

The complaint

Mr M complains that eToro (UK) Ltd (“eToro UK”) allowed him to open a CFD trading account in 2022, when it ought to have known he’d previously asked it not to let him trade. He wants it to reimburse him for the losses he suffered on the account.

What happened

Mr M opened an account with eToro UK’s sister company, eToro (Europe) Ltd (“eToro Europe”) in 2017. He traded extensively, suffering substantial losses. In late 2020, Mr M asked eToro Europe to close his account and “ban” him from opening an account again. He said he suffered from a gambling addiction. He was told he couldn’t be forcibly banned, but shouldn’t try to open another account.

In mid-2022, Mr M applied to open a CFD trading account with eToro UK. He was accepted for the account, and traded for a few months, losing around £15,000. Mr M complained. He said eToro UK ought to have known about his gambling issues because he told it about them in 2020. He said it shouldn’t have let him open another account, and if it hadn’t he wouldn’t have lost so much money.

eToro UK responded to say it didn’t think it had done anything wrong in opening Mr M’s account in 2022, but that it would now close it due to the vulnerability he’d disclosed and the risk of him being caused further harm by continuing to trade. eToro UK said to have prevented his application for an account going ahead it would have had to “*inextricably*” link the application to a previous account with a disclosed vulnerability or other reason not to proceed. That hadn’t happened here.

Mr M brought his complaint to our service, where one of our investigators looked into things. She thought the complaint should be upheld. In summary, she said she thought there was enough information in Mr M’s 2022 application for eToro UK to have identified him as the holder of the account closed in 2020. She thought if it had correctly identified who he was, it wouldn’t have let him trade. So she thought eToro UK should compensate Mr M for the losses he suffered in 2022, with interest. She also said it should pay Mr M £750 compensation for the distress he’d been caused.

Mr M agreed, but eToro UK didn’t, and asked for an ombudsman to decide the matter. In summary, it said:

- Mr M’s previous account was with eToro Europe, a distinct entity with its own regulation, rules and policies.
- His 2022 application was therefore as a new customer to eToro UK.
- The investigator gave too much weight to the different ways eToro could “ban” a client and whether they could then open another account. Ultimately this was Mr M’s first application to eToro UK and it hadn’t been able to link his application to the previous eToro Europe account.
- Mr M applied using a different address and email address from his eToro Europe account, and eToro UK hadn’t linked the two accounts.
- eToro UK gave no warranties or representations about its ability to identify future

- attempts to open an account by former clients.
- In any event, eToro UK shouldn't be held to the standard of indemnifying problem gamblers against losses they suffered. Mr M chose to open the 2022 account and trade.
- On both occasions in 2020 and 2022 when eToro entities became aware of Mr M's gambling problem, the relevant firm acted swiftly to close Mr M's account and help him protect himself from further harm.

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.

Firstly, I'd like to briefly address the question of where Mr M held his various accounts. Mr M has in his submissions argued that while his trades were carried out through eToro Europe, both his accounts (the one held from 2017-2020 and the 2022 account) were with eToro UK. I haven't been able to see any of the correspondence from when Mr M first opened the account in 2017. But I've been provided separate sets of statements from the two accounts. The 2017 account is marked as being under eToro Europe and the 2022 account under eToro UK.

And I've also seen screenshots of eToro's customer back office system – which I understand to be common across the different entities, as it appears the same for both accounts aside from one drop-down entry to indicate under which regulatory regime (and therefore with which eToro entity) the account is held. This shows the 2017 account being under the regulation of CySEC, the Cypriot regulator, and the 2022 account being under FCA regulation. Taking all this into account, I'm satisfied on balance that Mr M's first account opened in 2017 was held with eToro Europe and his 2022 account was held through eToro UK. This decision can be and is only concerned with the actions of eToro UK, and so I'm unable to comment on anything done by eToro Europe with regard to the first account.

The clear overlap between the entities and the sharing of information between them will, however, be relevant to my conclusions as will become apparent.

In reaching a conclusion on what I consider to be fair and reasonable, I'm obliged to have regard for (amongst other things) relevant regulatory rules and guidance. Here, I find the following to be particularly relevant:

The FCA's Principles for Business set out in the FCA's handbook at PRIN 2.1.1R sit across all activities carried out by regulated firms. Principle 2 says that a firm *"must conduct its business with due skill, care and diligence"*. And Principle 6 says that a firm *"must pay due regard to the interests of its customers and treat them fairly"*.

I've also had regard for the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ("the AML regulations"). While not prescriptive on how it should be done, these regulations say that a firm like eToro UK needs to apply *"customer due diligence measures"* when it establishes a business relationship. Article 28 of the AML regulations then goes on to say that the firm must identify the customer, and verify the customer's identity.

Moving onto the particular circumstances of this complaint, much has been made of the nature of the block eToro Europe placed on Mr M's account in 2020, and whether this meant eToro UK would have been able to pick up from Mr M's 2022 application that he was the same person that had held the other account. I think the question here is more straightforward, and not in my view reliant on the 2020 block on the account. In my view the

key question here is simply whether, in all the circumstances, it was fair and reasonable for eToro UK to have accepted Mr M's application in 2022 and allowed him to trade.

