

The complaint

Mr L's complaint, made through his representative, concerns his Contracts for Difference (CFD) trading account held with a business that I'll refer to as B. The complaint is against Accendo Markets Limited (Accendo) who introduced Mr L to B.

In brief, Mr L feels the account wasn't appropriate for him and Accendo failed to consider whether he had the necessary experience and knowledge to understand the risks involved in CFD trading. In addition, he says Accendo provided him with advice that led to him to incur a financial loss.

What happened

Mr L was introduced to B by Accendo and opened his CFD account in October 2013 and traded regularly until February 2018. He began losing money on the account in February 2014.

Mr L complained to Accendo, through his representative, on 9 February 2022. Accendo issued a final response on 2 March 2022 and apologised that Mr L felt he had cause to complain. But it didn't investigate his complaint as it said it was referred too late. Mr L then referred his complaint to our service through his representative.

Our investigator explained that the time limits set out in our rules meant we were only able to consider the part of Mr L's complaint concerning the provision of advice and only in respect of trades that occurred after February 2016.

In respect of these specific trades, the investigator wasn't persuaded that the information provided to Mr L by Accendo met the definition of advice, as explained in PERG 8.28 of the Financial Conduct Authority's Handbook. This being so, he concluded that the complaint shouldn't be upheld.

Mr L didn't accept the investigator's view. But he hasn't disputed that part of his complaint was brought too late. So, the matter has been referred to me to review, but only in respect of the merits of a limited part of his initial complaint – regarding the provision of advice in respect of trades that occurred after February 2016.

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 come to the same conclusions as the investigator and for broadly the same reasons.

I appreciate that Mr L suffered losses whilst trading on B's platform and this caused him distress, for which he has my sympathy. I also recognise that he has strong feelings about his complaint and feels Accendo is responsible for the losses incurred.

Turning to the evidence, I note we've been provided with a copy of an email Accendo sent to Mr L in January 2016. Looking at Mr L's trading history, I can see he traded in the companies mentioned in the email throughout 2016. So, because many of these trades occurred within the relevant time limits, I'm able to consider the merits of a complaint concerning them.

I acknowledge Mr L has said there were further instances where he received advice, but in respect of evidence we've only been provided with the email mentioned above. Where the information I have is incomplete, unclear or contradictory, I base my decision on the balance of probabilities – what is more likely than not to have happened. And on balance, I think it's more likely than not that Mr L did receive further emails from Accendo containing similar information to that provided to him in January 2016.

But while I recognise Mr L feels he was provided with advice in these emails, I'm unable to conclude that the information Accendo provided to him meets the FCA's definition of advice.

The FCA gives guidance on what does and doesn't amount to advice in PERG 8 of the FCA Handbook. PERG 8.28.1 (as it read in January 2016) says that advice requires an element of opinion on the part of the adviser. And that, in effect, it's a recommendation as to a course of action. Information, on the other hand, involves statements of fact or figures. PERG 8.28.2 further explains that simply giving information without making any comment or value judgment on its relevance to decisions that an investor may make is not advice.

The email Accendo sent to Mr L in January 2016 included news articles published by Bloomberg analysts. The news articles included factual information relating to upcoming earnings announcements as well as the Bloomberg analysts' opinions and forecasts of McDonalds (MCD), Apple (AAPL), Meta (FB), and Amazon (AMZN). These articles were sent to Mr L as he'd previously traded these companies and mentioned them during an earlier conversation with the Accendo broker.

I accept that the contents of Accendo's email may seem to include an element of opinion. However, these are not the opinions of Accendo. Rather, these are the opinions of the Bloomberg analysts as expressed in their published articles. The Accendo broker didn't provide his own comments or value judgements on the information provided, so I don't think this can be considered as advice given by Accendo.

And as the investigator has noted – it was stated in the footer of the email that its contents were for information purposes only and weren't recommendations to buy or sell.

I note Mr L has said these emails were accompanied by telephone calls from the broker, enquiring if he wished to trade based on the information provided. However, we haven't been provided with copies of the recordings of these telephone calls. And in their absence, I'm unable to assess whether advice was provided during these telephone calls.

While we'd like to have received the call recordings to assess the information provided, unfortunately Accendo hasn't been able to provide us with these. And given the passage of time that's passed since these calls took place, I think it's understandable the recordings are no longer available.

That said, I don't think, on balance, it's likely the Accendo broker's enquiries about whether Mr L wished to trade based on the information provided could reasonably be considered as advice. And while I appreciate the enquiries may have encouraged Mr L to trade on the basis of the information, I think the decisions to trade were ultimately taken by Mr L.

In summary, I recognise that Mr L's trading with Accendo led him to lose money, and that he

will be disappointed that I've reached the same conclusion as that reached by the investigator. But, looking at the evidence provided, I've not found that the information provided to Mr L by Accendo met the FCA's definition of advice. So, there are no grounds on which I can hold Accendo responsible for the losses he incurred from trading on the basis of information provided to him.

My final decision

For the reasons given, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 26 January 2023.

James Harris
Ombudsman