

## **The complaint**

Mr C complains that Fortrade Limited pressured him into re-opening a Contracts for Difference (CFD) trading account and gave him bad advice on what to trade. He complains that as a result of Fortrade's actions, he suffered financial losses for which he should be compensated.

## **What happened**

Mr C initially opened his account in 2017 – at which point he deposited \$100 but withdrew it two days later without carrying out any trades.

Sometime in March 2020 Fortrade contacted Mr C via email. The email explained that the recent 'crash with crude oil' was an event that only happened a 'few times in a decade'. It said that if Mr C wanted to make money '100k, 200k', this was the time. In response, Mr C said that his account was inactive. Fortrade therefore reactivated Mr C's account by obtaining certain documents from him, and updated the appropriateness questionnaire – Mr C's answers hadn't changed from 2017.

In relation to his 'reason for trading', Mr C circled 'other' (instead of capital growth, income, speculation or hedging). In answer to the question 'knowledge of trading', Mr C circled 'from a relevant role in the financial services sector'. He said he had 'no experience' in FX or CFD trading, but he did have significant online trading experience. He had substantial annual income.

As a result of this assessment, Fortrade allowed Mr C to open an account – which he did. He initially deposited around \$5,600 – but he lost over \$4,000 on one trade the day after opening his account. Between 12 March 2020 and 23 March 2020 Mr C deposited over \$30,000, and eventually withdrew \$11,200 and stopped trading.

Mr C complained to Fortrade about its decision to allow him to trade. He said that he had no experience with CFDs and explained that during the second day of his trading, he suffered a great loss, because he hadn't understood that by depositing more money to cover his margin, he was taking on more risk. He said he initially told the trader that he needed time to learn the platform and that's why he had only deposited \$5,000, but the trader kept on telling him to deposit more money in order to avoid being margin called and this led him to incur even larger losses.

Fortrade looked into Mr C's complaint, but didn't think it had done anything wrong. In short it said that the account was appropriate for Mr C and that he had been given all the relevant risk warnings and explanations.

It said that the account was 'execution only' which meant trading was Mr C's responsibility. It also said that the 'support manager' provided him with 'education' in the form of explaining to Mr C the 'main features of the platform', what open profit and loss meant, equity, margin level and other tools to manage risk such as stop loss and take profit orders. Overall, it concluded that Mr C had lost money on trades he wanted to make and it didn't think it had done anything wrong, so Mr C referred his complaint to this service.

I issued a provisional decision in February 2021. In it I said:

*Mr C has told this service that he had no experience in trading CFDs, and his professional role was as a corporate banker. This gave him an understanding of investing, but it didn't have anything to do with trading derivatives or CFDs.*

*I'm persuaded by Mr C's testimony – I consider it has been consistent and persuasive. And the form he filled out reflected this – it's very clear that he told Fortrade that he had no experience in CFD trading. In fact there's nothing in the form that indicates he had any experience which would allow him to understand the risks of CFD trading. And Fortrade did nothing to establish whether, in the absence of any experience, he had the necessary knowledge to understand those risks.*

*The whole assessment and Fortrade's conclusion that CFD trading was appropriate seems to be based on one answer – that he had 'knowledge of trading' from a 'relevant role in the financial services sector'. But it isn't clear from the form what type of trading this refers to – because the form talks about CFD trading and 'online trading', which Mr C acknowledged he had experience in. There's no indication that this particular question specifically relates to CFD trading – and I'm satisfied that if this had been the question, Mr C would not have answered it in the same way, because his job or role, whilst in financial services, did not relate to CFD trading. Subsequent conversations which he had with Fortrade confirm this. There is simply no evidence at any stage that Mr C had any knowledge or experience of CFD trading – and therefore, there was insufficient evidence for Fortrade to conclude, at the time, that Mr C had the necessary knowledge and experience to understand the risks involved in trading CFDs.*

*In my view, therefore, CFD trading was not appropriate for Mr C. I don't agree that his experience in investments generally, even if it was at a very high level, meant that he understood the very specific risks he was about to face. And in my view, Fortrade ought to have tested Mr C's knowledge in order to establish whether, in the absence of any specific experience, he understood specific features of CFD trading, like the basics of trading on margin, and the consequences of adding more margin to avoid margin calls. I'm persuaded, on balance, that if it had done this, it would've concluded that Mr C did not understand the risks and that CFD trading was therefore not appropriate. This means that it would've been required to warn Mr C that CFD trading was not appropriate for him and that he should not go ahead.*

