

The complaint

Mr B complains about the service he was provided with by Fortrade Limited, in particular, that it:

- Pushed him into trading only with Cannabis companies so he didn't diversify his portfolio as he wanted.
- Advised him on what to buy, when to trade and in what direction.
- Didn't apply any risk management to his trading account.
- Stopped him from closing his trading account when he wanted to.

What happened

In October 2018 Mr B completed an online application to enable him to open a trading account so that he could trade Contracts for Difference (CFD). The information he provided is shown in an Account Registration Summary (ARS) sent to him on 24 October 2018. Fortrade allowed him to trade based on the information he had provided. He suffered significant losses through his trading and complained in 2019. In response Fortrade said, in summary, that:

- Mr B traded with more than 50 different instruments so it cannot conclude that he was pushed to trade in only five companies dealing with cannabis.
- Mr B also traded cannabis stocks without any input from his support manager, so it cannot conclude he was pushed into trading with cannabis stocks.
- Mr B wasn't provided with advice but only market information which he based his own decisions on.
- Even if it did provide advice it is his money, his account, and his decision to open the orders.
- Mr B was warned on many occasions that CFD trading carries a high level of risk that he had the responsibility of managing.
- Mr B ignored warnings provided and continued to open positions that were too large and risky for his available margin and his margin level was below 200% being the level the support manager on many occasions said Mr B shouldn't allow his margin to fall below.
- It has found no evidence that the support manager prevented Mr B from exiting trades and closing his account.

One of our investigators considered the complaint and thought that it should be upheld. The main basis for his opinion was that Fortrade hadn't provided an appropriateness warning to Mr B at the outset. Fortrade didn't agree with the investigator and it was referred to me for review.

I issued a provisional decision upholding the complaint. In short, I found that Fortrade hadn't provided an appropriateness warning before Mr B opened his account as it should have done and that if it had provided such a warning it is more likely, than not, he wouldn't have opened his account.

I further found that even if I was wrong about that and Mr B had wanted to go ahead despite the warning, Fortrade would have had to consider whether to open the account in any event and if it had done so would have concluded it shouldn't do so in accordance with guidance provided by the regulator.

I also made additional findings about Fortrade's actions which included that it had; provided advice to Mr B when it wasn't authorised to do so; failed to consider whether Mr B ignoring warnings from the account manager about margin levels was because he didn't know what he was doing rather than due to aggressive trading given he was a novice investor; discussed and encouraged Mr B to borrow money to continue trading in breach of its obligation to act honestly and fairly and in the best interests of the client.

In its response to my provisional decision Fortrade said, for the first time, that it had provided a warning to Mr B on account opening. It relied on release notes relating to an update to its online process in August 2017.

I said to Fortrade that I wasn't satisfied that the information it provided was a record of a warning having been given to Mr B on account opening. Fortrade responded and disagreed saying a warning had been provided on account opening as recorded on its CRM and in the ARS emailed to Mr B.

It provided a copy of what was shown in its CRM system for Mr B and said that this showed that he received a warning at 2.19pm on the 24 October 2018. It said Mr B finished opening his account seven minutes after the warning, as shown in the ARS which shows a time of 2.26pm.

It said that although the process is largely automated it complies with regulatory requirements and that the FCA reviewed the wording and process for its warning and didn't suggest it was deficient.

Fortrade said it wasn't practical or necessary to retain a screenshot of every page viewed by Mr B and many websites require clients to acknowledge or accept warnings or contractual terms and these work on the same basis as its system – in that the client can't proceed to the next stage without acknowledging the warning. So, the fact a client proceeds to the next stage is evidence they acknowledged the warning.

Fortrade said its process is entirely consistent with regulatory requirements and standard market practice in dealing with account opening.

Fortrade made no representations about the additional reason I put forward for why I thought the complaint should be upheld. Namely, that if it had provided a warning on account opening and Mr B had said he wanted to go ahead, it should then have considered whether to proceed, in accordance with the guidance set out at 10A.3.3G, and concluded it shouldn't have gone ahead.

I pointed out to Fortrade that I would still be upholding the complaint on this basis even if a warning had been provided. It was only at this point that it provided any response on this issue.

