

The complaint

Mr W complains that VIBHS Financial Ltd gave him unsuitable advice to invest in a Contract for Differences (CFD) trading account.

Mr W is being represented by a professional firm.

What happened

Mr W opened applied to open his CFD trading account in 2017. In the application form he declared:

- His approximate annual income was \$50,000;
- His net worth was \$2,000,000;
- He had 10 years investment and/or trading experience, and he was looking for capital growth;
- In terms of his trading experience, he declared being a daily trader in securities for one year, 13 years trading options monthly, 8 years trading commodities weekly and no experience in CFDs or spreadbetting. He declared 4 years trading currencies weekly via interbank or OTC foreign exchange.

Mr W's account was approved and VIBHS concluded that trading CFDs was appropriate for him as he had sufficient knowledge and experience to understand the risks involved. He initially deposited £10,000 in October 2017 and continued depositing and trading until May 2018. In total Mr W suffered losses of just over £16,500.

In May 2021, Mr W complained. In short, he said he held VIBHS responsible for his losses. He said that VIBHS had failed to clearly explain the risks associated with the account and failed to undertake an adequate assessment of his expertise, experience and knowledge to ensure he had the appropriate skills required to make his own investment decisions. He also said that VIBHS failed to request appropriate facts to support its assessment, failed to properly consider his investment experience and inadequately assessed suitability.

VIBS didn't think it had done anything wrong. In summary, it concluded that it had properly assessed Mr W's background and experience, and didn't think he was entitled to any compensation, so Mr W referred his complaint to this service.

One of our investigators looked into Mr W's complaint but didn't think it should be upheld. In short, he said that Mr W was never provided with investment advice, and therefore VIBHS wasn't required to ensure that CFD trading was suitable. In addition, the investigator said that he had seen insufficient evidence to show that Mr W only opened the account as a result of cold calls from VIBHS, and he was satisfied Mr W was provided with sufficient warnings about the high risks of trading CFDs.

Finally, the investigator considered that overall, Mr W had indicated he had trading experience, including in forex and options, and it wasn't unreasonable for VIBHS to therefore conclude that he had sufficient knowledge and experience to understand the risks involved in trading CFDs.

Mr W didn't agree with the investigator. He said the warnings provided were generic warnings, and 'it should [have been] determined that [Mr W] did not have the necessary experience and knowledge in order to understand the risks involved in relation to CFDs'. He should've been given a specific warning to that effect – but he wasn't and therefore there was a breach of COBS10.

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.

In doing so, I agree with the investigator and for broadly the same reasons. I should be clear at the outset that this case is not about advice or the suitability of that advice. I've seen insufficient evidence that VIBHS provided a personal recommendation to invest in CFDs, or to open specific trades. Therefore, in the absence of a personal recommendation, VIBHS had no obligation to ensure that the trades Mr W was placing were suitable for him. In short this means that Mr W had an execution only account – he alone was responsible for the trades he was placing and for ensuring he was happy with those. I understand that part of Mr W's complaint is that the software he was using to trade was provided by a third party and they either mismanaged his account, or otherwise misled him. Whilst I sympathise, I've seen insufficient evidence that VIBHS ought to be held responsible for the actions of this third party.

However, VIBHS did have obligations in relation to ensuring that trading CFDs was appropriate for Mr W when it received his request to open an account. These obligations are set out in the Financial Conduct Authority's (FCA) Handbook, in the Conduct of Business Rules (COBS). Specifically, COBS10A.2 – Assessing appropriateness. This says:

'A firm must ask the client to provide information regarding that client's knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded to enable the firm to assess whether the service or product envisaged is appropriate for the client' (COBS10A.2.1).

'Investment firms, shall determine whether that client has the necessary experience and knowledge in order to understand the risks involved in relation to the product or investment service offered or demanded when assessing whether an investment service as referred to in Article 25(3) of Directive 2014/65/EU is appropriate for a client.

An investment firm shall be entitled to 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' (COBS10A.2.3).

'Depending on the circumstances, a firm may be satisfied that the client's knowledge alone is sufficient for him to understand the risks involved in a product or service.

Where reasonable, a firm may infer knowledge from experience' (COBS10A.2.8).