*Putting things right*

*The question I've therefore needed to consider is whether, on balance, this warning would've dissuaded Mr C from going ahead and opening his account. I need to consider this because if I conclude that the warning would've made no difference to Mr C's decision, then it wouldn't be fair to ask Fortrade to pay compensation – after all, the trades Mr C placed were his own, and I'm satisfied Fortrade didn't advise or pressure him into making them. On the other hand, if I consider it likely that a warning would've stopped Mr C from opening his account, then I think Fortrade ought to bear the financial consequences of its inadequate assessment of Mr C's knowledge and experience.*

*I've therefore considered this aspect of the complaint very carefully. And taking everything into account, I've provisionally concluded that it's more likely than not that a warning by Fortrade to the effect that it concluded, on the basis of the answers Mr C gave, that trading CFDs wasn't appropriate for him, would've been enough to stop Mr C opening his account. I say this because:*

- I've seen no evidence that Mr C was intending on reactivating his account but for Fortrade's repeated contact with him – including the last email which prompted his reply.*
- Mr C stopped trading very shortly after opening his account – which in my view is evidence that he was not prepared for the type of risks he was taking.*
- Mr C had no experience in CFD trading, and I'm satisfied he'd not understood just how different this was to the type of trading he was used to. In my view, a warning that this wasn't appropriate for him, by the very business that had been inviting him to reopen the account, would've persuaded him not to go ahead.*

*This means that in my view, Mr C would not have traded – and I'm satisfied there's no evidence he was intending to trade elsewhere because he only did so following the invitation from Fortrade and was not actively looking to trade. I'm therefore satisfied that it is fair and reasonable to ask Fortrade to refund the money Mr C deposited, minus any withdrawals.*

*I've considered whether interest should be added to this sum, and I'm not currently persuaded that would be fair. However, I do think that losing the sums that he did would've caused Mr C distress and inconvenience, for which Fortrade ought to pay some compensation – and I'm currently minded to award £250 for that.*

Mr C agreed with my provisional decision. He said that during the time he had calls from a 'relationship officer' who was advising him and 'pushing' him to buy CFDs in Petroleum and Palladium. Mr C explained that he didn't even know what Palladium was, but Fortrade kept telling him it was the most popular instrument and a lot of people had become rich. Mr C confirmed that to this day he didn't know what CFDs are or how they work.

Fortrade didn't agree with my provisional decision. It said the relevant rules didn't say that a customer must have some experience of trading CFDs in order for it to be appropriate for them to trade. It said the rules are clear that it wasn't necessary for someone to have experience of a particular product in order for it to be deemed appropriate.

Fortrade also said that the rules didn't require Fortrade to be satisfied that Mr C did understand the risk involved in trading CFDs, 'but rather that he was capable of understanding the risk'. It said that the fact that Mr C had never traded CFDs didn't mean that he was incapable of understanding the risks involved in trading, or that he was incorrectly assessed by Fortrade.

Fortrade said that it was 'clear beyond any doubt' that Mr C had sufficient knowledge and experience to understand the risks involved'. It pointed to COBS 10.2.6G which said that a firm may be satisfied that a client's knowledge alone is sufficient for him to understand the risks involved in a product or service. Fortrade said that it was 'fully and justifiably satisfied that Mr C's knowledge and professional experience meant that he was more than capable of understanding the risks in trading CFDs'. It said that Mr C had spent 30 years as a corporate banker, held a degree in Economics and had 'many years trading other financial products'. It said that given his background, 'it cannot be the case that [Mr C] was incapable of understanding the risks associated with trading CFDs'.

It said that while 'CFDs are relatively complex, the concepts are not difficult for someone with an Economics degree to understand, particular someone who already had experience of financial markets'.

Furthermore, it said that Fortrade explained the risks of trading CFD to Mr C on more than one occasion. It said that the FCA confirmed that a client may have appropriate knowledge and experience if the firm has provided information to the client about the nature of the product or service and the risks that it entails.

It concluded by saying:

'Given that [Mr C] is a highly qualified, intelligent and experience professional person, there was no reason for Fotrade to have doubted his ability to understand the information presented to him. Indeed the risk warnings were both clear and stark. It must be the case that someone with [Mr C's] educational and professional background would be quite capable of understanding and assessing the information which was presented to him prior to trading his account. The fact that he had no prior experience of trading CFDs does not render him incapable of understanding the information provided to him by Fortrade.'

