DRN-2058804

The complaint

Mr P opened a trading account with IG Markets Limited ('IG') in 2006; he refers to his cryptocurrency ('crypto') based Contracts for Differences ('CFD') trading between 2018 and 2019 in which he says he made losses of over £500,000 (including charges of over £90,000); he holds IG mainly or partly responsible for this and seeks, as a minimum, a refund of the charges incurred and payment of 10% of his losses as compensation; in the main, he says IG is culpable for the following –

- Granting him the account and the ability to trade high risk crypto CFDs without appropriate checks on his capability to do so as a retail client, on affordability and on Anti-Money Laundering ('AML') risks. [issue 1]
- Using a misleading title for the crypto CFD product "Ripple", which could reasonably have been mistaken for a stock of the same name. [issue 2]
- Applying unclear charges for holding crypto CFDs. [issue 3]
- Granting his application to exceed the notional value limit of £500,000 per client for crypto CFDs without assessing suitability. [issue 4]
- Unduly enticing him with perks in order to encourage more trading. [issue 5]
- Applying an unclear and unfair margin policy, which meant accumulation of unsolicited credit in the form of negative balances that initially did not trigger margin close outs – followed by margin close outs at points of increased negative balances (and at the least favourable prices). [issue 6]

What happened

IG disputes the complaint and has given detailed responses to all the issues raised. One of our investigators looked into the matter and concluded that the complaint should not be upheld. She too provided detailed treatment of all the issues raised, which broadly reflect the same details and points presented by IG. In the main, the findings against the complaint are as follows:

- Issue 1 – IG did not have a regulatory duty to assess appropriateness of the account in 2006, given that such duty first arose a year later in 2007; the duty does not extend to considering affordability; there is evidence of information provided by Mr P to IG in the course of his application for the account (including reference to previous CFD trading experience) which showed he had requisite knowledge and experience to engage in CFD trading, which IG would have been entitled to rely upon and which would have suggested the account was appropriate for him; and contrary to his assertion, regulations do not prohibit firms from offering crypto trading to retail clients.
- Issue 2 – There is evidence that IG's platform explained what Ripple was, that it was a crypto and how it was traded; so IG met with its regulatory duty to communicate information in a clear, fair and not misleading way; and its description of Ripple was not misleading.
- Issue 3 – The same applies to information available on the platform about charges; said information was fair, clear and not misleading; and it was repeated in the fees and charges section of the help and support feature of IG's website.

- Issue 4 – Mr P's account was based on an execution only service, so IG was not obliged to assess or advice on suitability (of a trading product or of his application to exceed the notional value limit); in addition, the relevant terms provided a warning on how such a step could affect the account.
- Issue 5 – Firms are not prohibited from making complimentary offerings to their clients.
- Issue 6 – Despite Mr P's perception, as a regulated firm engaged in investment services IG does not provide credit facilities; there is a distinction between margin trading and the unsolicited credit argument he has made; and, as agreed in the terms for the account, the margin close outs in his case were triggered by his account funds reaching or breaching the 50% margin close out level.

Mr P disagreed with this outcome. His comments (and then the investigator's responses) were mainly as follows:

- The appropriateness test and the question of affordability should still be relevant to his case; IG's duty of care towards the vulnerability that clients have in gambling (which is comparable to CFD trading) has not been addressed; and there has been no treatment of IG's AML obligations – in response, the investigator noted that she had previously said IG conducted a test comparable to an appropriateness test; she repeated that appropriateness does not include affordability; she said there is no evidence that Mr P informed IG about any vulnerabilities (in terms of a gambling problem or affordability problem); and she also said there is no evidence of anything that should have given IG cause to be concerned about AML.
- IG's offering of crypto CFD trading ought to have been coupled with appropriate safeguards given the complexity and high risks of such trading; IG did not provide such safeguards until it (and other firms) was forced by the regulator to do so.
- He maintained his allegations in issue 2 and, with emphasis, issue 3 – the investigator maintained her conclusions on both issues.
- He did the same, with emphasis, on issue 4 and asserted that he received no warning about the application to exceed the notional value limit – the investigator also maintained her conclusion on this issue; she noted that Mr P is responsible for his decision to trade above the limit and that it would be unfair to pass that responsibility on to IG because the outcome of such trading was unsuccessful.
- He presented evidence of a complimentary offer (free tickets to watch a cricket game) from IG which he says was designed to encourage his trading – the investigator did not consider that the offer amounted to an inducement to trade.
- He maintained his allegation in issue 6 and his argument about unsolicited credit – the investigator also maintained her view on the matter.

