

## **The complaint**

Mr N's complaint initially focussed on the decision by VPR Safe Financial Group Ltd trading as Alvexo to withdraw its services from the UK and the resulting forced closure of his trading account and remaining open positions.

Further concerns were then highlighted, namely that Alvexo:

- Provided trading advice that led him to incur losses.
- Manipulated its spreads.
- Caused issues with deposits and withdrawals.
- Opened trades on his behalf.
- Suffered a platform outage that prevented him from trading.

## **What happened**

Mr N had been trading with Alvexo since mid-2021. On 30 September 2022 it informed him and other UK clients that it was withdrawing from the UK. Clients were told they'd be able to continue to use their accounts as normal until 31 October 2022 at which point accounts would be switched to 'close only' until 31 December 2022, with any positions remaining open at that date then automatically closed.

Alvexo had been regulated in Cyprus since April 2015 and 'passported' its services into the UK. From 31 December 2020, following Brexit, it came under the Financial Conduct Authority (FCA)'s Temporary Permission Regime (TPR) which meant that for up to three years it was able to continue to operate within the UK and came under the jurisdiction of this service.

Within this period firms in the TPR either had to apply for full FCA authorisation or withdraw from the UK market. Alvexo decided not to obtain the authorisation and instead withdrew its services from the UK. It entered a supervised run-off regime in which it was only allowed to carry out activities required to wind-down any pre-existing UK business.

Mr N contacted Alvexo as he was very unhappy with the position its decision put him in. Alvexo initially agreed to extend the period in which he could trade normally to the end of November 2022. It then made a further offer to allow him to manage out his positions over a period of 90 days from 1 January 2023. As he didn't take up this offer, his positions were closed on 31 December 2022.

During this period Mr N referred a complaint concerning the closure of his account to this service. However, we were initially unable to look into the matter as Alvexo hadn't at that point been given an opportunity to respond. It eventually issued a formal final response at the beginning of February 2023, explaining that it didn't uphold the complaint as it felt it had acted correctly, in accordance with its terms. And further, it noted the extensions it had offered to Mr N.

By this point Mr N had engaged the services of representatives in bringing his complaint, who raised additional issues, broadly as set out above. These issues were put to Alvexo in

the course of the investigator seeking further information as part of his overall assessment of the matter.

The investigator then issued his view, explaining why he felt the complaint shouldn't be upheld.

In respect of the initial cause of complaint – the closure of Mr N's account – he felt Alvexo had acted in accordance with its terms and further, gone beyond its contractual requirements, increasing the initial notice period beyond the 15-day period set out in its terms, and then also giving Mr N further extensions. The investigator noted that Alvexo had also attempted to find an alternative broker for Mr N to transfer his account to and while this had ultimately been unsuccessful, no guarantee that a transfer would be made had been provided to Mr N.

The investigator then went on to look at other concerns Mr N's representatives had raised. In doing so, he also considered the appropriateness of the account and how the risks involved had been communicated to Mr N. I'll summarise his findings below.

- Appropriateness – the investigator noted that Alvexo had obtained information from Mr N at the outset to determine whether a CFD trading account was appropriate for him. He'd declared an annual income of over €100,000, a net worth of over €500,000, an intention to deposit up to €300,000 and a profession related to finance. The investigator acknowledged that it wasn't entirely clear whether Alvexo had determined whether CFD trading was appropriate for Mr N, or what, if any, specific warnings had been issued to him. But he noted that even if Alvexo had determined that CFD trading was inappropriate, Mr N would still have been able to proceed and in the investigator's view he would most likely have done so. And there was nothing in what Alvexo knew of Mr N's circumstances that ought to have led it to conclude that it should've gone as far as to prevent him from trading.
- Risk – the investigator highlighted the generic high-risk warning that would've been presented to Mr N when he opened the account. And that Mr N had accepted Alvexo's terms and conditions that referred clients to the full risk disclosure. The investigator felt that given the amount Mr N had been intending to deposit it was reasonable to expect him to have familiarised himself with the relevant documentation governing the relationship between him and Alvexo.
- Advice – the investigator listened to a large selection of call recordings of conversations between Mr N and his account manager and other staff. But he didn't find any evidence of advice being provided. Rather, he felt that the conversations had simply imparted generic information, as had some emails sent to Mr N.
- Specific trades – the investigator also found no evidence to support Mr N having been advised in respect of some trades highlighted by his representatives – specifically gold and Amazon. He could see no losses had been incurred on the gold positions and felt any decision made about the Amazon trade had solely been Mr N's. Again, there was no evidence he been advised how to manage the position in question.
- Spread manipulation – this referred to an occasion in January 2022 when Alvexo's spread differed from that of another broker. Alvexo acknowledged it had an issue with spread at the time, but it had been corrected. The investigator didn't feel that this indicated any systemic manipulation by Alvexo and said that Mr N didn't appear to have incurred any loss because of this single issue.
- Deposits – the investigator found that an issue Mr N had with depositing via credit card stemmed from the card being issued in a country other than his country of residence, which had resulted in a potential fraud flag. He felt this was reasonably dealt with by Alvexo offering Mr N an alternative method of funding his account.
- Withdrawals – Mr N had complained that Alvexo had failed to pay him the remaining

account equity after his positions were closed, as promised. The investigator accepted this point and said Alvexo should pay the amount outstanding to him immediately with interest added at 8% simple.

