

The complaint

Mr S complains that Plus500UK Ltd allowed him to open a Contracts for Difference (CFD) trading account, despite the fact that he had insufficient knowledge and experience to understand the risks involved.

What happened

In April 2020 Mr S completed an application to open a CFD trading account with Plus500. Plus500 assessed his application in order to determine if trading CFDs was appropriate for him.

In the application, Mr S said:

- He had never traded CFDs.
- He had no prior education, professional qualifications and/or work experience in the financial services industry in a role relevant to trading CFDs.
- He was employed in 'engineering' and earned between £30,000 and £75,000 annual income. He had £20,000 to £50,000 in 'savings, investments and assets (excluding property)'. And he could risk between £5,000 and £20,000 in trading.
- He said he anticipated trading daily for the purpose of short-term investments, and he then correctly answered three basic multiple-choice questions designed to test his investment knowledge.

As a result of the information he gave Plus500, it concluded that trading CFDs was not appropriate for him and warned him to that effect. However, Mr S still wanted to proceed and Plus500 allowed him to open an account. Mr S traded for around two weeks, during which time he lost over £17,700. He complained to Plus500 – but it didn't think it had done anything wrong, so he referred his complaint to this service.

I issued some provisional findings in February 2022. In short, I acknowledged that Plus500 had warned Mr S that trading CFDs wasn't appropriate for him. But when looking at all the circumstances of the case, I concluded that Plus500 should've used the discretion it had under COBS to decline Mr S's request to open the account. Had it done so, I was satisfied Mr S would not have traded and would not have incurred the losses that he did.

Mr S agreed. He said he had lost his life savings trading something he didn't fully understand. He acknowledged the warnings he was given, but felt that given his total lack of knowledge and experience he shouldn't have been allowed to open the account.

Plus500 didn't agree. It said:

- There were no rules which said that clients with no prior experience in derivatives ought to be prevented from opening accounts. It also said that the FCA did not define 'best interests' in the handbook.

- It said its obligations under COBS 10 involved new clients completing an appropriateness assessment.
- It said that although Mr S declared he lacked prior experience in trading CFDs or other derivatives, he 'did demonstrate a fundamental understanding and knowledge of our products by correctly answering a series of questions'. Plus500 said Mr S got questions on the effect of leverage and on how stop losses work right.
- In addition, Plus500 said that Mr S declared he worked in the engineering sector, which it said 'requires a high level of skill and intelligence'. It said that he declared an annual income of up to £75,000 and savings of up to £50,000. It said that based on this information, Plus500 determined that Mr S 'had both the required capability and financial resilience to be able to understand the products he was trading and withstand a fairly significant level of losses'. In addition, Mr S said he was trading for the purpose of short term investments as opposed to long term investments. It said that anyone 'who believed that they were buying cash equities, for instance, would not typically think to hold them for a short period of time'.
- Plus500 said that COBS 10.2.4 allowed it to rely on the information which Mr S provided. It said that, based on this information, 'it was evident [Mr S] only lacked prior experience'. It said that contrary to my provisional findings, Mr S did not display a 'lack of knowledge' and this was evidenced by his correct answers. It said that it was entitled to rely on Mr S's answers and did not need to 'check the legitimacy of this information by requiring hard evidence'.
- Mr S accepted the risk warning that was given to him and said he had read the terms and conditions which also included a Risk Disclosure Notice.
- Plus500 said that 'there were no concerns over [Mr S's] financial situation, intelligence or mental capacity' and therefore it was in Mr S's best interests to allow him to trade because that's what he wanted to do. It said that it was Mr S's 'right and will to proceed with the account application after accepting the risk warnings'. It said it did not consider that in this case it would've been 'fair' to deny Mr S the opportunity to trade.
- It said that it would be impossible for a client to always have CFD experience, because they'd need to start somewhere. And it explained that the assessment which Mr S completed had been designed to differentiate clients who ought to be allowed to trade, and client who should not. It said that based on the answers Mr S gave, including the knowledge he had, Mr S was in the category of clients who should be warned but be allowed to go ahead. Plus500 maintained that this was the right decision to make.
- Plus500 said that the guidance at 10.3.3 gave it a 'choice' and did not obligate it to prevent Mr S from trading. It said Mr S only 'failed' one part of the application, and for that reason, given that he accepted the warning and the terms, it was entitled to allow him to open the account.
- It said that it monitored Mr S's account and his trading or losses did not raise any concerns. And it didn't agree that his trading showed that Mr S was 'out of his depth', because a lot of his trades made profits. It said that it questioned whether if Mr S hadn't made a large loss on one of his trades, the complaint would still have been made.
- Plus500 concluded by saying that that the concept of 'best interests' did not 'equal

