

complaint

Mr T complains that the advice Central Markets (London) Limited (“Central Markets”) gave him to invest in Contract for Difference (“CFDs) was unsuitable. He says that the risk of CFD trading was misrepresented, the commissions charged weren’t fully explained, and the trades were carried out to generate higher commissions against Mr T’s best interests. Mr T is being represented by a third party.

background

Mr T completed a Retail Client Profile form (“RCP”) with Central Markets at the end of July 2012. This recorded that Mr T thought of himself as somewhere between ‘*balanced*’ and ‘*risk aware*’ in terms of his attitude to risk. Central Markets define ‘*balanced*’ as ‘*a balanced return of growth and income due to the acceptance of more investment in higher risk types which means this could have a negative effect on capital.*’ And it defines ‘*risk aware*’ as a ‘*balanced return of growth and income with focus on growth, (with the acceptance) that capital is at risk especially with the higher risk investments.*’ A balanced return investor was prepared to invest 25% of his total liquid investment portfolio in high risk products and a risk aware investor 50%.

It also says that Mr T’s investment objectives were ‘*to make a profit and to learn about the market.*’ And that he was looking to fund his account with £5,000 initially. It said that Mr T answered ‘yes’ to understanding the difference between CFDs and Shares, Long and Short positions – Stop Losses and Margin Calls. The RCP mentioned the fact that Mr T hadn’t invested in the market previously but had been on an educational trial. And he’d spoken to the advisor about CFDs and trades in general over a period of three months.

The RCP states that Mr T kept all of his money in his business from which he could draw £25,000 from if he wished to. And on the back of the information given an initial investment of £5,000 into an advisory CFD account was proposed.

At the end of August 2012, Mr T completed a ‘Client Application Form.’ In this he said that the estimated value of his savings and investments was £15,000. And that the source of his funds for trading was from his business. It looks like Mr T also signed a risk warning notice with regards to how CFDs work. And in September 2012 Mr T deposited £5,000 into the CFD account. Around a month later the account was closed after most of the money was lost.

Mr T’s complaint was looked at by one of our investigators. It was her view that the complaint should be upheld. She wasn’t persuaded that high risk investments such as CFDs were suitable for Mr T.

Central Markets disagreed with the investigator’s view. It said that it followed the correct procedure throughout Mr T’s application process and that he signed documentation confirming he understood the nature of the investment and the risks associated with it. So the complaint was passed to me to review.

I sent Mr T and Central Markets my provisional decision on this complaint in June 2017. In it I said:

When giving Mr T advice, Central Markets had to consider his knowledge and experience in the investment field relevant to the advice, his financial situation and his investment objectives. Central Markets says it did this by getting Mr T to complete the RCP – which it says is an in depth assessment of the above requirements.

The RCP shows that Mr T had essentially no investment experience aside from some trades in carbon credits. CFDs are classed as a high risk investment. I'm aware that Mr T marked himself somewhere between balanced and risk aware. And that he signed forms saying he understood the risks associated with CFDs. But a signature on a form is not the only thing I have to look at when assessing Mr T's understanding of the risks involved in this type of trading. And it doesn't necessarily mean that CFD trading was a suitable investment for him.

I say this because Mr T didn't have previous investment experience. And while I've taken into consideration Central Markets' comments about Mr T completing an educational trial prior to trading, I've not seen anything that shows me what that trial involved, its content and scope – or how Mr T responded to it. But in addition to this, CFDs are one of the highest risk products a retail investor can trade in. So based on Mr T's lack of experience – I'm not convinced that an educational trial and conversations with the Central Markets advisor would be enough to make him properly aware of the risks of CFD trading.

My conclusion is that Mr T didn't have the knowledge and experience to properly understand the level of risks associated with CFD trading.

Because of this I'm also not persuaded that the high level of risk Mr T indicated he was prepared to take was an informed choice on his part. I consider it unlikely that an investor who had no previous investment experience would knowingly commit a third of his savings to such a high risk trading activity as CFDs.

It's also worth looking at Mr T's financial position in relation to the advice he was given. There are some differences between the figures quoted on the RCP and the figures Mr T quotes on the application form a month later. But as the application form is the most recent document – and it seems to have been completed by Mr T himself, I've placed more weight on it when looking at this area. And Mr T states on the application form that the estimated value of all of his savings and investments was £15,000.

So on the basis of Mr T's recorded attitude to risk an investment of £5000 may not seem unreasonable if he's saying he had £15,000 of savings to draw this from. But it's worth noting that Central Markets has said it thinks Mr T is referencing the fact that he said he had '£15,000 float in his business at all times' in relation to these savings. So there's a question mark around how much of this money was disposable and how much – if any was earmarked for Mr T's business purposes. I'm therefore not satisfied that Central Markets has demonstrated that CFDs were suitable for Mr T's financial circumstances.

I've taken into consideration Central Markets' comments about it suggesting that Mr T deposit the smaller amount of £5,000 as acknowledgment that his situation wasn't conventional. But these points don't change my conclusion for the reasons I've already explained above.

