

## The complaint

Mr H complains Fortrade Limited (“Fortrade”) is at fault for losses he suffered on his Fortrade trading account.

Mr H complains Fortrade didn’t give him enough training on how to trade on the account. He also complains he was pressured to trade more and add more funds to his account and then to open a professional trading account.

## What happened

Mr H applied for his account on 27 February 2022. According to the account registration summary of his application answers:

- Mr H’s trading was to be for “speculation”.
- He had knowledge of trading from “previous trading experience” including two to five years’ experience of contracts for difference (CFDs) and other trading experience of more than 5 years’ He traded online on a daily basis.
- He was employed and his earnings were between \$100,000 and \$250,000.
- His savings and investments were worth \$5000 to \$25000.
- The source of his trading funds were to be ‘bank savings’.
- He agreed to the statement: “I understand that trading Contracts for Difference (CFDs) and other leveraged products carry a high level of risk.”
- Fortrade told Mr H it had classified him as a retail client and told him 77% of retail CFD accounts lose money.

Fortrade has said Mr H deposited £100,000 to open his account. It says he was “in frequent contact with his account support managers. They discussed various market analyses updates and similar. His account support managers wanted to assist him in making informed decisions... They were frequently emphasizing the volatility of the market as an indicator that the market is unpredictable. They also shared reports prepared by Fortrade’s Research Department... [his] account support manager... provided him with our educational materials regarding CFD trading...”

Fortrade has referred to two particular companies’ CFDs Mr H traded and made lots of losses on or was stopped out on. It says it didn’t suggest these companies to him.

Fortrade says the possibility of a professional client account was presented to Mr H by his account manager with an explanation of what it was and the criteria. It says Mr H wasn’t pressured into opening the account or coached through his answers to get it. It says Mr H on 21 April 2023 chased for his application approval so he could have lower stop-out levels.

Mr H signed his professional client application form on 25 April 2023. He ticked to say he

had traded CFDs in “*significant size*” at least ten times in each of the previous four quarters. He also ticked to say he had “*Financial Sector Experience*” and that “*I work or have worked in the financial sector for at least 1 year in a professional position which has provided me with knowledge or experience of CFDs or Forex.*”

In relation to this last point, Mr H named a company who employed him – which was a financial services provider – and said this was “*via*” two other entities which I gather were a professional and financial services recruitment company and a consultancy of that company. Mr H said his position held was “*Data + Analytics Programme Manager*” and his length of employment was two years three months. In answer to the question, “*How has this position provided you with knowledge or experience of CFDs / Forex?*”, Mr H answered “*Yes*”.

I understand Mr H’s account changed to a professional account on 25 April 2023.

Our investigator considered the complaint. He didn’t think Fortrade was at fault for opening Mr H’s original account, but he did think it was wrong to start treating him as a professional client and give him a professional account. In brief summary our investigator thought:

- FCA rule COBS 10A.2.1R required Fortrade to ask Mr H for information about his relevant investment knowledge and experience. Fortrade acted appropriately when it first opened Mr H’s account, because his application indicated he had knowledge of CFDs and experience of trading them.
- Fortrade could only treat Mr H as an elective professional client if it complied with the requirements in FCA rule COBS 3.5.3R. So it needed an “*adequate assessment of the expertise, experience and knowledge*” of Mr H that gave “*reasonable assurance, in light of the nature of the transactions or services envisaged*” that he could make his own investment decisions and could understand the risks involved.
- This would include satisfying a ‘quantitative test’ by fulfilling at least two of these three:
  - (a) Mr H averaged 10 CFD transactions, in significant size, each quarter over the previous four quarters;
  - (b) Mr H’s financial portfolio exceeded 500,000 Euros in size;
  - (c) Mr H had at least one year working in the financial sector in a professional position requiring knowledge of trading CFDs.
- Mr H didn’t tick on his form to say his portfolio exceeded 500,000 Euros. He ticked that he’d had financial sector experience but what he’d written about his job didn’t show his role required any knowledge of CFDs. He also ticked that he’d traded in significant size ten times a quarter in the previous four. We’d asked Fortrade to highlight the relevant trades, but it didn’t and just sent us Mr H’s trading history. This didn’t show Fortrade had properly considered this or show its basis for thinking Mr H showed he met this criterion.
- In light of the above, the evidence didn’t show Fortrade took “*all reasonable steps*”, as required by FCA rule COBS 3.5.6R, to make sure Mr H met the tests needed before re-categorising him as an elective professional client.
- Guidance from the European Securities and Markets Authority also warns against basing re-categorisation on a consumer’s own self-certification.
- As regards Mr H’s claim that Fortrade advised him on trades, the discussions reviewed didn’t amount to investment advice and Fortrade’s terms made clear it didn’t offer advice.

