

## The complaint

Mr P's complaint is about the way FXBFI Broker Financial Invest Ltd ("FXBFI") sold contracts for difference ("CFDs") to him.

## What happened

The details of this complaint are well known to both parties so I won't repeat them at length here. The facts are not in dispute, so I'll focus on giving my reasons for my decision.

In summary, Mr P saw an advert about buying some shares in an online retailer. He expressed his interest and received a telephone call from FXBFI within minutes. Over the course of the next month he received numerous phone calls from FXBFI and transferred over £125,000 to them.

Our investigator said FXBFI should refund all of the money Mr P deposited with them, with interest. And she said they should pay £500 for the trouble and upset caused. FXBFI didn't agree – they said Mr P should have been aware of the risks, which were set out in the terms and conditions. And they said he'd passed their questionnaire and their assessment to become a professional client.

## 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 agree with the conclusions reached by the investigator for these reasons:

- FXBFI have said Mr P should have been aware of the risks of trading CFDs because they were written in the terms and conditions. Whilst I can see there were warnings in the paperwork that Mr P signed, his testimony is that he signed these whilst on the phone and under pressure. I've not heard what was said on the phone so I can't be sure what induced him to sign them but it's clear that FXBFI suggested Mr P's money would do better invested with them than in his bank account.
- Chapter 10 of the Conduct of Business Sourcebook (COBS) requires a firm to assess whether a client has the necessary experience and knowledge to understand the risks involved in a product. Although I can see Mr P completed and passed FXBFI's assessment, Mr P's testimony is that he completed everything over the phone – and I'm not persuaded that the answers are a true reflection of Mr P's experience. For example, one of the questions asks for: "*Your annual average trade size (volume) of your past 40 leveraged transaction [sic]*" – but there's no evidence to suggest Mr P had undertaken any leveraged transactions prior to dealing with FXBFI.
- Mr P was initially treated as a retail client, and then recategorized as a professional client. COBS chapter 3 allows a firm to treat someone as a professional client if they meet two of three criteria (the quantitative test). I've seen no evidence that Mr P met two of the three criteria and I'm satisfied he should have failed that test and not been

treated as a professional client. This recategorization meant that Mr P was no longer entitled to negative balance protection – which seems to be why he wasn't able to close his account at certain times.

- The FCA Principles of Business (6) states “*A firm must pay due regard to the interests of its customers and treat them fairly*”. Mr P's told us that FXBFI called him repeatedly, wouldn't allow him to close his account when he asked to and told him he needed to invest more money. I've seen Mr P's call log for 11 days during the time his FXBFI account was open and there were over 70 calls during that time. FXBFI haven't provided any call logs or recordings. So I'm persuaded by Mr P's testimony that FXBFI weren't treating him fairly and were pressuring him to invest more.
- It's clear the matter has caused Mr P significant stress and upset as well as the financial loss. It's caused divisions in his family and risked his ability to provide for his wife and daughter who are both dependent on him.

### **Putting things right**

I'm satisfied FXBFI have failed to treat Mr P fairly from the outset. I'm persuaded he wouldn't have opened the account if he'd been fully aware of the risks involved. So I'm directing FXBFI Broker Financial Invest Ltd to:

- Refund to Mr P all of the amounts he deposited with them (less the £5,000 refund already paid)
- Pay to Mr P simple interest at 8% on each deposit – from the date the deposit was made to the date it's returned; and
- Pay £500 to Mr P for the distress and inconvenience caused.

### **My final decision**

My final decision is that this complaint should be upheld.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 21 December 2022.

Clare King  
**Ombudsman**