

The complaint

Mr T complains that XTB Limited failed to protect him from incurring significant losses on his trading account. He feels it should have recognised that he'd developed a problem and taken steps to restrict his account.

What happened

Mr T opened his Contracts for Difference (CFD) account with XTB in June 2019. The account was then closed in December 2019 when he informed XTB that he'd developed a gambling problem. Mr T complained to XTB as he felt it shouldn't have allowed him to open the account in the first place, nor allowed him to continue trading while making numerous deposits into the account.

XTB didn't uphold Mr T's complaint. It explained that its application process had included the completion of an appropriateness test to determine his knowledge and experience of the service offered. It said he had passed this test. It also emphasised that its service was execution-only and that its terms required accurate information to be provided to it, with responsibility for doing so, and for any subsequent trading on the account, remaining solely with Mr T.

XTB noted Mr T's concerns that he'd been able to continue to make deposits to his account after he'd exceeded the 'liquid net worth' figure he'd given as part of the application process. It said Mr T had been told he shouldn't make any deposits until he completed a 'data refresh' process that involved providing source of funds information. XTB noted that despite being told this, Mr T had made multiple attempts to place deposits in a short space of time, which had led to the system being overridden and some attempts being successful. XTB noted that, in any event, its system for restricting deposits wasn't a regulatory requirement.

In short, XTB was satisfied it had acted correctly and taken appropriate actions to assess Mr T's knowledge, experience, and financial circumstances, on multiple occasions.

The complaint was referred to this service where our investigator reached broadly the same conclusions as XTB. He noted that, in respect of the account application process and appropriateness test, Mr T had said that the information he'd provided was either not accurate or the answers hadn't properly reflected his specific circumstances. For example, although he'd selected the option 'employed', he was in fact on a temporary contract having only recently experienced a period of unemployment.

But the investigator noted that XTB hadn't been made aware of this and stressed that the Financial Conduct Authority's Conduct of Business Sourcebook (COBS) stated at rule 10.2.4 that: *"a firm is entitled to rely on the information provided by a client unless it is aware that the information is manifestly out of date, inaccurate or incomplete"*.

The investigator also noted that there was nothing said during the calls between Mr T and his new account manager when the account was opened that would've led to the conclusion that the account was unlikely to be appropriate for him. And the investigator didn't think XTB had acted incorrectly in respect of the deposits applied to the account that exceeded the

initial 'liquid net worth' figure.

The investigator also noted concerns Mr T had raised about the advertising of XTB's services and its response to a Subject Access Request. But, again, he didn't consider that XTB had acted incorrectly.

Mr T didn't accept the investigator's view. He said, particularly in respect of his continued depositing and trading, that XTB had 'turned a blind eye', ignoring signs that he was obviously in trouble. He wondered why XTB had not asked more probing questions to determine the circumstances of his additional deposits and he noted an apparent lack of communication between XTB's sales and compliance departments. He questioned why the importance of a 'data refresh' and source of funds information had not been better explained to him and why the blocks on the account appeared to have been lifted, allowing him to make further deposits.

In respect of the appropriateness test questions, Mr T said he was not asked for the level of detail that would've demonstrated that his circumstances weren't as they appeared to be on face value. He didn't actually have the experience of trading that his answers to the questions might have suggested and he asked why his unusual trading activity – depositing and trading for long periods, very early and late in the day – weren't monitored and acted upon. He was also unhappy that XTB had offered options for continued trading before his account was eventually closed.

The investigator wasn't persuaded to change his opinion. So, as no agreement could be reached, 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'd first like to express my sympathy for Mr T and recognise the impact this matter has had on him. It's quite clearly caused him a great deal of distress and I'm glad that he's been able to get the help he needed.

That said, in respect of the merits of the complaint, I must look impartially at the actions of XTB, with regard for the law and relevant industry rules and regulations, to decide if it acted incorrectly or unfairly.

I appreciate that looking back on what happened, Mr T feels there were occasions where XTB could have acted differently and taken steps that might have prevented his situation from worsening. But having looked carefully at the whole process, while I can see that things perhaps *could* have been done differently, I don't think that there is anything that XTB *should* have done.

As has been noted, before any account was opened, XTB was required to ask Mr T to provide information regarding his knowledge and experience in the investment field so it could assess whether the service was appropriate for him. This it did by way of the 'appropriateness test' that Mr T completed, which asked questions about his circumstances, his experience and his knowledge.

