DRN-4716691

The complaint

Mr M complains that London & Eastern LLP trading as Pelican Trading ('Pelican') gave him misleading information which caused him to make a financial loss in his trading account.

What happened

Mr M used an app provided by Pelican to trade on the foreign exchange (forex). The app provided a service called '*copy trading*'. Using this service Mr M selected a particular '*signal*' to copy. That meant trades would be made on Mr M's behalf that matched the trades done by his chosen signal. Mr M told us the signal's profile page on the Pelican app said the signal had a '*Max Drawdown of -6.6%*' and was '*Low risk*'.

Mr M said that soon after he began copying the signal it drew down more than 100% of invested capital. He said it also later transpired that the signal had in the past had '*huge Drawdowns*' which he said was the opposite of how Pelican had described the signal.

Mr M complained to Pelican that the signal's profile page on the Pelican app displayed a max drawdown and a risk categorisation that were misleading. In particular he said the max drawdown should've been calculated based open trades as well as closed trades – and by calculating it based on closed trades only Pelican had presented a misleading max drawdown figure and a misleading risk rating. He said this caused him to make a misinformed decision when deciding to follow the signal and so it caused the trading loss he'd experienced while following the signal.

Pelican didn't uphold the complaint. It said it took great care to provide transparent statistics to its app users. And it said there were various ways to calculate drawdown, and the method Pelican had used was an accepted norm in the forex market. It also said that if it used Mr M's method to calculate drawdown the signal would still be categorised as low risk because the drawdown would be about 12%.

To show its definition of drawdown was an accepted industry norm, Pelican provided a link to a third-party website which gave a description of drawdown. The website said the following:

> *'Drawdown in forex refers to the percentage of the amount of losing trades in a row. It is the amount that has been drawn from your account after losses in forex trading.*

And it said that in forex the following three types of drawdown existed:

- Absolute: The difference between the initial balance to the maximum loss in an account balance
- Relative: the difference between the maximum equity (unrealised profit or loss) high to maximum equity low
- Maximum: The difference between an all-time high to the all-time low of an account balance

Mr M referred his complaint to this service. In summary, he said he invested in a product he thought was low risk because it was marketed as having a maximum historical drawdown of 6.6%. But soon after he invested the drew down more than 100% of invested capital. And it had had '*huge drawdowns*' in the past. He said the method Pelican had used to calculate max drawdown for the signal he copied was inconsistent with Pelican's own explanation for how it calculated max drawdown. And the method Pelican had used on the profile page was not the industry standard. As evidence Mr M referred to Pelican's document titled '*Drawdown Limits, Subscriptions & Performance Fee Calculation*' which said drawdown was calculated based on open and closed trades. Mr M provided a screenshot of the signal's profile page from around the time he decided to follow the signal which was in March 2023.

Pelican made various comments in relation to Mr M's complaint, which included (but weren't limited to) the following:

- Its FAQ page described how Pelican calculated drawdown figures and in doing so differentiated between max drawdown for the purpose of the drawdown tool, and max drawdown that was shown on a signal's profile. It said max drawdown on the signal's profile was calculated using closed trades only. And the profile page included a link to the FAQ page, represented by an information icon which could be clicked.

- Using trade data for the signal Mr M copied, Pelican re-calculated the max drawdown using closed trades for a date in March 2023. The new calculation produced a max drawdown figure of only 0.04%.

- Pelican provided a video demonstrating on Pelican's current app (not the previous version Mr M used) that the information button on the signal's profile page included a link to Pelican's FAQ page which included the section '*What is Balance Max Drawdown?*' which differentiated between two types of max drawdown.

- The video also showed that if the app user chose to copy a signal, the user would have an option to add drawdown protection, and the user would be asked to agree to the drawdown terms.

- The document '*Drawdown Limits, Subscriptions & Performance Fee Calculation*' defined drawdown in the context of drawdown limits. Drawdown limits were a protection tool and so had to take account of open trades. That document, and the definition in it, weren't presented to the user to explain the drawdown figure displayed on the signal profile. It was presented to users after they had clicked to '*copy'* a particular signal, as part of explaining how protective limits on the account would work and how fees would be calculated – so it didn't serve as information to help users choose whether or not to copy a signal.

- In his use of Pelican's app Mr M had shown an appetite for risk by not setting a maximum drawdown level for any of his four accounts, even after the signal he followed posted an update saying he was experiencing drawdown and would have to make larger trades than normal. And Mr M had four accounts all following the same signal.

- Next to max drawdown the signal's profile page showed live trades which in this case showed that the signal was running losses in its live trades at the time Mr M decided to follow the signal. Users could click on the live trade figure and see the individual open trades that made up the live trade value. This was so users could take into account unrealized profit and loss as well as the performance of historical closed trades.

