DRN-3448675

Financial Ombudsman Service

The complaint

Mr W complains that Equitrade Markets Ltd gave him unsuitable advice to invest in Contracts for Difference (CFDs). He says this advice caused him a loss of over £21,000.

What happened

Around June 2015 Mr W was advised by Equitrade to open a CFD trading account with a broker I'll refer to as S, and gave it power of attorney to trade on his behalf. In June 2016 he revoked this power of attorney in favour of a different firm.

In November 2020, with the help of a representative, Mr W complained. In short, he said:

- Equitrade had not taken reasonable steps to ascertain whether CFD trading was suitable for him. He said Equitrade did not have a clear understanding of his circumstances, or else it would have established that he had 'no investment experience and was completely unfamiliar with the practicalities of CFD dealing'. He said that if Equitrade had ensured that he understood the key features, benefits and risks of CFD trading, the account would not have been opened.

- He was advised to invest too much of his portfolio in high risk products.

- Equitrade did not explain the likelihood of him making a return on the investment nor the impact commissions would have on his ability to make a return. Equitrade did not take into account his capacity for loss.

- He was led to believe that he was taking a medium level of risk with his investment, when in fact he was taking a high risk. He said that although he may have been given 'some of the risk warnings', Equitrade failed to make sure he understood them. Mr W also said that he did not understand at the time how trading on leverage exposed him to potentially significant losses with small movements in price, and had he understood, he would not have accepted this level of risk.

- Equitrade executed numerous trades with the sole intent of generating commissions for it. Equitrade did not explain to him the impact the commissions would have on his investment and, had he known, he would not have gone ahead.

Mr W therefore claimed the losses he sustained during the period Equitrade were advising him, 8% interest on that sum and compensation.

Equitrade looked into Mr W's complaint, but didn't think it had done anything wrong.

In short, it said that its advice to Mr W to invest in CFDs was in line with his investment objective of capital growth and in line with his attitude to risk. His financial circumstances at the time were such that he was able to financially bear the related risks.

Mr W didn't agree and so the complaint was referred to this service.

One of our investigators looked into the complaint. He didn't agree the complaint should be upheld. His efforts to investigate the complaint were hampered by Equitrade's failure to provide this service with any of its documentary evidence. In order to reach a fair and reasonable conclusion, in addition to Mr W's testimony, the investigator also obtained:

- A fact find with Mr W from a different complaint about similar trading with a different firm that post-dated by around a year the events giving rise to this complaint about Equitrade.

- Information obtained by S in the course of it establishing whether CFD trading was appropriate and opening an account for him, as well as a statement of trading.

- The final response letter from Equitrade.

The investigator concluded that the information he had obtained from third party sources corroborated the statements which Equitrade made in its final response letter – particularly in relation to Mr W's knowledge of investments and trading, and his financial background. He considered this information contradicted the claims Mr W had made in his complaint, for example that he had no investment experience. And he concluded that, when taking everything into account, investing in CFDs in 2015 was suitable for Mr W. He did not uphold the complaint.

Mr W disagreed. He said:

- It wasn't fair that the investigator took into account evidence which had not been provided by Equitrade. In any event, he had no recollection of the fact find with the other firm and could not be sure he had ever seen it or approved it. He did not accept the contents were accurate. He said that as the fact find was completed over a year after he was advised by Equitrade, it was taking into account experience which he had not yet matured in 2015. He also did not accept that the financial circumstances as detailed in that fact find were accurate.

- The only reason he began trading with Equitrade was a result of a cold call and a home visit by a representative. At that point 'he agreed to a trial run on the markets', and he was initially provided with advice on daily trades. Whilst these seemed profitable at first, losses began to build and became unmanageable – it was at this point that he stopped trading.

As agreement couldn't be reached, the case was passed to me to consider.

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 should start by explaining to Mr W that the rules which govern this service set out what evidence I can take into account when deciding what is fair and reasonable. DISP 3.5.8 explains that I am able to include evidence that would not be admissible in court and evidence from third parties (3.5.12).

For these reasons I'm satisfied it was right for the investigator to have taken into account, when deciding how persuasive Equitrade's final response letter was, the information which S obtained at the time Mr W opened his account with it, as well as the fact find which was carried out a year later with a different firm.

Equitrade has failed to provide this service with any information in relation to the complaint, over and above the final response letter which it sent to Mr W. It has not responded to the investigators many requests for information. But this failure doesn't change my overall remit, which is to decide based on all the available evidence, what's fair and reasonable in the circumstances of this complaint. This means, in my view, that if Mr W received suitable advice in 2015 from Equitrade, then it wouldn't be fair to uphold his complaint and award compensation simply because Equitrade has not provided the information this service has asked for.

Instead, I'm required to consider all the evidence in order to decide whether Equitrade acted fairly and reasonably when advising Mr W to invest in CFDs. For the avoidance of doubt, this evidence also includes Mr W's testimony which he set out in his detailed letter of complaint to Equitrade.

My starting point when looking at Equitrade actions is COBS 9.2, 'Assessing suitability'. Before deciding to advise Mr W to invest in CFDs, Equitrade was required to satisfy itself that this type of investment:

- Met Mr W's objectives;
- Was in line with Mr W's ability to financially bear any related investment risks, consistent with his objectives above;
- Was in line with Mr W's overall experience and knowledge, to the extent that he would be able to understand the risks involved.

