warned Mr R his account would be made temporarily inactive on 18 March. But the losses had reduced to just under £12,000 by this time, and this, along with the other information known about Mr R didn't suggest to Spreadex there was an affordability issue, so the account remained active.
- After a further reminder about the documentation Mr R's account was restricted on 28 April and showed losses of £37,501.57. Mr R provided two pay slips, but Spreadex also asked for bank statements. Mr R challenged this request on 5 May and was advised that it was required for KYC due diligence. Mr R provided screenshots from other bookmakers, but he was advised these weren't a valid source of funds. It needed bank statements which he provided on 14 May showing a balance of £12,711.46 but Spreadex also wanted a statement of the account which showed the Spreadex deposits. Another statement was provided on 26 May showing a balance of £3,651.24. On 7 June Mr R was advised Spreadex needed three months of bank statements. Mr R felt this was too private, so the account remained inactive.
- Spreadex provided an execution only service and would take prompt action if it was notified of a change to a customer's circumstances. Mr R didn't disclose, nor was it

evident to Spreadex, that he was suffering financially because of his spread betting.

- Mr R's deposits on account didn't appear to have been unaffordable and he didn't disclose information to suggest he was suffering from financial difficulties or that the deposits were unaffordable.

Mr R wasn't happy with the outcome so brought his complaint to the Financial Ombudsman Service. He said that Spreadex should have carried out more due diligence checks when he opened the account, and it wasn't enough for Spreadex to say it should believe what it was told particularly because of what it knows about gambling related harm. He doesn't believe Spreadex took proper steps to safeguard someone that was showing clear signs of gambling addiction and it placed profit before anything else.

Our investigator who considered the complaint didn't think it should be upheld. He said;

- When he opened his account Mr R had completed the customer agreement and had also been asked questions to confirm he understood the risk of spread betting.
- There was no reason for Spreadex not to accept the information provided by Mr R was accurate. And it had verified identity information electronically for anti-money laundering purposes.
- Mr R used a debit card for the deposits and had declared his annual income and savings. There was nothing to show affordability was an issue.
- There was no need for Mr R's account to be restricted while Spreadex was waiting for verification documents requested at the beginning of 2022. And when they were provided the losses on Mr R's account had halved so there was no need to restrict the account as the losses weren't clearly unaffordable for him.
- Spreadex wasn't aware of Mr R's gambling addiction nor that he was funding his spread betting from loans as the deposits reflected his declared financial information.
- Mr R had been given sufficient warnings about the risks associated with spread betting.

Mr R didn't agree with the outcome, so the complaint has been passed to me for a decision. Mr R made some comments for my consideration.

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.

After doing so, I've reached the same outcome as the investigator and broadly for the same reasons. I'll explain why.

I'd like first to explain, fixed odds betting is governed by the UK Gambling Commission and is not within the remit of this service. However, the rules which apply to spread betting is outlined in the Conduct of Business Sourcebook ('COBS') in the handbook of the Financial Conduct Authority ('FCA'). And the rules I consider relevant to this complaint are;

COBS 2.1.1;

'A firm must act honestly, fairly and professionally in accordance with the best interest of its client...'

COBS 4.2.1 says;

‘A firm must ensure that a communication or a financial promotion is fair, clear and not misleading.’

The crux of this complaint revolves around Mr R’s status as a vulnerable client because of his gambling addiction he has told us about and whether the losses he incurred were caused by Spreadex inappropriately allowing him to open his sports spread betting account.

For me to uphold this complaint, I must be persuaded that Spreadex was aware, or should have been aware, of Mr R’s vulnerability and failed to act upon this. I’ve reviewed the information Mr R was given when he opened the account as well as the information he gave to Spreadex about his circumstances.

Spreadex told us that Mr R made an online request for the upgrade from his fixed odds account to a spread betting account. Mr R has told us he had maxed out on his fixed odds betting account and ‘just clicked onto [the spread betting account] and they let me on after ticking a box.’ However, looking at the account opening process and the acknowledgement by Mr R of the risks he would be taking I think it would have taken more than a ‘click’. But I’ve reviewed the risk warnings Mr R would have seen to ensure they were fairly communicated to him.

With reference to the risks involved with sports spread betting I can see that during the account opening process on the initial application page – and every page of Spreadex’s website – says;

‘...Spread betting carries a high level of risk to your capital and can result in losses larger than your initial stake/deposit. It may not be suitable for everyone so please ensure you fully understand the risks involved.’

Mr R would have needed to have ticked that he accepted the terms and conditions which clearly set out the risk involved and amongst other details goes on to say;

‘You should not deal in these products unless you understand their nature and the extent of your exposure to risk...’

Mr R then had to answer two questions about his understanding of the risk and there was then a further risk warning entitled ‘spread betting risks’ and it was only after that was clicked that Mr R activated his account. Mr R has told us he didn’t have any prior spread betting experience, but I think it’s fair to say that Spreadex was clear, fair, and not misleading in its warnings about the risks involved in spread betting. And as such I can’t say that it didn’t provide the information it should have done or that it didn’t act honestly, fairly or in the best interests of its client in opening the account.

