

The complaint

Mr H complained about XTB Limited. He said it shouldn't have allowed him to open a contracts for difference (CFD) trading account as it was not appropriate for him. He said XTB were responsible for other unfair practices too.

Mr H said XTB has made mistakes and should compensate him for his losses that these have caused him.

Mr H has been represented throughout his complaint by a third party, and I have referred to them as Mr H's representative throughout.

What happened

Mr H opened a CFD trading account with XTB on 15 September 2020. Mr H incurred investment losses of around 103,980 euros and said he would like XTB to compensate him for this much due to failings that he thinks it made.

Mr H's representative said he shouldn't have been allowed to open an account in the first place. He said there was an insufficient assessment of the appropriateness of a trading account for Mr H.

Mr H's representative said XTB made failings in other unfair practices too such as misleading promotions, not being transparent about fees, a lack of risk warnings, a failure to close out trades and a rule to notify when a position drops by 10% of its value or more. He complained to XTB about all this.

XTB initially said it hadn't received Mr H's complaint, so our service passed this on for it to look at. It responded on 21 June 2023 and said it deemed a trading account appropriate for Mr H. It said its assessment was in line with regulatory requirements. It said Mr H agreed to its terms of business and risk acknowledgement. Finally, it said all its financial promotions clearly displayed risk warnings and its costs were clearly disclosed on its website. It didn't uphold Mr H's complaint. Mr H's representative asked our service to look into his complaint at this point.

An investigator looked into whether having a trading account was appropriate for Mr H. She said she could see Mr H didn't answer questions about how CFDs work, so she couldn't see how the account could be deemed appropriate for him due to his lack of demonstrating any knowledge. She said XTB needed to warn Mr H about the account not being appropriate for him and could see that it did disclose the risks associated within its client agreement. She felt after seeing this, that XTB didn't do anything wrong when it gave Mr H a trading account.

The investigator said she didn't think XTB had misled Mr H with its advertising, and she was satisfied it made risk warnings were prominent on its website. She went on to conclude charges were also clearly displayed in the client agreement that Mr H signed up to as well as XTB's website. She said she was also satisfied XTB closed Mr H's positions as soon as market conditions allowed and that there was no requirement for XTB to inform Mr H that his portfolio had dropped by 10% in any reporting period. She didn't uphold Mr H's complaint.

Mr H's representative was not in agreement with the investigator's view. They made the following points:

- That around the time Mr H signed up for a trading account, XTB released misleading commercials, showing, in its opinion, that it is easily accessible to trade, is fun and exciting for anyone with little knowledge or experience. Where-as in reality trading CFDs require the opposite and is a very risky financial activity.
- he didn't believe XTB complied with regulation at that time around marketing. He describes how any marketing should be fair, clear, and not misleading, something that XTB's marketing was not. He also mentioned FCA rules relating to the manufacture of product and that reasonable steps should be taken that an instrument is designed to meet the needs of its target market.
- He said, after seeing XTB's misleading advertisements, Mr H decided to go to its website in order to possibly open an account. He said on the official XTB website, there was no appropriate risk warning. He said the risk warnings on the main XTB site did not comply with UK regulation. He said it did not contain required information.
- He said Mr H should have been presented with a standardised risk warning as described in the FCA's handbook COB 22.5.6.
- He said, XTB did not make its fees and commission charged clear to Mr H. He said it is promoting 0% commission on its platform and this is misleading to its clients and prospective clients. He said XTB did not comply with regulation in relation to this – as it wasn't clear what the true overall cost of its fees were.
- Mr H didn't possess any knowledge of CFD products, nor did he understand the nature of CFDs.
- He said the sign-up process involved a tick box approach and was effectively a client self-assessment. There were no valid reasons for XTB not to perform a meaningful knowledge test. He said XTB did not comply with FCA regulation relating to this, particularly COB 10.2.1 which states the firm must ask the client to provide information regarding his knowledge.
- He said, considering the fact Mr H did not possess sufficient knowledge about CFDs, he should have been warned explicitly that CFDs are not appropriate for him.
- He said there was a major conflict of interest from XTB, by allowing a retail client without sufficient knowledge to participate, considering it charges fees and commissions as well as act as a counter party for every trade.

