

## The complaint

Mr S complains that Admiral Markets UK Ltd failed to act in his best interests when it provided a Contract for Difference (CFD) trading facility to him. His representative says Mr S has a gambling addiction and the provision of an account by Admiral led to him incurring significant losses.

## What happened

Mr S initially started the process of opening an account with Admiral in 2021 and completed it in April 2022. He then proceeded to trade on the account until November 2022, at which point he switched to trading with Admiral in another jurisdiction. Therefore, for clarity, this decision concerns only the period up to November 2022.

In March 2023, Mr S's representative complained to Admiral as set out above. It didn't uphold the complaint as it felt it had acted correctly in providing the account to Mr S. It highlighted that it had been unaware of Mr S's gambling issues until the matter was raised in relation to the complaint, at which point it took immediate steps to limit access to the account.

The complaint was referred to this service, but our investigator also didn't think it should be upheld. She said, in brief:

- Mr S's application confirmed he was self-employed; his annual income was above 200,000 Euros and he had liquid assets of more than €500,000. He was looking to deposit monthly between €5,000 to €14,999 to be sourced from income from dividends, savings, and salary.
- In April 2022, he completed an appropriateness test that Admiral judged him to have failed. As such, it provided risk warnings to him in line with its regulatory requirements. He then proceeded to deposit funds and begin to trade.
- Admiral had provided a copy of a bank statement from April 2022 provided to them by Mr S and a copy of a contract detailing the sale agreement for shares in a business. The agreement covered the sale of shares valued at CHF7,000,000 (over £5million). The investigator was persuaded that the documents supported the information provided by Mr S to Admiral about his personal financial circumstances.
- The investigator acknowledged Mr S's gambling addiction and to assess Admiral's handling of this issue she requested copies of all the correspondence exchanged between Admiral and Mr S from when the account was opened.
- Admiral confirmed it was not aware of Mr S's gambling addiction until it received the complaint letter in March 2023. The investigator felt there was no evidence to show he'd informed Admiral of any vulnerability prior to this date.
- Admiral confirmed it was now noted on its records that Mr S could not make any further deposits to his account or undertake any other transactions. Additionally, it had restricted the opening of any secondary account by him in the future – which the investigator felt was reasonable, given the information that had now been communicated to them.
- The investigator also considered concerns raised by Mr S's representative that he experienced losses because of 'technical problems'. She could see there'd been

some difficulties during his trading in the other jurisdiction. But she couldn't see evidence of technical issues being raised with Admiral while his UK account was operating. So, she wasn't persuaded that any losses on Mr S's UK account were due to technical problems.

Mr S's representative didn't accept the investigator's view. He said, in brief:

- Mr S made very clear in telephone conversations with Admiral that he didn't understand what he was doing.
- His losses outweighed the estimated deposit figures he'd provided at the outset, which should've put Admiral on notice of a problem.
- He'd failed the appropriateness test, yet Admiral had nevertheless allowed him to trade, indicated this was nothing more than an automated process. If Admiral had interacted with Mr S and asked him about his missing knowledge it would've become clear that this type of trading wasn't appropriate for him.
- The warning provided by Admiral was of little use as it made very clear that a failure in no way prevented Mr S from continuing with the process and trading.
- There should've been further evaluation of Mr S in light of him failing the test. Numerous final decisions issued by this service had suggested that businesses should at this point look to interrupt the account opening process.
- Admiral had failed in its overarching regulatory responsibilities to act in the best interests of clients, not only in respect of Mr S's trading with Admiral's UK operation but additionally in respect of his continued trading in another jurisdiction.

The investigator wasn't persuaded to change her opinion by these further submissions, so the matter's been referred to me to review.

### **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 those reached by the investigator and for broadly the same reasons. I want to assure Mr S and his representative that I've read and considered everything on the file. But that said, I'm satisfied I don't need to comment on every point raised to reach what I consider to be a fair and reasonable decision.

Where I've chosen not to comment on something, it's not because I haven't considered it. It's because I've focused on what I think are the key issues. That approach is in line with the rules we operate under. Further, where the evidence is incomplete or inconclusive, I've reached my decision based on the balance of probabilities. That is, what I think is more likely than not to have happened in light of the available evidence and a consideration of the wider circumstances.

