

complaint

Mr F's complaint is that Beta 2 Limited didn't trade on his account as agreed and took more risk than he wanted. He also complained that Beta 2 failed to answer his questions or respond to information requests.

background

In June 2012, Mr F signed up for Beta 2's advisory service to trade on margin in foreign exchange (FX) and precious metals. He opened a trading account and filled in a form called a 'limited power of attorney', authorising Beta 2 to trade on his behalf. He paid £25,000 into the account.

Mr F then met with Beta 2 several times to agree what types of trades would take place.

In July 2013, Mr F began to complain that trading on his account had not followed the agreed pattern. Beta 2 did not uphold his complaint and he complained to this service in October 2013. Mr F said that he had lost the entire £25,000 he put in.

I issued a provisional decision upholding Mr F's complaint on 21 January 2015, in which I said:

- Beta 2's way of working with customers was to agree what it called 'trading permissions' in advance. These set out the types of trades and amount of risk that they would take. Having agreed these, Beta 2 said it would trade in line with the 'permissions', without seeking separate approval for each trade.
- There wasn't much written evidence in this case – particularly about what the exact 'trading permissions' agreed at the start were. On several occasions in emails I have seen, Beta 2's Chief Executive Officer ("CEO") said he was happy with the permissions in place, but he did not say what they were.
- Mr F began to complain in July 2013 that the trading on his account was not in line with what was agreed. Beta 2 denied this but without ever saying what it believed Mr F's 'trading permissions' were.
- I needed to decide what I considered was most likely to have happened. In this case, Mr F had said clearly and consistently what he agreed to. Beta 2, on the other hand, has not said what it believed was agreed, just that it stuck to the 'permissions' (whatever they were). It had not provided an account history. It had also chosen not to respond directly to Mr F's point about the ratio of trades one way to trades the other way.
- If Beta 2 had any evidence to show that its trading was in line with 'permissions' to which Mr F agreed, I invited it once more to provide this evidence for me to consider.
- I was inclined to believe Mr F's recollections of the trading approach agreed. I thought that Beta 2 did not trade in the manner agreed with Mr F, but traded more frequently and took greater risks than agreed.
- I thought Mr F had lost money because of what Beta 2 had done and Beta 2 should compensate him for this. I also intended to award him £200 for the upset they had caused.

Mr F agreed with what I said. Although I sent Beta 2's CEO a copy of my provisional decision by post and email, Beta 2 did not reply.

my findings

I've considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. In the absence of any new evidence, I am going to uphold Mr F's complaint.

Beta 2's way of working was to agree a set of 'trading permissions' in advance with its customers. I am satisfied that 'trading permissions' were agreed in Mr F's case, since Beta 2's CEO mentions them (without saying exactly what they were) in emails.

Neither side has a written record of what was agreed. But I think Mr F's recollections are likely to be broadly correct. I say this because he has maintained his view since he began complaining to the business in July 2013. And because Beta 2 has not provided any evidence to the contrary, despite being given many opportunities to do so.

In emails, Mr F asked Beta 2 some clear questions about why it was trading on his account in the way it was. I don't think Beta 2 answered these questions in a clear or helpful way.

I conclude that Beta 2 didn't trade as agreed on Mr F's account. I think it traded more frequently and took greater risks. As a result, Mr F has lost money and Beta 2 should compensate him for this loss.

I also don't think Beta 2 dealt with Mr F's complaint properly. I say this because it didn't issue a final response letter or tell Mr F about his right to refer his complaint to this service.

I think Beta 2 upset Mr F by not trading as agreed and frustrated him by not answering his concerns. It put him under added stress at a time when he was under a lot of pressure already. I am awarding him £200 compensation for this.

fair compensation

In deciding what's fair, I think my aim should be to put Mr F as close as I can to the position he would now be in if Beta 2 had not acted outside his 'trading permissions'.

To compensate Mr F fairly, Beta 2 must:

- Refund to Mr F the opening balance on his trading account, less any closing balance he has received.
- Pay interest at a rate of 8% gross a year on this balance from 1 August 2013 until the date of settlement (that is, the date when Beta 2 pays Mr F). I've chosen 1 August 2013 as the date on which Mr F's relationship with Beta 2 effectively ended. The interest is compensation for being deprived of the use of his money.
- Refund any additional money Mr F paid into his account after the opening date, including any payments for commission.
- Pay simple interest at 8% gross a year on these additional payments from the date made until the date of settlement.

- Pay £200 for the distress caused.

I've chosen this way of compensating Mr F as he was aware that this was a high risk type of trading so returns were not guaranteed. I think getting his money back is a fair return in this context.

my final decision

Under the rules of the Financial Ombudsman Service, I am required to ask Mr F to accept or reject my decision before 27 March 2015.

My final decision is that I uphold this complaint and direct Beta 2 Limited to pay Mr F compensation as set out above, including £200 for the distress and frustration caused.

Louise Bardell
ombudsman