The investigator responded to Mr H's comments and said most of what Mr H's representative had raised had already been covered in her view.

The investigator added that she felt all of XTB's commercials had risk warnings displayed, required by the FCA's rules. She also considered in relation to rules about the manufacturing of products that XTB complied with FCA regulations. She said it designed and manufactured the products it promoted.

The investigator finally added that Mr H became a customer of XTB Limited, a UK registered firm and Mr H held his account and signed his contract with that entity. She said this meant Mr H would have seen risk warnings on the UK website when he was signing up to have the account and wouldn't have done this on the international website referred to by Mr H's representatives.

I issued a provisional decision on this complaint on 24 June 2024. Both parties have received a copy of that provisional decision, but for completeness I include an extract from the decision below. I said;

"I consider the crux of Mr H's complaint to be whether the account was appropriate for him in the first place and that the marketing and its commission were misleading. I have looked into these three issues.

Was XTB acting in a fair way towards Mr H when it assessed a trading account to be appropriate for him?

I have carefully considered the process XTB adopted when opening Mr H's account and the issues Mr H's representative has complained about in relation to this. In doing so, I'm not persuaded that XTB has done anything wrong on this occasion.

Mr H's representative said the sign-up involved Mr H self-declaring by picking an answer from a tick box. He said there was no meaningful knowledge test and XTB are in breach of the relevant FCA regulation about this. I looked into Mr H's concerns about this and asked XTB to provide more information about how its appropriateness test worked.

I can see that when Mr H opened his account, he was taken through a series of questions to determine his knowledge and experience of this type of trading. As a result of his answers, the trading account was deemed by XTB to be appropriate for him.

I've looked at the answers provided by Mr H in the appropriateness test. I can see what he has put down. I consider that XTB was entitled to take the information he told it about his circumstances in its appropriateness test at face value and use it to assess whether he should have a trading account.

XTB was required to assess whether the account was appropriate for Mr H. When it did this, it acted on the information Mr H provided and decided based on what he had said that the account was appropriate. I can see that it used his answers to assess whether or not he had experience of trading before and whether he met its threshold in this regard. It also asked him a question to test his knowledge. It has explained that because Mr H met its threshold and gave answers that demonstrated to it that he was experienced at trading, that he didn't need to answer further questions to test his knowledge. It said it inferred due to his trading that he had knowledge through trading.

When I look at the answers Mr H has given and how the assessment was conducted, I can't say at this stage that XTB did anything wrong here when it decided the account was appropriate for Mr H. He selected answers that suggested he had at least 6 months trading experience and had carried out multiple trades, demonstrating to XTB within its assessment that he had experience of this sort of trading. I currently think XTB met its obligations by assessing Mr H's experience and decided he had enough, that its trading account was appropriate for him. I don't currently think it has been unfair to Mr H here.

I have gone on to consider whether the risks of trading in CFD's and warnings given to Mr H were sufficient. I can see Mr H was required to accept XTB's terms of business and risk acknowledgement before opening an account. Within the risk terms of business and risk acknowledgement, it has described the risks involved with this sort of trading. XTB also said it gave warnings on its website. After looking at all this, I think Mr H was given at least some notice of the nature of risk that trading in CFD's brought with it. So again, I can't say on this occasion that XTB was being unfair or did anything wrong here.

Was XTB acting in a fair way towards Mr H when it advertised its services?

Mr H's representative said at the time Mr H signed up for a trading account, XTB had marketing campaigns that it said was misleading. It said it ran advertisements from well-

known names, demonstrating that trading on its platform was easy and could be done by anyone with little experience or knowledge. It said XTB was not adhering to regulation by doing this and was misleading in its marketing.

