DRN-4692058

The complaint

Mr W's complaint features a *buy* trade he placed on 18 May 2020 in the Contracts For Difference ('CFD') trading account he held with IG Markets Limited ('IG'). He says the trade order type he selected – a stop order – was either misapplied or misrepresented by IG, because he expected it to be triggered at the price level he stated but it was triggered significantly above that level. He says the same about the protection he expected from IG with regards to price slippage.

IG says the stop order behaved as it was supposed to and as stated in the notice(s) he would have seen at the time of placing the trade. One of our investigators looked into the complaint, agreed with IG and concluded the complaint should not be upheld.

A senior investigator then reviewed the case and also agreed with IG on the matter of the stop order – he too found that it behaved as it should have. In this respect, he provided an explanation of the trade types in order to help Mr W understand his finding. He also found that the slippage related provisions Mr W had cited did not apply to trades placed by stop orders.

However, the senior investigator noted the part of Mr W's complaint that referred to the impression he was given about the account when IG deemed it appropriate for him and submissions about his lack of knowledge. On this basis, and in the context of our service's inquisitorial remit, he considered the appropriateness of the account a matter, in the complaint, that must be addressed.

What happened

The senior investigator concluded that the CFD account was inappropriate for Mr W. He upheld the complaint on this ground and IG disputed this outcome. He could not be persuaded to change his view, so IG asked for an Ombudsman's decision.

Mr W opened the account in March 2020. Evidence of his online application and of the appropriateness assessment he underwent has been shared with us.

Information in his application included the following – confirmation that he was employed in the financial services sector as a debt investment professional; and confirmation that he had "*rarely/never*" traded shares, bonds, exchange derivatives or Over-The-Counter ('OTC') derivatives; and added confirmation in the statement "*I have never traded these products*".

Prior to the online application, Mr W underwent an IG appropriateness assessment in December 2019. He failed it. He incorrectly answered questions on the requirement to add funds to an account that has a low balance and situations in which an account provider might close positions. Around three minutes later he took the assessment test again. The questions were different and he answered them all correctly. On this basis, he was deemed to have passed the assessment.

The investigator mainly found as follows:

- IG was obliged – under the Conduct of Business Sourcebook ('COBS') section of the regulator's *Handbook* – to apply an appropriateness assessment to Mr W's application for the trading account. COBS 10A set out the relevant rules in this respect, whereby it need to obtain and consider information about his knowledge, experience and familiarity with derivatives, including his level of education and profession.

- In Mr W's application he selected the option that partly said he had 'never' traded traded/invested and had IG considered that further it would have found that he had no trading experience. Despite his profession, the details of what he did shows that he had no exposure to trading or derivatives.

- The first appropriateness test was failed, due to incorrect answers about margin. He retook the test around three minutes later. However, the absence of trading experience, apparent lack of understanding about margin and failure of the first test ought to have been enough to lead IG to the conclusion that the account was inappropriate for Mr W. It should have then issued him with a warning about the account's inappropriateness. It did not do that. Had it done so, it is more likely (than not) he would not have proceeded further. If he sought to proceed further, the rules allowed IG to accommodate that upon regard to the circumstances, but the overall circumstances were such that it would not have been in his best interest for IG to grant him the account.

- The account was inappropriate for Mr W and IG should not have issued it to him. He should receive redress for his total financial loss in the account (plus interest) and payment of £200 to compensate him for the trouble and upset the matter has caused him.

IG mainly argued as follows:

- It acknowledges and accepts it had a responsibility under COBS 10A to assess and determine appropriateness of the account for Mr W. Whilst other firms might proceed to provide a product/service to a client despite an inappropriateness assessment and warning, its policy is that it will only provide a product/service to a client if appropriate to do so. However, depending on circumstances, it may be satisfied with a client's knowledge and understanding of risks alone, thereby enabling clients without previous trading or professional experience to pass the assessment.

- In terms of its process – there is an assessment of the applicant's 'experience' that queries the products s/he has previously traded (from the simple to the complex), how such products have been traded (independently, advised or under management) and his/her product related qualifications or experience; then the applicant's knowledge is tested, based on five or ten questions (depending on the applicant's experience) that cover the concepts of leverage, margin and general derivatives trading, and based on a minimum pass requirement of 80%.

