

## The complaint

Mr H's complaint concerns his Contracts for Difference ("CFD") trading account held with Monecor (London) Ltd trading as ETX Capital ("ETX"). He says:

- ETX's temporary closure of online trading in its Brent Crude Oil CFD contract ("Brent contract") prevented him from seeing his positions, leaving him in the dark.
- He called ETX straightaway following the change to phone trading only but there was no answer, which left him with no chance to sell his positions or top up his account to ensure his positions remained open.
- Once online trading in the contract was restored after 14 minutes, Mr H's trades were closed straightaway resulting in a loss of over £58,000.

He feels ETX setting trading to phone-only and subsequently not answering his call caused him this financial loss.

## What happened

On 9 March 2022 Mr H opened several buy positions in ETX's Brent contract. Later that day, between 5:20pm and 5:34pm, its trading platform suffered technical difficulties due to high levels of volatility in the price of Brent Crude Oil. This resulted in it temporarily setting trading in its Brent contract to phone-only. This being so, Mr H couldn't trade or see his open positions in the Brent contracts online and was required to call ETX to instruct trades.

Mr H called ETX at 5:34pm, but he said there was no reply. The call lasted nine seconds before he abandoned it. His positions were closed by margin closures when online trading in the Brent contract was restored around the same time.

Mr H felt ETX not answering his call left him with no chance to sell the stock or top up his account margin, so he raised a complaint. ETX issued its final response concluding it had acted appropriately and in accordance with its terms and conditions, so it didn't uphold his complaint.

Mr H didn't accept ETX's response and referred his complaint to this service.

Our investigator didn't think ETX needed to take any further action. In brief, she said:

- ETX didn't guarantee its platform would always be available and it put a notice on its website stating it could be contacted by telephone instead. She therefore felt it had acted in accordance with its terms and conditions in this regard.
- Although Mr H said he tried to call ETX straightaway and there was no reply, his call occurred at 5:34pm, 14 minutes after online trading in the Brent contract was restricted, and it lasted nine seconds. She noted that ETX's terms and conditions stated high call volumes were to be expected during such times. So, she didn't think a nine second wait evidenced that there'd been a problem with ETX's phone service, and she didn't think it was fair to say ETX hadn't adhered to its terms and conditions.
- She also felt that because Mr H called 14 minutes after the outage first started, just

as the situation was resolved, he wouldn't have had time to prevent the margin closures.

- In any event, she hadn't been provided with evidence of Mr H having had funds available to top up his margin and prevent a margin call.
- As Mr H didn't deposit funds or sell his positions, the action taken by ETX to automatically close his positions was in accordance with its terms and conditions.

Mr H didn't accept the investigator's view and provided further submissions in support of his complaint. In brief, he said:

- He thinks ETX shouldn't have sold all his positions. He said if he'd been able to, he might have sold before the margin closures, or added cash, and would still have £25,000 in his account.
- He also noted that he could've deposited up to £10,000 from his credit card or used money from his savings but he didn't get the chance as his positions were closed when he had no control of contact.
- He reiterated that despite trading in Brent being set to phone-only, he couldn't contact ETX by telephone and he felt ETX not answering his call was in breach of its terms and conditions. He says had he got through he could've found out what was happening and made a decision.

However, this didn't persuade the investigator to alter her position, as her view remained that ETX hadn't done anything wrong and she felt the outcome of her assessment was fair and reasonable based on the situation.

Mr H remained dissatisfied and reiterated that his calls to ETX weren't answered so he couldn't trade by phone.

As the investigator wasn't persuaded to change her opinion, the matter has been 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.

Having done so, I'm satisfied ETX acted reasonably by restricting trading in the Brent contract to phone-only. I think it was entitled to do so, in line with its terms and conditions and regulatory obligations, and it was a pragmatic course of action in the circumstances.

I'm further satisfied that the automatic margin closures it actioned on Mr H's account after on-line trading was restored were also in line with its terms and conditions and regulatory obligations. At the time, he had insufficient margin and the closures served to protect him from incurring losses in excess of his available funds, providing him with the negative balance protection as required of ETX by the FCA.

But all that said, I think it's fair to say that the crux of Mr H's complaint is that, having switched trading in the Brent contract to phone-only, ETX then failed to provide an adequate service. In short, he was unable to get through to it, so could do nothing to prevent the margin closures of his positions.

Looking at the evidence, I can see that although Mr H made three calls to ETX on the day in question, only one of these was made during the 14 minute 'outage'. And, as noted, it came at 17:34, right as the outage was ending and the automatic margin closures were about to

happen. So, it doesn't appear to have been the case that Mr H was trying to get through during the outage and prevented from doing so because of issues with ETX's phone service. Even the single 17:34 call was abandoned by him after nine seconds and not because of a problem at ETX's end.

As such, I don't think the evidence supports a finding that ETX failed to provide a reasonable phone service during the outage. There's nothing to indicate that if Mr H had called earlier, he wouldn't have been answered. And even if his 17:34 call *had* been answered I don't think we would've had time to take any action to prevent the margin closures as it would've been too late. I'd add that, even if he had called earlier and spoken to someone, it would be difficult to conclude that he'd have been able to avoid the closures as, while he's said he would've been able to add funds to his account, he's not provided evidence that I feel supports this.

As such, in summary, I find:

- I'm satisfied ETX's terms entitled it to switch to phone-only trading and this was a reasonable course of action considering the market situation.
- I'm further satisfied ETX correctly closed Mr H's positions, in accordance with its terms and regulatory requirements.
- In respect of the crux of the complaint, Mr H not being able to contact ETX by phone and being denied the opportunity to close position or add funds, I've seen no persuasive evidence that ETX's telephone service was inadequate.

### **My final decision**

For the reasons given, 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 H to accept or reject my decision before 13 February 2023.

James Harris  
**Ombudsman**