Mr H's representative said Mr H decided to go and open an account after watching XTB's misleading advertisements. They said when Mr H did, he was not presented with an appropriate risk warning on XTB's website as prescribed by UK regulation.

XTB has an obligation to ensure that its communications or financial promotions are clear, fair, and not misleading. XTB also in the context of the services it was looking to provide, needed to include risk warnings in its marketing and advertising too.

I have seen some of the examples that Mr H's representative has provided, that they said supports the argument about XTB's advertisements. Having done this, I think it's worth saying from the outset that XTB are allowed to advertise its services, within the parameters of its regulatory obligations. What I need to consider here is whether XTB provided clear information to Mr H about the risks associated with trading in CFDs within its advertisements and elsewhere, when he signed up for an account. I am currently minded to conclude that he was.

I have seen examples of advertisements used by XTB that show it displayed risk warnings in a clear way. I can see that it has also done this at regular intervals on its website, something Mr H would have more likely than not have seen when he was signing up for an account. It has also done so, as well as explain its services in detail in its terms of business that would have been provided to him at this time too. And as I have already concluded Mr H would have agreed to XTB's risk acknowledgement too, so I think he would have been given enough information to consider the risks associated with this type of trading.

When I consider what I have just concluded, I can't currently say XTB were being misleading in any marketing or promotional material that Mr H would have seen at the time he signed up for an account. So, It follows that I don't currently uphold this part of Mr H's complaint.

Was XTB acting in a fair way towards Mr H when it promoted its fees and commission?

I have gone on to look at Mr H's complaint about commission. He said through his representative, that he did not understand XTB's fees and commissions when he signed up to have a trading account. He said XTB's website promotes 0% commission, and this is misleading. He said it didn't give enough information about the true costs of trading and didn't think XTB complied with regulations in this regard.

I have looked through what Mr H would have seen and been provided with when he signed up for an account with XTB. He would have needed to agree to its terms of business. I can see that it has described the fees and charges associated with Mr H's trading account here.

I have also looked on XTB's website and can see that it has described its fees and charges on here too. I can't currently conclude that XTB has treated Mr H unfairly with regards to its fees and charges. It has displayed them on its terms of business and website and so I think Mr H would have been able to obtain what these were to gauge an understanding as to what he was paying for when he used XTB's services.

In summary, I recognise that trading with XTB has caused Mr H to make losses and I empathise with Mr H about the trouble this has caused him. But to uphold a complaint against XTB I would need to be satisfied that it had acted incorrectly or unfairly in respect of its provision of its services to him. And while I understand Mr H will be disappointed, I can't

conclude it was unfair to him when it allowed him to open an account. So, it follows that I currently don't uphold Mr H's complaint."

I asked both parties to let me have any comments, or additional evidence, in response to my provisional decision.

XTB responded on 24 June 2024 and said it currently does not have any additional points to add.

Mr H's representative responded on 21 July 2024.

Mr H's representative covered points mainly in relation to Marketing and the appropriateness test carried out by XTB. I have summarised what I think are the key points made below:

Marketing

- He said XTB was clearly promoting an exciting and inconsiderate way of trading with absurd promises while at the same time targeting the mass population via sports events and famous sports personalities.
- He said misleading marketing including delusive and unrealistic statements in a unique pandemic situation (between 2020-22) was the main reason for Mr H's fully wrong perception of CFD trading and its risks that consequently, in combination with further company practices and failures led to Mr H's considerable losses.
- Mr H's representative referenced EU directives about this and presented a series of graphs to demonstrate XTB's financial and business growth, that he says its targeted marketing generated.