In summary it said the following:

- The rules are clear, 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.
- It did carry out an evaluation as to whether to provide a service to Mr B, contrary to

what the ombudsman indicated, and concluded that it would provide him with a service.

- As a matter of principle Fortrade considers a lack of experience alone is not a good reason to refuse to provide a customer with a requested service.
- It accepts there might be circumstances where it should not provide a service, such as to a vulnerable customer or someone in obvious financial difficulty, but lack of prior experience alone doesn't mean it shouldn't provide a service.
- It recognises that the ombudsman isn't bound by precedent but cannot understand how or why he would take a position which is so directly in contradiction with both the regulatory regime and the many previous ombudsman decisions on this point.

Fortrade also provided excerpts from several decisions of our service in support of its argument.

I then issued a second provisional decision. In short I made the following key findings:

- The inconsistent information and explanations Fortrade has provided and its inability to provide a simple record of the warning it says was given to Mr B on account opening makes it difficult to accept what it has said about the process in place when he opened his account.
- If I accept the release notes show the process in place at the time this would indicate a warning was given which would tie in with the reference in the ARS if I ignore what Fortrade has previously said.
- Even if I accept Fortrade's process meant Mr B was provided with an appropriateness warning on account opening I am not satisfied it did what it should have done in relation to that warning.
- Fortrade's process made it as easy as possible for client to proceed to open an account in contrast to what the FCA said should happen in its review of June 2017.
- Given the clear direction from the FCA and the significant risk from CFD trading I am not satisfied Fortrade acted fairly or in Mr B's best interests in allowing him to open an account and trade CFDs simply by ticking a box next to the warning generated.
- Even if Mr B had still wanted to go ahead I still think the complaint should be upheld because I don't think Fortrade should have proceeded to open an account in any event for the reason explained in my first provisional decision.
- The FCA made clear that firms should have a process in place to decide if they should proceed where an appropriateness warning has been given and the client still wants to go ahead. Fortrade has now said it did evaluate whether to allow Mr B to open his account but has previously said it has no such process and I am not persuaded that it did evaluate whether it should provide a service to Mr B.
- It is more likely than not its process is automated and that once Mr B ticked to confirm he had seen the warning he could proceed to the next stage of the account opening process.
- Fortrade should have considered whether to provide a service to Mr B that allowed him to trade CFDs, in accordance with COBS 10A.3.3G. If it had done so and had regard to what the FCA said in its review it is difficult to see how it could reasonably have concluded that it should provide a service given his complete lack of any relevant experience.
- At best Mr B had no previous experience of products such as CFDs at worst he had no investment experience and in the circumstances in allowing him to open an account to trade CFDs Fortrade failed to act in his best interests or treat him fairly.
- Fortrade has said nothing about my findings about what the FCA said in its Dear CEO letter and subsequent review or sought to explain how allowing clients with no previous experience to trade CFDs in in accordance with what the FCA said.

I again gave the parties the opportunity of responding and providing further information or argument they wanted me to consider. Mr B had nothing further to add. Fortrade still didn't agree with my findings.

It said that my decision turned on it not having conducted the required appropriateness assessment and if it had done so it would not reasonably have concluded it should provide a service to Mr B. It said there was no basis for me reaching such a decision. It said that it did carry out such an assessment but even if it hadn't it was wrong to conclude it would not have allowed Mr B to trade due to its lack of experience.

It said it would never turn down a client solely due to lack of experience and it doesn't see why this alone should be a reason a client shouldn't access its services. It said that is the approach across the sector and accepted in dozens of previous ombudsman decisions. It said as such the decision is unfair, incorrect, and irrational.

I pointed out to Fortrade that once again it had failed to address my findings about what the FCA had said clearly set out in both provisional decisions. It then, in short made the following points:

- The brief statement made by ESMA as quoted by the FCA about clients who fail the appropriateness test is a general observation about best practice where clients don't meet the appropriateness test.
- There will be occasions when clients don't meet the appropriateness test for reasons other than a lack of experience where Fortrade may decide not to allow the client to proceed to open an account.
- But it is not prevented from opening an account either by what the FCA has said or by COBS 10A.3 just because a client doesn't have experience.
- The statement by ESMA is directly contradicted by COBS 10A, by MiFID and by other answers ESMA gave on the subject.
- The regulatory regime allows that a service that isn't appropriate for a client may still be provided to the client. If that wasn't the case a whole section of COBS 10A would be rendered otiose.
- What is the purpose of the appropriateness warning if it was never permissible to provide the service?