Mr R’s vulnerability

Based on the information Mr R gave to Spreadex about his financial circumstances at the account opening stage, I can’t see there was any reason for Spreadex to consider that Mr R wasn’t competent in having such an account. And if it had been the case that it was Mr R’s vulnerability – his gambling problem – that caused him to tick ‘yes’ in order to open the account, Spreadex couldn’t have known this. But I’ve gone on to consider whether Spreadex was put on notice of any underlying issues that would impact Mr R’s decision making.

While I accept Mr R’s point that it would be difficult for a vulnerable customer to declare their gambling problem when opening such an account, equally it would be difficult to understand how a business would have known that a client had such a problem. Mr R has said Spreadex should have carried out more checks at the outset, but I’m not persuaded it was

required to do so. And I'm satisfied Spreadex was entitled to rely on the information Mr R provided and had no reason to question this.

Mr R has said that if Spreadex had asked to see his bank statements at the outset, then it would have seen evidence of his gambling. But as referred to above, Spreadex was reasonably able to rely upon his answers when he opened his account and there was nothing that caused it to be concerned about his financial circumstances to the extent that I would have expected it to seek out further information from him.

The rules which may have allowed Spreadex to step in and stop Mr R trading required Spreadex to have some awareness that he had an undisclosed vulnerability – but the amounts he was spending didn't cause any concern any earlier than when they actually did. Spreadex told us that Mr R's losses, when compared to his stated resources, didn't raise any warnings and his credit check upon account opening didn't raise any concern of financial vulnerability.

I asked Mr R at what point between the opening of his account and its suspension did he consider Spreadex should have intervened and stopped him trading. Mr R said it should have been the number and frequency of transactions he was making that should have been a trigger for Spreadex.

For spread betting firms like Spreadex, account holders accumulating significant losses isn't uncommon. Many of them include in their promotions, and account information, notices about the percentage of clients that make trading losses. In this case Spreadex told us that Mr R was successful in 65% of his trades, but the fact that Mr R did incur losses and had negative balances, in isolation, wouldn't have been enough for Spreadex to automatically conclude there was a gambling problem.

However, in January 2022 Spreadex's automated system raised an alert on Mr R's account for anti-money laundering purposes because Mr R – who had been onboarded as a low money laundering risk – had made a certain level of deposits into his account. I think it's important to stress that this check wasn't prompted by the frequency of betting or that Spreadex had concerns about Mr R's betting patterns. Rather it came about because the deposit levels in the context of Spreadex's anti-money laundering responsibilities prompted the check. This caused for a review to determine whether the levels of deposit were logical in terms of his background and claimed resources or from use of illicit funds.

Spreadex told us that given Mr R's declared £40,000 of savings and £35,000 income, his lifetime spread betting losses on his account of around £32,000 would not have been considered indicative of money laundering or any financial vulnerability given the losses were within his savings figure. However, it did consider it prudent to request documentation from Mr R to ensure that he was funding the account from legitimate resources, the outcome of which I've outlined above, and which led to the suspension of the account.

Mr R has said that Spreadex allowed him to continue spread betting after he was warned his account would be closed if the requested documents weren't provided. But when those documents were provided the losses on Mr R's account had halved so there was no need to restrict the account as the losses weren't clearly unaffordable for him, which I don't find unreasonable.

I'm satisfied that when Spreadex had reason to question Mr R's financial circumstances it did so. It took appropriate steps on 28 April 2022 by making his account inactive to limit his losses when the requested explanations and evidence wasn't received. It asked for further evidence and sought additional documentation when it wasn't happy with what Mr R had provided – the screenshots from other bookmakers and bank statements.

Given that Mr R was given the risk warnings and proceeded with the account itself suggests he was intent on opening the account and there's no reason to suggest he didn't understand the risks involved. With this in mind, it would be difficult for me to see why Spreadex should have prevented him from opening the account, so overall, I don't think it needed to do anything differently.

I'm not persuaded that Spreadex is responsible for Mr R's losses. Mr R asserts those losses came about as he shouldn't have been able to open the account because of his gambling problem. But I'm satisfied Spreadex wasn't aware of this and his financial circumstances during the account opening stage and subsequent betting behaviour wouldn't have given Spreadex any cause for concern.

As stated above, for me to uphold this complaint, I must be persuaded that Spreadex was made aware of Mr R's gambling problem and failed to act upon it. In the absence of such evidence, I can't say Spreadex did anything wrong in allowing him to open the account. And I can't agree that his subsequent betting patterns would have given rise for concern earlier than when Spreadex took action. It follows that I don't uphold Mr R's complaint.

I appreciate that Mr R will be disappointed with the outcome of his complaint. It's clear he feels strongly about it and I'm sorry for the position he is in. But I hope I have been able to explain how and why I have reached the decision that I have.

My final decision

For the reasons given, I don't uphold Mr R's complaint about Spreadex Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 23 February 2024.

Catherine Langley
Ombudsman