DRN-3977540

The complaint

Mr D complains that Finteractive Ltd let him open a CFD trading account when it shouldn't have done. He says Finteractive encouraged him to deposit money he couldn't afford. He says it encouraged him to place trades which resulted in him losing around £20,000. He wants his money back.

What happened

Mr D opened a Finteractive trading account in January 2021. He traded for about a month, corresponding frequently with one of Finteractive's agents on the phone about his trading. Over the course of his trading, he deposited around £20,000. After losing almost all this money, Mr D complained.

Finteractive initially didn't give a response to Mr D's complaint, and he came to our service. He said he'd been encouraged to add more and more money and hadn't really known what he was doing. He said he'd lost more than he could afford.

There was some correspondence between our investigator and Finteractive about whether we should look at the complaint. Finteractive said Mr D hadn't followed its complaint handling procedures and so it hadn't had a chance to investigate the complaint yet. But it said it considered it had followed all relevant rules and guidance and had treated Mr D fairly. It said it had provided information to help him use its platform and services, but he had traded of his own volition, and had been provided many warnings about the risks of CFD trading. While it said it hadn't done anything wrong, it made a number of goodwill offers to settle Mr D's complaint, the latest of which was for around £9,000. Mr D didn't want to accept these offers and wanted Finteractive to repay him all his losses.

Our investigator looked into things and said the complaint should be upheld. He considered Finteractive had encouraged Mr D to trade, and induced him into depositing money which added to his losses. He found Finteractive had guided Mr D and suggested trades to him. Overall he felt Finteractive had failed to meet the regulatory standards required and didn't think it was fair for it to have let Mr D trade the way he did. He said Finteractive should refund all Mr D's losses, adding 8% interest and £500 for the trouble he'd been caused.

Finteractive didn't agree, and asked for an ombudsman to decide the matter.

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.

Firstly I'd like to clarify I'm satisfied our service can consider this complaint. Finteractive isn't a UK based FCA regulated firm, but at the time in question in 2021 it was regulated by the FCA for the purposes of the events this complaint relates to, through the Temporary Permissions Regime. While I acknowledge Finteractive asked Mr D to send his complaint to another part of the business, I'm satisfied Mr D did in fact email a complaint to Finteractive in February 2021. That Finteractive chose not to respond until Mr D had followed a different process doesn't in my view change things for the purposes of our jurisdiction – in so much as we had the power to consider this complaint once 8 weeks had passed from that complaint being made. Our investigation didn't begin until after that time had elapsed, and so I'm satisfied the case rightly falls within the scope of our service.

I'd also note that, after some initial confusion between our investigator and Finteractive, I'm satisfied that throughout this complaint Finteractive have had appropriate opportunities to both give its version of events and arguments to our service, and to make offers to settle the complaint which have been passed on to Mr D. So I'm satisfied it has had the appropriate opportunities to defend its position and resolve matters.

In relation to the substance of the complaint itself, I've reached the same conclusions as our investigator and for broadly the same reasons. I'll explain why.

I've considered Finteractive's arguments carefully. I acknowledge that Mr D physically entered the trades he made himself, and I am also satisfied that Finteractive provided the required risk warnings. I don't doubt that Finteractive made risk warnings available to Mr D which would have alerted him to the risks of the trading he was going to carry out. But I'm not persuaded these more passive warnings outweigh the information Mr D was given by Finteractive when dealing directly with it, or that it was otherwise fair and reasonable for Finteractive to allow Mr D to operate his account the way it did.

Finteractive needed to firstly ensure Mr D's account was appropriate for him. It needed to satisfy itself he had enough knowledge and experience to understand the risks of CFD trading. Finteractive argues it did this by making Mr D complete a test before opening his account, which he passed. And while I agree this test is evidence which I give weight to when assessing the fairness of Finteractive's decision to conclude the account was appropriate, it isn't the only evidence. I've listened to a number of calls between Mr D and Finteractive across the first week or so Mr D held his account.

In these calls it is inarguably apparent Mr D doesn't understand the product he's trading or the risks he's exposed to. The agent has to explain leverage and how that impacts on Mr D's profits and losses – a crucial aspect of CFD trading and a key risk a customer would need to understand. The agent also has to lead Mr D through the practicalities of placing trades and closing them. In my view these interactions ought reasonably to have led Finteractive to conclude Mr D didn't have enough knowledge or experience to understand the risks of CFD trading.

I therefore think Finteractive ought to have followed the regulatory rules and guidance and warned Mr D that this trading wasn't appropriate for him. Had it done so, I'm of the view that Mr D wouldn't have continued to trade or deposited any further funds in his account.

