

complaint

Mr F complains that Chryson Limited gave him unsuitable advice to invest in Contracts for Differences (CFDs). He said he didn't know or understand what this trading involved, and he didn't understand how likely it was that he'd lose all his money.

background

In October 2015 Mr F filled out an application form with Chryson and agreed to open a CFD trading account with a third party I'll call 'C'. Mr F agreed with Chryson that it would manage this account on his behalf.

The application form had some information about Mr F's circumstances:

- He was self-employed as a bricklayer with an annual income of £35,000.
- He had monthly outgoings of around £1,400 and some £400,000 in his bank account. He had no other investments.
- The form said he was experienced trading shares and CFDs, but had no other sources of income. It said he wasn't experienced in spread-betting, futures or options.

Chryson determined that trading CFDs was suitable for Mr F and he deposited £25,000 initially, and a further £15,000 a short while later.

Shortly after opening his account with C, Mr F also signed an 'appointment of agent' form with C where he gave Chryson 'full unrestricted and unconditional power and authority to trade on the Account'.

Chryson traded on Mr F's account between October 2015 and for most of 2016. Unfortunately Mr F's account was depleted, and he was left with a negative balance with C of over £4,000 which Chryson settled.

In 2018 Mr F complained. In short, he queried where his money had been invested and why he had lost all of it. He complained that he wasn't aware all of his money could be lost, and initially also complained about the letter he received from C which said he owed it over £4,000.

Chryson didn't think it had done anything wrong. It confirmed the debt with C had been paid and he wouldn't be pursued for it. In relation to trading CFDs, it said that when Mr F opened his account all its documentation explained the high risk nature of trading CFDs, and Mr F was happy to take that risk with his money. It said that his losses were due to the volatility in the stock market at the time.

Mr F referred his complaint to this service. One of our investigators looked into his complaint, and concluded it should be upheld.

In short, she didn't consider the information which Chryson had captured on the application form was accurate, and found Mr F's submissions about his financial circumstances at the time persuasive. In particular, she was satisfied that he wasn't financially able to bear the high risks of CFD trading, and had insufficient knowledge to understand how these risks could affect his investment.

She also didn't agree with Chryson's comments, during the investigation, that the account was execution only and that trading was done by a friend of Mr F's. She said that evidence she had obtained from C showed clearly that only Chryson was allowed to trade on the account – and she considered the fact that it had received over £60,000 in commission from the account demonstrated that it was responsible for its management. C had confirmed that Mr F's account's trades reflected trades that had been placed on Chryson's master account – and so the investigator concluded that Chryson had indeed been trading on Mr F's behalf.

Chryson didn't agree with the investigator. In short:

- It said Mr F completed the application form which contained a number of 'prominent and highlighted risk warnings'. It said that Mr F had 'clearly signed to acknowledge' he had read these and understood them, and so it wasn't fair or reasonable for the investigator to have ignored this.
- It said it was entitled to rely on the information Mr F gave it and that's what it did. This service had previously affirmed this in other cases.
- It said that it wasn't right for the investigator to have inferred the account would be managed by Chryson purely because it had asked him questions about his experience, objectives and risk appetite. It said that 'as this was a risk product' it had a responsibility to 'review the suitability and/or appropriateness' whether it was an execution, advisory or managed account. It reiterated the fact that Mr F had signed the various forms which contained risk notices demonstrating, in Chryson's view, that he understood and accepted the risks of CFD trading.
- It reiterated that this was an execution only account and that it was being managed by someone not authorised to do so on Chryson's behalf.

As agreement couldn't be reached, the case was passed to me to consider.

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 investigator and for essentially the same reasons.

I should start, briefly, by saying that I'm not at all persuaded by Chryson's submissions in relation to the nature of the account. In fact the evidence is absolutely conclusive that Chryson was managing Mr F's account. During the investigation, C has confirmed that:

'Mr F was unable to trade on his account. It was not an execution only account. Trades were instructed through the Chryson control account by its authorised users'

And C also confirmed that the authorised agent was Chryson, and that it received over £60,000 in commission from trades on Mr F's account.

