

## **The complaint**

Mr D complains that Trading 212 Ltd ("T212") failed to perform the required checks before it opened an account for him to use to trade Contracts for Difference ("CFDs").

## **What happened**

Mr D has been assisted in making his complaint by a firm of solicitors. But in this decision, for ease, I will generally refer to all communication as if it has been with, and from, Mr D himself.

Mr D opened a CFD trading account with T212 in August 2015. He traded using that account until February 2021 at which time he closed his account. Mr D says that he experienced losses totalling more than £175,000 over that time. He complained to T212 that it had failed to correctly assess whether the account was appropriate for his circumstances, and that it had failed to take proper account of a medical condition from which he suffers. T212 told Mr D that he had failed to make it aware of his medical condition. And it said that it thought it had met the relevant regulatory requirements when it opened and operated his account. Unhappy with that response Mr D brought his complaint to us.

Initially T212 told us that it thought Mr D's complaint had been made too late. That matter has been considered by another ombudsman who explained why he thought Mr D's complaint had been made in time. I share the conclusions reached by the other ombudsman, and for the same reasons. So I will not be making any further findings about our jurisdiction over this complaint in this decision.

The merits of Mr D's complaint have been assessed by one of our investigators. He thought that the checks T212 performed, and the warnings it gave to Mr D before the account was opened, were sufficient for it to meet its regulatory responsibilities. And he didn't think T212 should have reasonably been aware of Mr D's medical condition so it couldn't make any adjustments for it. He thought that it had been reasonable for T212 to provide the CFD trading account to Mr D.

Mr D didn't agree with that assessment. So, as the complaint hasn't been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process.

## **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 deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mr D and by T212. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

At the outset I think it is useful to reflect on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority ("FCA"). Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

I think it would first be helpful to set out my understanding of the basis of Mr D's relationship with T212. When he opened his trading account T212 made it clear to Mr D that it was offering him an execution only service – it wouldn't be providing him with advice, or any recommendations, about the investments he would make. Those were essentially decisions that Mr D would need to make for himself. But, before opening the account T212 needed to consider whether an account of this nature was appropriate for Mr D's circumstances and experience.

T212 is a regulated firm. The relevant rules that cover that test of appropriateness can be found in section 10.2 of the FCA's Conduct of Business Sourcebook ("COBS"). The relevant sections of those rules at the time Mr D opened his account said;

- 10.2.1 (1) When providing a service to which this chapter applies, a firm must ask the client to provide information regarding his knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded so as to enable the firm to assess whether the service or product envisaged is appropriate for the client.*
- (2) When assessing appropriateness, a firm:*
- (a) must determine whether the client has the necessary experience and knowledge in order to understand the risks involved in relation to the product or service offered or demanded;*
  - (b) may assume that a professional client has the necessary experience and knowledge in order to understand the risks involved in relation to those particular investment services or transactions, or types of transaction or product, for which the client is classified as a professional client.*
- 10.2.2 The information regarding a client's knowledge and experience in the investment field includes, to the extent appropriate to the nature of the client, the nature and extent of the service to be provided and the type of product or transaction envisaged, including their complexity and the risks involved, information on:*
- (1) the types of service, transaction and designated investment with which the client is familiar;*
  - (2) the nature, volume, frequency of the client's transactions in designated investments and the period over which they have been carried out;*
  - (3) the level of education, profession or relevant former profession of the client.*

As its starting point for making that decision, and in line with the practices of other similar firms in the marketplace, T212 asked Mr D to complete a questionnaire, setting out matters such as his income, and employment details. T212 has explained that, since 2015 when Mr D opened its trading account, the questions it asks consumers have become more

detailed. But that in itself wouldn't lead me to a conclusion that T212 had fallen short of its responsibilities in 2015.

I would have some concerns if T212 had decided, on the basis of the information it had gathered, that the account was appropriate for Mr D. I don't think it had enough information about his past trading or investment experience to make a reasonable judgement about that part of the regulator's test. But T212 didn't conclude that the account was appropriate for Mr D – in fact its conclusions were exactly the opposite.

Following Mr D's application T212 wrote to him and in a message headed up Risk Warnings it said;

*"Based on your answers we are concerned you may not fully understand the risks involved in trading with us. If you haven't already used Practice mode, we recommend you to try it for at least two weeks to get a feeling of the risks. Even after this, you should remember that you could lose your entire deposit within a short period of time. If you would like to trade in Real Money mode nonetheless, please confirm that you understand this."*

In order to continue with his application Mr D was required to click a button headed "I CONFIRM" in order to move to the next stage of account opening.

I think the warnings I have shown above were sufficient for T212 to meet the regulatory responsibilities set out in COBS 10.3.1. That says;

*If a firm considers, on the basis of the information received to enable it to assess appropriateness, that the product or service is not appropriate to the client, the firm must warn the client.*

And COBS 10.3.3 goes on to give the following guidance;

*If a client asks a firm to go ahead with a transaction, despite being given a warning by the firm, it is for the firm to consider whether to do so having regard to the circumstances.*

I haven't seen anything that makes me think T212 should have been aware of any wider circumstances that were such it should have refused Mr D's request to open the account regardless. I think it had provided him with clear warnings, both those shown above and in the wider terms and conditions of the account, that made clear to Mr D the risky nature of the investments he was proposing. And it had given him an opportunity to assess, in a safe test environment, whether he was comfortable with making the trades that were being proposed. So I don't think it was inappropriate for T212 to open the trading account for Mr D.

Mr D has told us that he suffers from a neurodivergent medical condition. He says that condition means that T212 should have concluded the account would be inappropriate for his circumstances.

First I would like to say that I don't think it would be correct for a firm such as T212 to simply refuse all applications from consumers with similar conditions to Mr D. Doing so might place the firm in breach of its obligations under The Equality Act. But what is of more importance here is that I don't think it would be reasonable to expect T212 to have been aware of Mr D's condition. Mr D didn't tell T212 at any stage of his trading relationship with the firm that he had the medical condition. And I haven't seen anything that makes me think any information that Mr D supplied as part of his application should reasonably have led to that discovery.

A firm cannot be expected to make adjustments for a medical condition unless it is, or should reasonably be, aware that it exists.

Mr D operated his account with T212 for a period of around six years. I have seen that, in 2018, he told the firm he was considering stopping CFD trading and seeking a less risky investment alternative. But I also note that later that year Mr D started CFD trading once more and continued for a further three years. Whilst it is true that overall Mr D lost a considerable sum of money from his trading, many individual trades were successful. I'm not persuaded that the overall pattern of Mr D's trading should have caused any concerns to T212.

I appreciate how disappointing my decision will be for Mr D. But I think that T212 complied with the relevant regulations when it opened his trading account. It was for Mr D to determine any trading strategy and decide when it might be appropriate to place trades with T212. So I don't think that T212 has done anything wrong or that Mr D's complaint should be upheld.

### **My final decision**

For the reasons given above, I don't uphold the complaint or make any award against Trading 212 Ltd.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 24 May 2024.

Paul Reilly  
**Ombudsman**