

The complaint

Miss V complains that Trading 212 UK Limited (T212) mis-sold her contracts for difference's (CFD's) and didn't inform her of the risks associated with this type of trading when she opened her CFD account.

Miss V is represented in this complaint, but to keep things simple I have referred to Miss V throughout.

What happened

Miss V opened a CFD trading account with T212 in July 2020. She says she was not informed of the risks associated with CFD trading when she opened the account. She placed a total of 435 trades from when the account was opened until she ceased trading in November 2020. She lost around £57,000 in this period, which was her entire investment, so she complained to T212 in December 2021. I've summarised her key complaint points below:

- T212 failed to act in accordance with the FCA's Principles of Business and Conduct of Business (COBS) rules that
 - a. Contrary to COBS 10A.2, T212 allowed her to open a CFD account and trade when it wasn't appropriate for her
 - b. They failed to act with due skill and care (Principle 2).
 - c. They failed to have due regard to the interests of their customers and treat them fairly (Principle 6).
- Low risk ISA's were deliberately placed with high risk accounts to encourage easy transfer between accounts, this and the communications with T212 are deliberately misleading to lure customers into gambling CFD's.
- Risk warnings are deliberately left in small print and not as prominent when compared with their advertising contrary to COBS 22.5.8 which says the risk warning must be prominent.
- Customers are incentivised by T212 offering free shares when onboarding customers with a goal to have them eventually trading CFD's.

To resolve her complaint she wants a refund of her total losses of £57,000 plus 8% interest, £1000 compensation and reimbursement of the fees she's incurred in seeking legal advice.

T212 issued a final response letter to Miss V in January 2022, saying an appropriateness assessment was done when her account was opened which she passed. They say she had mentioned a professional qualification which would assist her understanding of trading CFD's so she knew about the nature and risks of CFDs and that they were entitled to rely on the information she had provided them. They also quoted several sections of their account terms and conditions which she agreed to and advised of the numerous clear risk warnings she was given at different stages about CFD trading.

T212 say she made no contact with them to mention any issues or raise appropriateness, and there was no communication with them after account opening until her representative contacted them a year later regarding this complaint. They say they didn't breach any

regulatory requirements and rejected her complaint, so she brought her complaint to this service.

Our investigator considered the merits of the complaint in detail and agreed with T212. He considered whether the account was appropriate for Miss V and whether the risks of this type of trading had been explained. He said there wasn't any evidence that T212 had done anything wrong and didn't uphold the complaint.

Miss V didn't agree with the investigators findings and so this has come to me for a final decision.

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.

Although I haven't commented on every single point, I'd like to assure Miss V that I have considered everything and summarised the key issues. Having done so, I won't be upholding this complaint and for the same reasons as the investigator. I will explain further.

As a regulated firm, the rules by which T212 must conduct their business are outlined in the Conduct of Business (COBS) rules of the Financial Conduct Authority handbook. COBS 10.2 outlines the requirements that T212 had to follow.

COBS 10.2.1 R 01/11/2007

(1) When providing a service to which this chapter applies, a firm must ask the client to provide information regarding his knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded so as to enable the firm to assess whether the service or product envisaged is appropriate for the client.

(2) When assessing appropriateness, a firm:

(a) must determine whether the client has the necessary experience and knowledge in order to understand the risks involved in relation to the product or service offered or demanded;

(b) may assume that a professional client has the necessary experience and knowledge in order to understand the risks involved in relation to those particular investment services or transactions, or types of transaction or product, for which the client is classified as a professional client.

COBS 10.2.2 R 01/11/2007 The information regarding a client's knowledge and experience in the investment field includes, to the extent appropriate to the nature of the client, the nature and extent of the service to be provided and the type of product or transaction envisaged, including their complexity and the risks involved, information on:

(1) the types of service, transaction and designated investment with which the client is familiar;

(2) the nature, volume, frequency of the client's transactions in designated investments and the period over which they have been carried out;

(3) the level of education, profession or relevant former profession of the client

T212 had to gather relevant information of Miss V's financial situation, knowledge and understanding of investments, her investment experience and to establish if she understood the risks involved in the service and product offered – to decide if it was appropriate for her.

She completed her Know Your Client (KYC) information online and provided T212 with the information they needed. I have to make my decision based on the evidence I have and so I am looking at the questions Miss V was asked when she opened her account and the response she gave to these. In the application, she confirmed she was a self-employed therapist and not an experienced trader nor was she high net worth investor. It is noted that she did not have experience of CFD trading, but this alone does not mean CFD's are not appropriate for her. She was asked about her trading history and the question and answers are noted below.

