

The complaint

Mr R complains that Trading 212 UK Limited (“T212”) -

- Allowed him to trade on a Contracts for Difference (“CFD”) facility, and subsequently via its ‘Invest’ facility, despite having failed its appropriateness test.
- Closed the CFD facility when he began making money, which he believes was done to prevent him from winning back losses.
- Advised him to use its Invest facility, and failed to inform him of the ISA facility, which he feels would’ve been more suitable.

As a result of these issues, Mr R feels that he lost significant sums of money, which he would like T212 to refund and pay damages related to the losses.

What happened

The background to the complaint will be well-known to both parties so I won’t set it out in detail here.

Mr R complained to T212, initially via a representative, in July 2023 along the lines of the details set out above. T212 didn’t uphold the complaint. It explained that before Mr R’s account was opened in March 2020 it had carried out an appropriateness test, the results of which had prompted it to explain to Mr R that CFD trading wasn’t appropriate for him. However, it had allowed Mr R to trade, having been given a specific warning about inappropriateness, in line with its regulatory requirements.

T212 subsequently noted that Mr R’s trading patterns weren’t consistent with CFD trading, as he was holding open positions for long periods. It alerted him to this and recommended that he instead trade real stock, rather than derivatives, through the Invest facility. (For clarity, the type of account opened for Mr R provided a CFD trading facility, the ‘Invest’ direct stock investment facility and an ISA element).

T212 was satisfied its actions had been reasonable in the circumstances, and it had no reason to suspect Mr R was vulnerable in any way. It highlighted that both services used by Mr R had been on an execution-only basis and that he’d been provided with numerous risk warnings and other information about trading that he had actively accepted.

The complaint was referred to this service, but our investigator also didn’t think it should be upheld. He made the following findings, in brief:

- He was satisfied T212 had correctly assessed CFD trading to be inappropriate for CFD trading for Mr R and warned him of this, in line with the relevant regulatory requirements. And he didn’t feel there was anything in the personal and financial information Mr R had provided that should’ve prompted T212 to go further than this and prevent him from trading.
- The terms of the account didn’t require T212 to generally monitor the level of deposits made to the account. And there was nothing that would’ve led T212 to review deposits on an exceptional basis, such as indication that Mr R was

experiencing financial difficulties.

- It was reasonable and in accordance with the terms of the account for T212 to close the CFD trading element of Mr R's account when it identified that his trading patterns – holding positions for the long-term that were incurring fees – weren't suited to CFD trading.
- It was also reasonable for T212 to suggest that the 'Invest' facility would be more appropriate for the type of investing Mr R was doing, so he could hold actual stocks, as opposed to derivatives, for the long-term. That said, no advice was given by T212, and it was ultimately Mr R's choice to use the Invest facility and the decisions about what to invest in were Mr R's own.
- T212 wasn't made aware of any health condition that might have affected Mr R's ability to use its service until later, when he made his complaint to T212. So, the investigator didn't feel T212 had treated Mr R unfairly by not taking Mr R's condition into account sooner.

Mr R didn't accept the investigator's view. He reiterated points already made and added further comments and questions. In brief:

- He said he'd asked T212 to close his account in December 2020 and it hadn't done so, instead waiting until January 2021 when it decided to close only the CFD trading facility in his account.
- Why had only the CFD trading facility been closed, with the Invest, and ISA, elements left available to trade?
- Why did T212 not intervene when he made losses on the Invest facility of the account?
- Why had he been told that CFD trading was intended to be generally short-term when T212's website indicated that positions could be held indefinitely?

The investigator felt there was little he could add to what he'd already said but confirmed that he remained satisfied that T212 had acted in accordance with the terms of the account when it removed the CFD trading facility.

Mr R disagreed and felt the terms only allowed for the account as a whole to be closed – not just one facility. He again reiterated his concerns that the account hadn't been closed completely when he first requested it in December 2020, that T212's reasons for removing the CFD facility were invalid and that he had been given advice to move to investing directly in stocks by way of a misleading email from T212.

As no agreement could be reached, the matter was referred to me to review.

What I've decided – and why

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

It's clear Mr R has strong feelings about the matter. He's provided detailed submissions to support his complaint, which I've read and considered in their entirety. However, I trust he won't take the fact that my findings focus on what I consider to be the central issues, and that they're expressed in less detail, as a discourtesy. The purpose of my decision is not to address every point raised in detail, but to set out my conclusions and reasons for reaching them.

As is required by our rules, I've taken into account relevant law and regulations; relevant regulators' rules guidance and standards; codes of practice; and, where appropriate, what I consider was good industry practice at the relevant time. But I think it's

important to stress that while I take all those factors into account, as noted, I'm ultimately deciding what I consider to be fair and reasonable in all the circumstances.

There is a large volume of correspondence associated with the complaint, reflecting the various points that have been raised and reiterated by Mr R throughout the course of our investigation. But I think it's fair to say the central issues are –

- Was it appropriate for T212 to offer Mr R a CFD trading facility (as part of his account) in the first place?
- Was it reasonable to then remove access to this facility from Mr R, and was this done in a fair way?
- Did T212 then unsuitably advise Mr R to use the Invest facility, leading to him investing in products that were unsuitable and resulting in him incurring significant losses?

