DRN-4150657

The complaint

Mr B complains about the way Monecor (London) Ltd trading as OvalX communicated with him at a time when it was winding down its operations and transferring client accounts to another broker.

What happened

Mr B had an account with OvalX. He had a number of Contracts for Differences (CFDs) open at the time in AUD/USD, both long and short.

On 8 February 2023 he received an email saying that "*OvalX will be closing its service for all clients over the coming weeks*". It explained that it had agreed with another broker for accounts to be transferred, as this would enable customers to continue trading, but there was no obligation to accept this. OvalX gave some detail about the broker and then, in the section called "*What would I be agreeing to"* it listed some options, including this one:

"Any positions on your OvalX account being closed at market price and the same positions being opened on your [other broker's account] *at an identical market price. Your positions will then be transferred over a weekend. The weekend transfer date will be communicated once you have opted in."*

When Mr B received this email, he asked some questions including whether his positions would simply be reopened "*in the same negative position without affecting my balance"* and in particular, whether his free margin would still be there. There was some further correspondence and on 15 February 2023 Mr B received another email about OvalX's transfer to the other broker. This time in the "*What would I be agreeing to"* section of the email OvalX said:

"OvalX will close your open positions and realize any profit or loss. [C] *will open the positions at the same close price on your new account. Your positions will then be transferred over a weekend. The weekend transfer date will be communicate once you have opted in."*

When the transfer was completed Mr B raised his concerns. He said he had been caused a significant financial loss, and he had been given inconsistent information from OvalX.

OvalX considered Mr B's complaint. It said that the changes in the transfer process did not affect Mr B's financial position, in that his net exposure remained identical after the transfer, and that would've been the case whether it had crystallised and transferred the 283 positions or, as it eventually did, transferred just one long position of 0.04 AUD/USD – which amounted to his net exposure to AUD/USD.

It said that Mr B's net exposure was the same at the new broker as it had been with OvalX so Mr B was in the position of managing his account as he had been before the transfer. However, it acknowledged that the communications regarding margins was confusing, and the confusion could've been avoided – so it offered Mr B £350 compensation.

Mr B didn't agree with the outcome and referred his complaint to this service.

One of our investigators looked into Mr B's complaint, but didn't agree it should be upheld. In short, he considered that overall OvalX had explained the process and the changes between the emails, although they caused some confusion, were not major. He also didn't think Mr B had any other option but to accept the transfer to the other broker, as his positions would've been closed regardless. Overall he considered OvalX's offer of compensation fair and reasonable and didn't agree it should be increased.

Mr B didn't agree with the investigator:

- He said that the investigator's assessment didn't deal with the key issue which is that OvalX created a "*Catch-22 situation for customers with open trades that would not be transferred to the transfer Broker"*.

- He said the first email from OvalX said that open trades would be transferred to the other broker with no adverse effect on customers, but in subsequent emails they changed the terms without making consumers aware.

- He didn't think it was right to say OvalX had no control over the service the new broker would provide, because OvalX had entered into an agreement with this other firm. He queried how many customers "*had trades in a negative position that would have come good in a long term strategy"* but this opportunity was taken away from them.

- He queried how many customers had "*losses forced upon them by OvalX failing to run a successful business"* and said that customers were paying for OvalX's failings. He said he knew it was possible to transfer open trades without any major loss to the customer, and OvalX simply chose not to do this, and chose a broker who wouldn't allow this.

- He said the changes in the two emails he received were "*critical"* and not minor. He said that in the 8 February 2023 customers would not realise any losses but in the 15 February email they were told they would. He said most customers would not have noticed that the 15 February email was different because they had already agreed to the transfer previously.

- OvalX must've known about the other broker's terms and conditions, so it chose to give misleading information in the initial email.

- He repeated his complaint that OvalX had profited from this Catch-22 situation, that it was unethical and that OvalX had deliberately chosen to mislead customers. He didn't accept that £350 was fair and reasonable compensation.

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

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.

I've considered Mr B's submissions very carefully. I can clearly see that the matter has caused him distress and inconvenience, and that he fully believes he has suffered a financial loss for which he should be compensated.

Having taken everything into account, however, I'm not persuaded Mr B has suffered a financial loss – nor even that the difference between the two messages was that significant.

I should firstly say that it isn't my role to look into OvalX's arrangement with the other broker, nor what service the other broker could or couldn't provide. I don't consider I'd have the power to make findings about these issues – but even if I did, I'm not persuaded they're relevant.

What OvalX needed to do was ensure that Mr B, should he choose to be transferred over to the new broker, was in no worse position with it than he was with OvalX. Its original email suggested moving all 283 of his trades, by closing them on OvalX's platform at one price, and reopening them at an identical price on the other broker's platform. Mr B would therefore still have carried his unrealised losses with the other broker and any relevant margin requirements to keep those trades open.

OvalX then changed this approach and decided to move only the net exposure of the positions. In Mr B's case, this resulted in moving just one long 0.04 trade in AUD/USD. Although this meant realising his losses, it also meant that from a net equity point of view, he had exactly the same point for point profit and loss with the new broker, as he did with the 283 positions he had open with OvalX. In other words, Mr B did not suffer a financial loss – and he was in a position to be able to manage his strategy however he wanted going forward. So on the crux of Mr B's complaint, I'm satisfied OvalX hasn't done anything wrong and Mr B wasn't caused a financial loss.

In terms of OvalX's communications, I acknowledge they really ought to have been clearer – and I think it's especially unfortunate that the second email didn't highlight the change. It would've alerted its customers to the fact that the second email had some slight variation compared to the first and ensured that consumers were fully aware of this – even if it made no actual difference to the net financial position. It clearly did have an impact on how the account would look with the new broker, and I can understand why this would've caused some initial upset until it was explained.

So when deciding what compensation for the distress and inconvenience is fair and reasonable in this case, I've taken the above into account. I've also taken into account, however, that I don't agree this was a critical or fundamental change that would affect Mr B's financial position. It would merely make the new account *look* different. Furthermore, OvalX corrected the previous email within a week, and a considerable time before the transfer actually took place. So Mr B had ample time to digest the contents of the second email and, since he viewed this change as critical, decide for himself whether he still wanted to go ahead with it. I acknowledge his submissions that he thought it was a repetition of the previous email – and I agree OvalX should've done more to highlight that it wasn't. But Mr B remains at least partly responsible for not having read it.

Taking this all into account, I agree that OvalX's original offer was fair and reasonable, and so that is what I award.

My final decision

My final decision is that I partly uphold Mr B's complaint. Monecor (London) Ltd trading as OvalX must pay £350 to Mr B within 28 days of when we tell it he has accepted this final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 22 April 2024.

Alessandro Pulzone
Ombudsman