

complaint

Ms P complains about the forex trading account she opened with Beta 2. She says that the account was not suitable for her.

To resolve the complaint Ms P would like the losses she incurred to be repaid.

background

An adjudicator considered the complaint and recommended that it should be upheld.

In summary he said that:

- He didn't think that the account was suitable for Ms P.
- He said this was because Ms P was 58 years old and retired.
- She had very limited investment experience.
- She was recommended to invest 50% of her savings.
- Ms P said that she had been told the maximum she could lose would be 10% of her capital.
- He therefore didn't think that the risks had been clearly explained to Ms P.
- He thought that if Ms P had been told she could potentially lose all of her capital then it was very unlikely she would have invested.

Despite being given several deadline extensions the business did not reply to the adjudicator.

my findings

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 come to the same conclusions as the adjudicator and for the same reasons.

Ms P was told by an introducer acting for the firm that only 10% of her money was at risk. I do not consider the firm can be held responsible for what the introducer said. However, the firm did not properly establish the level of risk that Ms P was prepared to take. The account opening form says nothing about the level of risk associated with the account.

In an email to Ms P the firm made the following comments about risk:

'The markets we trade are perceived to be at the higher end of the investment risk spectrum but regardless of the client's risk appetite we believe we can cater for them. Our technical trading systems can be utilised for a low risk client to a very high risk client.'

'I understand you have a fairly medium risk threshold, and we believe working on this level of risk will work well for you.'

I am therefore satisfied that the firm did not make Ms P properly aware of the high level of risk associated with the trading account. The firm said nothing to Mrs P that would have alerted her to the fact that all of her capital was at risk. I am satisfied that if Ms P had been properly aware of the risk associated with CFD trading she would not have opened the account.

Like the adjudicator I am satisfied that a high risk, leveraged trading account was in any event unsuitable for Ms P. She was retired and was advised to put half of her savings into a very high risk trading account.

For these reasons this complaint should be upheld.

Losing a considerable proportion of her savings will have been upsetting for Ms P. I agree with the adjudicator that the sum of £250 is a suitable amount to compensate her for this.

fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Ms P as close to the position she would probably now be in if she had not been given unsuitable advice.

I take the view that Ms P would have invested differently. It is not possible to say *precisely* what she would have done differently. But I am satisfied that what I have set out below is fair and reasonable given Ms P's circumstances and objectives when she invested.

what should Beta 2 do?

To compensate Ms P fairly, Beta 2 must:

- Compare the performance of Ms P's investment with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investment. If the *actual value* is greater than the *fair value*, no compensation is payable.

Beta 2 should also pay interest as set out below.

- Pay to Ms P £250 for the upset caused by the loss of a significant proportion of her savings.

Income tax may be payable on any interest awarded.

investment name	status	benchmark	from ("start date")	to ("end date")	additional interest
CFD account	surrendered	for half the investment: FTSE WMA Stock Market Income Total Return Index; for the other half: average rate from fixed rate bonds	date of investment	date surrendered	8% simple per year on any loss from the end date to the date of settlement

actual value

This means the actual amount paid from the investment at the end date.

fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, Beta 2 should use the monthly average rate for the fixed rate bonds with 12 to 17 months maturity as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Any additional sum paid into the investment should be added to the *fair value* calculation from the point in time when it was actually paid in.

Any withdrawal, income or other payment out of the investment should be deducted from the *fair value* at the point it was actually paid so it ceases to accrue any return in the calculation from that point on.

If there are a large number of regular payments, to keep calculations simpler, I will accept if Beta 2 totals all those payments and deducts that figure at the end instead of deducting periodically.

why is this remedy suitable?

I have decided on this method of compensation because:

- Ms P wanted capital growth with a small risk to her capital.
- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to her capital.
- The WMA index is a mix of diversified indices representing different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.
- I consider that Ms P's risk profile was in between, in the sense that she was prepared to take a small level of risk to attain her investment objectives. So, the 50/50 combination would reasonably put Ms P into that position. It does not mean that Ms P would have invested 50% of her money in a fixed rate bond and 50% in some kind of index tracker fund. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Ms P could have obtained from investments suited to her objective and risk attitude.
- The additional interest is for being deprived of the use of any compensation money since the end date.

my final decision

I uphold the complaint. My decision is that Beta 2 Limited should pay the amount calculated as set out above.

Beta 2 Limited should provide details of its calculation to Ms P in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I am required to ask Ms P either to accept or reject my decision before 15 February 2016.

Michael Stubbs
ombudsman