DRN-2303365

The complaint

Mr I says Plus500UK Ltd ('Plus500') did as follows:

- Allowed him to trade Options in his account without informing him that it was "*completely different to regular trading*" with "*entirely different set of problems and risks*". A number of his Options trades resulted in losses because trading was suspended and he was unable to close them when he wanted to. Overall, he seeks recovery of all his Options trading losses. [issue 1]
- Allowed him to make company/business-based deposits into the account despite the terms for the account prohibiting such deposits. He says the deposits should never have been accepted and he seeks a total refund in this respect. [issue 2]
- Allowed him to continue making deposits into the account after he instructed its closure in January 2020 – which he did upon his coming to terms with his gambling addiction and attempting to address it. He seeks a refund of all the deposits he made into the account after his closure instruction. [issue 3]

What happened

Plus500 disputes the complaint. In response to issue 1, it mainly says the matter relates to Options 'Contracts for Differences' ('CFD') trading; that the specific periods of unavailable trading happened due to low trading volume and high price volatility in the relevant market(s) which made prices and price quotes unreliable; that screenshots of Bloomberg charts relevant to each affected trade serve as evidence of this; and that suspension of trading in such circumstances is provided for and supported by section 13.7 of the User Agreement for the account.

In response to issue 2, Plus500 mainly says it was entitled to rely upon information from its customers unless it was aware of reason not to do so; that the User agreement provided for this and for the obligation upon customers (like Mr I) not to use corporate payment methods to fund trading in the account; and that it had discretion to verify customers' payment methods which, in Mr I's case, it did in October 2019.

Its response to issue 3 is that Mr I sent his account closure instruction on 24 January 2020; that in order to execute the instruction all positions in the account had to have been closed and any account balance had to have been withdrawn; that upon receipt of his instruction he still had an open position in the account and he proceeded to open more positions later on the same day; he did not inform Plus500 of his gambling problem until 1 February 2020; and it confirmed to him, on 5 February, that the account had been closed.

One of our investigators considered the complaint and concluded that it should not be upheld. She agreed, broadly, with Plus500's position (and supporting evidence) on all three issues.

With regards to issue 1, the investigator also established – with evidence – that Mr I had been provided with a Risk Disclosure Notice ('RDN') which highlighted the risks in CFD trading and that, at the outset, he was issued with notice from Plus500 that the CFD trading account was inappropriate for him. She acknowledged Plus500's right to have granted him

the account, after the inappropriateness warning was issued to and agreed/waived by him, and she concluded that it did nothing wrong in allowing him to trade in the account.

Mr I did not accept this outcome. In particular, he said he wanted the outcome reviewed because he considers it unethical for Plus500 not to have detected and rejected the corporate payment methods he used for the account. The matter was referred to an ombudsman.

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 share the investigator's conclusions and her reasons. I do not uphold Mr I's complaint.

Issue 1

The regulator's Conduct of Business Rules within COBS 10A.2 sets out the basis on which a firm is required to assess the appropriateness of a financial product or service for a customer or client. The purpose being to determine whether (or not) the client has sufficient knowledge and experience to understand the risks involved in the service or product offered by the firm.

COBS 10A.3 then says a firm is obliged to warn its client if the appropriateness assessment concludes that its service or product is not appropriate; that its warning can be in a standardised format; and that if, despite the warning, the client wishes to proceed with the service or product the firm has discretion to do so "… *having regard to the circumstances*."

We have been given evidence of the outcome of the appropriateness assessment conducted for Mr I's account at the outset. It notified him that the account (for CFD trading) was inappropriate for him and he chose to agree (and waive) that notice in order to proceed with the account. Plus500 says the circumstances which persuaded it to allow the account opening to proceed included his references to having prior trading experience, including in shares, Options, commodities and forex; to having the financial capacity for loss from CFD trading; and to having requisite financial knowledge.

Overall and on balance, I am satisfied that Plus500 discharged its obligation to warn Mr I that the account was inappropriate for him – as it had assessed – and that the circumstances which persuaded it to grant his request to proceed, despite the warning, were reasonable. In addition, and considering the risk warnings within the RDN (including warnings about the risks of CFD and Options CFD trading), I do not accept Mr I's claim that he was not informed, or adequately informed, about the trading he was venturing into. I consider that he was.

The other matter in issue 1 relates to the periods of suspended trading. I am satisfied with Plus500's evidence of price volatility and unreliability during those periods and, as it says, the User Agreement expressly made provision for such suspended trading where prices were unreliable. I consider that this stands to reason, and it is not uncommon in the sector for trading to be suspended on platforms where prices are uncertain or volatile and until prices and/or price quotes become reliable again.

I find no basis to say Mr I should recover his losses from Options CFD trading in the account.

Issue 2

Mr I concedes, and declares, that he breached the User Agreement's prohibition against corporate payments into the account. This does not naturally lend itself to his claim for compensation. Nevertheless, I have considered if a basis for such a claim exists in Plus500's reaction – or, as he has argued, inaction.

The prohibition essentially created a duty that rested on the customer – in this case, Mr I. Plus500 was entitled to expect him to abide by it given that he had agreed the User Agreement for the account. I have not seen evidence that he gave prior notice of breaching the prohibition to Plus500 or evidence that it was or could have been aware of the breaches as they happened. It does not appear to have had a definitive *duty* to monitor, routinely, against such breaches and it has referred to the discretion it had to do so which it exercised in October 2019.

Even if such a duty existed, I do not consider an argument that Plus500 failed to apply a routine check on payment sources could create grounds for the refund Mr I seeks. His deposits were based on his decisions and his action, and where they were lost in trades that he placed then that too is a matter rooted in his decisions and actions. I am not persuaded that the accountability (and ethics) he has argued, even if established, could reasonably result in refunding such losses to him.

Issue 3

After sharing news of his gambling problem with Plus500 on 1 February, Mr I's account was closed by the time it responded to his complaint on 5 February. I do not consider this an unreasonable reaction period, especially as available evidence is that there were no open positions – therefore no exposures to risks – in the account when it was closed. Overall and on balance, I am not persuaded that Plus500 reacted unreasonably or too slowly to this news. I do not consider that it facilitated more trading (and potential losses) in the account after 1 February despite its awareness of the gambling problem.

Between 24 January, when Mr I appears to have instructed the closure of the account, and 1 February it was reasonable for Plus500 to ensure that any such closure took place in the correct circumstances. Mr I's retention of open positions, opening of new positions and any new deposits made after 24 January all conflicted with his closure instruction. I consider that he retains primary responsibility for that. Perhaps Plus500 could have been more proactive in clarifying such conflicting behaviour, but I do not consider that the situation was unduly drawn out. By 1 February it had notice of Mr I's problem and within a few days there were no open positions in the account and the account was closed.

Overall and on balance, I am not persuaded by Mr I's claim for a refund in this issue.

My final decision

For the reasons given above, I do not uphold Mr I's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 23 December 2020.

Roy Kuku
Ombudsman