

## **The complaint**

Mr S complains that he was given unsuitable investment advice by Trade Facts Ltd (trading as Galvan at the time) to invest in Contracts for Difference (CFDs). He says that his advice caused him a financial loss.

I refer to 'Galvan' and, where relevant Trade Facts, throughout this decision

## **What happened**

In September 2015 Mr S opened a CFD trading account on advice from Galvan. Galvan recommended trades until around April 2016, when his balance was too low to continue trading.

In November 2020 Mr S complained. In short, he said he had been given unsuitable advice to invest in CFDs, and the risks weren't properly explained to him. Galvan looked into his complaint, but didn't agree it had done anything wrong. It said that the CFDs which were recommended were in FTSE100 companies, and Mr S would've needed to agree to each trade. It said that client accepted the commissions and charges it levied, and these were clearly explained. It said that the high risks of trading CFDs were explained to Mr S and he accepted those risks.

Mr S remained unhappy and referred his complaint to this service.

One of our investigators looked into Mr S's complaint, and thought it should be upheld. In short, she said that at the time Mr S clearly had limited investment experience – and only in shares and bonds. She said that this experience would not have given Mr S the knowledge he needed to understand the risk of this type of trading. Furthermore, she considered that Mr S's attitude to risk wasn't in line with the risk that trading CFDs represented. She considered the fact that even though Galvan described CFDs as 'limited risk', Mr S still initially declined to go ahead. He only did so having received additional communications from Galvan.

Galvan didn't agree. In short it said:

- Although Mr S declined to open his account in 2013 – he requested 5 reports from Galvan until he agreed to invest in CFDs in 2015.
- It didn't 'constantly' approach Mr S – as above, Mr S requested reports which would also have required him to agree to being contacted by Galvan.
- As Mr S had previous experience investing in stocks it believed he had enough knowledge to be aware of the risk he was willing to take when investing in CFDs. As Mr S had chosen a 'medium-low' attitude to risk, his account was capped at £96,250 which was 25% of his liquid assets.
- It also didn't agree with the compensation the investigator had recommended. It said that the 'proposed compensation calculation is incompatible with the product that Mr S was trading'.
- It said that Mr S traded for almost a year without ever raising a complaint, even though he would have needed to give his consent to every trade that was placed on

his behalf. It said that for someone who was active as Mr S on the account, if he had had concerns about the performance, he would have ceased trading or raised queries.

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.

Having done so, I've reached the same conclusions as the investigator and for broadly the same reasons.

In September 2015 the Conduct of Business (COBS) rules on suitability explained that firms needed to take 'reasonable steps to ensure that a personal recommendation, or a decision to trade, is suitable for its client' (COBS 9.2.1).

The rules explained that (COBS 9.2.2):

- (1) A firm must obtain from the client such information as is necessary for the firm to understand the essential facts about him and have a reasonable basis for believing, giving due consideration to the nature and extent of the service provided, that the specific transaction to be recommended, or entered into in the course of managing:
  - a. Meets his investment objectives;
  - b. Is such that he is able financially to bear any related investment risks consistent with his investment objectives; and
  - c. Is such that he has the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of his portfolio.

At the time of the advice, Mr S was a 'retired business manager', with an average yearly income of £45,000 – made up of £15,000 investment income and £30,000 pension. He had around £385,000 of liquid assets and said that his attitude to risk was 'medium low'. Galvan said that he had earmarked £5,000 for 'speculative high-risk investment' and that he had been trading shares and bonds for over 20 years.