guaranteed profits'. It said that if all CFD investments firms were required to compensate consumers who claimed that the account was not appropriate for them after they'd made loss, there'd be no CFD firms left in operation. It said that the FCA did not make prior investment experience a pre-requisite and it wasn't for this service to rewrite the rules.

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.

And I've considered Plus500's comments in response to my provisional findings very carefully. Having done so, I've not been persuaded to change my mind.

It's not in dispute that once Mr S completed his application, Plus500 concluded that he did not have sufficient knowledge and experience to understand the risks involved with trading CFDs. It warned him to that effect and required him to acknowledge that he had read the warning, and the terms, before allowing him to proceed with his application.

At this point, having warned Mr S, the FCA suggests that firms should also have regard to the guidance at 10.3.3G. This says:

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.

A relevant circumstance is the overarching duty Plus500 owed Mr S – in particular, COBS 2.1 says:

(1) A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).

And the FCA's high level Principle 6 in my view is also relevant, because it says:

A firm must pay due regard to the interests of its customers and treat them fairly.

I acknowledge that 'best interests' is not a defined term in the FCA handbook, and I accept that, in addition to acting in Mr S's best interests, another consideration when applying the guidance at 10.3.3G is a consumer's right to spend or invest their money how they see fit. This means that in the circumstances of this case, when deciding whether Plus500's decision was fair and reasonable, I agree that I need to take into account the fact that the FCA clearly considered there are circumstances when a consumer should be allowed to invest in something which is not appropriate for them.

However, in deciding what the above means in relation to the circumstances that applied to Mr S's case at the time, I've also carefully taken into account what the FCA and the European Securities and Markets Authority (ESMA) have said about appropriateness. They have repeatedly emphasised the risk of financial harm to consumers who are allowed to trade CFDs after failing the appropriateness assessment.

Plus500 will have received a number of 'Dear CEO' letters from the FCA which reminded it of the importance of following the guidance at 10.3.3 and the concerns the FCA continued to have over firms paying insufficient attention to that aspect of COBS 10A.

In June 2017 the FCA said:

- ‘Applicants should not be asked to confirm an intention to proceed with a transaction as the next step in the application process’ – this is because the FCA found that clients who failed appropriateness but could simply override the risk warning were much more likely to open an account and trade. In Mr S’s case the warning is simply the next part of the application – it was very easy for him to override it and carry on.
- In most cases the FCA looked into, it found that firms ‘did not give meaningful consideration to whether the application should still be permitted to proceed’. It said that this allowed clients ‘to override the appropriateness assessment and risk warning and proceed to trade without substantive deliberation’.
- It references the questions and answers provided by ESMA which said:

‘taking into account the complex nature of CFDs and other speculative products and the best interest of the client, in cases where the assessment of appropriateness indicates that the product or service is not appropriate for a retail client or where insufficient information is available to assess appropriateness, the best practice would be for the firm to not allow the client to proceed.’ (my emphasis)

- The FCA said that the above meant some firms ‘may be failing to comply with their obligations in relation to customers’ best interests under COBS 2.1.1R and Principle 6, as well as acting contrary to our guidance in this regard (COBS 10.3.3G)’ where firms allow clients to proceed.