So for all these reasons and given the particular circumstances of Mr T's case, I'm satisfied that the advice provided by Central Markets was unsuitable for him and he should be compensated for the losses he's suffered.

I also agree with the investigator that losing a significant proportion of his savings will have been upsetting for Mr T. I consider £150 is a suitable sum to compensate him for this.

So it followed that it was my provisional decision that I intended to uphold Mr T's complaint. I then went onto explain what I thought fair compensation would be in the circumstances.

Mr T hasn't sent me anything else to consider in response to my provisional decision. But Central Markets sent me the following:

- The provisional decision seems to be based on the fact that Mr T had never invested in CFDs – but that's why Central Markets provides advisory services.
- All of the trade recommendations were well researched and recommended in the belief that they would do well in line with Mr T's RCP and educational trial.
- On a call note summary on the back of the RCP, it's noted that the broker emphasised that whatever money would deposit in his account, would be at risk of loss.
- Therefore, regardless of Mr T's lack of experience in trading CFDs, it believes Mr T was made fully aware of the risks.

But I'm still not persuaded that Central Markets gave Mr T suitable advice about trading in CFDs in relation to his specific circumstances. So while I've carefully considered its comments – I still think this complaint should be upheld and I've explained my reasons for this below.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've decided to uphold this complaint and I'll explain why.

My provisional decision didn't dispute Central Markets' role as an advisory service, it looked at the suitability of the advice Mr T was given. And as an advisory service, Central Markets has an obligation to its clients to ensure the advice it provides is suitable. In Mr T's case, I think his experience in CFD trading is relevant to whether or not it was suitable for him. And I'm still not convinced that it was.

I say this because, Central Markets says that it made recommendations based on thorough research – and on the back of Mr T's RCP and educational trial. But while I acknowledge that the risk warnings on the RCP form may have been brought to Mr T's attention, this doesn't remove Central Markets' obligation to ensure that CFD trading was suitable for Mr T. Part of this obligation should've included taking into account his lack of experience and his financial circumstances.

In December 2016 the Financial Conduct Authority issued a consultation paper on CFDs and retail clients. In this it criticised firms which relied on inexperienced investors agreeing to risks which they were unlikely to properly appreciate. The FCA said:

'Our supervisory work found poor practices of firms asking clients with no experience to self-certify that they understood the nature of the product and the risks involved.'

Central Markets knew Mr T was inexperienced in trading CFDs. But it says it was satisfied with Mr T's answers to the RCP and that he'd completed an educational trial. But the RCP is done over the phone and completed by a Central Markets advisor. The handwritten call note summary saying "*client made aware that whatever he deposits on his account is at risk of being lost*" isn't necessarily enough in this case to convince me that Mr T was fully aware there was a high chance that he could lose almost *all* of the money he was investing. This is subsequently what went on to happen.

I've also seen a copy of a risk notice that looks to have been signed by Mr T. But I can't see a date on this document – so I'm not sure when he actually seen this and how it was presented or discussed with him. Central Markets has also mentioned the educational trial – but as I said in my provisional decision – and as is still the case, it hasn't sent me any information with regards to what this involved or what Mr T's response to this was. So I can't reasonably say that this would've been enough to ensure Mr T was fully aware of the high risk involved with CFD trading. And based on what I have seen, I'm not convinced Mr T had enough information to make an informed decision about his attitude to risk.

In addition to this, there's also the point that Mr T says he kept all of his money in his business – with a £15,000 float available at all times. And this is where Central Markets has said the £5,000 investment seemed to be drawn from. From the RCP, I can't see that there was any discussion around the point that as Mr T was likely drawing this money from his business – how much of it was actually disposable? I think that Central Markets should've done more to address this point to ensure his financial situation was suitable to trade in CFDs. Without this, I'm not convinced that advice to invest at best a third of this money into something very high risk and complex, given his lack of experience was suitable.

I've taken into consideration Central Markets' comments in response to my provisional decision, but for the reasons I've explained above, it doesn't change my mind given the particular circumstances of Mr T's case. Based on what I've seen, I still think 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 T as close to the position he would probably now be in if he'd not been given unsuitable advice.

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

what should Central Markets do?

To compensate Mr T fairly, Central Markets must:

- Compare the performance of Mr T'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.

- Pay to Mr T £150 for the trouble and upset caused by the fact he was sold an investment that I think was unsuitable for him – and resulted in him losing nearly all of the money he invested – which I understand must've been distressing for Mr T.

Income tax may be payable on any interest awarded.

investment name	status	benchmark	from ("start date")	to ("end date")	additional interest
the CFD account	surrendered	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've 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.

why is this remedy suitable?

I've decided on this method of compensation because:

- I'm not convinced that Mr T made an informed choice on his attitude to risk, so I can only base this on what it seems likely his attitude to risk was prior to this investment. And as he didn't hold any risk based investments – I think it's fairest to say he was looking 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 T's circumstances and objectives. It doesn't mean that Mr T would've invested only in a fixed rate bond. It's the sort of investment return a consumer could've 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

For the reasons set out above I uphold Mr T's complaint and Central Markets (London) Limited should put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 25 August 2017.

Rosie Osuji
ombudsman