I'll look at each of these issues in turn.

Appropriateness

As the investigator noted, there are specific regulatory requirements concerning how a prospective customer should be assessed prior to them being offered a CFD trading facility. This is to determine their knowledge and experience of trading these high-risk products. Mr R initially said that T212 had failed to carry out any such assessment. But it did do so, and its assessment determined that CFD trading was *not* appropriate for Mr R and it warned him of this. As required, an additional specific warning was provided, in addition to the more general warnings that the regulations require.

There is also guidance included alongside the rules that suggests that businesses offering CFD trading should give consideration to the circumstances of a prospective customer who's failed the appropriateness test and potentially not allow them to go ahead, even if warned. But I don't think there was anything in what T212 knew of Mr R's circumstances at the time of the account opening that should have prompted it to take this extra step.

Removal of the CFD facility

A review of Mr R's trading patterns by T212 prompted it to suggest that he move to trading real stocks – as opposed to derivatives – as he was holding large stock CFD positions for extended periods. I don't think this was an unreasonable suggestion for T212 to make. It explained what Mr R needed to do and offered him assistance in moving any relevant positions. It also agreed to cover the market spread for positions that were moved.

I recognise T212 ultimately acted to close the CFD facility in line with its terms and conditions, but Mr R was given appropriate notice. I know he feels that the action was taken by T212 because he was at that point generating profits. But I've not seen anything that persuades me the motivation behind T212's actions was anything more than what it has suggested – a desire to move Mr R to a more appropriate investment environment.

Mr R has highlighted that he had actually asked for his account to be closed shortly before T212 took this action, in December 2020. So, he argues that is when the account should've been closed, and in its entirety, not just the CFD facility.

I see that he did send a brief message to T212 in December 2020 indicating that he was angry in respect of some other issues relating to the account and this message did say that he wanted to close the account. The matter in question concerned T212's decision to liquidate customers' cryptocurrency positions in December 2020, and subsequently remove

crypto asset CFDs from their platform. T212 took this action following the Financial Conduct Authority's banning of retail trading of cryptocurrency derivatives, which came into effect from January 2021. I'm satisfied this was something T212 did in line with its regulatory responsibilities and in accordance with its terms.

T212 did respond to say that Mr R could close his account if he closed all his positions and/or sold shares held on it. But given the specific context and background of the message and Mr R's ongoing trading with T212 I think it's reasonable that his account wasn't immediately closed at this point, or any facility removed. And it doesn't appear that Mr R followed up on this issue at the time, only during the investigation of the complaint. In any event, as the investigator noted, it may have been that he'd have ended up in a worse position had the CFD facility been removed sooner.

I note also Mr R's comments about the terms relating to account closure – that they only cover termination of the *entire* agreement – that being all the facilities, including the Invest facility and the associated ISA facility. But while I take his point, I still don't feel that, in the context of what was fair and reasonable for T212 to do, removing only the specific facility about which it had concerns – the CFD facility – was wrong. It explained the reasons why it felt that direct investment in stocks rather than stock CFDs was more appropriate given the long-term nature of his trading, and I think in the circumstances it would've been disproportionate to stop Mr R trading altogether. And he was not obligated to use the Invest facility. Further, T212 suggested that the CFD facility could be retained providing Mr R closed the long-term stock CFD positions.

Was Mr R advised to use the Invest facility?

I don't think the act of T212 suggesting that the Invest facility would be more appropriate for Mr R's pattern of trading constituted advice. The email sent to him on 14 January 2021 explained why T212 considered the Invest facility and that method of investment was more appropriate, given the nature of what Mr R was doing. It simply presented him with the option to use the Invest facility and made clear it was his decision whether he did so or not.

I acknowledge there was a suggestion that Mr R transfer existing positions to the Invest facility. But these were exactly that, *existing* positions, which Mr R had selected himself. All elements of the service provided by T212 were execution-only. Mr R had chosen which CFD positions to open and he continued to choose which direct stock investments to make. I've not seen that any recommendations were made to him about what to invest in, as I would expect. And, as noted, I think the suggestion that he move to direct stock investment was simply T212 pointing out to him a *method* of investing that on the face of it appeared to be more appropriate for him.

Mr R has said T212's indication that the Invest facility and direct stock investment in general was more appropriate for long-term investment led him to invest in a particular exchange traded product "Leverage Shares 3x Long NIO". His understanding that this would be a suitable investment for him seems to have been based on the name of the product featuring the term 'long'. As noted above, T212 provides an execution-only service, no advice is provided, and there is nothing to suggest that the decision to invest in this product was anything other than Mr R's. If there was a misunderstanding about the nature and risk of the product, I'm not persuaded that T212 can in any way be held responsible for it.

In summary, I recognise this has been a very difficult and stressful matter for Mr R. I appreciate receipt of my decision will be very disappointing for him, but in all the circumstances I'm unable to conclude that T212 acted incorrectly or unfairly in respect of the service it provided to him.

My final decision

For the reasons given, my final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 2 August 2024.

James Harris
Ombudsman