In my view, the FCA has been clear that it would be against the Principles for firms to simply conclude that it’s in a client best interests ‘to do what they want’ - because this type of trading is very likely to lead to significant capital losses. In deciding what circumstances Plus500 needed to take into account at the time it decided to allow Mr S to open his account, I’m satisfied it needed to take due note of what the relevant regulators have said. So I’m persuaded that Plus500 was required to carefully balance Mr S’s desire to go ahead and trade something which the majority of its clients lost money on, with Mr S’s clear lack of any experience or knowledge in CFD trading – or indeed any other form of investing, given that Plus500 didn’t elicit evidence of any other investment experience from Mr S at the time.

To be clear, I don’t agree that this means the client best interests rule requires ‘guaranteed profits’ – I think that misses the point entirely.

The question that Plus500 needed to answer when Mr S failed the appropriateness assessment isn’t whether or not he’d be ‘guaranteed a profit’ if he were allowed to open his account – but, in essence, whether trading CFDs would be exposing Mr S to significant financial harm which he was unable, given his lack of knowledge and experience, to fully appreciate and understand. As a regulated firm with an overarching obligation to act in Mr S’s best interests, it was incumbent on Plus500 to assess very carefully whether the high likelihood that Mr S would lose money trading CFDs was outweighed by his desire to trade. Based on what I’ve said above, I’m satisfied the regulator intends there to be limited circumstances which would mean it’s in a client’s best interests to invest in something they have insufficient knowledge and experience to understand.

In addition, the arrangement was also one which meant that Plus500 would potentially stand to gain from Mr S’s trading – whether through the spreads on the individual trades he placed, or through taking the opposite sides of his trades.

In other words, Plus500 needed to carefully consider whether the potential to financially

benefit from a client losing their money through trading something they had insufficient knowledge and experience to understand was compatible with their overarching obligation towards Mr S to act in his best interests. In my view, this aspect of the arrangement between Plus500 and Mr S made it even more important that Plus500 consider Mr S's circumstances carefully before deciding that it was in his best interests to trade CFDs.

Plus500 has sought to justify why it allowed Mr S to open his account despite it not being appropriate for him by arguing that Mr S answered questions which showed he had some basic knowledge of CFDs. I don't agree these questions achieve that purpose for the reasons I set out below – but even if I did, I'm not persuaded understanding some basic principles around CFDs is the same as understanding the significant risks trading them involves. And Plus500 had already concluded that Mr S had insufficient knowledge and experience to understand the risks involved in CFD trading – or else it would have concluded the account was appropriate. So whatever knowledge it was satisfied Mr S had, it clearly did not consider it was enough for him to understand the risks involved.

This means that Plus500 is attempting to argue that it took the fact he answered these three basic questions correctly as reasons why he ought to be allowed to trade something which it had already concluded he didn't understand or have experience in, and in which the vast majority of its clients lose money. In the particular circumstances of Mr S's case, I don't agree this was sufficient for the following reasons:

- The only question about leverage asks Mr S to identify what the maximum leveraged amount he could trade with, if he deposited £1,000 and the leverage was 1:100. This then gives Mr S three possible options - £200, £30,000 and £100,000. I'm not persuaded this question provided Plus500 with much reassurance about Mr S's knowledge, even if he did choose the correct answer. The question didn't allow Plus500 to test or be satisfied that Mr S understood the risks of being able to trade with such a large amount of money despite only depositing a fraction of the overall amount – and this is the key risk Mr S needed to understand before proceeding.
- The next question asks Mr S to determine what would happen if, having set a stop loss on a position, the market moved rapidly and gapped through the price he had set. Mr S had only two options – 'my position will close at the next best available price' and 'a stop loss cannot close my position'. Here too I'm not at all persuaded that Mr S's ability to choose the correct answer, out of only two options, actually elicited any knowledge from Mr S about CFD trading. This question for example didn't allow Plus500 to be satisfied that Mr S understood how stop losses worked or how they could be used to mitigate risk.
- Finally, Mr S correctly answered a question about 'who is responsible for adding funds to your account'. Here Mr S had two options again – 'Plus500' or 'I am responsible'. Again, this provides insufficient reassurance that Mr S actually understood what adding margin meant, how it might affect the amount of money he could stand to lose or anything actually relevant to CFD trading.