Fortrade also said that it had previously referred to the supervision visit from the FCA in 2016 and there was a further visit in May 2017 when no issue about its process was identified.

It also referred to other ombudsman decisions which confirmed firms could provide a service after an appropriateness warning.

In light of its further arguments I issued a further provisional decision the findings from which are set out in full below:

Findings from third provisional decision

"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 and considered carefully what Fortrade has said about my second provisional decision, I am not persuaded I should change my findings. I still think this complaint should be upheld for the reasons I have previously set out in my provisional decisions.

I think it is important to make clear that my findings are made on a balance of probabilities, what is more likely than not, based on the evidence provided by the parties. How much weight to give to any piece of evidence is a matter for me to decide, but generally contemporaneous documentary evidence is more likely to be persuasive as to what happened or didn't happen.

The first issue is whether Fortrade provided an appropriateness warning on account opening as it should have done. Fortrade's explanation as to what happened has been inconsistent and changed over time. I have already made reference to this in my provisional decisions but I set out the contradictory and inconsistent information Fortrade has provided below.

In an email to the investigator dated 9 August 2021 before he provided his opinion it referred to what it said were the appropriateness warnings sent to Mr B in November and December 2018 and stated:

"Although the appropriateness assessment took place following the account opening, the appropriateness warning was sent in a very early stage in relationships and, importantly, at a point where (Mr B) had not suffered any loss."

This made it very clear that the appropriateness assessment took place after the account was opened. The investigator thereafter gave his opinion and Fortrade disagreed with his finding that it failed to provide an appropriateness warning as required by the rules. In its

response it argued that it had given such a warning and said that this was sent to Mr B on two occasions referring again to the communications sent to Mr B in November and December 2018. It argued there was nothing in the wording of COBS 10A.3 that suggested the warning could only be given before the service was provided.

The matter was then referred to me and I asked Fortrade what the reference to an appropriateness warning in the ARS meant, given it had said the earliest appropriateness warning it had given Mr B was 16 November 2018. It told me this referred to an educational email sent to Mr B before his account was verified. It did not suggest that this referred to an appropriateness warning given on account opening. It said ideally that the appropriateness warning should be given prior to clients beginning to trade but that the warning it had given was still given at a very early stage of the relationship.

So, at the point of my first provisional decision Fortrade's evidence very clearly indicated that it had not provided an appropriateness warning on account opening. Instead it made clear that the warning was provided later and sought to argue that this was still compliant with the requirements of COBS 10A.3.

It was only in response to my first provisional decision that Fortrade said that an appropriateness warning had been given on account opening as part of its process. However, the only evidence it provided in support of this significant change in its explanation of what happened, were release notes relating to changes to its systems as of August 2017. It provided no evidence specific to Mr B's opening of his account in October 2018.

Fortrade's current position is still that its process would have provided an appropriateness warning based on the information Mr B provided as recorded in the ARS. However, despite me identifying the limitation of the release notes from August 2017 that it relies upon, it has not provided any additional evidence to support its argument.

I acknowledge that those release notes indicate that an automatic appropriateness warning will be generated when the client provides certain information on account opening. Based on the information Mr B provided on account opening – namely that he had no previous online

trading experience in CFDs or any other products – the release notes suggest a warning would have been generated.

However, I have to balance what Fortrade has now said happened and the very limited evidence it has provided in support of this – consisting only of release notes from over a year before Mr B opened his account – as against the information it provided in response to the investigator's opinion and to the questions I asked it before I issued my first provisional decision - which are not consistent with what it now says.

It has still not provided any evidence from the time Mr B opened his account to show he was provided with a warning on account opening. This might not be such an issue if it had provided consistent information, but it is an issue in this complaint, given this isn't the case and Fortrade has provided inconsistent information about what happened, as set out above. I think this inevitably impacts the weight given to the evidence it now relies upon.