In the event that an assessment by the firm shows that a client does not have sufficient knowledge and experience to understand the risks, the firm must provide a warning to that

effect (COBS10A.3).

The FCA also provides guidance to firms that they ought to consider, having regard to the circumstances, whether to allow a consumer to override the warning above and still open an account.

Was it fair and reasonable for VIBHS to have allowed Mr W to open his account?

In light of the VIBHS's regulatory obligations, I've therefore considered the information that Mr W provided and whether it was fair and reasonable for VIBHS to have concluded, as it did, that trading CFDs was appropriate for Mr W.

In establishing Mr W's knowledge and experience, VIBHS was entitled to rely on the information Mr W provided to it – and this included what he said about his trading experience. I've outlined what this was above. Whilst his experience trading securities was significant, on its own it likely would not have been enough to demonstrate that he understood the specific risks associated with trading CFDs – and these risks largely stem from the ability to trade on leverage.

However, Mr W also had considerable experience trading options, for which margin can be required (especially when trading options in the UK) and carry similar risks as CFDs, and currencies, because they are derivatives. Whilst it isn't clear from the application form how Mr W traded currencies, I'm satisfied it was fair and reasonable for VIBHS to conclude that this combined experience showed Mr W had enough experience in high risk derivatives to understand the impact that small swings in the price could have on his investment. In my view, it's this key aspect that VIBHS needed to satisfy itself of when establishing whether Mr W had the necessary knowledge and experience to understand the risks of trading CFDs.

I'm persuaded, therefore, that given what Mr W had said about his background, it was fair and reasonable for VIBHS to conclude that he had sufficient knowledge and experience to understand the risks involved.

I think it was also fair and reasonable that it conclude that Mr W was able to understand the risk warnings he was given – and on this point, I'm sorry to say that I don't agree with Mr W that he wasn't provided any. VIBHS has provided evidence from its website at the time to show that these warning were easily available to him, and I've consulted an archived version of VIBHS website online that has a banner, in red, which says:

'CFDs are complex instruments and come with a high risk of losing money rapidly due to leverage. 64.37% of retail investor accounts lose money when trading CFDs with this provider'.

Given his declared experience, I'm satisfied Mr W was also fully able to understand this warning and was well aware of the high risks he was about to take with his money. For all these reasons, I'm therefore satisfied that VIBHS complied with its regulatory obligations when it allowed Mr W to open the account.

In addition, as I've set out above, simply failing the appropriateness assessment wouldn't have stopped Mr W from opening his account. Although he would've been provided with a warning that trading CFDs wasn't appropriate for him, it's clear from his testimony via his representative that he was induced to trade CFDs due to the promises from a third party of significant returns.

So I'm not persuaded, even if my findings about his knowledge and experience were different, that in the particular circumstances of Mr W's case, a warning from VIBHS would've dissuaded him from opening the account – particularly given that the existing warnings he did receive did not have this effect.

Although the FCA provides guidance on the discretion firms have to consider whether to allow a consumer to open an account anyway, it's clear to me that this would include, among other circumstances, the degree of knowledge a consumer had overall (for example whether they had no investment knowledge whatsoever, or whether they had some) and, importantly, their ability to afford the likely losses. Mr W's declared information showed that he was an experienced trader, albeit not directly in spreadbetting and CFDs, and importantly had sufficient capacity for loss to withstand capital losses.

Were the financial losses Mr W sustained caused by something VIBHS did or didn't do?

It follows, therefore, that once Mr W opened his account, he alone was responsible for deciding what trades to place, how much to deposit and when to close his trades. I understand he had placed his trust in a third party, and whilst I do sympathise with how this arrangement turned out, this isn't something VIBHS was responsible for checking or validating for him. I've seen insufficient evidence that it was involved in the decisions to trade or in the software that he was apparently using.

Mr W's account was an execution only account for which he was responsible for, and I'm satisfied that the financial losses he incurred stemmed from decisions to trade which he made.

Taking all this into account, therefore, I consider that VIBHS acted fairly and reasonably when it allowed Mr W to open his account. And I'm satisfied that it is not responsible for the financial losses he suffered.

My final decision

For the reasons I've given above, I don't uphold Mr W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 29 February 2024.

Alessandro Pulzone
Ombudsman