

complaint

Ms P complains that TMS Capital Limited recommended an investment that wasn't suitable for her.

background

TCM contracted a business, which I will call "M", to provide and manage trading strategies on its behalf. Ms P was already trading with M when she signed a discretionary investment management agreement with TCM. She says TCM didn't carry out an appropriateness check until three months after she became a client; that it didn't tell her she had been classified as a retail client and as such the product should not have been marketed to her; that she was pressured into agreeing she was able to accept losses of up to £50,000; and that TCM and M were already working together when she agreed to start trading.

The adjudicator did not conclude that the complaint should be upheld. He considered Ms P was reasonably aware of how the product worked and understood the risks involved. He didn't think TMS had put any pressure on her to risk more than she was comfortable with.

Ms P did not agree. She replied in detail saying, in summary, that:

- She would not have invested in the product if she had understood the high risk involved. She needed the money she had invested for a property purchase.
- She had worked in financial services, but did not have experience of this type of investment.
- She enclosed various emails showing how the product had been recommended to her.
- TMS had signed an agreement with M before she started trading with it. So TCM should have authorised the information that M presented to her.

my findings

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

Ms P agreed that she would invest £250,000 using the trading strategy designed by her two friends who are directors of M. It is clear to me that she agreed this before TMS had entered into any contract with either M or Ms P. So TMS cannot be held responsible for the content of the presentation Ms P received. TMS had signed a power of attorney document to allow it to trade on her behalf, but this was signed in anticipation of TMS completing a contract with M. It seems to me that Ms P was keen to invest. Indeed, she had agreed to promote the product to her contacts. Following the contract between TMS and M, she needed to sign an agreement with TMS to allow her trading to continue.

I find that it is more likely than not that Ms P understood the risks involved in the investment. I have taken into account her current and previous employment in arriving at this conclusion. She agreed with TMS that her investment objective was to "*achieve speculative gains*" and it was made clear that "*trading margined products can quickly lead to large losses as well as gains*". TMS gave clear warnings about the risks involved and advised her to seek independent advice if she had any concerns.

Ms P says she told TMS she was prepared to lose up to £500 of her investment. It pointed out that this would not make the margined product suitable for her. She was already trading in the product and clearly wanted to continue and on that basis she agreed to choose the “up to £50,000” option. I do not find that she was pressured into making this choice. I can see she had plans to use her investment in around a year for a property purchase. But I haven’t seen any evidence that she told TMS about this – she mentioned it to her friends, but this was before TMS had contracted with M.

Ms P completed a form to allow TMS to classify her as a professional client. But TMS decided, based on the information provided, to classify Ms P as a retail client. This meant she did not lose any regulatory protections and I don’t consider TMS did anything wrong in the way it chose to categorise her. Ms P says TMS should not have marketed the investment to her as a retail client – but as I have already decided that TMS did not market the investment to her and that she was already made her investment before she entered into an agreement with TMS, I do not need to investigate this further.

I am not unsympathetic to the position in which Ms P finds herself – she has lost a considerable amount of her investment. But this is because of the performance of the investment. I don’t conclude that the investment was unsuitable for her investment objectives and attitude to risk, or that she did not understand the risks involved.

TMS did not assess the suitability of the investment for Ms P. Instead it made an assessment of whether the investment was appropriate. However, the firm was managing Ms P’s investment on a discretionary basis. In my view as per the FCA handbook (COBS 9.2.1) a firm managing investments on a client’s behalf has an obligation to ensure suitability. However, whilst suitability was not properly established for the reasons set out above, I am satisfied that the investment was suitable for Ms P.

my final decision

For the reasons I have explained, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Ms P to accept or reject my decision before 18 February 2016.

Elizabeth Dawes
ombudsman