

complaint

Mr and Mrs B complain, through a claims management company (CMC). The complaint is about the advice given by Sequant Capital Limited to invest in Contract for Difference ("CFDs").

They think the advice was unsuitable, and the risks of CFD trading were misrepresented. They're also unhappy that the commission charges weren't explained to them and they think the account was churned.

Background

At the time of making the complaint, Central Markets (London) Limited was the registered name for the business. It changed to Sequant Capital Limited in October 2017; however the company registration number and, therefore, all liabilities of the business remain the same. For that reason, my final decision will refer to the business as Sequant Capital Limited.

Mr and Mrs B met with Sequant in March 2010 to discuss the possibility of investing in CFDs.

Before funding the account, Sequant completed a retail client profile (RCP) which assessed Mr B's knowledge and experience, financial situation and investment objectives in line with its obligations to assess suitability.

Mr and Mrs B originally funded the account with £10,000 in August 2010. And made a further advance in February 2011 for £44,720.45 So they invested around £54,000 in total.

Within this RCP, Mr B identifies himself as 'risk aware'. And he said his main investment objective was to "*maintain value and to gain growth and income.*"

Because of Mr B's previous experience, Sequant decided investing in CFDs was suitable for Mr and Mrs B.

And it's said it explained the risks involved. It did this by giving risk warnings when the RCP was completed and it sent a risk warning document. It also said all its brokers disclose the risk per trade over the phone before any trade is placed.

Sequant also said its commission structure is clearly explained to clients during the RCP. And again before each trade is placed.

Sequant said churning didn't take place on Mr and Mrs B's account – and they had to agree to each trade before it happened.

The investigator who looked at the complaint didn't think Sequant had done anything wrong.

She concluded that the advice was suitable – and that CFDs were a suitable way to meet Mr and Mrs B's investment objectives. She also thought the risks were clearly explained – and she was satisfied the commission amounts were evident throughout. She also said she wasn't convinced churning had taken place.

The CMC didn't agree with the investigators findings. It said:

- Mr B didn't have experience in CFDs – only FTSE shares so it's not reasonable to say he had enough knowledge.
- It didn't agree Mr and Mrs B's investment objective could be achieved through CFDs.
- Sequant shouldn't have let Mr and Mrs B invest more than 10% of their liquid assets.
- And even if it agreed with the 50% limit under the 'risk aware' definition – that they actually invested more than 50% anyway.

I issued a provisional decision in October 2017 – at the time Sequant Capital Limited were called Central Markets (London) Limited. While it has changed its name, the liabilities remain the same.

In the provisional decision, I explained that I didn't think Sequant had done anything wrong. I considered that:

- Mr B had 12 years' experience in conventional equities, 11 years' experience in trading high risk shares, and 4 years' experience in short term trading. I thought it was likely that Mr B therefore had sufficient knowledge and experience to understand the relationship between high risk and high reward. Shortly after the initial meeting, the evidence I saw suggested Mr B had also gone through a CFD trading trial. So I concluded that Sequant was entitled to rely on Mr B's confirmation that he understood how CFDs worked;
- I considered that one of Mr B's objectives was to invest part of his portfolio in something high risk, and he confirmed this when he classified himself as 'risk aware'. I also considered that Sequant provided Mr B with a number of risk warnings which confirmed CFD trading was high risk; I thought that while the investment was considerable, it was balanced by the rest of his portfolio which was taken into account when Sequant carried out the fact find. I thought that, given that overall, Mr B had a portfolio worth £180,000 which was predominantly invested in low to medium risk investments. And he had confirmed that he was to fund his account with an additional £40,000 of 'cash coming'. Overall, I considered that given the particular circumstances of Mr B's case, investing around 25% of his portfolio in something high risk, given his knowledge and objectives, wasn't unsuitable.
- I also considered that the commissions were explained sufficiently clearly and weren't represented.
- And, having looked at the trades which were placed, I didn't consider that the frequency of trading or the types of trades were indicative of the account being churned.

Sequant responded to my provisional decision and didn't have any further comments. The CMC responded, on behalf of Mr and Mrs B, and said:

- Mr and Mrs B weren't risk aware – and they didn't want a high risk product;
- Mr and Mrs B's previous experience in FTSE Shares isn't transferable to CFD trading;
- They don't think the risk warning document should be heavily relied upon, and there's no sufficient evidence that the risk warning was disclosed on every trade;
- Mr and Mrs B may have felt pressured into making the trades;
- There's no evidence that Mr and Mrs B asked Sequant for advice;
- Mr and Mrs B shouldn't have invested more than 50% of their portfolio in CFDs;
- They don't think it's reasonable to say Mr and Mrs B had around £220,000 in their portfolio as the £40,000 cash amount may never have materialised;

- It's highly doubtful Mr and Mrs B understood the risk warning;
- Mr and Mrs B didn't do any of their own research;
- The commission may not have been apparent to Mr and Mrs B and they may not have been able to access their account through webconnect.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, and having taken into account the additional information I've received after my provisional decision, I see no reason to change my provisional conclusions.

I appreciate the CMC's strength of feeling on this complaint. I've read and carefully considered the additional points. But it hasn't provided any additional evidence. And I'm not persuaded by the points it has raised.

In my provisional decision I explained that I thought Mr B had sufficient knowledge and experience to understand what investing in CFDs involved – bearing in mind he had also undergone a trial period before investing his cash. I considered that the evidence suggested Mr B was clearly looking to invest in something high risk in order to potentially benefit from high rewards. Mr B classed himself as 'risk aware' and I've already explained why I consider that Mr B was willing to invest a substantial proportion of his portfolio in something high risk in order to potentially generate a high return. The risk warning also makes it clear that CFDs are a high risk product – and Mr and Mrs B went ahead with the trades despite this risk warning. If they weren't willing to invest in such a high risk product, they wouldn't have.

I acknowledge Mr B's investment didn't work out – but in itself that doesn't mean investing in CFDs was unsuitable for him. And it wouldn't be fair to essentially uphold the complaint on the basis that he has lost a considerable amount of money.

I don't think it's reasonable for the CMC to say Mr and Mrs B may have felt pressured into making the trades. Mr B initially invested around £44,000 and then funded his account with a further £10,000 at a later date. He also took part in a trial after his initial meeting with Sequant – I don't consider these actions to be similar of somebody who was pressured into making a decision about their investments. In fact, as I've already said, I think the evidence suggests Mr B was keen to go ahead with this type of trading.

I explained in my provisional decision that I didn't think there was a hard limit on how much Mr B should've invested in CFDs. Overall, the evidence suggested Mr B was looking to invest around a quarter of his portfolio in high risk investments – I didn't consider this to be unaffordable for him. I would add that I don't agree with the CMC the £40,000 of cash coming should be excluded from the assessment of affordability. This figure was clearly raised by Mr B, and it seems clear that this is how he intended to fund his account. Sequant was entitled to rely on this, and to decide on whether this investment was affordable taking that into account. If there was a chance Mr B wouldn't receive this cash, he should've raised this with Sequant at the time.

So for these reasons, I'm satisfied that investing in CFDs was in line with Mr B's objectives, attitude to risk and financial situation, and that he had sufficient knowledge and experience to be able to understand the risks involved.

In relation to having access to the account, if Mr and Mrs B couldn't access their account through webconnect to see the trades Sequant were making, I would expect them to have queried this before now. So therefore, I don't agree that they weren't aware of what trades they were making, the risk those trades held, or had no idea about the amount of commission which was applied to the trades.

my final decision

For the reasons set out in my provisional decision, and above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs B to accept or reject my decision before 8 January 2018.

Hayley West
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