

complaint

Mr H's complains about the advice that Beta 2 Limited gave him to open a spread betting account using funds in his Self-Invested Pension Plan (SIPP).

background

At the end of January 2014 Mr H spoke with Beta 2 about the service it could provide in relation to his SIPP. Beta 2 confirmed that it was offering an *'advisory trading Investment Boutique'* service.

It provided information to Mr H about its service and the way it managed risk. And it asked him to complete some application forms; both to open an account with Beta 2, and to open an account with the trading platform where the trades would be carried out.

Mr H completed these forms in March. They confirmed that he had an annual income of around £45,000 and savings of between £10,000 and £20,000. One of the forms said he had a net worth of £450,000 (but Mr H says that this isn't true). His SIPP was worth £75,000 but he wasn't making regular contributions to it. And he had 6 to 12 months experience investing in equities and bonds, but no experience in Contracts for Difference (CFDs) or spread-betting.

The forms also establish that Mr H was comfortable taking a high risk, and there were several risk warnings about margined products and the possibility of losing all of the invested capital, and more.

The application form asked:

Q: "*when viewing your investment portfolio as a whole, how would you perceive that it is diversified (in percentage terms)*".

A: "10% for low risk and 90% for high risk".

Q: "*what return would you like to achieve per annum with your Bets2 trading account*"

A: "25%".

Mr H provided Beta 2 with limited power of attorney in order to be able to trade using the funds from his SIPP. Beta 2 would then email Mr H periodically with suggested trades, which Mr H was free to accept or reject.

Mr H believed that he had a limit on his account which meant that he couldn't lose more than 25% of the overall value of his SIPP. In September 2014, the value of his SIPP had fallen by 28%. So Mr H emailed Beta 2 and asked for confirmation that he was on *'25% risk'* and querying why he hadn't been contacted when his account had dropped by more than that.

He continued to have this misunderstanding. In January 2015, he raised a query about his account falling to around £40,000 and asking why he wasn't contacted.

In mid-January, there was a sharp movement in the value of the Swiss Franc. It seems that a significant portion of Mr H's portfolio was exposed to the Swiss Franc, and he lost all of his funds.

I issued a provisional decision in March 2016. I said that:

I've read and carefully considered the detailed submissions provided by Beta 2's legal representative.

I should say that whether or not Mr H's suitability for forex trading had been previously assessed (and I've seen no evidence that it was), Beta 2 still had a duty to provide suitable advice to him. So I'm not persuaded that Beta 2's arguments around this are relevant. And I'm also not persuaded that the arguments around foreseeability and causation are relevant either. I say this because I don't think it's reasonable to argue that the client was provided with several risk warnings that they might lose all of their money. And then argue that when they do lose all their money it isn't a foreseeable consequence. The specific reason why the market moved against Mr H's positions might not have been foreseeable – but that he could lose all of his funds clearly was.

And in my view these issues aren't key to Mr H's complaint. I think the key aspect is the suitability of the advice provided to Mr H by Beta 2 to invest the entirety of his SIPP in its forex trading service.

Beta 2 told Mr H that it was an 'advisory trading Investment Boutique'. And its application clearly said that it would be obtaining information from Mr H in order to assess his suitability. This information should've included Mr H's knowledge and experience, his overall financial situation and his investment objectives.

The Beta 2 application form sets out some of this information. It confirms Mr H had a salary of around £45,000 per annum, and savings or other investments amounting to £10,000. The form makes reference to a net worth of £450,000. But there's no explanation for what this £450,000 represents – whether it is just his home, a combination of his home and other liquid assets, or something else entirely. And Mr H disputes this figure – he says his net worth is considerably lower than this and that he was told to put it on the application form.

His signed application form for the trading platform where Beta 2 would carry out the trades confirms his income, though estimates savings at around £20,000.

What is clear from both application forms is that Mr H had no experience of CFD or spread-betting, and around 6 to 12 months experience in equities and bonds. I think this means he wasn't an experienced investor.