In looking through the evidence available to me, I'm not persuaded it was fair and reasonable for Galvan to have concluded that trading CFDs was suitable for Mr S. In fact I think it's clear that Mr S had doubts about investing, and the notes from his conversations with Galvan demonstrate this. In 2013 in the space of a month, Mr S tells Galvan the following:

- "trades shares, bought Chemrgin & Go Ahead Group on the back of our recommendation. Mr never heard of CFDs"
- "Mr keen but wants to do a bit of reading up. Sent strategy email. Mr agreed to respond to this."
- "Mr keen but cautious. Med low but lots of liquid cash"
- "Mr still mulling this over, keen but cautious, explain limited risk, mr going to have a think".
- "Mr still thinking, put off by risk. Explained limited risk / activity, mr going to have another think but basically decided against it".

In May 2015, Mr S appears to have requested a report from Galvan – and as part of that, Galvan called Mr S six times between 20 May 2015 and 16 June. The notes show:

- “2<sup>nd</sup> pitch, suit & account open, suggested 5k start. Shown platform, needs to move funds around”
- “Decided against it. Wasted my time. Claims is about time, knows that’s why we provide service we do. Mentioned warnings online. Poss read bad review.”

Eventually in September 2015, Galvan called Mr S again. This time he confirmed that no changes in relation to suitability. Galvan confirmed in its notes that given his risk profile, his account had been limited to 25% of his liquid assets - £96,250. It confirmed that his suitability had been assessed in 2013 and in June 2015, and that by September nothing had changed. A few weeks later, on 29 September 2015, Galvan reduced the commission it was charging Mr S as he had expressed unhappiness about the charges. There was no further comments of note until April 2016, when his balance was ‘too low to trade’.

I acknowledge Galvan’s distinction between ‘cold-calling’ and what it did in this case, which is follow up a ‘lead’ based on someone requesting one of its reports. Equally, when looking at the contact with Mr S, it’s clear to me that trading CFDs was not something he was considering – and not something he felt comfortable with. As late as June 2015 it was clear that Mr S still had misgivings about investing in CFDs – and from his earlier conversations, I’m satisfied the high risk nature of CFD trading was very much the reason he wasn’t interested.

It wasn’t for Galvan to persuade Mr S to do something he wasn’t comfortable doing, or to convince him to take more risk than he was willing to take. And I agree with the investigator that, in addition to this clearly being outside his risk tolerance, Mr S also had no experience in CFDs. He had never traded them – and didn’t even know what they were until he spoke to Galvan. In that regard, it isn’t clear to me how Galvan was reasonably satisfied, by September 2015, that Mr S had the ‘necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of his portfolio’ (COBS9.2.2(c)).

In my view, and as evidenced by Galvan itself, nothing had changed in Mr S’s circumstances. There’s no evidence that he had, since 2013, begun trading CFDs or knew anymore about them. There’s no evidence that his appetite for risk had increased or that he was now comfortable taking a ‘speculative’ risk with his money – in fact the evidence shows that he was still ‘medium low’.

I acknowledge Galvan’s point about the limited risk account being something offered by the broker – but I agree with the investigator that for an investor who had no experience of investing in CFDs, this would also have been confusing. A limited risk account didn’t in reality make this a ‘limited risk’ investment – there was still very much a high likelihood that all of Mr S’s investment would be lost. It simply meant, at the time, that he wouldn’t lose more than his deposit. In my view, the high likelihood that he would lose all of his investment is not what Mr S meant when he explained he had a medium low attitude to risk.

And having looked at Galvan’s own definition of ‘medium low’, I’m satisfied Mr S would not have fully understood what he was being recommended he invest in:

*‘You are a moderately conservative investor who is prepared to accept a small amount of risk. You may have some understanding of investment markets; however you are only prepared to put a limited part of your investment capital in stock market investments’.*

I'm satisfied that this definition would not have clarified to Mr S that these were not stock market investments – they were in fact high risk, leveraged trades, which exposed him to potentially significant fluctuations in the value of his investment, and to exceedingly high commission.