It referred me to a telephone call between Mr C and Fortrade during which Mr C repeatedly said he 'understood' what he was being told, and made reference to his significant academic and professional background. Fortrade said this call was evidence that Mr C knew exactly what he was doing and how the process worked. It therefore said that it would be 'unfair and irrational' for me to hold Fortrade responsible for the losses he sustained.

### **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 particular, I've considered Fortrade's comments in response to my provisional findings very carefully. However, I'm not persuaded to change my findings for a number of reasons.

I should start by correcting Fortrade's interpretation of my provisional findings – I did not provisionally conclude that in the absence of any experience in trading CFDs, a consumer could never pass appropriateness. But I don't agree that the test is whether, overall, Mr C's background allowed him to 'understand the information provided to him by Fortrade'. That is not the test as set out in COBS10A. In my view, Fortrade's response to my provisional decision demonstrates that it has not appreciated how inadequate its assessment of Mr C's knowledge and experience was. So for clarity, I've decided to set out the rules as they are in the Financial Conduct Authority's (FCA) Conduct of Business Rules (COBS). I've then set out some relevant guidance issued by both the FCA and the European Security and Markets Authority (ESMA).

Before I do, it's important I address another aspect of Fortrade's comments – namely the 'education' it says it gave Mr C after he opened the account. This information did not, in my view, increase Mr C's level of understanding such that he now had sufficient knowledge to understand the risks involved in trading CFDs. But in any event, this information was provided to Mr C *after* he opened his account – in other words, after Fortrade had already concluded that trading CFDs was appropriate for him. Guidance at COBS10A2.9 clearly refers to this happening 'before assessing appropriateness', not afterwards. It could therefore not have used this as a reason to conclude he had 'sufficient knowledge', because at the point it made that assessment, it had not yet provided him this additional information.

## Relevant rules and guidance

COBS10A required Fortrade to assess whether Mr C had *‘the necessary experience and knowledge in order to understand the risks involved in relation to the product or investment service offered or demanded’*. In doing so, Fortrade needed to ensure that *‘the information regarding a client’s or potential client’s knowledge and experience in the investment field includes the following, to the extent appropriate to the nature of the client, the nature and extent of the service to be provide and the type of product or transaction envisaged, including their complexity and the risks involved:*

- (a) *The types of service, transaction and financial instrument with which the client is familiar;*
- (b) *The nature, volume and frequency of the client’s transactions in financial instruments and the period over which they have been carried out;*
- (c) *The level of education and profession or relevant former profession of the client or potential client.’*

COBS10A.2.8 also allowed Fortrade to be satisfied that knowledge alone was *‘sufficient for him to understand the risks involved in a product of service’ and, where ‘reasonable, a firm may infer knowledge from experience’*.

ESMA’s Questions and Answers Relating to the provision of CFDs and other speculative products to retail investors under MiFID provided some further guidance to firms on how to apply this rule.

It said that *‘in order to be able to assess the appropriateness of CFDs or other speculative products for retail investors, firms should ensure that the information collected about the client’s knowledge and experience is sufficiently detailed and granular, including covering the specific product to be traded and the relevant underlying asset class’*. And furthermore, the *‘more complex or risky the instrument is, the more detailed the information collected by a firm should be in order to be able to correctly assess the appropriateness of the product for a retail investor’*. This meant that firms, like Fortrade, *‘offering CFDs or other speculative products should therefore ask specific questions to identify relevant experience and knowledge of the retail client of both the underlying asset and market, and types of speculative financial instruments that will be offered to the client’*.

ESMA said that, for example, *‘the questions designed to ascertain a retail investor’s knowledge and experience to trade in binary options should be different from the questions designed to assess a retail investor’s knowledge and experience to trade in CFDs, which incorporate the element of leverage’*.

It gave some examples of bad practice, including asking overly broad questions, or asking questions about knowledge and experience in trading financial instruments in general, not specific to the speculative products to be traded.

ESMA also explained that firms should be obtaining *‘information about the client’s previous experience of trading relevant financial instruments’*. In particular, for CFDs, it said firms should get evidence of:

- Previous trading in CFDs or similar speculative instruments such as rolling spot FX.
- Previous trading in other derivative instruments traded with margin such as futures or options.