So the first question I've considered is Mr H's attitude to risk at the time. Having considered all the information, including the way Mr H behaved during periods when the value of his SIPP fluctuated significantly, I'm satisfied that Mr H's attitude to risk for his SIPP was probably high.

But Mr H's appetite for risk is only one of the things which Beta 2 should've considered when it advised him to open a forex trading account. It should've also considered Mr H's capacity for loss. In other words, his ability to absorb the fall in the value of his SIPP and what effect it would have on his standard of living if his entire SIPP lost value. The FCA has emphasised that this is an important aspect in providing suitable advice.

Spread-betting and CFD trading are complex and very high risk products. There's no dispute about this. The risk of losing a significant amount of money, possibly more than the invested sum, means that it's especially important to make sure that the consumer has sufficient assets to be able to withstand such a loss.

And I'm not persuaded that Mr H's financial situation at the time meant that he could. His SIPP represented 75% of his liquid assets. I think that investing all of it in very high risk and speculative trades wasn't suitable for Mr H because there was a high risk he could lose it all. And Beta 2 should've told him this at the time, and advised him against opening the account.

And I think it was even more important for Beta 2 to do this given that Mr H had no experience in CFD or spread-betting, and only limited experience in investments in general.

So I'm satisfied that Beta 2's advice was unsuitable for Mr H. And I think that if Beta 2 had explained to Mr H at the time that this type of trading wasn't suitable for him, he wouldn't have gone ahead with the application. So I think Mr H should be compensated for the losses he suffered as a result of the unsuitable advice he received.'

Mr H accepted my provisional decision and had no further comments.

Beta 2 didn't respond to the provisional decision.

my findings

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

As Beta 2 didn't provide any further information or comments, I see no reason to change my provisional decision. So I confirm my provisional decision as final.

fair compensation

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

I think Mr H would have invested differently. It is not possible to say *precisely* what he would have done, but I am satisfied that what I have set out below is fair and reasonable given Mr H's circumstances and objectives when he invested.

what should Beta 2 do?

To compensate Mr H fairly, Beta 2 must:

- Compare the performance of Mr H'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.

If there is a loss, Beta 2 should pay such amount as may be required into Mr H's pension plan, allowing for any available tax relief and/or costs, to increase the pension plan value by the total amount of the compensation and any interest.

If Beta 2 is unable to pay the total amount into Mr H's pension plan, it should pay that

amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the total amount should be reduced to *notionally* allow for any income tax that would otherwise have been paid.

The *notional* allowance should be calculated using Mr H's marginal rate of tax at retirement.

For example, if Mr H is likely to be a basic rate taxpayer in retirement, the *notional* allowance would equate to a reduction in the total amount equivalent to the current basic rate of tax. However, if Mr H would have been able to take a tax free lump sum, the *notional* allowance should be applied to 75% of the total amount.

- Pay Mr H £200 for the trouble and upset losing all of his money would've caused him.

Income tax may be payable on any interest awarded.

investment name	status	benchmark	from ("start date")	to ("end date")	additional interest
Self- Invested Pensions Plan	still exists	FTSE WMA Stock Market Income Total Return Index	date of investment	date of my decision	8% simple per year from date of decision to date of settlement (if compensation is not paid within 28 days of the business being notified of acceptance)

actual value

This means the actual amount payable 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.

Any additional sum that Mr H paid into the investment should be added to the *fair value* calculation at the point it was actually paid in.

Any withdrawal, income or other payment out of the investment should be deducted from the *fair value* calculation 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 chosen this method of compensation because:

- Mr H wanted capital growth and was willing to accept some investment risk.
- The WMA index is made up 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.
- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr H's circumstances and risk attitude.
- Mr H has not yet used his pension plan to purchase an annuity.

my final decision

For the reasons I gave in my provisional decision, my final decision is that I uphold the complaint. Beta 2 Limited should:

- pay Mr H the amount calculated as set out above; and
- pay Mr H £200 for the trouble and upset the matter has caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 6 May 2016.

Alessandro Pulzone
ombudsman