

The complaint

Mr S's representative complains that Alvar Financial Services Limited failed to post all of his executed derivative positions to his account statements. He went on to say that this resulted in him overtrading and creating losses on the new position that he shouldn't have been able to open.

Mr S would now like Alvar to put him *'back into the financial position he would have been in should these breaches and negligence not occurred'*.

What happened

In January 2021, Mr S sent an instruction to Zodiac Partners Limited to open a position of 3,000 GNOGW 11.5 May 2021 Warrant for him. Zodiac executed the trade on Mr S's behalf, as his agent, trading via a channel set up by Alvar Financial and their prime broker, May Bank. As well as acting as the underlying broker, Alvar also acted as the custodian.

After receiving confirmation of the trade from his execution broker, Zodiac, a little over 10 minutes later, Mr S asked them to open an additional position for a further 10,000 warrants in GNOGW. Again, Zodiac confirmed the trade a short while afterwards.

Mr S's underlying broker, Alvar, also provided daily statements to him. Despite Mr S's request for the further 10,000 GNOGW warrants, the statements that Alvar issued to him failed to reflect his additional instruction.

On 23 February 2021, Mr S asked Zodiac to close his GNOGW positions. Following his instruction, Zodiac closed the full position of 13,000 GNOGW. It was only at this point that Alvar corrected Mr S's statements, and the point at which Mr S says that he then became aware that he held 13,000, rather than 3,000, GNOGW. Alvar attributed a loss of \$45,375 as a consequence of the further 10,000 positions Mr S held.

During the period from 26 January 2021 to 23 February 2021, Mr S opened a position in 3,000 Fiverr International. The position remains open, and Mr S has significant losses attributed to it.

In August 2021, the 3,000 and 10,000 GNOGW positions were deleted from Mr S's statement. This altered his account's equity by effectively hiding the c\$59,000 loss that he'd suffered. The error was subsequently corrected by the time Alvar issued a further statement to Mr S on 15 December 2021.

Shortly afterwards, Mr S decided to formally complain to Alvar. In summary, he said he was unhappy that they had provided regular, inaccurate statements to him. Mr S also said that he relied upon those statements to make his trading decisions. In addition, he also said that he shouldn't have been able to open the Fiverr position if Alvar had provided accurate statements showing his correct GNOGW position. Mr S went on to say that he didn't think he should be held accountable for those losses. Finally, Mr S explained that because Alvar had

allowed him to overtrade, there were potentially further losses that he'd suffered which, had they correctly reflected the equity on his account between 19 August 2021 and 15 December 2021, he wouldn't have suffered.

After reviewing Mr S's complaint, Alvar initially concluded that they were satisfied they'd done nothing wrong. They also said, in summary, that both Zodiac and Mr S should have checked the regular statements that had been issued and flagged the missing 10,000 position to them.

Mr S was unhappy with Alvar's response, so he referred his complaint to this service. In summary, he repeated the same concerns that he'd set out to Alvar. In addition, he also raised a similar complaint to Zodiac.

Both complaints to Zodiac and Alvar were then considered by one of our Investigators. He concluded that Alvar hadn't treated Mr S fairly because they had a duty to ensure that any executed positions were reflected correctly on the statements that it provided. However, he felt that as an experienced, professional investor, Mr S should have questioned why the subsequent 10,000 position wasn't showing on his statement. Our Investigator didn't consider that Alvar should be held accountable for the Fiverr losses that Mr S was facing or that he'd seen any overtrading losses.

In an attempt to resolve the complaint, our Investigator set out a settlement proposal to both parties of splitting the \$45,375 GNOGW loss equally between Mr S and Alvar. He explained that he'd reached that conclusion because there was no way to know when Mr S would have closed the 10,000 position had it been reflected correctly on the statements.

Following receipt of our Investigator's settlement proposal, Alvar explained that they agreed with the recommendation. Mr S, however, disagreed with our Investigator's findings and rejected the proposed settlement offer. In summary, he said that he didn't believe it was fair to attribute the losses equally between himself and Alvar. In addition, he also said, in summary:

- That splitting the loss 50:50 wasn't proportionate to the errors that the parties had committed. He went on to say that he didn't believe it was reasonable to attribute more than 10% of the GNOGW losses to himself.
- He felt he could rely on Alvar's reporting and as such, continued to invest which ultimately created a scenario where he overtraded. Mr S went on to say that had it not been for Alvar's misreporting of his GNOGW position, he wouldn't have opened another position (Fiverr).
- He said that Alvar's failure to reconcile the trading that they'd undertaken on his behalf for over month was a significant oversight on their part.
- He went on to say that there were insufficient funds for trading in the Fiverr shares to have taken place. Mr S didn't believe that trading would have taken place were it not for Alvar making an account balance adjustment.