Even if I'm wrong on this point, I still think it would be fair for Finteractive to refund Mr D's losses. As well as establishing the appropriateness of the account, Finteractive was also obliged to run the account and carry out its dealings with Mr D in ways that paid due regard to his interests and treated him fairly. And it needed to ensure it managed any conflicts of interests between itself and Mr D fairly. I'm not persuaded it did either of those things.

In one of the initial calls with Mr D, he discloses to Finteractive that he is a taxi driver, who hasn't traded before. He says he has put £250 into his account and says he doesn't have the money to add much more than that.

Over the course of a number of subsequent calls, the agent repeatedly encourages Mr D to deposit more funds, and to increase the leverage on his account (I take this to mean opting up as a professional client).

Mr D does indeed opt up to professional client status a week or so after opening his account. Given Finteractive knew Mr D hadn't traded before, and didn't have the liquid cash to put £5,000 into his account, I can't see how it could possibly be reasonably satisfied Mr D met the criteria to be considered a professional client.

Finteractive's agent mentions increasing the amount he has on deposit and his leverage in order to "take advantage" of Finteractive's "risk management" tools, and to build a portfolio with a wider spread of assets. Of course Mr D could equally well have placed smaller trades with a smaller amount of margin to spread his exposure across different assets and positions, he didn't need to bet with more money to do so. And I've seen no evidence that Finteractive highlighted with equal weighting the risk that Mr D was exposing himself to by using more leverage and depositing more money.

I acknowledge that the agent does mention that increased leverage means losing trades could be more impactful, but the thrust of the conversation is clearly geared around the potential upside of gaining more market exposure. I don't think the agent gave a fair and balanced view of the risks in order for Mr D to make an informed decision about how to proceed.

The agent questions Mr D about how much he'd like to make trading, and Mr D says about £1,000 a month. The agent says that in order to make that, Mr D would need to expect to make a 20% profit a month so would need at least £5,000 in his account. The agent doesn't say how likely Mr D is to make that 20% profit, or in my view sufficiently highlight that there's a significant chance Mr D could in fact lose all the additional funds.

When the conversations around depositing further funds are happening, Mr D explains he hasn't got that money available and will need to make further deposits from credit cards.

The agent continually reassures Mr D, and says he'll help teach him to trade and to guide him through the process. I'm satisfied that Mr D takes the actions he does based on the guidance and reassurance of Finteractive's agent.

Taking all this into account I'm not persuaded Finteractive treated Mr D fairly. Mr D was a novice trader who only funded his account with the amount he did, from credit cards, because Finteractive suggested he do so.

I would like to clarify at this point that while I've detailed certain calls or interactions, my conclusions in this case aren't drawn from one given call. It is the overall pattern and nature of the way Finteractive dealt with Mr D that I find to have failed to give due regard to Mr D's interests.

Finteractive's own website at the time said that 88% of retail clients lost money trading with it. I'm not persuaded in its dealings with Mr D that Finteractive's actions reflected that reality, but instead painted a rosier picture of the likelihood of making money that led to Mr D depositing and trading more.

I've not been persuaded it was in any way in Mr D's interests to put £20,000 of mostly borrowed money into a CFD trading account which he had displayed he didn't really understand.

I'm satisfied that it wasn't fair or reasonable for Finteractive to suggest Mr D fund his account in this way, or to say that trading with more leverage would in some way allow Mr D to manage his risk better. I don't agree that exposing such sums of his money to risks he didn't really understand was in Mr D's interests.

Had Finteractive acted fairly, and not encouraged Mr D in this way, and given a balanced view of the risks as well as the potential rewards, I'm satisfied Mr D would never have traded at all. I'm therefore of the view that his trading, and resultant losses, were a direct result of being treated unfairly by Finteractive. It follows that I think it would be fair and reasonable for Finteractive to compensate Mr D for those losses.

Putting things right

I find that had Finteractive treated Mr D fairly, he wouldn't have traded with it and so wouldn't have suffered the losses he did. So to put things right, Finteractive should pay Mr D a sum equal to the amount he deposited in his Finteractive account, less any withdrawals he made.

It should add 8% simple interest to this amount, from the date of any deposit until the date it settles the complaint. This is because Mr D has been deprived of the use of this money during that time.

I'm also satisfied that this experience caused Mr D distress. He lost a lot of money in a short space of time and was worried about the impact on his finances. Like our investigator, I think Finteractive should pay Mr D £500 in light of that.

My final decision

For the reasons I've given I uphold this complaint, and direct Finteractive Ltd to pay Mr D compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 1 November 2024.

Luke Gordon
Ombudsman