

complaint

Mr F's complaint is about the way Beta 2 Limited conducted trading on his account. In particular he says Beta 2 acted outside its mandate by trading on his account on a discretionary basis when he had signed up for an advisory service and exposed him to a far higher risk than he had agreed to. He also complains that Beta 2 failed to respond to repeated requests for information.

background

In late 2012, Mr F completed an application form to apply for Beta 2's advisory service in relation to foreign exchange (FX) and precious metals trading. He opened a metatrader account on which to trade and completed a limited power of attorney, authorising Beta 2 to act on his behalf in executing the trades. He then paid £30,000 into the account.

In February 2013, Beta 2 sent an email requesting Mr F's permission for a number of trades. This prompted some email exchanges, during which Mr F agreed some new parameters for trading. Trading activity then increased significantly and in May, Mr F began to complain that the firm had made unauthorised trades.

In November 2014, I provisionally upheld Mr F's complaint. I made the following points:

- Mr F had been given sufficient information to understand how Beta 2's model worked, which was to agree what it called trading permissions, within which it would trade. I was therefore not minded to uphold the complaint of discretionary rather than advisory trading.
- I was minded to find that Beta 2 did not trade within the permissions it agreed with Mr F.
- Beta 2 should have pointed out to Mr F that the returns he was looking for were not realistic.
- An exchange of emails in February 2013 showed Mr F agreeing a clear set of Trading Permissions with Beta 2.
- Beta 2 did not then trade in the manner agreed and took much greater risks.
- Mr F had lost money as a result and Beta 2 should compensate him for this.
- I was also not satisfied that Beta 2 dealt with Mr F's complaint adequately. And my provisional intention was to award compensation of £200 for the stress and frustration caused by Beta 2's failure to address Mr F's concerns.

Mr F accepted my provisional findings. Beta 2 disagreed and responded at length. Most of its points had been raised previously but I consider the main ones to be:

- Mr F agreed to Beta 2's method of trading.
- Mr F was an affluent and highly experienced investor.
- He understood the risks and was warned repeatedly.
- Mr F was happy when things were good and would not have complained had Beta 2 made profits for him. He only complained when he realised the performance of the investments was not going to be what he expected.
- Mr F had online access to his account and monitored it regularly. So why did he not complain earlier if Beta 2 was not trading as agreed?
- It sent an example of how it conducts its business with new clients.

Beta 2 also made an offer of USD2,000 as full compensation for Mr F's distress. This was put to Mr F by our adjudicator but he did not accept it.

my findings

I have reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I see no reason to change the conclusions reached in my provisional decision.

As I said in my provisional decision, I am not persuaded that Beta 2 was at fault in making trades without a separate authorisation for each one from Mr F. I say this because I consider that Beta 2 had explained how it operated and sent examples of how its trading permissions worked which were reasonably clear. Mr F had in my view been given sufficient information to understand that this was how Beta 2's model worked. He could have complained immediately – or not proceeded – if he wasn't comfortable with this approach.

Beta 2's lengthy response to my provisional decision chooses not to address my central finding – which was that Beta 2 did not trade in the manner agreed with Mr F. In February 2013, in an email exchange, Beta 2 said (referring back to the trading permissions it agreed earlier):

“For the type of returns you are looking to achieve, we will have the same stops, the same trades, but we'll buy them in increments 2.5 times larger than our current recommendations (risk 2.5 times more as well)”.

Mr F agreed to this. But Beta 2 did not proceed on this basis. Trading volumes increased rapidly, lot sizes were often larger than agreed and there were seldom any stop losses. Based on the evidence I have seen, Beta 2 did not trade in the manner agreed and took much greater risks. I conclude that Mr F has lost money as a result and Beta 2 should compensate him for this.

Beta 2 has repeated its arguments that Mr F was an experienced trader who understood the risks clearly and was warned repeatedly about them. However, as I pointed out in my provisional decision, the complaint is not that the risk was not explained or understood, but that trading did not follow the agreed trading permissions. No amount of disclaimers or risk warnings could counteract this.

Beta 2 has argued that Mr F had online access to his account and monitored it regularly. However, Mr F had signed up to a service where Beta 2 would trade within agreed parameters. I am satisfied that there was therefore no obligation for him to monitor trading activity on a day to day basis. Beta 2 might prefer it if Mr F had objected earlier, but he was not obliged to do so. In any case, this does not alter my decision as to whether Beta 2 has done anything wrong in this case.

I also remain satisfied that Beta 2 did not deal with Mr F's complaint adequately. I say this because it did not issue a final response letter or give Mr F his rights to refer his complaint to this service.

Mr F has said that he was distressed by Beta 2's failure to address his concerns. His emails clearly show the extent of his frustration. I consider that Beta 2's actions in response to Mr F's understandable concerns would indeed have been upsetting and frustrating. I am awarding compensation of £200 for this.

fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Mr F as close to the position he would probably now be in if Beta 2 had not acted outside of the trading permissions he had agreed.

To compensate Mr F fairly, Beta 2 must:

- Cancel all transaction made on Mr F's trading account after 14 February 2013 (the date when he agreed to the 2x trading permissions) to restore the balance on his account at that date. Pay this balance to Mr F.
- Pay simple interest at a rate of 8% gross a year on this balance from the date that trading ceased on the account until the date of settlement. This interest is compensation for being deprived of the use of the funds.
- Refund any additional payments Mr F made into his account after that date.
- 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 and frustration caused.

I have chosen this method of compensation as Mr F was fully aware that this was a high risk form of trading in which returns were not guaranteed. I therefore consider a return of his money to be 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 6 January 2015.

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

Louise Bardell
ombudsman