- Information about volume of trading and frequency.
- Information about the client's professional experience e.g. whether the client has worked in a financial services firm in a role that is relevant to trading in OTC leveraged financial instruments

In terms of knowledge, ESMA said that in order to be *'specific enough to enable the firm to assess correctly the appropriateness of a product for a given retail client, questions about the client's knowledge should assess his or her understanding of at least the key risk areas for each product that will be offered'*. ESMA then gave a list of questions or areas that firms should be exploring when testing the clients level of knowledge.

Finally, when taking into account information about academic or professional experience that may demonstrate knowledge relevant to trading in CFDs or other speculative products, firms should be obtaining *'sufficiently granular'* information about educational qualifications.

It said that firms *'should not count general education, course or qualifications in non-financial service related topics as relevant knowledge for trading in CFDs or other speculative products'*.

In 2016 the FCA sent Fortrade, and other CFD providers, a 'Dear CEO' letter in which it outlined a number of concerns around how firms were carrying out appropriateness assessments.

It said that many firms gathered insufficient detail regarding the types of service, transaction and designated investments with which the client is familiar. And, furthermore, did not take into account the nature, volume and/or frequency of the client's previous transactional experience or the time period over which such transactions had been carried out.

In 2017 the FCA concluded a further review on the extent to which CFD providers were complying with COBS. It concluded that a *'firm's assessment questions should aim to obtain from the client relevant information about the client's knowledge and experience (including relevant qualifications), and seek evidence in support of answers provided'*. It highlighted how knowledge assessments *'benefit from inclusion of general risk management-based questions'* (for example, knowledge and use of leverage, stop-losses and other risk mitigation mechanisms) – and it said that assessments *'of appropriateness that do not adequately evaluate a prospective client's knowledge and experience will not comply with COBS 10.2.1R'*. Finally, it also reiterated firms' failure to *'take adequate account of the nature, volume and/or frequency of prospective clients' previous transactional experience, or the time over which such transactions had been carried out. This is required by COBS 10.2.2R(2).'*

#### Fortrade's appropriateness assessment

Based on the information above, I'm satisfied that the regulator requires a comprehensive assessment of a client's knowledge and experience before a firm can conclude that trading CFDs is appropriate. And I'm satisfied this means that there will only be very specific and limited scenarios in which a firm can simply 'infer' knowledge from experience – and, in any event, I'm satisfied a firm would need to have detailed and 'granular' knowledge about that experience before inferring a level of knowledge that makes trading CFDs appropriate for a consumer. So I'm satisfied that overall, experience and knowledge require a thorough assessment before a firm can conclude that trading CFDs is appropriate.

In responding to my provisional decision, I think Fortrade has confused knowledge with experience. It has on the one hand explained that Mr C's professional role and academic qualification conferred on him a certain amount of knowledge – and this knowledge, it concludes, *must* have been enough for him to understand the risks of trading CFDs. In other words, it has attempted to rely on COBS 10A.2.8 – 'a firm may infer knowledge from experience'. And then it has also relied on this same rule which says 'a firm may be satisfied that the client's knowledge alone is sufficient for him to understand the risks involved in a product or service'.

But Fortrade has failed to appreciate that COBS 10A.2.8 requires *some* assessment of the client's experience and/or knowledge. If Fortrade was intending to conclude that Mr C's knowledge alone was sufficient, given his lack of experience in trading CFDs, then it needed to actually test this knowledge in order to be able to reasonably determine whether it was sufficient. Equally, if it wanted to conclude that his professional role was enough, it needed to ascertain precisely what the role was. And it needed to do this before concluding that trading CFDs was appropriate.

Instead, I'm satisfied that Fortrade's assessment was inadequate and not in line with what the regulator expects firms to do. Fortrade didn't have sufficient information about Mr C's professional role at the point that he applied to re-open the account – although it knew it didn't have any relevance to CFD or derivatives trading. Mr C has confirmed that his role did not involve trading on margin, CFDs, or anything else related to the account or the service he was asking Fortrade to provide to him. And during the application it took no steps to ascertain whether Mr C had any actual knowledge of CFDs – including his understanding of the differences to normal stock trading and the risks associated with trading on margin or other similarly high risk investments.

