Financial Ombudsman Service

complaint

Mr D complains that the advice Central Markets (London) Limited gave him to invest in Contracts for Difference (CFDs) was unsuitable. He says that the risk of CFD trading was misrepresented, the commissions it charged weren't explained, and trades were carried out solely to generate commission.

Mr D is being represented by a third party.

background

Central Markets contacted Mr D at the end of September 2011. The firm's notes of that call say that Mr D worked as lorry driver, but had not been getting regular work recently. He told the broker that he was looking at trading to make some extra income, and that he was comfortable investing £10,000. He said that he was looking for *'small but regular profits'.* The notes explain that Mr D was *'a bit inexperienced'* and had only been looking at forex.

A few weeks later Central Markets completed a Retail Client Profile form (RCP).

This said that Mr D's annual income was around £28,000. He had around £23,000 in cash, split between bank deposits and a cash ISA. He was able to invest an additional £10,000 to invest in CFDs.

The form says that he classified himself as *'risk aware'*. Central Markets defined this as someone who was looking for a *'balanced return of growth and income with the focus on growth* [but accepted] *that capital is at risk especially with higher risk investments'*. He lived with his partner and had one dependant.

He said *'yes'* to understanding the difference between CFDs and shares, long and short positions, stop-losses and Margin Calls. And he also ticked the box to say that he had read and understood the risk warning for CFD trading.

Mr D invested around £10,000 in October 2011. He invested a further £2,000 in May 2012. His account was virtually depleted by June 2012, at which point he withdrew his remaining funds.

One of our adjudicators looked into Mr D's complaint and agreed that it should be upheld. In summary, he didn't think CFD trading was suitable for Mr D given his background, lack of experience and income.

Central Markets didn't agree with the adjudicator. It acknowledged that *'client income is certainly one determining factor',* but it said that it took into account other financial information in establishing whether a CFD account was suitable.

It summarised Mr D's financial situation as set out in the RCP form and said that Mr D was a *'risk aware investor'*. This meant that he was prepared to invest 50% of his liquid assets in higher risk investments.

Central Markets said that given the above, it felt that investing £10,000 in a CFD account was suitable for him. It said that it reached this conclusion *'not only based on his income, but also his financial profile and experience at the time'*. It also provided a note of a telephone call between Central Markets and Mr D during the RCP process. It said that Mr D was a *'willing and suitable investor, even though his employment position is uncertain'*.

The adjudicator wasn't persuaded to change his mind, and so the case has been passed to me.

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 agree with the adjudicator and for essentially the same reasons.

I have very little to add to what the adjudicator has already said.

I've considered very carefully the comments Central Markets provided in reply to the adjudicator's view. I'm surprised that Central Markets insists that this account was suitable for Mr D, when in my view the evidence clearly shows that it wasn't.

In particular, the note of the conversation with the broker in my view demonstrates that Mr D shouldn't have been advised to invest in CFDs. I say this because the note clearly says that Mr D wasn't getting full time work. And it also shows that he had misunderstood what outcomes CFD trading could deliver. It was unlikely that CFD trading would deliver the *'regular'* profits he was after. But there was no attempt by the broker to correct this obvious misunderstanding.

CFD trading is very high risk. When combined with the commissions Central Markets charged, the likelihood of maintaining the value of the invested capital, let alone growing it or receiving an income from it, was reduced.

I acknowledge that the risk warnings on the RCP form were brought to Mr D's attention. But this doesn't remove Central Markets' obligation to ensure that the advice it provided to Mr D was suitable. This should've included taking into account his lack of experience and his financial circumstances.

Central Markets knew that Mr D was inexperienced. So in addition to clearly misunderstanding what CFD trading was likely to deliver and having a low and irregular income, he was also unlikely to fully understand what CFD trading involved. This should've been more than enough to conclude that CFD trading wasn't suitable for Mr D.

And Central Markets should also have assessed whether Mr D was financially able to bear the risks associated with the advice it was providing. The regulator has described capacity for loss as the sum of money the loss of which would have an adverse impact on an investor's lifestyle.

Mr D had liquid assets of between £20,000 and £30,000. In my view, advice to invest at best a third of his liquid assets into something very high risk and complex, given his lack of experience and low income, was unsuitable. Mr D should've been advised to invest his money elsewhere – particularly given that he was after *'regular profits'*. And it's clear to me that given this background, including the fact that he had one dependant, the total loss of these funds (or more) would likely have an adverse impact on his lifestyle.

So for all these reasons and given the particular circumstances of Mr D's case, I'm satisfied that the advice provided by Central Markets was unsuitable for him and he should be compensated for that.

fair compensation

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

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

what should Central Markets do?

To compensate Mr D fairly, Central Markets must:

- Compare the performance of Mr D'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.

  Central Markets should also pay interest as set out below.

Income tax may be payable on any interest awarded.

investment name	status	benchmark	from ("start date")	to ("end date")	additional interest
Saxo trading 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, Central

Markets 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 Central Markets 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:

- Mr D wanted income with some growth with a small risk to his 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 his 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 Mr D's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr D into that position. It does not mean that Mr D would have invested 50% of his 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 Mr D could have obtained from investments suited to his 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 Central Markets (London) Limited should pay the amount calculated as set out above.

Central Markets (London) Limited should provide details of its calculation to Mr D in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr D either to accept or reject my decision before 4 July 2016.

Alessandro Pulzone
ombudsman