Finally, whilst I acknowledge that Mr S appeared to have significant liquid assets, I think it's important to note that Mr S was not on a particularly high income, and he was retired. That's not to say that an investment of £5,000 was not affordable – but I would've expected Galvan to consider his financial circumstances, his ability to replenish the £5,000 in the event that he lost it all, and what that meant in relation to the suitability of the advice it gave him. I've seen no evidence that this was considered. In my view, had the suitability of investing CFDs been properly considered, this aspect would've made it even clearer that it wasn't fair and reasonable for Galvan to conclude that it was suitable for Mr S to be investing in this type of high risk trading.

Taking all this into account, I'm satisfied that Galvan's decision to advise Mr S to invest in CFDs wasn't fair and reasonable. I say this bearing in mind Mr S's repeated reluctance to go ahead, lack of experience or knowledge about the product, reliance on retirement income and incompatible attitude to risk. This means that Galvan needs to do something to put things right.

### **Putting things right**

In assessing what would be fair compensation, I consider that my aim should be to put Mr S as close to the position he would probably now be in if he had not been given unsuitable advice. I've considered Galvan's comments about this carefully, but I'm not persuaded to change the investigator's proposed redress.

The purpose of the method of redress set out below isn't to replicate the investment Mr S could or would have made at the time had he been given suitable advice. It's to compensate Mr S for the fact that he invested in an unsuitable investment. In other words, I'm satisfied that, with suitable advice, Mr S would have invested differently even if it is not possible to say *precisely* what he would have done differently.

However, it is possible use some assumptions about Mr S from what we know about him at the time. For example, it's clear that Mr S had experience in shares and bonds, and that's what he was predominantly investing in. It's also clear that he had a medium low attitude to risk, which by Galvan's own definition limited the types of investments he ought to have been advised to buy at the time. The purpose here is to, overall, compensate Mr S for the investment he would've made – the fact that the proposed remedy is 'incompatible' with what Mr S was being advised to invest it is because that advice, for the reasons given above, was unsuitable.

Given this information, I am satisfied that what I have set out below is fair and reasonable given Mr S's circumstances and objectives when he invested.

### **What must Trade Facts Ltd (trading as Galvan) do?**

To compensate Mr S fairly, Trade Facts Ltd must:

- Compare the performance of Mr S' investment with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investments. If the *actual value* is greater than the *fair value*, no compensation is

payable.

- Trade Facts Ltd should also add any interest set out below to the compensation payable.
- Pay to Mr S £200 for the distress and inconvenience he was caused by being given unsuitable advice to invest in something which carried a high risk of capital loss – and seeing those losses materialise.

Income tax may be payable on any interest awarded.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
CFD trading account	No longer in force	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	Date of investment	Date account closed	8% simple per year on any loss from the end date to the date of settlement

### ***Actual value***

This means the actual amount paid from the investment at the end date.

### ***Fair value***

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, Trade Facts Ltd should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Any additional sum paid into the investment should be added to the *fair value* calculation from the point in time when it was actually paid in.

Any withdrawal from the Trade Facts Ltd should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if Trade Facts Ltd totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

As an 'end date' I've specified when the account was closed. To be clear, what I intend is for compensation to run until Trade Facts ceased advising Mr S – either because there was no cash to trade with (so the date of the last refund or cash withdrawal), or because his account was closed. Therefore this is the 'end date' that needs to be used when calculating compensation.

### **Why is this remedy suitable?**

I have decided on this method of compensation because:

- Mr S wanted Capital growth with a small risk to his capital.
- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to his capital.
- The FTSE UK Private Investors Income **Total Return** index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is a mix of diversified indices representing different asset classes, mainly UK equities and government bonds.

It would be a fair measure for someone who was prepared to take some risk to get a higher return.

- I consider that Mr S' risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr S into that position. It does not mean that Mr S would have invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker fund. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr S could have obtained from investments suited to his objective and risk attitude.

### **My final decision**

My final decision is that I uphold this complaint. Trade Facts Ltd must pay the compensation I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 21 March 2023.

Alessandro Pulzone  
**Ombudsman**