- Low, medium and high risk for signals were concepts used by the FCA. Pelican's process for assigning risk labels was based on drawdown. Signals with less than 15% maximum drawdown were categorised as low risk.

Mr M made further comments, including (but not limited to) the following:

- At the time he began copying the signal its profile on the Pelican app included no link to the Pelican FAQs. A screenshot he provided showed this. And links on the Pelican app were broken.

- After he referred his complaint to this service and made a notification to the FCA Pelican changed how it displayed max drawdown on the profile page.

One of our Investigators looked into Mr M's complaint. He thought that if Mr M wasn't properly informed about how the drawdown figure on Pelican's app was calculated then he wouldn't have been able to make an informed trading decision. But ultimately the investigator concluded Pelican hadn't misled Mr M. He said Pelican had displayed a cautious drawdown figure on its app at the time, and its risk rating of '*low*' had been reasonable, based as it was on past performance up to that date. In summary the investigator also made the following points:

- To begin copy trading with Pelican, Mr M had to accept Pelican's Copier Agreement. The Copier Agreement included the following at 3(f):

  '*You warrant that (a) you understand the nature of spread betting, CFD trading, FX trading and equity/share dealing, and that spread bets, CFDs and FX are complex instruments and come with a high risk of losing money rapidly due to leverage and hence you may be exposed to a loss which is greater than your initial outlay/deposit;*

  (b) you will monitor the performance of the Signals/Trade Alerts and will regularly determine if such Signals/Trade Alerts remain suitable for you.'

- Pelican had made clear copy trading was inherently high-risk, and so the risk rating of '*low*' on the product Mr M chose to follow was a relative risk rating.

- Pelican had different definitions for '*max drawdown*'. But the app included an information button which would've taken Mr M to the definition that was current at the time. The information button was in a different place in the version Mr M sent us but it was still present in a screenshot from Mr M.

- Drawdown as a statistic on the copy signal profiles was different from max drawdown as a tool to limit losses. And Pelican had presented information about the two concepts in such a way that a reasonable investor would understand the difference.

- Mr M had actively chosen not to use the drawdown limit tools Pelican made available on the app. And some of the answers he gave in the questionnaire he completed before using the app suggested his risk appetite was high. And he had four accounts all following the same copy signal. So it wasn't clear Mr M was, as he claimed, risk averse. And so it also wasn't clear Mr M would've acted differently if Pelican had shown a higher max drawdown figure for the copy signal.

- It was unfortunate the copy signal had performed badly after Mr M began following it. But that wasn't foreseeable and was part of the overall risk of speculative leveraged trading.

Mr M didn't accept the investigator's opinion. In summary he said the link to which the investigator referred was broken (as were other links in the Pelican app). So Mr M had no reason to think drawdown was calculated any other way than by closed and open positions.

Because no agreement could be reached, the complaint was passed to me to review afresh and make 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.

Having done so, I'm not upholding the complaint. I'll explain why.

The purpose of this decision is to set out my findings on what's fair and reasonable, and explain my reasons for reaching those findings, not to offer a point-by-point response to every submission made by the parties to the complaint. And so, while I've considered all the submissions by both parties – including very extensive email correspondence from Mr M – I've focussed here on the points I believe to be key to my decision on what's fair and reasonable in the circumstances.

To uphold Mr M's complaint, I'd need to be satisfied Pelican wrongly caused him to believe the max drawdown it showed for the copy signal was based on open and closed trades and/or that Pelican wrongly caused Mr M to believe the copy signal was low risk. Then, to require Pelican to compensate Mr M for his trading losses, I'd need to be satisfied Mr M wouldn't have followed the copy signal if he hadn't been led to believe max drawdown was based on open and closed trades and/or the copy signal was low risk.

I've found it wasn't unreasonable for Pelican to show the copy signal as low risk. I don't have a basis to say Pelican's policy of categorising a signal as low risk where its drawdown is less than 15% was unreasonable. And Pelican has said that even if it calculated drawdown based on open and closed trades at the time Mr M began following the signal, the max drawdown would've been about 12%. So the signal still would've been classed as low risk according to Pelican's policy. And as the investigator said, Pelican made clear that the trading itself was inherently risky and so it was reasonable to interpret the risk rating of '*low*' as being relative to trading based on other copy signals.

Whether Pelican caused Mr M to think the signal's max drawdown was based on open and closed trades is less clear. But on balance I'm satisfied it didn't.