Our investigator thought if Mr H had remained a retail client he’d have placed the same

trades but had less leverage available and so if this meant he would've lost less Fortrade should pay him this difference with 8% simple interest to put things right.

Mr H accepted our investigator's conclusions so long as all trades that crystallised after the account change, including ones placed before the change, were to be included – as all such trades had potential to lose more after the change. Our investigator agreed with this.

Fortrade agreed it hadn't given Mr H financial advice, but it otherwise rejected our investigator's views. It resent a statement showing Mr H's trading history with another provider. It also sent a 25 April 2023 email from Mr H in which Mr H said:

- He'd evidenced he'd been with his employer for more than two years and his employer had *"confirmed in writing earlier today that I 'work or have worked in the financial sector for at least 1 year in a professional position which has provided me with knowledge or experience of CFDs or Forex'"*.
- He had also worked at another financial services firm during 2018 to 2020. In an earlier role he'd worked for another financial firm where he *"worked with Equities and Fixed Income Products (include Futures and options FX, CFD)."*
- He had *"some on the job knowledge of Settlements, Trade Booking/allocation and Cash and Stock Reconciliations"* and used to do *"UAT Testing"* (software user testing) for client servicing systems. He also *"worked on a trading support desk many, many years ago..."*
- *"...please advise exactly what statement you need from my current employer to get this signed off? I don't have one-years relevant experience - I have much more!"*

Fortrade, in reply to our investigator's assessment, said in brief summary:

- It didn't accept it hadn't taken reasonable steps to ensure Mr H satisfied the test to be an elective professional client.
- Mr H had made trades with Fortrade with notional values exceeding £10,000 and it was these that were deemed significant for the purposes of the test. In addition Fortrade asked Mr H for a statement from an account he held elsewhere which showed significant trading activity in CFDs as well as stocks and cryptocurrency.
- Fortrade didn't just rely on Mr H to self-certify. It obtained email confirmation from his line manager that his role had given him working knowledge and experience of CFDs (or foreign exchange).
- All Fortrade did was present Mr H with the option of changing to an account allowing him to take advantage of greater leverage and lower margin requirements, so long as he met the FCA's elective professional client criteria, which Mr H said on 11 April 2023 he did. He was then asked to provide the extra information mentioned. The decision to change the account was solely that of Mr H.
- Fortrade's recalculation of the trades that closed or stopped since the account change, would be concluded shortly but Fortrade didn't agree it should pay redress to Mr H.

Our investigator didn't change his view and still thought Fortrade shouldn't have changed Mr H's account, removing his retail customer protection. In brief summary he said:

- Mr H's account changed on 25 April 2023 and in the year before that he averaged less

than ten significant trades on Fortrade a quarter. In May/June/July 2022 he placed eight, in August/September/October 2022 seven, in November/December 2022 and January 2023 he placed eight and in February/March/April 2023 he placed three. He had an account elsewhere too, but Fortrade hadn't pointed us to significant trades on that.

- With all this in mind, Mr H didn't fulfil the requirements for an elective professional client.
- Fortrade said it obtained evidence from Mr H's line manager of financial knowledge or experience gained at work, but it sent us an email from Mr H not his line manager. Even if Mr H met the criterion relating to working in a position requiring relevant knowledge, this was just one and not at least two of the relevant criteria.
- Overall Fortrade had not taken all the 'reasonable steps' it ought to have taken. So it should rework the account from the point of re-categorisation, including existing trades subsequently closed or stopped out. It should also add 8% simple interest to the difference calculated.

Fortrade didn't reply with any further clarification, evidence or arguments. Mr H hasn't sent anything new either. As the matter remains unresolved, it has been passed to me to decide.

### **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 arrived at substantially the same conclusion as our investigator and for substantially the same reasons.

In short, I'm not persuaded Fortrade provided Mr H with advice or did anything wrong by opening his retail account. But I think it was wrong to reclassify him as an elective professional client and give him a professional account.

The parties will be familiar with the relevant rules. Our investigator referred to these in his assessment, so I won't set them out again here. But, briefly, in considering whether to treat him as an elective professional client, Fortrade had to undertake an adequate assessment of Mr H's expertise, experience and knowledge of CFD trading that gave it reasonable assurance he understood the risks involved and could make his own investment decisions. This had to include being satisfied he met at least two of the three quantitative test criteria.

Mr H didn't claim to have very substantial savings. There's been no suggestion the size of his portfolio ought to have assured Fortrade of Mr H's expertise, experience or knowledge as regards the risks of conducting CFD trading as an elective professional client. So Fortrade wouldn't have been acting reasonably or fairly in my view had it placed weight on or took assurance from the size of Mr H's financial portfolio when agreeing to re-classify him as an elective professional client.

