

The complaint

Mr S complains that London & Eastern LLP's copy trader service led him to incur significantly larger losses than he expected because some of the trades were larger than they should have been.

He wants London & Eastern to reimburse him for the additional losses he incurred.

The copy trader service was provided by Pelican Exchange Ltd as an appointed representative of London & Eastern. As such, London & Eastern is responsible for this complaint. For ease, I'll refer to the business as the trading name it uses - Pelican Trading - throughout my decision.

What happened

Mr S agreed and paid for Pelican Trading's copy trading service. This meant he selected a "signal provider", who I'll refer to as "T" and Pelican Trading provided the software to allow him to automatically copy the trades placed by T. Mr S chose a trade size of 0.5.

Mr S says he quickly realised he'd made larger losses than the account he was copying. He decided to stop the service and withdrew the money from his account.

Pelican Trading said that T had dealt in some "mini lot sizes" which its software couldn't replicate and this led to positions being generated at ten times the intended level. It pointed Mr S to its terms and conditions which it said made it clear that Mr S used its copy software at his own risk.

After Mr S referred his complaint to us, Pelican Trading told us that its software fulfilled its mirror trading responsibilities and that it wasn't liable for trade account configurations on T's trading platform.

Our investigator recommended that the complaint should be upheld. She said Mr S had set a trading size factor of 0.5, so his losses should have been half that experienced by T. She thought Pelican Trading had made an error in setting the size of the trades on Mr S's account. She thought it should calculate the additional losses incurred as a result of the error in apportioning trades and reimburse this to Mr S, plus interest at 8%. She also thought Pelican Trading could have resolved this issue at an earlier stage and that it should pay Mr S £50 for the distress and inconvenience caused in having to pursue his complaint.

Mr S responded to say that the problem seemed to be that his account was trading in higher volumes for two particular positions, rather than the trade size being set wrongly for all his trades.

Pelican Trading didn't agree with our investigator's conclusions. It said, in summary, that:

- Whilst the same symbol was used, and the trade size appeared to be the same, T was trading in micro lots, but Mr S was allocated standard lots.

- The broker failed to enable the correct symbols. This was beyond Pelican Trading's control.

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.

Our investigator set out various trades and compared trading by T with Mr S's trades. She concluded that there'd probably been an error by Pelican Trading in setting up the proportional trade size. But Pelican Trading had already provided an explanation for the error, which Mr S seems to accept. That is that he incurred larger losses because trades in two positions were ten times the level they should have been. And this is because some of his trades were placed as "standard lots" whereas T had traded "micro lots". From the information I've seen, I'm satisfied this is a reasonable explanation for what happened.

But what the parties don't agree on is who was responsible for the error.

Pelican Trading initially said it wasn't responsible because its software wasn't capable of interpreting the correct size of trade because of the way the positions were set up by T; and that its terms and conditions explain it's not liable in such circumstances. In response to our investigator's view it said it was the broker who'd failed to enable the correct symbols.

The broker said Pelican Trading was responsible for ensuring the correct proportionate trades were placed for Mr S. And that since the error with Mr S's trades, Pelican Trading told the broker it had "*fixed the issue*".

In cases like this, where the evidence is incomplete, inconclusive, or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

Having done so, I find Pelican Trading is most likely responsible for the error here. I say that because it told Mr S that its system couldn't copy the mini lot sizes because it was "*beyond [its] technical capability*". And that it didn't blame the broker for the error. So I find it was a failure in Pelican Trading's system that led to Mr S's losses being larger than they should have been.

Pelican Trading says that it isn't liable for the additional losses Mr S made because its terms and conditions, which Mr S agreed to when he signed up for the service, explain it isn't liable for any losses and that Mr S used the service at his own risk.

The Financial Conduct Authority ("FCA") has set out in COBS 2.1.2R, that a firm must not seek to exclude or restrict or rely on any exclusion or restriction of any duty or liability it may have to the client under the regulatory system. So that means Pelican Trading couldn't limit its obligation to act with due care, skill and diligence and treat Mr S fairly under Principle 2 and Principle 6.

When Mr S agreed to the copying service, he reasonably expected that his trades would copy his chosen "signal provider" in the proportion he'd set – 0.5. There was nothing to suggest that certain trade configurations couldn't be followed, such as "mini lots", or that this would result in larger positions than he'd agreed to hold. I don't find it's fair for Pelican Trading to rely on its terms to exclude its liability in the individual circumstances here.

In addition, Pelican Trading's terms point out that the FCA treats copy trading services as a discretionary investment management service. I find this means that, in effect, Mr S gave

Pelican Trading the authority to carry out the trades on his behalf, but within the parameters he'd set. So Pelican Trading was obliged to copy T's trades at a proportion of 0.5 for Mr S. I find it failed to do this.

For these reasons, I find the complaint should be upheld.

Putting things right

Pelican Trading should put Mr S back in the position he'd be in now if its software had accurately copied the trades as he'd instructed. It should calculate the additional losses incurred by Mr S as a result of the errors and reimburse this sum to Mr S.

To recognise that Mr S has been without that money, Pelican Trading should pay interest on this amount at the simple rate of 8% per year from the date of the losses to the date of settlement. *

To reflect the distress and inconvenience caused in Pelican Trading not resolving this issue at an earlier stage, I agree with our investigator that it should pay Mr S £50.

* HM Revenue & Customs requires Pelican Trading to take off tax from this interest. Pelican Trading must give Mr S a certificate showing how much tax it's taken off if he asks for one.

My final decision

My final decision is that I uphold this complaint. London & Eastern LLP, trading as Pelican Trading, should pay compensation to Mr S as 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 21 August 2024.

Elizabeth Dawes
Ombudsman