- Alvexo opening trades – the investigator found no evidence to support Alvexo having opened trades on Mr N's account. He acknowledged it may have assisted him in placing some trades at the outset, but the investigator didn't feel this was the same as it having acted unilaterally to place trades on his account without his knowledge or authorisation.
- Platform outage – Alvexo had acknowledged there'd been a connectivity issue with its platform in December 2021 but said that it had still been possible to trade via the third party MT4 platform. The investigator noted that it wasn't unusual for this type of issue to arise with on-line services and that it was reasonable for Alvexo to offer an alternative trading method in the circumstances. And further, that in light of Mr N not being able to use the MT4 platform it had nevertheless reimbursed his account as an acknowledgment of the issue, which was fair.

Following receipt of the investigator's view Alvexo made payment of the account balance, plus interest, to Mr N as the investigator had instructed. However, Mr N remained unhappy, and provided further evidence that he felt showed he'd been advised by Alvexo and more generally that it had acted incorrectly.

As no agreement could be reached, the matter was referred to me to review.

### **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.

As the background I've provided above demonstrates, for various reasons, this has been a protracted and complicated matter. I want to assure Mr N I've read and considered everything on the file. But that said, I'm satisfied I don't need to comment on every point raised to reach what I consider to be a fair and reasonable decision. Where I've chosen not to comment on something, it's not because I haven't considered it. It's because I've focused on what I think are the key issues. That approach is in line with the rules we operate under.

Where the evidence is incomplete or inconclusive, I've reached my decision based on the balance of probabilities. That is, what I think is more likely than not to have happened in light of the available evidence and a consideration of the wider circumstances.

As has been noted, the complaint was in the first instance primarily driven by Alvexo closing Mr N's account. In respect of that specific issue, while I appreciate how frustrating it will have been for Mr N, I don't think Alvexo acted incorrectly or unfairly.

It was entitled to act in accordance with its terms and conditions to terminate its agreement with Mr N (and other customers) by giving at least 15 business days' written notice. However, given the potential impact of its decision, it gave significantly longer notice to its customers and in Mr N's specific case extended the deadline even further in acknowledgment of his concerns. It also appears to have taken steps to find an alternative broker to transfer his account, which it was not required to do. In all, I think its approach was reasonable.

But as can be seen from the background to the complaint, Alvexo's actions in closing Mr N account prompted him to raise a variety of other concerns. I'd say, in brief, that having reviewed all the submissions, I'm broadly in agreement with the conclusions reached by the investigator on these additional points, largely for the reasons given. As such, I think it serves little purpose to reiterate all that's already been said in respect of each point. Rather,

I'm going to focus on what I think, given the nature of Mr N's response to the investigator's view, are his main concerns – that being the provision of advice by Alvexo's staff that he says led him to incur losses and further, Alvexo's failure to provide telephone call recordings that would support this advice having been given.

In respect of the call recordings, I accept that Alvexo hasn't provided recordings of *all* the calls Mr N had with its members of staff. But there isn't an absolute requirement that calls must be retained indefinitely. I note what Mr N has said relating to guidance issued by the European Securities and Markets Authority (ESMA). But that guidance is in respect of written records where an assessment of suitability has been carried out, which wasn't the case here. In providing an execution-only service (which of course Mr N disputes the service was) there was no requirement that suitability be assessed. Rather, Alvexo had to assess appropriateness.

And while there may have been issues with Alvexo's process regarding that assessment, as the investigator noted, ultimately, I'm satisfied Mr N would've proceeded to trade in any event as that was what he was seeking to do, and he was made aware of the significant risks involved. Given the personal and financial circumstances he'd declared I don't think there was any reason for Alvexo to have prevented him from doing so.

Alvexo did supply a large number of call recordings, albeit they don't go back as far as 2021. But I think there's sufficient to make a reasonable assessment of the nature of the communication between the parties. And while I note how strongly Mr N feels that advice was provided, there's nothing in the call recordings that supports this. While, as noted, the recordings don't cover the entire period in question, had the relationship been one where advice had been regularly and frequently provided to Mr N, I think it's likely that at least some of the calls provided would confirm that advice had been given, but that's not the case.

I've also considered the email evidence that Mr N's provided that he says shows a keenness on the part of Alvexo staff to talk to him rather than put information (or what he sees as advice) in writing. But I don't think the examples he's provided demonstrate what he's suggesting. I think more likely they are examples of staff members trying to contact him to provide the service that it had agreed to provide. That being Alvexo's Elite service where he was provided with unlimited 1 on 1 support.

He's questioned why he would have had a specific 'Senior Account Executive' assigned to him who he regularly spoke with if Alvexo wasn't providing an advisory service. But again, I don't see anything unusual in having a specific point of contact given the level of service that Alvexo was providing. Nor do I agree that a large volume of contact necessarily supports the relationship being an advisory one as opposed to one where generic information and support was provided.

Mr N has also provided some email evidence that shows him asking questions of the account executive about what actions he should take in respect of particular trades. But there are no written responses to these. And while I accept that any responses may well have been provided by telephone, again what I have seen doesn't demonstrate conclusively that any conversations that did then occur included advice rather than information.

I appreciate Mr N will be very disappointed that I've reached the same conclusion as the investigator as I note from his comments that this matter has had a profound effect upon him. But in all the circumstances I find I'm unable to conclude that Alvexo acted incorrectly or unfairly in respect of any aspect of the service it provided to him.

**My final decision**

For the reasons given, my final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 1 March 2024.

James Harris  
**Ombudsman**