I don't agree that these questions reasonably gave Plus500 any evidence about Mr S's actual knowledge of CFD trading, or broader indications of his knowledge more generally about investments or trading. And none of the questions elicit any knowledge from Mr S about his degree of understanding of the specific type of risks involved in trading on margin.

I'm not persuaded these questions support Plus500's conclusion that, given all the circumstances, it ought to allow Mr S to trade CFDs despite this not being appropriate for him.

And I don't agree there was in fact any information in the application which Mr S completed which indicated it was in his best interests to be allowed to trade a high risk and very complex financial instrument such as a CFD. I say this because:

- Despite what assumptions Plus500 has about 'engineering' as a profession, it knew absolutely nothing about Mr S's professional role or what this involved. Engineering doesn't inherently grant any particular knowledge or insight into any type of trading or investment, let alone CFDs, and it was simply one of the 'dropdowns' he could select from.
- It didn't know what Mr S's annual income is – other than it fell somewhere between £30,000 and £75,000. And it also didn't know how much Mr S had in savings – whether this was readily realisable savings, or money which Mr S might not be able to access. All it knew was that, overall, Mr S had somewhere between £20,000 and £50,000 in 'savings, investments and assets (excluding property)'.
- It did know that Mr S had never traded CFDs or leveraged investments, and that he didn't have any other experience or qualification in this domain.
- There was nothing in the application about Mr S's general understanding of investing – for example whether he had ever invested in the past, whether he held any investments or whether he understood the risks of investing more generally, including high risk investments.

Furthermore, given that the warning Mr S was asked to acknowledge was merely another step in the application process, I'm not persuaded it was reasonable for Plus500 to have been satisfied that Mr S had understood that the warning wasn't a generic risk warning – but rather one that was specifically provided to him personally. In my view it was too easy for Mr S to simply 'click' the warning away in order to proceed – as I've mentioned above, the FCA has been clear that this does little to deter consumers who shouldn't be trading CFDs from doing so.

I agree with Plus500 that experience is not a pre-requisite for an account being appropriate or for a consumer being allowed to trade. And I've not based my decision solely on this aspect of Mr S's case. I've based it on the fact that as far as Plus500 knew at the time, Mr S had no experience and insufficient knowledge and it knew very little about his financial circumstances or his overall investment experience. And whilst I've considered what Plus500 has said about the three questions it asked him, it's clear to me those questions provided no actual insight into Mr S's knowledge about the risks he was about to be taking on – whether in relation to CFD trading or anything related to investing.

Taking all the above into account, and considering them in light of the rules and the regulator's statements, I'm not persuaded it was fair and reasonable for Plus500 to conclude that it was in Mr S's best interests to open a CFD trading account given what Plus500 knew about him at the time. I'm persuaded that in order to act fairly and reasonably, Plus500 ought to have applied the guidance at 10.3.3G and decided it would not offer Mr S a trading account.

And I'm satisfied that if it had done so, Mr S wouldn't have traded as and when he did – and therefore wouldn't have been able to incur the losses that he did.

Putting things right

For the reasons I've set out above, I'm persuaded that Plus500 needs to pay Mr S compensation. And I'm satisfied that fair and reasonable compensation in this particular

case is for Plus500 to refund whatever money Mr S deposited in the account, minus any withdrawals, up to the point he raised his concerns with it.

And I'm satisfied that being allowed to trade CFDs despite his obvious lack of knowledge and experience caused Mr S distress and inconvenience – over and above the financial losses he sustained. For that, I'm satisfied it would be fair and reasonable for Plus500 to pay him £250 compensation.

My final decision

My final decision is that I uphold Mr S's complaint. Plus500UK Ltd must pay the compensation I've outlined above within 28 days of when we tell it Mr S has accepted this final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 23 March 2022.

Alessandro Pulzone
Ombudsman