- Number of trades in CFD (on an execution only basis) in the course of the last year? – **0**
 - How many times have you placed trades in CFD/leveraged products (on an execution only basis) in the course of the last 3 years? – **not answered**
 - Average sum of your monthly deposits for CFD trading on non-advised basis in the course of the last year? – **Under 0 USD**
 - Number of years experience of CFD trading on a non-advised basis? – **0**
 - Do you have any professional experience or qualifications which would assist your understanding of the nature and risks of trading CFDs? – **yes – prof-qualification**
 - Do you have any previous professional experience which would assist your understanding of the nature and risks of trading CFDs? – **not answered**
- If you have deposited £3000 and the leverage ratio is 1:10, what is the maximum amount you could trade with us? – **30000**
- My position/s may be automatically closed when: **account running at a loss "**

This shows Miss V didn't have prior experience of this type of non-advised trading, but she also adds that she had a professional qualification which would assist her understanding of the nature and risks of trading CFD's. She was also able to answer further questions about leverage and positions closing automatically.

The information she has provided T212 is what they have relied on. COBS 10.2.4 confirms, T212 are within their rights to rely on the information that has been provided to them when the account was opened.

To be clear, there was no requirement that T212 had to decline her application simply because she lacked the relevant experience. The rules require T212 to give an enhanced warning about the risk of this type of trading and let Miss V decide for herself if she wished to proceed - this was sufficient to fulfil their regulatory obligations. I have discussed below whether the risk warnings she was given were sufficient.

I considered whether the risks of CFD's and warnings given to her were sufficient, and I think T212 did enough to warn Miss V of the risks involved in CFD trading. She opened her account via the android app where she was required to download this from the android app store before being able to sign up for an account. The risk warning below would be presented before the account was created and then followed up with numerous further warnings upon creating the account.

"CFDs are complex instruments and come with a high risk of losing money rapidly due to leverage. **76% of retail investor accounts lose money when trading CFDs with this provider.** (T212 emphasis) You should consider whether you understand how CFD's work and whether you can afford to take the high risk of losing your money."

It is also important to note that Miss V would be expected to read this and then confirm "OK" and she would be unable to create an account without reading and accepting these warnings.

The KYC document gives clear risk warnings, they would have been given at the account opening stage and the numerous trading risk notices would be clearly visible. The additional enhanced warning required was also given because of the answers she had given as part of the appropriateness assessment. This warning is sufficiently prominent and specifically says *“based on your answer, we are concerned you may not fully understand the risks in trading with us”* and *“You should remember that you could lose your entire deposit within a short period of time, If you would like to trade in Real Money nonetheless, please confirm you understand this.”*

Miss V would have to have agreed to this in order to have proceeded to open the account, so I am satisfied that she was intent on opening the account despite the numerous risk warnings given. In addition to this, she agreed to the terms and conditions of the account which do highlight the high risk nature of CFD trading. The enhanced warning was enough to satisfy T212’s regulatory obligations but T212 have in their final response letter, detailed several further terms which outline the high risk nature of CFD trading so I won’t repeat these here. Overall, I am satisfied that she was aware of the risk involved with CFD trading and using leverage where she was at risk of losing more than her initial deposit amount.

I’ve also considered whether T212 were put on notice of any underlying issues that would impact her decision making such as health, vulnerability, gambling or criminal activity. I haven’t seen any evidence that nor has there been any evidence of communications between account opening and this complaint being brought to T212. Given that she would have been given the risk warnings, passed the appropriateness test at account opening and proceeded with the account suggests she understood the risks involved. With this in mind, it would be difficult for me to see why the account wouldn’t be appropriate for her or that T212 should have prevented her from opening the account, so I don’t think they needed to do anything differently.

I note Miss A’s concerns regarding incentivising consumers or offering free shares on CFD account, but I have seen no evidence of this. In terms of moving funds between the accounts freely to encourage CFD trading, again I have seen no evidence of this, particularly in Miss V’s case where T212 say her Invest Account shows no funds were ever deposited to this and there is no trading activity. I have not seen any evidence of misleading information. With regards to one click trading, this is set as a default, but it is optional and T212 confirm this can be changed via account settings to ask for confirmation before confirmed.

The account Miss V signed up to is an execution only account and so T212 do not offer advice on any of the trading options or trades Miss V chooses. They say she alone made the decision to trade and so they shouldn’t be held responsible for any losses she’s incurred whilst trading on their platform and I agree with them. There is nothing to suggest T212 had any involvement in the Miss V’s trading practices and so I don’t think they’ve done anything wrong here.

I understand the strength of feeling Miss V has particularly with her concerns around T212’s trading practices and I mean no discourtesy by not individually commenting on these. However, I should be clear, my role here is not to tell a business how it should operate nor is it to punish a business where I find there has been some wrongdoing, that is the role of the regulator, the Financial Conduct Authority. My role is to put the consumer back in the position they would have been in where there is evidence of wrongdoing – which I can’t say there is here. If Miss V continues to have concerns over the way T212 operate, I suggest she contacts the FCA to discuss this further.

I know Miss V will be disappointed with my decision, especially considering the losses she’s suffered. I have considered all the information that’s been provided to me and haven’t seen

anything that would suggest there has been a breach of the terms of the agreement or the COBS rules. It then follows that I don't think it would be fair or reasonable to hold T212 responsible for the losses she has incurred.

My final decision

For the reasons given above, I don't uphold this complaint against Trading 212 UK Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss V to accept or reject my decision before 18 July 2023.

Naima Abdul-Rasool
Ombudsman