Appropriateness test

- He said Mr H carried out a personal data request that XTB completed and sent to him, including about its appropriateness test. He said Mr H received all this information, but it did not contain any knowledge of questions regarding understanding of CFDs.
- He said Mr H was classified with a "junk" rating upon his registration. Mr H's representative then made comments about how much Mr H scored and trial runs, and what scores can be achieved based on answers provided.
- Mr H after his sign up in 2020, said his representative, did not receive any agreement or similar document from XTB, which would imply that Mr H upon sign up was not recognised as a regular customer.
- He said, Mr H does not recall marking the experience tick boxes and alleged knowledge question and these were not documented by XTB either.
- He said even if the experience question was presented to Mr H, it might have been purely marked by mistake or Mr H had a lack of understanding about this question.
- He gave examples of other clients across Europe taking the appropriateness test and each having a different sign up to navigate, including a different number of knowledge-based questions to answer.
- He said, either by mistake or possibly a company glitch, Mr H was not presented with a sufficient appropriateness test, that he ought to have had as an EU citizen. It said if he had, Mr H's lack of experience would have been picked up.

Other considerations

- He said the risk warning on the website Mr H would have gone to, to open his account, was latterly enlarged and given a more prominent spot. This he says, proves the original risk warning that Mr H would have seen, was not fit for purpose.
- He reiterated fees presented by XTB were misleading for Mr H about 0% commission on stock CFD trades.

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.

I want to assure Mr H and his representative that I have carefully read his submission and considered all the points made. But I'm not going to respond to every issue raised, in particular if it is not material to the outcome of Mr H's complaint or I have already provided an answer in my provisional decision.

Instead, I'm going to focus my decision on any relevant new points raised by Mr H's representative and what I see as the central issues to Mr H's complaint. I don't intend this as a discourtesy, rather it reflects the informal nature of our service and my role in it.

Marketing

I have first of all looked again at the points made by Mr H's representative about XTB's marketing. Again, I understand and acknowledge what Mr H's representative is saying and the points he is making here. I can see that XTB did use sports personalities and events within its marketing material and advertisements. I have read through all that he has said again and also looked through the informative graphs and information about XTB that he has provided.

That said, I don't think Mr H's representative has added anything new to his arguments here, other than to provide additional context on what he has already presented in previous submissions. So, I haven't got anything to add, to what I have already concluded in my provisional decision.

The only additional point I would make here is in response to a comment Mr H's representative made about Mr H's lack of knowledge. He said due to a lack of knowledge and misleading company marketing, Mr H was convinced he was trading real assets on the XTB platform.

I am not persuaded by this, based on the answers Mr H gave in the appropriateness assessment that he carried out during his application to hold a trading account. Mr H told XTB that he had some experience of CFD trading previously and had answered one of its knowledge questions correctly. I am not persuaded, with what I have just said in mind, that Mr H would have thought he was trading on real assets or was misled by advertisements in this regard.

In summary, I think XTB were entitled to market its services to Mr H, as long as it adhered to its regulatory obligations around this, and for the reasons I gave in my provisional decision, I think on balance it did.

Appropriateness test

Mr H's representative made several comments about the appropriateness test XTB carried out, when Mr H applied to have an account with it. He said it carried out a personal data request, but this did not contain any specific knowledge questions from XTB and so he questioned what XTB asked Mr H in this regard. He also queried why Mr H was referred to as "Junk" or why it had noted down that he had a "Junk" rating.

I have read through the personal data that Mr H's representative received from XTB. I also went back and asked XTB about what Mr H's representative said. XTB pointed to the information it had already provided to our service and said it had already highlighted the question it asked Mr H when he applied for his account. It said it has already also highlighted Mr H's answer to this question. It provided a screenshot of this.

XTB also explained that any reference to "Junk" on any of its forms, print outs or screenshots, is a bug in its system that it is now looking to correct. It said its own system generated that word, but it said it made no bearing on how Mr H's account was administered by it and made no bearing on anything that has happened.

I have read through what happened here again and read Mr H's representative's comments carefully. I can see Mr H answered a series of questions, including one knowledge-based question, and off the back of his answers, XTB deemed an account appropriate for him. I acknowledge the points Mr H's representative has made but I've seen enough in the documents submitted by XTB, that I think I can draw a conclusion, on the balance of probabilities, about what happened when Mr H applied for an account with it.

