

The complaint

Mr N has complained that Jarvis Investment Management Limited, trading as London South East Trading ('LSE'), allowed him to open a Contracts for Difference ('CFDs') trading account which wasn't right for him. He would like his losses of £43,808 returned to him with interest plus £1,000 for the stress he has been caused.

Mr N is represented in bringing his complaint but for ease of reading, I will refer to 'Mr N' throughout my decision.

What happened

Your text here Mr N had a trading account with LSE since December 2014 on which he says he incurred losses. He said those losses were incurred as a result of him not been warned of the risks in trading and even if he had been warned he wouldn't have necessarily understood those risks.

He complained that he wasn't suitable or fit to trade with LSE – it wasn't appropriate for him. He didn't think LSE had complied with the Principles that applied under the regulations, and it hadn't acted with due skill and care or in his best interests. He was unfamiliar with the high risk nature of CFD trading and was inexperienced. He had been misled about the commissions being taken and didn't understand the implications of gearing.

LSE responded to Mr N's complaint on 22 July 2024. It didn't uphold the complaint;

- Mr N's account was an execution only account that didn't allow CFD trading so an appropriateness test wasn't needed.
- Mr N's 358 trades incurred its flat commission fee of £9.95. Its staff weren't remunerated on sales.
- Mr N had made a trading return of over £46,000
- Risk warnings were displayed on its website.
- Mr N traded through at least three alternative brokers.
- It had completed a stock transfer to another broker as requested.

Unhappy with the outcome, Mr N brought his complaint to the Financial Ombudsman Service. Our investigator who considered the complaint didn't think LSE needed to do anything more. He said;

- As the account was an execution only share dealing account LSE didn't have to carry out an 'appropriateness' test. And he couldn't find that an execution only share dealing account wasn't right for Mr N.
- He couldn't find any evidence of churning of the account. Mr N didn't receive any advice from LSE.
- The key consideration was that the account was execution only and there was no evidence he was given advice that led to the number of trades carried out.

- The charges incurred were made clear from the terms and conditions of the account agreed at the outset.

Mr N didn't agree with the investigator. He said;

- Even though he didn't receive advice, LSE benefited from the commission structure that incentivized high volume trading without any assessment of his best interests regardless of his account's execution only status.
- LSE profited from the arrangement so has some responsibility for the outcome.
- The high level of transaction fees exceeded what he had anticipated. LSE's representations of commission didn't communicate the potential cumulative cost of frequent trades.
- There weren't any built-in controls or warnings against excessive trading and the transparency around the commissions misrepresented the financial burden that would result for typical trading activity.
- Under the regulations, LSE had a duty to prevent adverse outcomes associated with frequent trading from which it benefited disproportionately.

As Mr N's response didn't change the investigator's opinion and the complaint remains unresolved, it has been passed to me for decision in my role as ombudsman.

LSE provided some additional information for my consideration. It said;

- The trading cost on its platform was a set amount per trade which Mr N would have known at the time he traded.
- The regulations Mr N had referred to didn't apply to his account as it was an execution only account.
- The trading fees were disclosed and accepted by Mr N when he opened his account with LSE. It hadn't traded through 'alternative brokers'. The brokers he had referred to were independent from LSE.
- It wasn't under any obligation to restrict a client's access to trade of his own volition.

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.

After doing so, I've reached the same conclusion as the investigator and broadly for the same reasons. I'll explain why.

In making his complaint, Mr N has referred to the rules and regulations LSE must abide by being a UK regulated financial business. Those rules are laid out by the regulator, the Financial Conduct Authority ('FCA'). Mr N has complained that LSE breached some of the FCA Principles. These have a wide application and I have therefore considered all of Mr N's points with the Principles in mind as a relevant consideration throughout my decision but I note Mr N has made particular reference to;

'Principle 2 – Skill, care and diligence

A firm must conduct its business with due skill, care and diligence.

...

Principle 6 – Customer's interests

A firm must pay due regard to the interests of its customers and treat them fairly.'

The FCA's rules are defined in its Conduct of Business Sourcebook ('COBS') and Mr N has referred to the appropriateness test and CFD trading. CFDs are complex investments and an appropriateness test would be needed to ensure Mr N's understanding, knowledge and experience to comprehend the risks of the product.