Our Investigator was not persuaded to change his view as he didn't believe that Mr S had presented any new arguments that he'd not already considered or responded to. Unhappy with that outcome, Mr S then asked the Investigator to pass the case to an Ombudsman for a decision.

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 have summarised this complaint in less detail than Mr S has done and I've done so using my own words. The purpose of my decision isn't to address every single point raised by all of the parties involved. If there's something I've not mentioned, it isn't because I've ignored it - I haven't. I'm satisfied that I don't need to comment on every individual argument to be able to reach what I think is the right outcome. No discourtesy is intended by this; our rules allow me to do this and it simply reflects the informal nature of our service as a free alternative to the courts. Instead, I will focus on what I find to be the key issue here, which is whether Alvar's response to Mr S's complaint was reasonable in light of the various parties involved in the transaction and also, whether Alvar should be held accountable for the losses that Mr S says that he suffered by the incorrect statements that he received.

My role is to consider the evidence presented by Mr S and Alvar in order to reach what I think is an independent, fair and reasonable decision based on the facts of the case. In deciding what's fair and reasonable, I must consider the relevant law, regulation and best industry practice. Where there's conflicting information about what happened and gaps in what we know, my role is to weigh up the evidence we do have, but it is for me to decide, based on the available information that I've been given, what's more likely than not to have happened. Having done so, I'm upholding Mr S's complaint in part - I'll explain why below.

Jurisdiction

Before I do, for completeness, I wanted to address whether Mr S has submitted his complaint to this service on time, given the comments made by his representatives in their correspondence with us.

I can't look at all of the complaints referred to me. The rules applying to this service say that I can't look at a complaint made more than six years after the event being complained about – or (if later) more than three years after the complainant was aware, or ought reasonably to have been aware, of their cause for complaint. Unless that is, the business being complained about agrees. This is Dispute Resolution rule 2.8.2R(2) – which can be found online in the Financial Conduct Authority's handbook. And, in this instance, it's clear that Mr S has referred his complaint to this service within those timescales.

When a consumer complains to a business, the regulator expects that firm to provide their final written response within eight weeks. And, within that response, the firm is expected to set out the consumer's right to refer their complaint to this service, but that letter must explain that the consumer only has six months from receiving the final resolution letter to do so. This is covered under the regulator's DISP rule 1.4.12R.

In his complaint submission to this service (November 2022), Mr S explained that he had previously complained to Alvar in February 2021 about them mis-posting the GNOGW transactions. Mr S then complained to Alvar again about the same issue on 25 May 2022. So, on the face of it, Mr S has complained about the same issue twice, but what that means is Mr S would have needed to have raised his concerns with this service within six months of receiving Alvar's final resolution letter to his February 2021 complaint.

I asked to see copies of the complaint correspondence from February 2021 along with Alvar's response; that was to confirm the complaint was identical and that Alvar had set out to Mr S the time limits that must be met, should he decide to refer his complaint to this

service. Alvar explained that as the individuals who dealt with Mr S's February 2021 complaint had since left their employment, they didn't have any records about that interaction which they were able to share beyond what had already been submitted. Mr S explained that he only received a prompt, brief dismissal to his February 2021 complaint and hadn't retained any of that paperwork.

So, whilst Mr S's complaint to this service was only submitted in November 2022, combined with the fact that it was likely to be a repeat of his earlier concern and as I've not been presented with any evidence that he was either provided with his FOS referral rights or more specifically, made aware of what those time limits were, I'm satisfied that despite the earlier February 2021 complaint, this is a complaint that has been submitted on time and is one that I can consider.

GNOGW transactions

Mr S says that Alvar's failure to reconcile the trading that they'd undertaken on his behalf for over a month was a significant oversight on their part. It seems to me that there's little doubt that Alvar issued statements to Mr S that didn't properly reflect his full GNOGW position. The statements that Alvar sent to him showed that Mr S held 3,000 GNOGW, rather than the 13,000 which he'd originally asked for. So, in respect of this particular issue, I think it's reasonable to conclude that Alvar didn't deliver the service that Mr S should have reasonably expected.

Alvar have determined that the mistake occurred because the electronic feed failed at some point between themselves and May Bank. But, in any event, despite what Alvar initially set out in their complaint response to Mr S, I'm satisfied it was their responsibility, and no one else's, to ensure that the statements they provide to their consumers are correct. It seems that Mr S didn't log into his account on the platform to check his positions, so he was fully reliant on the information that Alvar was sending him in those statements.