And whilst I've noted that Fortrade thinks that CFDs are '*relatively* complex' but wouldn't be hard for someone with an Economics degree to understand, I fundamentally disagree. CFDs aren't relatively complex – they're a very complex and high risk financial instrument which causes losses to the majority of consumers who trade them. And as the FCA also says, are not going to be appropriate for the majority of retail consumers. I don't agree that a degree in Economics gives any particular knowledge or understanding of CFDs and Fortrade has provided no evidence or argument to back up this assertion. In any event, as I've said above, if Fortrade wanted to rely on Mr C's degree, it needed to either fully probe what Mr C's degree was in – or it needed to test Mr C's knowledge in order to confirm its assumption that Mr C fully understood the risks he would be taking. It did neither.

Mr C has explained that he did not understand what CFDs were, and to this day still does not. He said that he had traded stocks before in the past, and that's why answered the questions on the application form the way he did. But he has confirmed that he has never traded CFDs in a personal capacity, nor in a professional one – and he has no qualification or degree in this area that would allow him to have the kind of knowledge required to 'understand the risks' which are specific to trading CFDs.

For all these reasons, I'm satisfied that Fortrade's assessment was not adequate, because it neither properly assessed what experience Mr C actually had, nor did it assess what knowledge he had. As a result, I'm persuaded its conclusion that he had the knowledge and experience to understand the risks of trading CFDs was flawed and not based on relevant considerations. Furthermore, given everything the FCA has said about how such assessments should be carried out, I'm satisfied Fortrade's process for establishing whether trading CFDs was appropriate for Mr C fell significantly short of what was required by the regulator and the rules. Therefore, I'm satisfied that Fortrade's conclusion that trading CFDs was appropriate for Mr C was not fair and reasonable.

## Putting things right

COBS10A.3 says that if a firm decides that a particular service or product is not appropriate, it must warn the consumer about this.

In Mr C's case, he did not receive such a warning, because Fortrade concluded that the account was appropriate. But in my view, Fortrade ought to have concluded that based on the answers he gave, trading CFDs was not appropriate for Mr C – and so I'm satisfied that it should have warned him about this.

This means that I now need to decide what would've happened if Fortrade had in fact provided Mr C this warning – would Mr C have traded anyway, either with Fortrade or elsewhere? Or would a warning have been enough to convince Mr C that trading CFDs was not the right thing for him, and therefore dissuaded him from going ahead?

I note that Fortrade did not provide any comments on this aspect of my provisional findings. So I've reconsidered how to fairly and reasonably award compensation to Mr C.

And taking everything into account, I remain satisfied that a warning by Fortrade to the effect that it concluded, on the basis of the answers Mr C gave, that trading CFDs wasn't appropriate for him, would've been enough to stop Mr C re-opening his account. I say this because:

- Mr C never traded on his account when he first opened it.
- I've seen no evidence that Mr C was intending on reactivating his account but for Fortrade's repeated contact with him – including the last email which prompted his reply.
- Mr C stopped trading very shortly after opening his account – which in my view is evidence that he was not prepared for the type of risks he was taking.
- Mr C had no experience in CFD trading, and I'm satisfied he'd not understood just how different this was to the type of trading he was used to.

In addition, it's clear to me that Mr C only decided to reply to Fortrade's email because of the exceedingly positive commentary in it – to the extent that it was inviting him to potentially make profits of '100k, 200k'. The email did not give a balanced picture of what trading CFDs in oil would realistically achieve for Mr C, and in particular, that rather than making such significant profits, the likelihood was he'd lose his money – as most of Fortrade's clients do. I'm satisfied a warning that this wasn't appropriate for him, by the very business that had been inviting him to re-open the account in this way, would've persuaded him not to go ahead.

For these reasons, I'm persuaded on balance that if Fortrade had warned Mr C as it should have, he would not have traded with it. I'm persuaded he would've likely left the account dormant much as he had done in the past.

And whilst I acknowledge the trades he eventually placed were his – in my view, he would never have been exposed to the significant risks this type of trading involves had Fortrade done what it was supposed to do.

Therefore, I'm satisfied it's fair and reasonable that Fortrade, and not Mr C, bear the financial consequences of the inadequate assessment it carried out of his knowledge and experience. And I'm satisfied that making such losses would've caused Mr C distress and inconvenience, for which I'm satisfied £250 is fair and reasonable compensation.

I've considered whether any interest ought to be added to the sums which Mr C traded and lost – but I remain of the view that this wouldn't be fair in the particular circumstances of this case.

### **My final decision**

My final decision is that I uphold Mr C's complaint against Fortrade Limited, who must pay the compensation I've outlined above within 28 days of when we tell it Mr C has accepted this final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 1 April 2022.

Alessandro Pulzone  
**Ombudsman**