I recognise the tremendous difficulties this matter has created for Mr S and he has my sympathy. But in all the circumstances I don't think Admiral has been shown to have acted incorrectly or unfairly. While there may have been occasions where it could have acted differently, I've not seen persuasive evidence of failings in its regulatory responsibilities or of mistakes having been made.

Admiral provides an execution-only service, so it doesn't give advice or assess the suitability of its products for customers. Rather, as has been noted, it's required to assess whether the activity in question is appropriate for the prospective account holder. The rules regarding this are found in the Financial Conduct Authority's Conduct of Business Sourcebook (COBS) –

specifically rule 10.2. Those rules required Admiral to gather information about Mr S's knowledge and experience of trading high-risk products to determine his understanding regarding the possibility of losses. The rules also say, at 10.2.4, that a business is entitled to rely on the information provided by a client, unless it's aware the information is manifestly out of date, inaccurate or incomplete. Where a prospective customer fails an appropriateness assessment, an account can still be opened providing, in line with rule 10.3, that the consumer is warned that the trading is not appropriate for them.

In Mr S's case the appropriateness test determined that trading of this nature wasn't appropriate for him. I accept that the test was maybe not as comprehensive as it could've been. It was limited to only four questions, concerning the frequency of derivatives trading carried out in the previous three years, professional/educational experience and two relative straightforward 'knowledge' questions. But that said, Admiral's process worked such that an incorrect answer in response to any one of the four questions resulted in an overall fail, which is why Mr S received a warning. He said that he had no professional/educational experience but answered the other questions correctly.

The warning issued to Mr S said that based on the information he'd submitted and the results of the test, the products weren't suitable for him. I accept that the warning then went on to say this in no way prevented Mr S from trading. But it did add that before doing so he should familiarise himself with the account terms and risks and, if necessary, consult an expert. It also recommended he expand his knowledge and experience of this type of trading using a 'demo' account, where he could learn more about trading but without any risk.

And there's no requirement that in the event of trading being deemed inappropriate that a business must interact further with the consumer to carry out a further evaluation. There is *guidance*, as opposed to a rule, at COBS 10.3.3 that suggests a business should consider whether to let the consumer go ahead and trade having regard to the overall circumstances. But I don't think there was anything in what Admiral knew of Mr S's circumstances that would, or should, have given it cause to think that he should be prevented from going ahead.

If he'd indicated that his financial circumstances were difficult – for instance, he was unemployed or otherwise without a steady income stream – then I would expect that to have likely influenced Admiral's decision. But that wasn't the case. Admiral had been told that Mr S had substantial income and liquid assets. It had been provided with documentation that supported this, despite there being no regulatory requirement for information provided as part of the application process to be independently verified. As previously noted, the rules are such that a business is entitled to rely upon information provided to it, unless it's aware the information is out of date, inaccurate or incomplete.

Once Mr S took the decision to start trading there was also no requirement that Admiral monitor and assess how he was choosing to operate his account. I've noted what his representative has said about comments he made to Admiral about his lack of understanding. But I've not been able to obtain independent evidence that supports this. What call recordings there are available appear to be from the period *after* Mr S had been trading with Admiral's UK entity. And even these calls don't appear to be concerned with a lack of understanding. Rather, they're more focused on technical issues with the service.

I've also noted what Mr S's representative has said regarding other final decisions issued by this service, and wider regulatory guidance, that he feels support his view that Admiral's processes should've been more robust. But we look at each complaint on its own merits and in light of the specific circumstances of the case. While I've considered carefully what Mr S's representative has said, ultimately, my conclusions must primarily be reached based on the evidence and the circumstances particular to Mr S.

Even if I felt Admiral's processes should've been more robustly designed, perhaps to feature some of the additional 'interruption' elements highlighted by the guidance quoted by his representative, I nevertheless think that more likely than not Mr S would've chosen to proceed and trade on the account. It was clearly something he was keen to do, albeit for clearly the wrong reasons.

I appreciate my decision will be extremely difficult for Mr S to accept. But in all the circumstances I find I'm unable to conclude that the complaint should be upheld.

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 19 April 2024.

James Harris  
**Ombudsman**