

The complaint

Mr R complains that TS Capital Limited advised him to invest in Contract for Differences (CFDs), which was unsuitable due to their high risk and his lack of experience. On his behalf, a claims management company (CMC) seeks a refund of £1,283.78 losses, compensation for distress and inconvenience and a refund of fees and costs.

What happened

Mr R opened an account with a business separate to TSC in August 2017. He then traded on the apparent advice of TSC. He closed the account in December 2017 having incurred the loss noted above.

The CMC has said that at no point during the period in question did TSC warn him of the risks involved with investments of this type and even if he had been warned, he wouldn't necessarily have fully understood those risks. He had no idea the investments were high-risk as he was not an experienced investor and was not familiar with trading in CFDs, having only previously invested small amounts in shares.

TSC provided some information in response to the complaint including its terms of business, a number of documents relating to account opening and a several recordings of telephone calls with Mr R.

An investigator considered the matter and concluded that the complaint should be upheld, in part at least, as he wasn't persuaded the advice had been suitable for Mr R. TSC didn't accept this, saying that the fact find confirmed Mr R's investment experience was 'high', with him having more than 10 years' experience in trading. Further, the call recordings showed he had a full understanding of CFDs and he wouldn't have started trading in them if he didn't understand the risks involved.

No agreement could be reached, so 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.

I should say first that there's been a general lack of clarity about the circumstances behind the complaint. Various pieces of information have been provided by Mr R's CMC and by TSC, but they don't, in themselves, particularly help to confirm precisely what happened. And this situation has been compounded by a general lack of engagement by both parties. Further information and clarity have been sought since the investigator issued his view, but little of substance has been forthcoming.

That said, in all the circumstances, I nevertheless consider there is sufficient available to me to reach a fair and reasonable conclusion in respect of the issues the CMC has raised for the specific period in question. That is, Mr R's trading from August 2017 through to November 2017, the period during which the evidence shows he incurred the claimed loss of £1,283.78.

As I understand it during this period Mr R's trades were being placed with a separate company but based upon advice from TSC. This conclusion is supported by a power of attorney document signed by Mr R and a representative of TSC dated 14 August 2017, shortly before the trades commenced on 18 August 2017.

A further power of attorney document has been provided, dated 5 December 2017, but I believe this relates to trading on a different, new account, again with advice provided by TSC, from early 2018 onwards. It seems that a balance of funds was transferred to this new account from the account on which Mr R traded in 2017. The amount transferred was £8,716.22, equivalent to Mr R's initial £10,000 deposit made in August 2017, minus the losses incurred of £1,283.78 – which is the amount sought as compensation for Mr R by his CMC.

As noted, recordings of phone calls have been provided, but these appear to relate to Mr R's trading in 2018. So, while they might tell us something about his understanding of CFD trading by that point, they don't provide much insight into the activity in 2017.

And in respect of that particular activity, I don't think the conclusion reached by the investigator, that the complaint should be upheld, is a reasonable one.

Where there's conflicting information about what happened and gaps in what we know, I must weigh the evidence we do have and to decide, on the balance of probabilities and in light of the wider circumstances, what's most likely to have happened.

I've noted that information provided after the investigator issued his view demonstrates that Mr R has experience of trading CFDs dating as far back as 2012. It appears he had powers of attorney in place with the other business covering sub-accounts with at least different three brokers. These came before a separate agreement with a predecessor business of TSC.

The records of these accounts show a high volume of CFD trading, with amounts exceeding that covered by this complaint. They also demonstrate a high level of general engagement by Mr R over a period of years. The signed application for one of the accounts, from July 2013 specifically confirms that Mr R had traded CFDs previously.

That Mr R had some knowledge and experience of this type of investment is also demonstrated in the phone calls provided, both by his representative and previously by TSC (albeit, as noted, those calls were made later in 2018).

This being the case, it is difficult to see how this background tallies with various comments made in the original complaint letter of June 2021, which included –

- Mr R had no idea that these investments were high-risk.
- Prior to being cold called by TSC, he would never have traded CFDs.
- Prior to his involvement with TSC, he had no investment experience.

The complaint as made relates to a specific period in 2017 during which Mr R incurred a relatively minor loss of around £1,300. Given the background noted above, I don't think there are any reasonable grounds upon which the complaint should be upheld.

This has been explained to Mr R's CMC, which provided some further comments from him – that he only followed what the advisors were telling him to do as that's what he paid them for as FCA authorised advisors. And further, that he was never fully aware of what CFDs were and what the advisors were doing for him. But, on balance, although I accept he was most likely receiving some guidance from TSC and other parties, I think Mr R appears to have had

a reasonable degree of experience and knowledge of CFDs, and other investments.

I accept he may have experienced other issues over the course of his trading from 2012 onwards, but these are unlikely to be covered by the complaint as it has been put, in terms of timings, circumstances and respondent. In that respect, I'd stress that my findings here don't prevent Mr R from making a further complaint about issues not covered by this decision, should he wish to do so.

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 R to accept or reject my decision before 29 December 2023.

James Harris
Ombudsman