- In Mr W's case, he had no previous trading experience but he said he had relevant experience from a role in a financial institution; under COBS 10A it was not required to enquire further into whether (or not) his role exposed him to experience of derivates; under COBS 10A it was entitled to rely on the accuracy of his reference to having relevant experience from his professional role; and he passed the second knowledge test he took – in this respect, the investigator was wrong to say the first failed test prepared him to avoid failing the second, the questions in the second test were completely different so that could not have been the case.

The matter was referred to an Ombudsman.

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 have reached the same conclusions as expressed by the senior investigator. As he said, our inquisitorial remit allows us to note and address the references Mr W has made, as part of his complaint about the 18 May 2020 trade, to the impressions he was given (in relation to appropriateness) at the outset of the account, from his application for it onwards, and to his lack of knowledge.

I have considered the details of the complaint. It apparent that the trade event happened shortly after the account was opened, and that the circumstances related to the event are directly connected to the level of knowledge and understanding Mr W had about trading in the account, and to the question of whether (or not) the account was appropriate for him. In other words, the appropriateness of the CFD trading account, for him, appears to be the root cause of his complaint. Our remit allows us to determine such root cause issues within a complaint.

For the above reason, I have made no dedicated findings on the 18 May 2020 trade. As I explain below, overall and on balance I conclude that the trading account was inappropriate for Mr W and IG should have warned him about that; that it is more likely (than not) he would have heeded the warning; and that even if he did not, it is IG's evidence that it would not have granted him an inappropriate account; so, I find that the account was inappropriate, IG should not (and would not) have granted such an account to him and, without the account, any and all trading within it, including the trade on 18 May 2020, would never have happened.

The regulator's *Handbook* includes Principles for Businesses that IG will be familiar with. Principles 2, 3 and 6 require, in broad terms, firms to conduct their services with due skill, care and diligence, to make reasonable efforts to manage and control their affairs responsibly and effectively, and to uphold their customers' interests and treat them fairly. There is case law – Ouseley J, in R (British Bankers Association) v Financial Services Authority [2011] EWHC 999 (Admin) – which confirms The Principles are ever present requirements that firms must comply with. Furthermore, COBS 2.1.1R, in the Handbook, contains the *client's best interests rule* which requires firms to uphold their clients' best interests.

The above sums up the regulatory context in which IG's conduct in Mr W's case should and will be determined, and the context for applying the requirements of COBS 10A to its assessment of his application for the trading account.

In broad terms, *Appropriateness*, under COBS 10A, must be assessed by a firm in order to determine whether (or not) a client has sufficient knowledge and experience to understand the risks involved in the service or product offered by the firm, especially where the product is complex – life CFD trading, in Mr W's case. This is distinct from the duty to provide risk warnings. Risk warnings provide information on risks. Appropriateness is the process by which firms must assess whether (or not) a client has enough knowledge and experience to 'understand' such information and how it applies in the relevant service or product.

In terms of assessing appropriateness, the following is important:

- Information about the type of service(s) and investment product(s) the client has previous experience of and is familiar with.
- Information about the nature, volume, frequency and length of the client's experience in any such service(s) and investment product(s).

A firm is obliged to warn the client if the assessment concludes that the relevant service or product is inappropriate. If, despite the warning, the client still wishes to proceed with the service or product the firm has discretion to allow the client to do so "… *having regard to the circumstances*." However, I do not consider that this provision for discretion applies to IG because, as mentioned above, it has already confirmed to us its policy of not granting inappropriate accounts to applicants.

Evidence shows that Mr W presented himself to IG as having no previous trading experience. As I said in the background section above, and I quote –

"*Information in his application included the following – confirmation that he was employed in the financial services sector as a debt investment professional; and confirmation that he had "rarely/never" traded shares, bonds, exchange derivatives or Over-The-Counter ('OTC') derivatives; and added confirmation in the statement "I have never traded these products"*."