From the answers given, the CFD trading account was deemed to be appropriate for him. The answers indicated that he had some investment experience and some knowledge of how the particular product worked. Importantly, this was emphasised during initial telephone conversations Mr T had with his account manager. While I accept that there was no

suggestion Mr T was a highly experienced trader/investor, he confirmed that he wasn't completely inexperienced and asked several questions that demonstrated a reasonable knowledge of the type of trading he was going to do – discussing, for instance, margins and leverage.

In all the circumstances, I can see no issue with the account being opened following the completion of the appropriateness test. In respect of answers given as part of the test that gave details of his personal and financial circumstances, I note what Mr T's said about his answers not really reflecting the situation he was in – for example, his employment status not being quite as his answer suggested. But XTB could only base any decision it might make about Mr T's account opening or ongoing trading on the answers and information it was given. If, for instance, the figure given for liquid net worth was not accurate, due to Mr T misunderstanding the term, XTB can't have been expected to be aware of that.

While Mr T has concerns about the account being opened in the first place, his primary concern appears to be with XTB allowing him to continue depositing funds, trading and incurring losses while demonstrating behaviours he feels ought to have alerted it to potential problems.

But as an execution-only service, XTB had no responsibility to advise Mr T about how he was trading, nor was there any obligation on it to review or monitor the trading on the account. XTB did, however, have a mechanism in place to restrict the account when the amount deposited exceeded the liquid net worth figure given as part of the account opening process. It appears Mr T was informed of the situation when this occurred, and it was explained to him what he needed to do for a 'data refresh' to occur and that source of funds information needed to be provided.

Mr T made repeated attempts in a very short space of time to deposit funds, and eventually the system was overridden, and some payments accepted. I understand that, in light of Mr T's circumstances and difficulties, this was unfortunate. But again, I don't think that XTB can be held responsible for any issues that occurred as a result. XTB had a system in place, in line with its responsibilities around anti-money laundering (AML) regulations, that sought to keep records in respect of source of funds for deposits. Mr T had been made aware of what was needed from him to continue trading.

I understand that he may not have recognised the significance of this, particularly as by this point he'd developed a problem and was focussed on chasing losses. But he did provide information for the purposes of the data refresh that he acknowledges was incorrect. I note what he's said about XTB not making him sufficiently aware of the importance of the requirements for this system and the fact that he managed to continue depositing and trading while the data refresh process was ongoing. But the system wasn't in place with a primary purpose of spotting problematic trading behaviour. As I've said, it was there primarily for more general regulatory purposes. So, I don't think there's any reason why activity around it would've necessarily alerted XTB to Mr T's problems.

Despite there being no specific requirement for XTB to monitor or review the activity on Mr T's account, I have nevertheless given some thought to whether, in the particular circumstances, XTB should maybe have acted differently, perhaps taking steps to engage with Mr T in the way he's suggested.

The most obvious point when this might have occurred is during the period in November 2019 when Mr T made the repeated deposits mentioned above. With hindsight, these deposits going beyond his stated liquid net worth were somewhat unusual activity. But they occurred over a period of three weeks during which a significant withdrawal from the account was also made. And this was while the process of data refresh was ongoing, during which

Mr T provided the inaccurate information noted above. A second withdrawal was then requested, and a few weeks later Mr T informed XTB of his problems and the account was closed.

In telephone conversations I've listened to between Mr T and XTB during November 2019 he made no reference to any problems. From what I've seen, there doesn't appear to have been a particular point, prior to Mr T informing XTB of his gambling problem, where XTB could reasonably have been expected to take a different course of action. Mr T has suggested that better note-taking would've enabled staff to have a better understanding of his ongoing situation. But, as I've said, there simply wasn't any obligation on XTB's staff to carry out a general day-to-day review of what he was doing.

In all the circumstances, I don't think there was enough to prompt XTB do anything more. It may be that if the situation had continued for longer, with further deposits made without the provision of source of funds information, then action might have been taken. But, as noted, by 20 December 2019 the account had in any event been closed.

So, in summary, I'm satisfied XTB acted fairly and reasonably in respect of Mr T's account opening and continued operation. I note his additional concerns about the way XTB's service was advertised and how it was this which prompted him to start using a service he feels was not appropriate for him. But I've seen nothing that persuades me XTB acted incorrectly in this respect or advertised its service in breach of any applicable regulations or guidance.

Lastly, I note his concerns about the way in which his subject access request was handled. While it may have taken some time for all the information to be provided and there was some disagreement about formats, etc. I'm satisfied XTB generally responded to the request in good faith, providing alternative formats where possible and explaining its decisions where it felt it wasn't required to provide certain pieces of information. Ultimately, Mr T was still able to effectively use the information provided by XTB to support his complaint.

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 T to accept or reject my decision before 29 March 2022.

James Harris
Ombudsman