In particular, I've given considerable thought to the question of whether eToro UK ought fairly and reasonably to have linked Mr M's 2022 application to the account he'd previously held with eToro Europe. I take the view that it should have, and I'll explain why.

eToro UK is of course right to say that it is a separate entity from eToro Europe. But equally, it's apparent that the two firms are part of the same group of companies, and information is shared between them. For example:

- The back office system containing information about Mr M's accounts appears to be the same, with an entry on the system denoting which entity the account is held with.
- eToro UK's explanation of why Mr M's 2022 account didn't flag as being made by someone who already had an account (based on the information he entered about himself) suggest that there *are* circumstances where an account would flag as linked to a previous account held with a sister entity in the eToro group.
- In one of its responses eToro UK said that if the eToro Europe account block had been entered in a different way, Mr M *"would not have been able to move past the phone number registration phase of the onboarding"*.
- While his account was held with eToro Europe, he received emails from employees of eToro UK, including the account manager who corresponded with Mr M about the closure of his account in 2020.

So I've taken into account that, while Mr M's 2022 application was for a different entity than the one with which he'd held his previous account, the separation wasn't as distinct as in other circumstances, and I think it's reasonable for me to assume eToro UK ought to have known the details of Mr M's previous account with eToro Europe, and the reason for its closure.

I'll now turn to the 2022 application itself. I have given weight to eToro UK's argument here that it can't be expected to always identify attempted duplicate accounts, and I haven't presumed it should do that. I don't think it told Mr M it would definitely spot an attempt to open a new account and stop him from doing so. But I do think in these particular circumstances, eToro UK ought fairly and reasonably to have been aware that Mr M's 2022 application was being made by the same person who'd held the eToro Europe account closed in 2020.

While Mr M used a different address and email address, his 2022 application was made using the same name, date of birth and phone number as was on record for the eToro Europe account. In my view, this ought to have been enough for eToro UK to at least strongly suspect the two accounts were held by the same person. I don't think it's realistically likely that two separate people would share a name, date of birth, and phone number.

Here again I would emphasise I've considered eToro UK's arguments carefully. It has said its onboarding isn't designed to identify vulnerable customers but is set up to comply with its AML and other regulatory obligations. I accept that. And I note that it has said in this case Mr M's application was verified electronically by the automated system without any manual analysis of Mr M's account. It isn't my role to question the processes and systems eToro UK has in place, but in these particular circumstances I don't think it was fair and reasonable for it to fail to identify Mr M was the same person who'd had an account with eToro Europe.

eToro needed to carry out its business with due skill, care and diligence. And in order to comply with the AML regulations, it needed to identify Mr M and verify his identity. I'm satisfied that if eToro UK had in fact verified who Mr M was, it would inevitably have led to it

knowing Mr M had previously held an account – because there's no dispute he is in fact the same person.

To summarise – eToro received an application for an account, and it should have made sure it identified the person making that application. It had Mr M's name, phone number and date of birth. And I don't think it was fair and reasonable, based on eToro's obligations under the Principles and the AML regulations, for it to have failed to identify Mr M as the same person who'd held the eToro Europe account closed in 2020.

The question remains as to what ought to have happened, had eToro UK made this identification. It would have known the reason for Mr M's previous account closure – based on the system records as well as the fact it was an eToro UK account manager who dealt with Mr M when he closed the account. And I've had regard for what eToro UK did in fact do when it discovered Mr M was the same person as who'd held the other account, and therefore about his vulnerability to problem gambling. It closed his account.

Overall I'm satisfied that, had eToro UK realised at the point of application Mr M's history with eToro Europe, it wouldn't have allowed him to open the account. Had he not opened the account he wouldn't have suffered the losses he did. So eToro UK should reimburse him for them.

In reaching this conclusion I've also thought carefully about eToro's arguments regarding Mr M's own role in events. I've not taken it lightly that Mr M did, as a matter of fact, apply for the 2022 account and place trades that lost money. eToro didn't encourage, advise, or induce him to do any of that. But I'm also satisfied that eToro had a duty to have regard for Mr M's interests, even when Mr M himself may have acted in a way that wasn't consistent with those interests. And for the reasons I've given I'm satisfied that if eToro had treated Mr M fairly and reasonably when he applied for an account in 2022, it wouldn't have let him open it. So I think it is fair and reasonable in the particular circumstances of this complaint for eToro to compensate Mr M for the losses he suffered on that account.

Putting things right

eToro UK needs to put Mr M in the position he'd have been in had he not opened his account in 2022. It must pay him a sum equal to the amount he deposited into the account, less any withdrawals he made while the account was open. It should add 8% simple interest to this sum, from the date of any deposit to the date it settles this complaint.

eToro UK may consider it needs to deduct income tax at the basic rate from the interest portion of the award. If it does, it should tell Mr M it has done so and how much it has taken off. It should also provide Mr M with a tax deduction certificate if he asks for one, so he can reclaim the tax from HMRC if appropriate.

Like our investigator I'm satisfied this experience was very distressing for Mr M. Due to eToro's error, he traded and lost substantial sums when he'd already lost a lot of money in the past. I'm persuaded this will have been incredibly upsetting for Mr M. In the circumstances I consider £750 to be fair and reasonable compensation for that.

My final decision

For the reasons I've given I uphold this complaint and direct eToro (UK) Ltd to pay Mr M compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 22 November 2024.

Luke Gordon
Ombudsman