Mr P asked for an ombudsman's decision.

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.

Having done so, I have reached the same conclusion as the investigator for the same reasons she gave. I consider that the investigator provided a reasonably detailed rationale behind her view and I do not intend to repeat those details. I incorporate her reasons (as summarised above) into this decision and I observe that none of her references to facts and/or evidence appear to be in dispute – instead Mr P perceives those facts differently. I will concentrate mainly on the key findings (and on Mr P's main points).

Issue 1

No regulatory appropriateness assessment was required for Mr P's account opening process in 2006 – the regulator's requirement of such an assessment was introduced in 2007. Nevertheless, there is evidence that part of the information he gave IG in the course of opening the account confirmed that he had more than 12 months previous experience in trading shares, CFDs and in spread betting.

Appropriateness, under the relevant rule (in COBS 10.2 of the regulator's Handbook), is assessed upon information from a client to a firm about whether the client has sufficient knowledge and experience to understand the risks involved in the service or product offered by the firm. Even though this rule did not apply in 2006, if it did apply his confirmation of trading experience (as stated above) would more likely (than not) have resulted in the conclusion that he had enough knowledge, understanding and experience to make the account appropriate for him.

The rules say a firm is entitled to rely upon the accuracy of information given by the client. Mr P appears to have cast some doubt on IG's record of information related to the opening of his account. However, evidence of that record appears to be reliable and in the absence of evidence that it had cause (or should have had cause) to doubt the information Mr P submitted at the time I am not persuaded to doubt it. If the appropriateness rule applied in 2006 IG would have been entitled to rely on the information Mr P presented, as it did at the time.

Mr P has made arguments about affordability, vulnerability and AML.

There appears to be no nexus between the AML argument and his claim. No incident(s) in this respect appears to have been alleged, instead the argument appears to be an isolated point in Mr P's general criticism of IG's account opening and monitoring process. The task before me is to determine his complaint and claim for compensation, not to conduct a general assessment of IG's operations. If the AML argument was directly relevant to his claim I would address it, but it is not so it does not warrant further treatment.

The same applies to Mr P's allegation that IG did not put safeguards in place until regulations were introduced which required them. This too appears to be generic and it seems implicit within the argument that he accepts IG applied such safeguards when regulations were created and required it to do so. As such, no regulatory wrongdoing appears to have been alleged. Furthermore, there is evidence of risk warnings made available to Mr P in a Risk Disclosure Notice that formed a part of the Customer Agreement for his account; and evidence of IG applying relevant European Securities and Markets Authority rules and safeguards for CFD trading as they became applicable.

Even if the appropriateness test applied in 2006, it does not extend – and would not have extended – to include an affordability sub-test. Affordability is usually a feature of a suitability assessment and, as the investigator explained, that differs from an appropriateness assessment.

The regulator's rule at COBS 2.1.1 (R) contains the clients' best interests provisions and it says "*A firm must act honestly, fairly and professionally in accordance with the best interests of its client"*. Its Handbook also includes a principle for firms – under Principle 6 – to "… *pay due regard to the interests of its customers and treat them fairly*". COBS 2.1.1 (R) also post dates 2006 but Principle 6 does not, so I have considered Mr P's arguments about affordability and vulnerability under IG's overall responsibility to act fairly in line with his best interests at the time the account was opened and thereafter.

Prior to his complaint, there is no evidence that Mr P brought to IG's attention any financial problems he faced in the course of his trading and/or any wider vulnerability issues he faced in that respect. There is also no evidence that he indicated to IG his trading and/or losses had become out of his control – and no evidence that IG ought reasonably to have drawn this conclusion from his account activities, especially as the execution only basis for the account meant IG was not obliged to monitor the account on his behalf.

For firms in the sector, accounts accumulating losses or significant losses are not uncommon. Such losses, in isolation, would not have been enough to indicate to IG that Mr P was not in control of his trading and/or losses, or that he had an affordability problem. The same applies to the notion of wider vulnerability issues – in the absence of express notice to IG about such issues, losses in his account would not have automatically indicated their existence. Without awareness of any affordability or vulnerability issues faced by Mr P, I am not persuaded that the clients' best interests rule was breached by IG in his case.