In accordance with COBS 10A.7.2(EU) – now COBS 10A.7.2(UK) as of 1 January 2021 – Fortrade was required to maintain a record of; the result of the appropriateness assessment; any warning given to the client; whether the client asked to proceed despite the warning; where applicable, whether the firm accepted the client's request. Given Fortrade now says a warning was given on account opening it should have a record of this as required by the above rule, as I pointed out to it. However, it has provided no such record in support of its position.

In the circumstances the release notes from 2017 don't provide persuasive evidence that Mr B was provided with a warning at the time he opened his account in October 2018.

Even if I am wrong about that and the warning shown in the release notes had been given to Mr B on account opening, I think the warning fell short of what the FCA expected from such a warning. The risk warning shown in the release notes, states:

"Based on the information supplied in the Financial Questionnaire regarding your trading experience we consider that CFDs are not appropriate products for you."

COBS 10A.3 does not specify the wording to be used for the risk warning. However, I noted in my second provisional decision that the FCA's review of appropriateness assessments for sales of CFD products in June 2017 included the following guidance to firms as to how an appropriateness warning should be given:

"In line with ESMA Q&As, risk warnings should be designed to interrupt the application process. They should use clear language to communicate that a specific product or service is not appropriate for the applicant because the applicant's answers lead the firm to the view that the applicant does not have the knowledge and experience to properly understand the risks involved, with a clear recommendation against proceeding with the transaction.

As such, when presenting a risk warning, applicants should not be asked to confirm an intention to proceed with a transaction as the next step in the application process. Examples of good practice in this regard include implementation of a mandatory cooling off period after the risk warning and/or requiring the applicant to submit or respond to a separate communication in which they must acknowledge the risk warning, such that they do not have the option to proceed immediately."

From the information that I have seen the warning that was provided through the account opening process that Fortrade rely upon, failed almost entirely to apply any of what is referred to by the FCA as set out above. The only part of what the FCA had said which it could be argued Fortrade followed is that the warning was in clear language.

There was no recommendation not to proceed and all the client had to do to move on to the next stage of the application process was to tick the tick box next to the warning. Rather than the risk warning interrupting the application process, as the FCA suggested should be the case, Fortrade's process made the warning another simple step in the process.

I think there is a very clear contrast between Fortrade's process and the FCA's expectations as set out in the review. The FCA made clear its concern that where clients can easily override the risk warning a high proportion of clients then enter into CFD transactions. In other words, the easier the process the more likely it is that clients, for whom CFDs are not appropriate, proceed despite the warning.

Fortrade's process made it very easy for clients to override the risk warning. There is a significant difference between a warning popping up as part of the account opening process - with only completion of a tick box needed to proceed with account opening - and a warning popping up with a recommendation not to proceed and with time to consider that.

If Fortrade had applied the steps that the FCA indicated should be in place when providing a warning I think it is more likely than not Mr B would have decided not to go ahead.

I note what Fortrade has said about being visited by the FCA in 2016 and 2017 and of it being satisfied with its process. Fortrade has provided no evidence in relation to those visits on which I could base any findings relevant to this complaint. Whatever happened on those visits, the FCA provided clear guidance in its Dear CEO letter and subsequent review as to what it expected firms to do and the process that Fortrade had in place fell far short of what was expected in my view.

Even if the warning was given and there was nothing wrong in the way this was given I am still of the view this complaint should be upheld on the basis Fortrade shouldn't have allowed Mr B to open his account in any event.

Fortrade has made various points about the findings I have made on this point in my previous provisional decisions.

It suggests that the quote from ESMA that the FCA set out in its June 2017 review was a general observation about best practice where a client doesn't meet the appropriateness test. However, the quote from ESMA specifically refers to 'CFD and other speculative products' whereas the appropriateness rules are not limited to such products. So, I am not persuaded it was a general observation about best practice.

Furthermore, even if it could be said the quote itself was a general observation by ESMA, that isn't the context in which the FCA used it, given they set out the quote specifically in relation to their review of CFD products. In the circumstances I think it is reasonable to find that the FCA intended that firms take note of what ESMA had said specifically in relation to CFD products.