In addition, I've seen the appointment of agent form which clearly indicates Chryson would be the agent trading the account. I would add that it seems entirely implausible to me that Mr F would agree to pay Chryson commission, outlined in the application form as 0.2% of the total value of the position, without receiving a service in return.

So it's clear to me that Chryson essentially advised Mr F to open a CFD trading account, and agreed to manage it on his behalf in exchange for a commission on the trades. As a result, Chryson was under an obligation to ensure that trading CFDs was suitable for Mr F – by ensuring that CFD trading met his investment objectives, that he would be financially able to

bear any related investment risks and that he had the necessary knowledge and experience in order to understand the risks involved.

I acknowledge and accept, in principle, that Chryson was entitled to rely on the information Mr F provided it. But the obligation to provide a suitable recommendation to Mr F was a positive one – in other words, COBS 9 required Chryson to ‘take reasonable steps’ to ensure that its recommendation was suitable for Mr F.

In looking at the answers on the form, I’m not persuaded Chryson could’ve done this without probing more into some of the glaring inconsistencies – for instance how Mr F could’ve accumulated £400,000 worth of cash savings in his account given his low income and relatively high monthly expenditure. Or how he could claim to have knowledge and experience of trading shares and CFDs, but have no existing investments at all. In addition, I’m not persuaded there was sufficient evidence about the level of risk Mr F was willing to take with this money. There was only one possible answer on the application form - ‘high’. But there was no documented discussion or explanation as to the risks of CFD trading, and the particular risks of a managed CFD account – by this I mean the effect of commissions being charged on the overall position (not just the deposit) each time Chryson opened and closed a trade, and how this would impact on the already high risk of making significant losses.

I’ve also taken into account what Mr F has said about the account opening process. He has provided evidence of his savings at the time, which were far less than the £400,000 stated on the form. I find this evidence persuasive. In particular, I’m not persuaded he would’ve chosen to lie to that extent about the amount of cash savings in his account – given that he didn’t lie about having any other investments or income.

Given these circumstances, and the lack of any meaningful and documented discussion with Mr F at the time about trading CFDs, I’m not persuaded this type of trading was suitable for him. I’m not satisfied Mr F was financially able to bear the highly likely possibility that he would lose his entire investment, and I’m not persuaded his knowledge and experience allowed him to fully understand just how risky trading CFDs was. I don’t underestimate the role of Mr F’s family friend in opening the account and introducing him to Chryson in the first place. But I’m satisfied it was for Chryson to decide, for itself, whether this type of trading was suitable for Mr F and to ensure that he fully understood (not just read) what he was getting himself into. I’m not persuaded it did this. And I’m satisfied that if Chryson had properly discussed CFD trading with Mr F, and given him suitable advice, Mr F would likely not have invested at all.

Fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Mr F 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 F 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 F's circumstances and objectives when he invested.

What should Chryson do?

To compensate Mr F fairly, Chryson must:

- Compare the performance of Mr F'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.

Chryson should also pay interest as set out below.

- Pay to Mr F £750 for the trouble and upset he was caused by seeing his entire investment disappear as a result of the unsuitable advice Chryson gave him.

Income tax may be payable on any interest awarded.

investment name	status	benchmark	from ("start date")	to ("end date")	additional interest
CFD trading account	surrendered	average rate from fixed rate bonds	date of investment	date trading on Mr F's account stopped	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, Chryson 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 Chryson 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 F wanted to achieve a reasonable return without risking any of his capital.
- The average rate for the fixed rate bonds would be a fair measure given Mr F's circumstances and objectives. It does not mean that Mr F would have invested only in a fixed rate bond. It is the sort of investment return a consumer could have obtained with little risk to their capital.
- 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 Chryson Limited should pay the amount calculated as set out above.

Chryson Limited should provide details of its calculation to Mr F in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr F either to accept or reject my decision before 30 April 2020

Alessandro Pulzone
ombudsman