Issue 2

I do not find merit in this matter. There is evidence of Ripple being presented, within IG's platform, in the express context of a crypto CFD product, in a crypto market and based on an underlying crypto asset. IG's website provided further and informative description of the product. On balance, I consider it inconceivable that its status as a crypto CFD could have been unclear to Mr P given such context and descriptions (on the platform and website).

Issue 3

The same conclusion (as in issue 2) applies to issue 3. Between the relevant product information, market information tabs and the fees and charges section of IG's help and support website feature, reasonably clear information about charges relevant to CFD trading were accessible to Mr P. In addition, I do not consider that this type of information would have been alien to him given the prior CFD trading experience he referred to in the account opening process. On balance, it is also unlikely that he would have traded to the extent required to generate the losses he has referred to if he did not have meaningful awareness of the relevant charges – or if the charges were unclear to him.

Issue 4

I am not persuaded by Mr P's argument in this issue. With knowledge of the associated increase in risk exposure, he applied to exceed the notional value limit and chose to venture into trading above that limit. IG granted his application. It was not obliged to assess suitability of the application, given the execution only basis for the account. I have not seen evidence that IG was aware of, or ought reasonably to have been aware of, facts that would have made the application contrary to his best interests. Its decision to grant the application was within its reasonable commercial discretion – as it was within Mr P's discretion as an account holder to make the application. Despite Mr P's assertions, I do not consider that a wrongdoing has been established in this issue.

Issue 5

Mr P recently provided an example of the sort of complimentary offering from IG that he perceived to be an inducement to increase his trading – with the inherent suggestion that this was designed to increase IG's chances of profiting from an increase in his trading.

I accept that such offerings can be aimed at developing good relations between a firm and its account holders and that a by product from it could be the account holders indulging in a more relaxed or more adventurous attitude towards trading. However, this notion is distinct

from a firm actively and explicitly inducing an account holder to trade more or to trade in a riskier fashion – and Mr P has not presented evidence of this.

The development of good relations between a firm and its account holders, through complimentary offerings, is not automatically a detrimental or cynical pursuit. The facts of each case should be considered on merit. Such a pursuit can bear benefits for both parties. The chance that it might make an account holder trade more or trade in a riskier fashion to his or her detriment depends on the account holder – it is not an inevitable outcome of complimentary offerings from a firm to its customers. In Mr P's case, I have not seen evidence that IG made complimentary offerings that had an inevitable detrimental outcome.

Issue 6

I understand Mr P's view of the financing element of CFD trading as being equivalent to unsolicited credit, but I disagree with it. The financing element is a result of the leveraged nature of CFD trading and it can be viewed as a form of borrowing – hence the applicable financing and holding charges – but it would be wrong to say it is unsolicited borrowing. An account holder that engages in leveraged or margin trading does so with the wilful intent to sustain such trading on the basis of the financing element – so, the opposite is the case and this element is expressly solicited by the account holder.

The effect of financing should not be confused with the margin call regime that applied in Mr P's account. Contrary to what he says, it would not have been the case that his financing liability was unfairly allowed to increase before a margin call was applied and that such liability should have been mitigated by IG through an earlier margin call.

That liability was a part of the risk he would have undertaken in each relevant trade. The margin call was the effect of that risk reaching the point at which a determination could be made that equity in his account could no longer cater for – being the 50% level provided by regulation and applied by IG. Prior to this point – and prior to forced margin call closures of his trades – he retained responsibility and the ability to manage any relevant open trades and his account equity in order to avoid forced trade closures. This would have included the options of closing loss-making trades himself and/or adding funds to the account in order to keep them open. As such, the mitigation he appears to have expected from IG was his responsibility – not IG's. IG has referred to evidence of him receiving notices warning about margin calls, which should have prompted his reaction to mitigate accordingly.

In light of the above, Mr P's argument about unfair and unsolicited credit falls away. In addition, I have not seen evidence to establish, on balance, that IG manipulated prices as he appears to have suggested.

My final decision

For the reasons given above, I do not uphold Mr P's complaint.
Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 2 November 2020.

Roy Kuku
Ombudsman