Fortrade has suggested that the quote from ESMA is directly contradicted by the rules, MiFID and other answers provided by ESMA. Fortrade has not directed me to any statement by ESMA. It has referred to the quote being contradicted by COBS 10A, but it has not explained why and I am not aware of any such contradiction. It has also not explained in what way the quote contradicts anything in MiFID or other statements made by ESMA. In the absence of any explanation as to how the quote is contradictory I am not persuaded there is any such contradiction.

Fortrade has suggested that if it wasn't possible to provide a service after providing an appropriateness warning it would render part of the rules otiose and has questioned what the purpose of the warning is if it isn't possible to provide a service after a warning.

But, as I have already pointed out, the FCA's review specifically relates to CFDs and that is the context in which the quote from ESMA is referred to by it. The rules aren't limited to CFD, so in the circumstances I am not satisfied that it can be reasonably be argued that part of the rules would be rendered otiose if my findings stand.

Fortrade has said that it isn't prevented from opening an account that it has determined isn't appropriate just because someone had no previous investment experience. This seems to suggest that if there is nothing in the rules that specifically prevents it from doing something it will have done nothing wrong.

However, as it knows, its obligations aren't limited just to what the rules specifically say it can and cannot do. As COBS 2.1(1) makes clear it must act honestly, fairly, and professionally and in the best interests of its clients. In doing so it should have regard to what the FCA has said in relation to the rules, including what it has said through its CEO letter and review.

Fortrade now says that it did give consideration as to whether, or not, to open an account for Mr B - in accordance with COBS 10A.3.3(G) - before deciding to do so. However, it has previously told me this was not part of its process and has provided no evidence to support what it now says. In other words, there is nothing in the evidence it has provided that suggests that it gives consideration to whether it should open an account for a client who has been given a warning and ticks the box in the online application next to the warning. In the circumstances I am not persuaded that at the time of Mr B opening his account there was any consideration by Fortrade as to whether it should open an account for him.

I think it is more likely than not that Mr B's account was opened by Fortrade based on the information he provided and without any consideration by it as to whether it should open the account. As such I think Fortrade failed to follow the guidance in the rules and the direction provided in the FCA's Dear CEO letter.

I have considered what, more likely than not, would have happened if Fortrade's process had included it considering whether it should open the account. If it had considered this in the light of what the FCA had said in its review of 2017, as I think it reasonable to have expected it to do, it is difficult to see how it could have concluded it should open the account. Fortrade has said that Mr B's lack of experience in CFD wasn't a reason not to do so. But it has not explained how such a decision would have been consistent with what the FCA said in the review.

I acknowledge however, that the quote from ESMA that the FCA refers to in the review talks of 'best practice' rather than acting in the 'best interest' of the client as set out in COBS 2.1.1R. And Fortrade may argue that whilst it may not have followed the best practice approach that ESMA suggested this doesn't of itself mean it did something wrong. So, I have considered further the merits of Fortrade's argument that there was nothing wrong with it opening an account for someone in Mr B's circumstances.

Fortrade accepts that there may be circumstances where it should not provide a service, such as where a client is vulnerable or in financial difficulty. However, it argues that a lack of previous experience of the product involved doesn't mean it shouldn't provide a service.

I think it is worth noting that I have seen nothing in the evidence Fortrade has provided to me that shows that its onboarding process would identify a client that was vulnerable or in

financial difficulty. So, whilst it has accepted that it shouldn't necessarily open an account for a client in that position, it seems to have had nothing in place that would have identified there was an issue or have stopped the opening of an account for such a client.

That aside Fortrade's argument is that just because Mr B didn't have experience of CFD this wasn't a reason for it not to open the account. But even if I accepted that a lack of experience in CFD wasn't a reason not to open an account, I think there is a difference between a client in that position and a client who has no investment experience at all.

Fortrade's online account opening process requires clients to provide any information about experience in FX, CFD, or any other online trading experience. From what I have seen it doesn't ask about any other kind of investment experience. So, it appears that Fortrade doesn't have any way of establishing whether a client might be a complete novice in investments.

Based on the information that it obtained about Mr B, all Fortrade could safely conclude was that he had no experience in CFD, FX or online trading of any sort. It didn't know if he had other investment experience as it didn't ask for that information. In the circumstances it had no way of knowing whether he was a novice investor with no previous experience of investment – which is what Mr B has said was the case at the time.