XTB has explained the way it carries out its appropriateness test, and how it seeks to meet its regulatory obligations here. It has told our service that it assessed Mr H as having enough experience that he needed to only answer one question to demonstrate his knowledge, and this was based on the answers he gave it. Again, I don't think it has done anything wrong here. It has looked to tailor its assessment based on the applicants experience, this being something it is required to assess under the regulations.

I acknowledge Mr H's representative's comments about different trial run tests that Mr H carried out and the different experiences he received from these. But I have looked at what happened when Mr H did apply to have an account with XTB, and in doing so, as I have just concluded, I don't on balance, think XTB did anything wrong when it assessed a trading account to be suitable for him.

Finally, I do understand Mr H's representative's concerns over XTB's use of the word "Junk" on its system. I have seen what he is referring to: on Mr H's details and also a call note from the time. XTB has said it will look into this and resolve what it thinks is a system bug. I acknowledge what XTB has said here, that it will look to resolve what it calls a 'bug' in its system. But also, that it has been clear that this has made no bearing on any decision made or outcome in Mr H's case. I haven't seen anything either, that would suggest to me that it had any bearing on Mr H's complaint, so I am satisfied that it is on this occasion, as XTB has described.

Other considerations

Mr H's representative said Mr H ought to have been registered at the time with XTB's Cypriot business as he is a European citizen. I am satisfied that Mr H was registered as a customer

of XTB's UK based business and so this is why XTB were and are under obligations with the UK regulator, the FCA, in relation to this complaint and also why I have looked into and decided his complaint. I asked XTB again to clarify why Mr H was registered as a customer of its UK based business at the time he applied for an account. XTB said Mr H applied for an account during the Brexit transition period, and the UK branch was still part of the EU. So, it said, his account was set up under the UK branch. I don't have anything to add to what has been said here, other than I don't think XTB did anything wrong when it set Mr H's account up under its UK business at this time.

Mr H's representative also made some additional comments about the risk notice displayed on the XTB website he felt Mr H would have gone to. It provided a sample screenshot of this website from 2020. He said the risk warning has since been enlarged and made more prominent by XTB. I haven't seen enough evidence, to know for sure which website Mr H went to when he was looking to apply for an account with XTB, but I am satisfied based on the documentation provided by it that Mr H would have been provided with the risk warning, before he agreed to open an account with XTB.

As well as display the risk warning on its website, it would have asked Mr H to accept a risk disclosure document too. In addition, I can see from the recent information provided by Mr H's representative, that XTB's representative's carried the risk warning on their emails to Mr H, on the day of sign up and messages regularly after this point. I can see for example that Mr H's account manager, displayed the risk warning prominently in his email to Mr H on 15 September 2020, when he signed up for an account and before he deposited any funds. So, on seeing all of this, I think the risk warning was clearly displayed by XTB. Again, I am satisfied that Mr H would have been given enough information about the risks involved in trading in CFDs and with opening an account with XTB.

Mr H's representative has again mentioned fees and in particular 0% commission for stock CFD trades. He has again mentioned Mr H's lack of knowledge at the time including not knowing what certain terms meant. I have nothing more to add here other than to repeat that Mr H told XTB he had experience and knowledge of trading CFDs when he applied for an account with it. The fees and charges, as I mentioned in my provisional decision were displayed in the terms and conditions and clearly on XTB's website. So, with my findings in mind, I am not persuaded by Mr H's arguments here about XTB's fees and clear, fair, and not misleading disclosure of these.

In conclusion, I acknowledge all that has been said by Mr H's representative. I acknowledge the points he has made about marketing, risk disclosure, fees, and the appropriateness test. He has presented detailed submissions about this and so I know the outcome will be disappointing for him and for Mr H. But based on the findings I have given in my provisional decision, that I have reiterated here, I do not uphold Mr H's complaint.

My final decision

My final decision is that I don't uphold Mr H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 10 September 2024.

Mark Richardson
Ombudsman