

The complaint

Mr W complains that he didn't realise he had purchased a Contract for Difference (CFD) through Plus500UK Limited. Mr W says he thought he'd purchased the underlying shares.

Having now lost all of his original investment, Mr W would like Plus500UK to refund the monies that he's lost.

What happened

In May 2022, Mr W completed Plus500UK's online application form to open an account with them. Part of the process required Mr W to answer an online questionnaire to establish his knowledge of what he was entering into. After completing that questionnaire, Plus500UK's website determined that a CFD account wasn't appropriate for Mr W, but despite the warning, he decided to acknowledge that message and continue opening an account with them.

After the account set up had been completed, Mr W deposited £1,000 with Plus500UK and opened a position on Valneva. Mr W says at that point he thought he was purchasing actual shares in Valneva rather than a CFD. Following changes in the underlying share price over a number of days, as Mr W didn't have enough funds in his account to maintain the position, the trade was closed out due to a margin call, resulting in Mr W losing all of his investment.

Shortly afterwards, Mr W decided to formally complain to Plus500UK. In summary, he said that he was surprised to see the opening share price of Valneva on Monday 16 May 2022 was different to the closing share price on Friday 13 May 2022. Mr W felt that Plus500UK had influenced the prices for their own benefit, resulting in his losses. After exchanging correspondence with Plus500UK, it became apparent to Mr W that he'd not opened a traditional share dealing account, but a CFD trading account.

Mr W went on to raise a further concern with Plus500UK when he learned that he wasn't purchasing shares in his selected company, but rather, he was purchasing a CFD which up until that point, he'd never heard of. He stated that Plus500UK's website was misleading.

After reviewing Mr W's complaint, Plus500UK concluded they were satisfied they'd done nothing wrong. They also said, in summary, that they have no influence on the closing and opening share prices of any stock, and they simply act as an execution only trading platform. In addition, Plus500UK explained that they felt their website and all their associated literature that was shared with Mr W as part of his account opening was clear about both the risks that he was entering into and the fact that he was setting up a CFD trading account, rather than a traditional stocks and shares account.

Mr W was unhappy with Plus500UK's response, so he referred his complaint to this service. In summary, he said that having not purchased shares in nearly 35 years, this was the first time he'd bought what he thought were shares, online. He explained that he didn't believe Plus500UK were clear about what he was entering into.

The complaint was then considered by one of our Investigators. He concluded that Plus500UK hadn't treated Mr W unfairly because from what he'd seen of the pre-sale disclosure documentation that Mr W was given prior to setting his account up, it was clear that this wasn't a traditional stocks and shares trading account.

Mr W, however, disagreed with our Investigator's findings. In summary, he said that all he wanted to do from the outset was purchase some 'real shares'. He went on to say that as a layperson with no experience in online share dealing, he simply typed 'buy shares online' into his search engine and Plus500UK's website came out at the top of the page. Given that he wanted to buy shares, rather than CFDs, Mr W says that he was misled.

Our Investigator was not persuaded to change his view as he didn't believe Mr W had presented any new arguments he'd not already considered or responded to. Unhappy with that outcome, Mr W then asked the Investigator to pass the case to an Ombudsman for a decision.

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 have summarised this complaint in less detail than Mr W has done and I've done so using my own words. The purpose of my decision isn't to address every single point raised by all of the parties involved. If there's something I've not mentioned, it isn't because I've ignored it - I haven't. I'm satisfied that I don't need to comment on every individual argument to be able to reach what I think is the right outcome. No discourtesy is intended by this; our rules allow me to do this and it simply reflects the informal nature of our service as a free alternative to the courts. Instead, I will focus on what I find to be the key issue here, which is whether Plus500UK were clear in their dealings with Mr W about the nature of the arrangement he was entering into.

My role is to consider the evidence presented by Mr W and Plus500UK in order to reach what I think is an independent, fair and reasonable decision based on the facts of the case. In deciding what's fair and reasonable, I must consider the relevant law, regulation and best industry practice. Where there's conflicting information about what happened and gaps in what we know, my role is to weigh up the evidence we do have, but it is for me to decide, based on the available information that I've been given, what's more likely than not to have happened. And, having done so, I'm not upholding Mr W's complaint, and it's largely for the same reasons as our Investigator. Whilst I appreciate that Mr W will be disappointed with my decision, I'll explain why below.

I can well understand Mr W's concern at seeing the £1,000 he'd invested reduce to zero in such a short space of time, particularly when, as he says, it's money he can ill afford to lose.

In May 2022, when Mr W opened his account, Plus500UK needed to ask him to provide information regarding his knowledge and experience, relevant to the specific type of product or service demanded, so as to enable them to assess whether the service or product was appropriate for him. This assessment included determining whether Mr W had the necessary knowledge and experience in order to understand the risks involved in the product or service demanded.

I've looked closely at the questionnaire that Mr W completed as part of the account opening process. Plus500UK's first question asked: *'How many trades of CFD/leveraged investment have you placed in the last 3 years?'* to which he responded *'Less than 20 trades'*.

However, in his complaint to this service, Mr W has explained that he'd never heard of CFDs until Plus500UK explained to him what they were following the loss of his investment. In response to a question about leverage ratios, Mr W provided an inaccurate answer although that's hardly surprising given that within the same questionnaire, he explained that he'd never used borrowing to invest. In response to all his answers, Plus500UK's system determined that a CFD account was not likely to be suitable for Mr W.