I don't accept that if Fortrade had considered whether it should open an account for a client to trade in high risk speculative CFD it could reasonably have concluded that it should do so for a client who was a novice investor, not just in CFD but in investments overall.

Furthermore, I also think this complaint should be upheld regardless of the findings I have set out above for the other failings by Fortrade set out in my first provisional decision. These were, in short; it gave advice it wasn't authorised to provide; failed to consider that the numerous margin breaches were because Mr B didn't know what he was doing and take action accordingly; had discussions with Mr B about borrowing money to improve his liquidity/trading. I think these actions by Fortrade mean it failed to act honestly, fairly and in the best interests of the client, in breach of COBS 2.1.1(1)R.

In summary, based on the evidence and information provided, my findings are:

- Fortrade didn't provide a warning that CFDs were not appropriate for him when he opened his account as it should have done.*
- If I am wrong about that and it did provide a warning on account opening the warning wasn't given in the way the FCA said this should be given, in that it didn't recommend that he not open the account and didn't give time for him to consider that before opening the account.*
- If it had provided a warning in the way it should have done it is more likely than not Mr B wouldn't have opened his account.*
- If a warning had been given in the way it should have been and Mr B wanted to open his in any event then Fortrade failed to consider whether it should let him do so, as it should have done.*
- If it had considered this it could not reasonably have concluded that it should open an account for Mr B taking into account what the FCA said in its review.*
- In any event it could not reasonably have concluded that it should open an account that allowed Mr B to trade in high risk speculative CFD when he was a novice investor.*
- There are, in any event, further failings by the firm which mean this complaint should be upheld.*

I think it is fair and reasonable to uphold this complaint and award the redress set out below to Mr B in all the circumstances.”

I gave the parties the opportunity of responding to my further provisional decision. Mr B agreed with it but Fortrade didn't. It repeated that it had not treated Mr B unfairly and that he wanted to open an account and it was clear he was capable of understanding the risks involved in trading a CFD account. It said that the way he operated his account demonstrated that he knew what he was doing and that he was quite capable of managing the associated risks and that he lost money because of his increasing risk appetite.

Fortrade also said that it didn't accept it had failed to comply with the relevant regulatory requirements and that it had a clear account opening process. It said that whilst some of this was automated it was nonetheless fully compliant and was confirmed as such in a FCA visit. It said it was wholly unfair for it to be required to reimburse the losses sustained by Mr B as a result of his decision to deploy an increasingly risky trading strategy.

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.

Fortrade has provided no new information or evidence in response to my third provisional decision and as such there is no basis for me changing the findings that I made in that decision. So, I still think this complaint should be upheld and Fortrade should pay redress to Mr B for the reasons I have already set out in my third provisional decision, and in those prior where my findings have not changed. However, I will briefly comment on the points that Fortrade has made in its response.

Fortrade refers to Mr B wanting to open an account, but this has never been in issue and that does not mean he would have gone ahead if Fortrade had done what it should have done so far as the appropriateness warning is concerned. For the avoidance of doubt my conclusions are, as summarised in my third provisional decision, that:

- Fortrade didn't provide a warning that CFDs were not appropriate for Mr B when he opened his account, as it should have done in accordance with COBS 10.A.3R.
- If I am wrong about that and it did provide a warning on account opening the warning wasn't given in line with the way that the FCA indicated this should be given - in that it didn't recommend that he not open the account and didn't give time for him to consider that before opening the account in accordance with the guidance in the FCA's 2017 review of appropriateness assessments for CFD products.
- If Fortrade had provided a warning in the way it should have done it is more likely than not Mr B wouldn't have opened his account.
- Even if a warning was given in the way it should have been and Mr B wanted to open his account in any event then Fortrade failed to consider whether it should let him do so, as it should have done in accordance with COBS 10A.3.3G and what the FCA said in its Dear CEO letter of 2016 about firms not having a process in place for this.
- If it had considered whether to open an account for Mr B it could not reasonably have concluded that it should do so taking into account his circumstances and what the FCA had said in its June 2017 review.
- In any event it could not reasonably have concluded that it should open an account that allowed Mr B to trade in high risk speculative CFD when he was a novice investor.
- There were in any event further failings by the firm which means this complaint should be upheld. In short Fortrade; gave advice it wasn't authorised to provide;

failed to consider whether the numerous margin breaches were because Mr B didn't know what he was doing and take action accordingly; had discussions with Mr B about borrowing money to improve liquidity/make trades. I think these actions mean that Fortrade failed to act honestly, fairly and in the best interests of the client, in breach of COBS 2.1.1(1)R.