However, Mr N wasn't trading in CFD's. Mr N was a retail client, and his account was execution only which traded in listed shares and not CFDs, so the COBS rules about this don't apply;

'COBS 10.4 Assessing appropriateness: when it need not be done

10.4.1 (1) A firm is not required to ask its client to provide information or assess appropriateness if:

(a) the service only consists of execution and/or the reception and transmission of client orders, with or without ancillary services, it relates to particular financial instruments and is provided at the initiative of the client;
...'

And the shares Mr N traded in were 'non-complex' because;

- they weren't derivatives,
- were liquid,
- weren't leveraged and
- there was sufficient publicly available information for him to have made an informed judgment as to whether to invest.

So, I don't agree that LSE failed to assess whether he was appropriate for CFD trading as it didn't need to.

If LSE was providing advice to Mr N, then COBS 9.2 'Assessing suitability' and COBS 9.3 'Guidance on assessing suitability' would apply and LSE would have to assess the suitability of the account for Mr N. But LSE wasn't providing advice as the account was an execution only account and it didn't make a 'personal recommendation' to Mr N or 'manage investments' on his behalf. Other rules apply in that LSE had to act in Mr N's best interest, needed to disclose service details and charges and had to have a client agreement with Mr N. However, I haven't been presented with anything to suggest that LSE has fallen foul of any of those rules.

I say this because Mr N applied online when opening his account and agreed to its terms and conditions in doing so. As part of that Mr N agreed to 'pay us a fee for our services in accordance with our published rate of charges from time to time. Details of the rate of charges are available from us on request.' And looking at the 'breakdown of Trades & charges' LSE has provided for Mr N's account I can see that Mr N paid a flat fee for any trades carried out as advised.

As the account was an execution only account, Mr N didn't have interaction with LSE representatives in that advice was given. I haven't been presented with anything to suggest that Mr N was induced to carry out the trades that he did. Any trades he did make were of

his own volition. Mr N has referred to his account being churned – excessively traded – and that the commission earned by LSE wasn't transparent. The FCA defines churning as;

‘COBS 9.3.2G Churning and switching

- (1) A series of transactions that are each suitable when viewed in isolation may be unsuitable if the recommendation or the decisions to trade are made with a frequency that is not in the best interests of the client.’

But Mr N's account was execution only and I can't see that LSE in any way influenced or enabled excessive trading over and above offering its platform as a trading facility. And I don't think there was anything in Mr N's trading behaviour that would have suggested to LSE he was vulnerable or financially unsophisticated to the extent that excessive trading was harming him which could have required its intervention. So, I don't agree with Mr N's comment that 'LSE benefited from a commission structure that arguably incentivised high trading volume without any assessment of whether it was in my best interest'.

Mr N has argued that LSE profited significantly and its 'representations of commission fees did not effectively communicate the potential cumulative cost of frequent trades, thus creating a misleading impression regarding the true cost of using their services'. But LSE is entitled to be remunerated for a service it provided. And Mr N was charged a flat fee for any trade as agreed with LSE when he opened his account so he knew in advance of each trade the costs that would be incurred. And as it was for Mr N to decide how often he wanted to trade I don't agree that LSE 'inadvertently enable[d] practices that led to excessive commissions.'

Mr N has said that there weren't 'any built-in controls or warnings about excessive trading'. But it was for Mr N to decide when he wanted to trade and as I have found above, I don't find there was anything about the way in which Mr N traded that would have caused LSE to question whether him having the account was in his best interests.

Mr N has referred to him making losses on his account. In its final response to Mr N's complaint LSE stated that Mr N had paid in £85,440.00 to his account over the years and withdrawn a total of £131,639.77 which suggests Mr N made a profit of £46,199.77. We asked Mr N to identify where he had made the losses he had referred to and the specific trades. But Mr N didn't reply. So, in the absence of anything from him to show otherwise, it's not possible to identify Mr N has suffered a loss in his dealings with LSE or that LSE is responsible for those losses.

Taking all the above into account, I don't find that LSE has done anything wrong in allowing Mr N to open an execution only share dealing account or that he has suffered any losses because of any failings by LSE. I also don't agree that LSE has breached any rules or didn't appropriately apply the regulator's rules and Principles in the running of Mr N's account. It follows that I don't uphold Mr N's complaint and don't find that LSE needs to do anything more. I appreciate Mr N will be disappointed with the outcome to his complaint as it's clear he feels strongly about it. But I hope I have been able to explain how and why I reached that decision.

My final decision

For the reasons given, I don't uphold Mr N's complaint about Jarvis Investment Management Limited trading as London South East Trading.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 10 September 2025.

Catherine Langley
Ombudsman