Despite the fact that Plus500UK flagged to Mr W that a CFD account wasn't right for him, he still decided to proceed anyway. And, that was after acknowledging the following warning:

'Appropriateness Risk And Target Market Warning. Declaration – I acknowledged your warning that a CFD account is not appropriate for me. However, I wish to proceed with my application and I understand the risks associated with CFD trading. I am aware of your demo account and the information on your website. True'.

As Plus500UK concluded that the account was not appropriate for Mr W, they warned him of this fact under the regulator's COBS 10.3 rule. And if, despite this warning, Mr W still intended on opening his account, guidance under COBS 10.3.3 said that it would be *'for the firm to consider whether to allow him to do so having regard to the circumstances'*.

The final element of COBS 10 is the guidance at COBS 10.3.3 which suggests that firms ought to consider taking into account the circumstances as to whether or not to let a consumer proceed, despite a warning that the service requested isn't appropriate.

The FCA hasn't provided any specific scenarios of when firms ought to exercise this discretion to unilaterally prevent consumers from opening an account. And I'm satisfied that if the regulator didn't want consumers who didn't pass the appropriateness assessment to still request the service or product, they would've said so. The fact that firms are guided to consider all the circumstances indicates that in the regulator's view, firms need to balance the best interests of their customers by weighing up the risks of the product or service demanded, versus the customer's interests in doing something they clearly want to do.

So, I've looked at Mr W's circumstances at the time. I'm not persuaded that in the specific circumstances of Mr W's case there were any particular reasons that ought to have prompted Plus500UK to unilaterally stop Mr W from doing something he clearly wanted to do – and for which the questionnaire he completed suggested that he had some experience of, and ample warning of the risks.

Despite this, I am broadly satisfied that Mr W was made aware of the risks that he was entering into and more specifically the fact that he wasn't dealing in just ordinary shares. Having looked at an archived copy of Plus500UK's website from May 2022, which is the time that Mr W opened his account, the first piece of information he would have seen was a prominent warning that stated: *'CFDs are complex instruments and come with a high risk of losing money rapidly due to leverage. **77% of retail investor accounts lose money when trading CFDs with this provider.** You should consider whether you understand how CFDs work and whether you can afford to take the high risk of losing your money'*.

In addition, as part of the account opening process, Mr W was provided with a copy of Plus500UK's User Agreement, which he had to accept as part of the account set up. Within the User Agreement document, it states that *'Trading in Contracts for Differences (CFDs) and use of the Trading Platform (which allows high leverage investments in CFDs) carries a high level of risk to your investment. Make sure you fully understand the risks involved'*

before downloading the software and accessing the Trading Platform and take investment, financial, tax or other advice if necessary. CFD trading may not be suitable for every customer. A detailed explanation of the risks associated with trading on the Trading Platform is set out in this User Agreement and the Risk Disclosure Notice, which can be found by clicking on the Risk Warning on the Website. You should ensure you fully understand such risks before entering into the Client Agreement and using the Trading Platform’.

Plus500UK’s Risk Disclosure Notice that Mr W accepted as part of the account opening process also provided similar warnings about the risks he was entering into. It explains that consumers should *‘not invest in CFDs with money that you cannot afford to lose. An investment in CFDs carries a high degree of risk to the investor and, due to fluctuations in value, the investor may not get back the amount he has invested’.*

So, despite what Mr W says about only wishing to trade ordinary shares, from what I’ve seen, there are enough references to CFDs and the risks associated with them on Plus500UK’s website and literature to have reasonably prompted him to pause and seek further information about what he was entering into before investing any of his monies, so I can’t reasonably conclude that Plus500UK have misled Mr W or treated him unfairly.

Mr W says that he typed *‘buy shares online’* into his internet search engine and Plus500UK’s website was promoted at the top of the page as the first result, which is why he came to find himself on their website. Mr W went on to say that he relied upon those search results, particularly given that he wanted to purchase shares as opposed to CFDs. There’s a number of factors that can drive which businesses appear at the top of an internet search result and it’s not within the remit of this service to speculate on what those could be. Needless to say, following any internet search, it’s down to the consumer to undertake their own due diligence and check that the results presented to them, provide them with precisely what they’re looking to achieve. In support of his complaint, Mr W sent in a screenshot of Plus500UK’s internet search result. However, the screenshot provided states *‘Ad Buy & Sell Stock CFDs with Plus500. Trade from your mobile. 73% of retail clients lose money’*. So, whilst Mr W wasn’t looking to purchase CFDs, the advert does make reference to purchasing CFDs rather than ordinary shares and should have prompted Mr W to carefully consider what was being offered.

It seems that when Plus500UK did become aware that Mr W didn’t understand the arrangement that he’d entered into, they put a stop on his trading account, meaning he couldn’t deposit further monies or undertake any new trades. Taking all of this into account, I don’t think that Plus500UK is required to pay any compensation to Mr W – I’m satisfied that Mr W would’ve opened his account regardless, and the losses sustained were therefore trading losses incurred by Mr W’s trading decisions, and not caused by something Plus500UK did or didn’t do.

My final decision

I’m not upholding Mr W’s complaint and as such, I won’t be instructing Plus500UK Limited to take any further action.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr W to accept or reject my decision before 17 April 2024.

Simon Fox
Ombudsman