The application documentation clearly shows that he informed IG of the nature of his professional role in the financial services sector. He worked in the debt investments sub-sector. Without further enquiries, that description had no direct and/or meaningful relevance to derivatives or CFD trading, and IG ought reasonably to have taken note of this information and to have formed the same conclusion.

Whether (or not) it should have enquired further can be debated. It says COBS 10A did not require that, but in the wider context – based on the aforementioned Principles and the client's best interests rule – if it sought to assume that Mr W's professional role in debt investments extended to experience in derivatives it ought reasonably to have enquired further. Statement of the role alone was not enough to draw such an extension, so it should have applied due care, skill and diligence by making such additional enquiries in order to ensure it did not make an assumption that went against Mr W's best interests – such as an erroneous assumption of appropriateness. Had it made those enquiries, it would have learnt that Mr W's profession did not expose him to experience in derivatives.

Mr W essentially presented himself as an applicant without previous trading experience and with no professional experience directly or meaningfully relevant to the CFD/derivatives trading account he was applying for – and he confirmed both clearly to IG.

IG argues that he earned some points in the experience related part of its assessment process because of relevant experience in his professional capacity. For the reasons addressed above, I consider that no points could reasonably have been allocated on this basis. In other words, Mr W failed – and/or should have failed – the experience test.

In terms of IG's knowledge test, the undisputed fact is that Mr W failed this test too – that is, the first test he took. A failed knowledge test combined with a failed experience test, should have automatically resulted in the conclusion that the account was inappropriate for him, and a warning to that effect.

The notion of allowing repeated applications of the knowledge test until it is passed despite any failures in between (and without issuing a warning about inappropriateness following such failures) does not, in my view, match the regulatory expectations in COBS 10A. Those expectations are that the assessment is properly applied by the firm and where it is failed an inappropriateness warning is issued by the firm – as opposed to the firm suspending such a

warning during test failures, until the warning is treated as redundant when the assessment/test is eventually passed.

The same notion also conflicts with Mr W's best interests. The failed knowledge test was IG's opportunity to alert him, for his benefit, to the inappropriateness of the account – especially when considered alongside the failed experience test. He was deprived of such an alert at the time, and he did not subsequently receive it because he passed the second knowledge test.

IG says its practice permits the conclusion of appropriateness if only the knowledge test is passed. I do not propose to appraise IG's approach or practice in this respect. It is the requirements in COBS 10A (and the requirements from the regulatory context summarised above) that matter and, for the reasons addressed above, those requirements meant IG should have given due regard to the first knowledge test that was failed and should have declared the account inappropriate for Mr W at that point. I repeat, its evidence is that it would not grant an inappropriate account to an applicant, so Mr W's pursuit for the account should have ended at the point he failed the first knowledge test.

Overall, on balance and for the above reasons, I uphold Mr W's complaint. The CFD trading account was inappropriate for him and IG should not have issued it to him.

Putting things right

Fair Compensation

My aim is to put Mr W into the position he would probably now be in had he not been granted the inappropriate trading account by IG.

He should never have been granted the inappropriate trading account. Had that happened, none of the trading that took place in the account would have taken place. The same applies to the outcomes of all those trades, they would not have happened because there would have been no trading in the account, because there would have been no account. IG is responsible for granting him the inappropriate trading account, so its responsibility extends to the events and consequences that flowed from that.

What must IG do?

I order IG to do as follows –

- Calculate the total of all Mr W's capital deposits that were lost in his trading account. ['A']

  The aim is to ensure that he recovers only the total capital he invested and lost in the account, as though he never opened and operated the account.

- Calculate interest on A at the rate of 8% simple per year from when each capital loss occurred (and for each specific capital loss amount) up to the date of settlement. The total interest = 'B'.

  The aim of B is to compensate Mr W for being deprived the use of the lost capital.

- Pay Mr W the total of A + B.

- In addition, pay Mr W £200 for the trouble and upset the matter has caused him.

My final decision

For the reasons given above, I uphold Mr W's complaint and I order IG Markets Limited to calculate and pay him compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 24 April 2024.

Roy Kuku
Ombudsman