First, I haven't seen that any industry standard gave Mr M a basis to expect that max drawdown for the signal profile would factor in open trades. I've seen that max drawdown is sometimes based on closed trades only, particularly when it's used as a performance measure as opposed to a drawdown limit. But Pelican could still have misled Mr M if it gave him reason to believe the drawdown figure on the profile page was based on open as well as closed trades.

Mr M is right that some information from Pelican – in particular the document titled '*Drawdown Limits, Subscriptions & Performance Fee Calculation*' – describes '*drawdown'* and '*max drawdown'* as including open and closed trades. But Pelican is also correct in saying those descriptions referred to the drawdown limit tool with which users set stops on their accounts to minimise the size of any losses. I accept this was the case. I haven't seen any information from Pelican which said explicitly that max drawdown on the signal's page was calculated based on both open and closed trades. Nevertheless it remains the case that the signal's profile page also used the term '*max drawdown*' and in the absence of any other definition it's possible a user might reasonably presume that max drawdown on the profile page was calculated in the same way as max drawdown in relation to the drawdown limit tool.

But Pelican's FAQs did say drawdown on the profile page was calculated on closed trades only. Mr M has said the link to that page – which is shown on the screenshot from Mr M – didn't work. But I haven't seen evidence of that. And I think on balance it's likely the link existed. And if Mr M had found the link to be broken at the time he was making his decision, he could reasonably be expected to seek the information he needed in another way or to delay his decision until the link was repaired.

I think Pelican could usefully have made its definition of max drawdown more prominent. And I know it's recently made some changes to the max drawdown it displays, to help avoid any misunderstandings in future. But overall I don't think what Pelican provided was so deficient that it failed to be clear and not misleading and so caused Mr M to misunderstand the basis of the max drawdown figure on the signal's profile on the Pelican app.

It's important to add here that, even if Pelican did mislead Mr M about how max drawdown on the signal's profile was calculated, I wouldn't be persuaded it caused Mr M to do something he wouldn't otherwise have done. In other words, I think it's likely Mr M would've followed the copy signal even if he'd known max drawdown on the profile page was based on closed trades only.

Adjacent to the profile's max drawdown, Pelican's app provided live trade information about copy signals. That consisted of a figure showing unrealised profit/loss. Users could click on the unrealised profit/loss and be shown all the currently open trades that made up the total current unrealised profit/loss. From this information Mr M could've seen the signal was trading at a loss.

Mr M has said that to make an informed decision he would also have needed to know the extent of historical unrealised losses. I understand this would've been incorporated into the max drawdown figure if the figure had been based on open and closed trades – and Mr M is saying it's a necessary component for informed decision making. But I haven't seen that this was in fact necessary for Mr M to make a reasonable risk-based decision, or that he wouldn't have followed a signal without knowing that information.

Mr M had live trade information available to him at the time he decided to follow the signal. As I've said, from that he would've seen the signal was running losses at that time. After he began following the signal he would also have seen the increase in unrealised losses which he's said began to occur soon after he began following the signal. And it would've become evident – if not already evident – that max drawdown on the profile page was based on closed trades only. Despite this Mr M followed the signal for about three months, without setting a drawdown limit for his own accounts. So – having considered the actions Mr M took in the context of the information he had – I'm not persuaded that being given a drawdown figure based on open and closed trades in March 2023 would've stopped Mr M from following the signal at that time.

I also haven't seen that such information in relation to the signal Mr M followed, had it been provided, would've shown the signal to be significantly higher risk. Pelican has said that if it had included open trades in its max drawdown calculation around the time Mr M decided to follow the signal, the max drawdown would've been about 12% and the risk rating would've been low. So overall, and on balance, I don't things would've been different enough that I can conclude Mr M would've made a different decision even if he'd known the profile's max drawdown wasn't based on open trades as well as closed trades.

Another reason I'm not persuaded Mr M would've acted differently had he known how the signal's drawdown was calculated is because of the appetite for risk Mr M showed. Mr M showed an appetite for risk which suggests that, on the balance of probabilities, neither a lack of information about historical unrealised losses or a max drawdown displayed at the level of 12% was likely to sway his decision about whether to follow the copy signal. Specifically, Mr M chose not to set any drawdown limits on any of his four accounts, he gave answers on a questionnaire which indicated a high risk appetite, and he had four accounts which all followed the same signal. So I think on balance Mr M was comfortable enough with risk that I can't say he would've done differently had he known the signal's max drawdown was based on closed trades only.

Overall, I'm sorry to know Mr M's trades performed poorly while he followed the signal on Pelican's app. But I can't conclude that Pelican treated him unfairly and that in doing so it caused Mr M to experience that poor performance. So I'm not asking Pelican to do anything on this occasion.

My final decision

For the reasons I've set out above, my final decision is that I don't uphold this complaint.

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

Lucinda Puls
Ombudsman