With regard to Mr H's work, what Fortrade obtained from Mr H shows this took place in the financial services sector, but it doesn't show it was financial services work of a kind relevant to trading CFDs. Mr H's job title didn't denote any financial services expertise and wasn't concerned with CFDs, or trading or trading CFDs but rather suggests his work, role and expertise was in information technology. It appears Mr H's professional position at the time wasn't a profession or professional role inherently or necessarily requiring knowledge of CFD trading. Also what Fortrade has provided doesn't persuade me that in Mr H's particular case his position did in fact require knowledge of CFD trading or like transactions. With this in mind, I don't see that Fortrade could reasonably be assured by what Mr H's line manager said or was willing to say about the knowledge Mr H derived from his work in that role.

Likewise I don't see that Fortrade ought to have had confidence that Mr H's previous roles involved or required such knowledge, based on what he said about having "*worked with*" certain products or having "*some on the job knowledge of*" some support or backroom functions. I don't see that Fortrade could reasonably conclude from this that the nature of Mr H's past work required a significantly greater degree of knowledge of CFD trading than he could evidence in his current role. I don't overlook that Mr H said he "*worked on a trading support desk many, many years ago*" but this doesn't change my view.

So I share our investigator's view that insofar as Fortrade placed weight on or took assurance from Mr H's work, it didn't act reasonably or fairly towards Mr H in agreeing to reclassify him as an elective professional client.

Also it isn't obvious to me that Fortrade ought to have been assured it could reclassify Mr H legitimately as an elective professional client based on his past trading and the frequency with which he made large trades. I'm mindful 'significant size' isn't specifically defined. Our investigator took issue with how Fortrade counted large trades for this purpose. Fortrade hasn't responded to clarify its position or explained how the other account it has pointed us to was taken into account in its assessment.

In short Fortrade hasn't articulated its reasoning very clearly on this point. But even if it were able to explain that Mr H met this criterion, it is plain he didn't have a large enough portfolio to meet the test relating to that and wasn't - on the evidence obtained - employed in a role or profession which conferred on him specific knowledge of leveraged products. So I conclude Fortrade incorrectly classified Mr H as an elective professional client and exposed him to risk it shouldn't have exposed him to.

I note that COBS 3.5.6 R required that before deciding to re-categorise Mr H as an elective professional client Fortrade had to take all reasonable steps to ensure that he satisfied the relevant tests. Having considered Fortrade's evidence and arguments presented here, I'm unable to conclude that it did take 'all reasonable steps' to ensure Mr H satisfied the tests.

I'd add that restrictions for firms offering CFDs to retail consumers - restricting leverage and increasing margin requirements - were, at root, introduced to protect them from harm and losses they could otherwise suffer. Mr H's request to be reclassified and lose this protection seems to have been prompted by losses arising from unsuccessful trading - because if he were allowed to trade with less margin, losing positions could stay open longer and might recover. But it might also result in more losses and harm of the kind the regulatory provisions introduced for CFDs were designed to stop. One doesn't need to accept Mr H's arguments about being financially stretched and having borrowed to invest or risked a large part of his savings, to conclude his request to be reclassified wasn't made from a position of comfort, strength or security. In that situation it seems to me it ought to have been harder, all other things being equal, for Fortrade to assure itself that Mr H grasped the risks of the course he was asking Fortrade to allow him to take.

So for each of the reasons I've given above, and also in light of all I've said above, I uphold Mr H's complaint in part.

### **Putting things right**

To put things right, Fortrade Limited should put Mr H into the position he'd have been in if he hadn't been re-categorised in April 2023 and had instead remained a retail client. I note that Fortrade hasn't raised any practical objections to the approach our investigator proposed for doing this.

I think it likely Mr H would've still placed the same trades – but without the greater leverage the re-categorisation allowed, which potentially led to him losing more than he would've had he retained the greater protection afforded to retail clients.

To put things right, Fortrade Limited should rework Mr H's account from the point he was reclassified (which I gather was on 25 April 2023), including all trades that closed or stopped during that period, and compare what he would've lost if he'd remained a retail client, using the relevant rules and margin requirements that were in place at the time, with what he lost as a professional client - and Fortrade Limited should pay Mr H any difference (if he lost more as a professional client).

Fortrade should add 8% simple interest to that difference, starting from the date Mr H's last position closed (which I gather was 9 November 2023) until the date the redress is paid. Income tax may be payable on any interest paid.

### **My final decision**

For the reasons I've given, and in light of all I've said above, I uphold Mr H's complaint.

Fortrade Limited must put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 16 October 2024.

Richard Sheridan  
**Ombudsman**