On that basis I think it is fair and reasonable to uphold the complaint and award the redress set out below to Mr B taking into account all the circumstances.

Turning back to the Fortrade's response to my third provisional decision, it has said that it was clear that Mr B was capable of understanding the risks involved in a CFD trading account.

If it is suggesting that Mr B's understanding was clear to it at account opening then I don't think this is supported by the available evidence. The information Mr B gave Fortrade about his previous experience showed he had not previously traded CFDs or carried out any other online trading and he was not required to provide any information about any other investment experience. In the circumstances I am not satisfied that Fortrade could reasonably have concluded that Mr B was capable of understanding the risks of trading CFDs based on the information it obtained on account opening.

If Fortrade is instead suggesting that the trading Mr B carried out after he opened his account shows he understood the risks then I don't agree. In my first provisional decision I explained why I thought the evidence relating to Mr B's trading suggested that he didn't understand what he was doing and I am still of the same view. In short, having listened to various telephone calls between Mr B and his support manager I thought it was more likely than not that he ignored what he was told about margin trades and - in Fortrade's words - traded 'aggressively' because he didn't know what he was doing. I gave various examples from the telephone calls I had listened to which I thought supported my finding on this and Fortrade has provided no information or evidence that persuades me I am wrong.

Fortrade has again said that it doesn't accept that it failed to comply with the relevant regulatory requirements but has provided no new evidence or information that would lead me to change the findings in my provisional decisions as to what it did wrong.

It has also said that it is wholly unfair for it to have to reimburse losses Mr B sustained from his decision to employ an increasingly risky trading strategy. However, he only sustained those losses because Fortrade opened an account for him which I don't think would have been opened if it had done what it should have done.

For the reasons I have set out at length in my provisional decisions, and in the decision above, I am satisfied my conclusions are fair and reasonable. Therefore I uphold Mr B's complaint and award the redress set out below to Mr B for the reasons set out above and in my provisional decisions.

Putting things right

In assessing what would be fair compensation, I consider that my aim should be to put Mr B as close to the position he would probably now be in if Fortrade had treated him fairly and complied with its obligations under COBS and the FCA Principles.

I am mindful that Mr B has asked only for repayment of the money he put into his account. I also take note that he has referred to using his savings. In the circumstances I am not satisfied that it would be appropriate for redress to be based on a comparison with a benchmark as I am not satisfied Mr B would have invested in something else instead.

I think redress should be awarded on the basis that the money Mr B put in his account would have remained as savings and he would have earned interest on this money. Looking at interest rates for deposits where Mr B was a resident at the time in question, I think an interest rate of 0.5% is reasonable.

So, Fortrade should pay to Mr B the money he paid into his trading account less the withdrawals he made but with interest at 0.5% from the date each payment was made into his account to the date of settlement.

In addition, I think Mr B has suffered some distress and inconvenience as a result of losing a large part of his savings. He has referred to suffering ill-health as a result. He has not provided any evidence of this, but I have no doubt he will have been caused distress as a result of losing his savings. I think an award of £500 is appropriate for this.

My final decision

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £160,000, plus any interest and/or costs that I consider appropriate. If I consider that fair compensation exceeds £160,000, I may recommend that Fortrade Limited pays the balance.

Determination and award: I uphold the complaint. I consider that fair compensation should be calculated as set out above. My final decision is that Fortrade Limited should pay the amount produced by that calculation up to the maximum of £160,000 (including distress and/or inconvenience but excluding costs) plus any interest set out above.

Recommendation: If the amount produced by the calculation of fair compensation exceeds £160,000, I recommend that Fortrade Limited pays Mr B the balance plus any interest on the balance as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 2 August 2022.

Philip Gibbons
Ombudsman