However, whilst Mr S may have been reliant on those statements, I've also thought about the chain of events immediately prior to him receiving those regular statements. When Mr S instructed his execution broker, Zodiac, to open the positions for him, he received fill reports for both, confirming each had been filled. So, given Mr S says he relied upon the statements that Alvar provided, knowing that he'd asked Zodiac to open a second position of 10,000 GNOGW, he didn't subsequently query with either Zodiac or Alvar why the latter request wasn't reflected on his statements. And, given the size and frequency of Mr S's other trades that week along with the size of the subsequent GNOGW transaction, I think it likely that it would've been obvious to him that this larger position was missing. It would appear, therefore, that Mr S missed an opportunity to mitigate the error.

Ordinarily, I think that would be the end of the matter were it not for Alvar allowing Mr S to open a new position, which had his positions been reflected correctly, he wouldn't have been able to.

What's clear is that Mr S has suffered a loss of around \$45,375; that's based on the opening and closing price of the 10,000 GNOGW position. What isn't as immediately obvious, though, is had Alvar not issued incorrect statements, whether Mr S would have taken the same or a different course of action. Unfortunately, we're now working to a different timeline and can't apply the benefit of hindsight to mistakes of the past. But, I think it's reasonable to conclude that Mr S would have crystallised some level of loss and I'm cognisant of the need to be fair to both parties in reaching an outcome that is balanced.

Had Mr S been provided with a correct set of statements, there is no way to know when he would have closed out all of his GNOGW positions. It's for that reason that I've decided to

attribute the \$45,375 losses equally between Mr S and Alvar, holding both parties accountable.

Whilst I appreciate Mr S may feel that he should be accountable for no more than 10% of the 10,000 GNOGW losses, I don't agree. That's because I'm not persuaded that Alvar's actions were any worse than Mr S's inaction. So, in light of the unknown, I'm satisfied that this approach is fair and reasonable to both parties and as such, I'm upholding this part of Mr S's complaint.

Fiverr

In his complaint to this service, Mr S says that had Alvar not mis-stated his GNOGW position, he wouldn't have been able to open the Fiverr trade without depositing further monies beforehand. And, from what I've seen, Mr S would have needed to have credited around \$26,000 to his account ahead of making the Fiverr purchase. I can appreciate why Mr S is disappointed by the actions of Alvar; he says that as a consequence of them allowing him to place the Fiverr trade, it's resulted in a loss of around \$700,000.

Whilst there's little doubt that Alvar sent out statements that were incorrect, when I've thought about Mr S's circumstances at the time, I don't think having a correct statement would have made a material difference to the Fiverr transaction that he undertook.

However, in shaping my decision, I've had to think about whether on balance, had Alvar not issued incorrect statements and Mr S's account had been reflective of his correct positions, what was more likely than not to have happened.

Mr S is clearly an experienced professional investor who's been trading for some time. In addition, the file shows that he deposited significant sums of money over 2021 (totalling c\$1,200,000) to support his endeavours. As such, I think it's more likely than not that regardless of what was going on with the GNOGW position, Mr S would've still placed the Fiverr trade. And, I think it probable that he would have deposited further funds to support that.

It seems that Mr S first became aware of the potential that overtrading had taken place on his account on 23 February 2021 when the 10,000 GNOGW position was brought to his attention. It's at that point that he could have also closed his Fiverr position had he been concerned about accumulating further losses, but he didn't. He kept the position open. As such, I'm not upholding this element of Mr S's complaint.

Overtrading

On 19 August 2021, the 3,000 and 10,000 positions in GNOGW were removed from Mr S's statements; that meant the losses of c\$59,000 were also removed. However, by 15 December 2021, Alvar had corrected his statement. In his complaint to this service, Mr S explained that because of Alvar's misinformation, they incorrectly allowed him to overtrade on his account. He went on to say that had Alvar not hidden the c\$59,000 losses, he wouldn't have been able to open and then make further losses on new positions.

But, having looked closely at Mr S's account history over the period between 19 August 2021 and 15 December 2021, had the GNOGW positions and losses not been removed in error, his account would have been on margin call for four days. As Mr S didn't open or close any positions during those four days, I'm not upholding this element of his complaint.

Putting things right

The role of this service is to resolve complaints quickly and informally, and where we conclude that an error has occurred, we ask the business to put the consumer as close as is reasonably possible back into the same position that they would've been in were it not for the mistake. In setting out the redress below, it's important to remember that this isn't an exact science, and I've had to make a number of assumptions about what's most likely to have happened were it not for the mistakes that Mr S suffered. However, I'm broadly satisfied that what I'm asking Alvar to do is fair and reasonable in the circumstances.

Alvar should cover 50% of the losses that Mr S suffered on the 10,000 GNOGW position. This equates to \$22,687.50.

I'm not holding Alvar accountable for the investment losses that Mr S suffered in respect of the Fiverr transaction.

My final decision

I'm upholding Mr S's complaint in part and require Alvar Financial Services Limited to put things right for him in the manner that I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 7 May 2024.

Simon Fox
Ombudsman