

complaint

Mr S complains XTB Limited wrongly closed out three of his trades on his spread betting account (for two different reasons) which caused him a financial loss of £350.58.

background

Mr S opened his trading account with XTB in December 2017, funding his account and placing his first trade. On 15 December 2017, XTB closed out the trade without his authority. Mr S opened two further positions but on 19 December 2017 XTB told him that it was withdrawing its cryptocurrency offer and all cryptocurrency positions would be closed by the end of the year. This forced Mr S to close his positions prematurely.

In his complaint Mr S said XTB should've made him aware at the point of account opening that it could take such measures.

An adjudicator at this service did not feel his complaint should be upheld as she didn't believe XTB had done anything wrong or operated outside its terms and conditions (T&Cs). She was also satisfied that these were written in a clear and easy way to allow Mr S to make an informed choice as to whether to sign up. She didn't accept that XTB should've drawn his attention to any particular clauses. Instead she felt the onus was on Mr S to ensure that he understood the terms or sought further clarification in the event that he wasn't clear about some issues.

She noted that Mr S hadn't disputed that he'd breached the margin requirement on the first trade, and therefore felt XTB was entitled to close this position without his prior agreement.

She was also satisfied that clause 40.1 of the terms allowed XTB to make changes provided it gave customers adequate notice. She felt its email notification of 19 December 2017 gave Mr S such adequate notice with regards to the withdrawal of the cryptocurrency offer.

Mr S disagreed, and said:

- He now appreciates that XTB's terms and conditions allowed it to take both of the actions it did but felt it took little or no steps to bring these to his attention. It was so keen to get him on board that there was no reference to the T&Cs even though it knew he was a first-time trader
- His assigned account manager made a big deal about the online training (which he looked at). He asked him a number of questions which made it abundantly clear that he was completely new to trading and it must have been obvious that the size of trade he was talking of, with the balance he had placed in his account, meant there was a real risk of falling below the percentage which causes a close out on a trade
- As would have been obvious to his account manager at the time, he had no idea that trades could be closed out. Given he was talking to him specifically about the questions above, and given the obvious risk to his funds, he should have told him of those risks. Just saying something like "you know if the trade goes down by X, we would have to close it off" would have been enough
- It would have been so easy to do this which suggests he deliberately chose not to knowing XTB would benefit
- In regard to the sudden and unexpected decision to withdraw the cryptocurrency offering, there was also no effort to draw the T&Cs to his attention despite his

obvious lack of any experience in trading. There was surely a greater burden on XTB to do this

my findings

I have considered all the arguments and evidence to decide if this complaint should be upheld. In this case I agree with the adjudicator and for the same reasons.

When businesses or advisors recommend products to their clients or would-be clients there is a clear and regulated requirement to ensure they fully understand the nature of any proposed products or services. This is called an advised sale. This will include being fully apprised of the risks, dangers and drawbacks of any financial product or activity.

If, however, as in this case, the business is not offering a personal recommendation or advice service but is merely 'selling' a product or service its responsibility is limited to providing accurate and easily understandable information about the product or activity. This includes not misleading by omission.

By this standard, I have seen no evidence that XTB did anything wrong. Spread betting is a very risky financial activity, arguably closer to gambling than an investment, and the onus is on would-be clients to fully ensure they understand the many and varied risks posed by such a high risk activity. This includes the margin issue and the risk of positions being closed without a client's permission. I have seen no evidence that XTB failed to include the relevant information about these risks.

I also note that the front page of XTB's website offers a clear and explicit warning about spread betting, particularly to inexperienced investors:

'CFDs are complex instruments and come with a high risk of losing money rapidly due to leverage. 79% 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 my view, XTB was not required to provide any of the warnings Mr S refers to or explicitly draw his attention to specific clauses in the T&Cs. It was also entitled to take both of the actions it did.

my final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to Mr S ask to accept or reject my decision before 5 December 2018.

Tony Moss
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