I accept Mr W's representative's submissions that CFDs are generally considered to carry a higher risk of capital loss than other investments and that, as such, they are not usually going to be suitable for the majority of retail investors. So in the absence of any evidence from Equitrade, I've had to consider Mr W's circumstances at the time of the advice by relying on his testimony and any other evidence available. In doing so, there are a number of areas where I consider the evidence contradicts, or undermines, some of the statements Mr W made in his complaint:

- Mr W claimed in his complaint to Equitrade that he had no investment experience in 2015 when he was advised to invest in CFDs, but I'm not persuaded. I say this because:
    - The account opening documentation from S shows he registered as its client in 2011 – so Mr W must have had some investment experience.
    - His financial circumstances as confirmed by S show that he had substantial investments.
    - The appropriateness assessment which was carried out, most likely a second time, in 2017 showed that he had at least 5 years trading experience.
    - The fact find which was completed with a different firm in 2016 showed he had experience of investing in CFDs, spreadbetting, high risk investments and mainstream investments.
- Mr W said he had no experience in CFDs or spreadbetting. But here too, the evidence appears to contradict his testimony. The appropriateness assessment indicated he had 5 years trading experience, including leveraged products. And it suggested that he traded on average 38 times a year. The fact find from 2016 also

indicates that he had significant trading experience, including ten years plus in CFDs and spreadbetting which would predate his arrangement with Equitrade.

- Mr W claimed that he could not afford to invest so much of his money in something so high risk. He says he invested £100,000. But in looking at his trading statement from S, I'm not persuaded he ever did invest that much money while he had an arrangement with Equitrade. I can see that between June 2015 and June 2016 he deposited £17,042.26. And I can then see that there were a number of share sales which overall netted just under £40,000 (net of profits and losses). I've not been provided with sufficient evidence or explanations around these shares sales – for example, whether these were shares which Mr W already owned and chose to sell in order to fund his account, or something else. But overall, I've seen insufficient evidence that he deposited £100,000 with Equitrade.

- Connected to this, Mr W also claimed that Equitrade did not take into consideration his capacity for loss nor his overall best interests. But here too, I'm not persuaded. From the evidence I've seen, Mr W's financial circumstances at the time showed that he broadly had:

    - As of 2015, over £1,000,000 in savings and investments, with income after tax of £4,000 per month and disposable income of around £2,500 (the details S had on file).

    - The fact-find in 2016 said he had £80,000 bank deposit, pension worth £400,000 and other investments worth £500,000.

    - The final response letter from Equitrade says that he had savings and investments worth around £750,000.

- To my mind these figures are all broadly consistent. Given that these figures come from separate sources and appear to corroborate what Equitrade said in its final response as well, I'm satisfied on balance that this was broadly Mr W's financial position at the time of his arrangement with Equitrade. Overall, given this background, I'm satisfied that Mr W could afford to invest a proportion of his liquid assets into something high risk, like CFDs. I say this because in my view, the evidence shows that Mr W was able to financially bear the invested related risks of trading CFDs without materially impacting his lifestyle.

Mr W has also claimed that he was unhappy that Equitrade misled him as to the amount of risk trading CFDs would involve, and had he understood the risks, he wouldn't have gone ahead. But I'm not persuaded by his evidence.

I've taken into account Equitrade's failure to provide a business file in this case beyond the final response letter. But I've also taken into account the likelihood that Mr W would've seen risk warnings both when signing up to Equitrade's terms and when opening and accessing his account with S. Based on this service's experience of these types of cases, I think it's likely that Mr W would have seen risk warnings around this type of trading that would've alerted him to the fact that he was being advised to invest in something which carried a high risk of capital loss.

Given that, as I've said above, I'm persuaded Mr W did in fact have existing investments, and in my view had been investing for some time, I'm satisfied he would've appreciated that there was a strong likelihood that he would lose some, or possibly all, of his invested capital.

The question is whether Mr W wanted to take such a level of risk. In reaching my view on this issue, I’ve taken into account Mr W’s behaviour in June 2016. In my view this is relevant because after a year of trading with Equitrade, Mr W had clearly lost a substantial amount of money. At this point not only was he aware of the risks of trading CFDs, but he had experienced those risks. And yet Mr W did not cease trading and withdraw his capital altogether – he changed firms. In my view this shows that Mr W was happy to take this level of risk, despite being disappointed with the performance of Equitrade’s strategy. And so for these reasons, I’m persuaded Mr W was willing to expose his money to this level of risk when he was advised by Equitrade.

Finally Mr W also claimed that the commissions and the impact they would’ve had on his investment weren’t fully explained to him. He claims that if he’d understood how these commissions would’ve impacted his investment, he wouldn’t have gone ahead. But I’m not persuaded. Ultimately, it’s clear to me that after a year of trading with Equitrade, he continued to be happy to invest money in an advisory CFD trading service. And on balance, given my experience of these cases, I’m persuaded that it’s likely his arrangement with Equitrade would’ve been the same, or very similar, to the subsequent arrangement he signed and agreed to with another firm in June 2016. In my view, if the level of commissions being generated by Equitrade had been a cause for concern or something which would’ve convinced him not to continue, he would not have signed up with another firm. I’ve seen insufficient evidence, based on the trading statement alone, that Equitrade churned Mr W’s account with the only intention of generating commission and not placing suitable trades.

Taking all the information I have into account, I’m persuaded that Mr W was able and willing to invest in CFDs with a portion of his liquid assets, be that cash and/or the sale of some shares. Given the evidence available, I’m persuaded that Mr W was both financially able, and willing, to take a high risk with his money in order to pursue the potentially higher rewards which trading CFDs can bring. I’m persuaded that his desire to continue trading, with advice, beyond the end of his arrangement with Equitrade, is evidence of this. And I’m satisfied he had the necessary experience and knowledge to understand the investment related risks involved in trading CFDs.

So for all these reasons, I don’t uphold this complaint.

My final decision

My final decision is that I don’t uphold Mr W’s complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr W to accept or reject my decision before 16 September 2022.

Alessandro Pulzone
Ombudsman