

The complaint

Mrs K complains that eToro (UK) Limited, trading as eToro, had a discrepancy on a trading chart within her contracts for difference (CFD) account. She says that after contacting them to discuss the potential error, they asked her to close her positions and account because it had come to light that she'd allowed a third party to access and trade on her account.

Mrs K would now like eToro to recompense her for the stress and concern that she says she's suffered because of their actions and to reverse their decision to close her account.

What happened

In February 2023, Mrs K contacted eToro asking for an explanation on why their five-minute charts were different from the London Stock Exchange's (LSE) chart in a trade that she had opened the previous day.

Mrs K explained to eToro that from what she could see, the discrepancy prevented her from closing the trade with a profit of 0.56% and instead, it was closed at breakeven. She went on to explain to eToro that she wasn't asking for a refund, but simply asking them to correct their error to avoid future losses.

After eToro provided an explanation to Mrs K about the charts, she remained unhappy and asked them to look again at her concerns. After eToro issued a further explanation, Mrs K stated that she didn't feel it addressed her concerns. At this point, eToro telephoned Mrs K to talk through the issue. During the discussion, Mrs K asked the eToro representative to speak to her husband and during that conversation, it came to light that he typically traded on her account around 70% of the time and Mrs K traded for around 30% of the time.

Following the telephone call, Mrs K received an email from eToro, explaining that they were blocking her account from undertaking any further trades. Shortly afterwards, Mrs K decided to formally complain to eToro. In summary, she said that she was convinced that their charts weren't reflective of the actual position of the markets and was unhappy that her account had been blocked.

After reviewing Mrs K's complaint, eToro concluded they were satisfied that their charts were accurate. They also said, in summary, that because it had come to light that Mrs K had allowed her husband to log into and use her trading account, they were asking her to close her open positions by 2 April 2023.

Mrs K was unhappy with eToro's response, so she referred her complaint to this service. In summary, Mrs K said that she didn't feel eToro's explanation about their charts was convincing and she was unhappy that she was being asked to liquidate her positions as she trusts her husband to act in her best interests.

The complaint was then considered by one of our Investigators. He concluded that eToro hadn't treated Mrs K unfairly by asking her to close out her positions. He went on to say that

from what he'd seen, eToro had acted within the terms of customer agreement in doing so. In addition, he also explained that he considered the prices that eToro had provided Mrs K were reflective of the markets in general at that particular time.

Mrs K, however, disagreed with our Investigator's findings. In summary, she said that she didn't believe eToro's terms and conditions were clear about the account sharing. Mrs K went on to say that she felt eToro's response had been 'abusive and disproportionate'. Our Investigator was not persuaded to change his view as he didn't believe that Mrs K had presented any new arguments he'd not already considered or responded to. Unhappy with that outcome, Mrs K then asked the Investigator to pass the case to an Ombudsman for a decision.

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.

I have summarised this complaint in less detail than Mrs K has done and I've done so using my own words. The purpose of my decision isn't to address every single point raised by all of the parties involved. If there's something I've not mentioned, it isn't because I've ignored it - I haven't. I'm satisfied that I don't need to comment on every individual argument to be able to reach what I think is the right outcome. No discourtesy is intended by this; our rules allow me to do this and it simply reflects the informal nature of our service as a free alternative to the courts. Instead, I will focus on what I find to be the key issues here, which is whether the price that Mrs K was quoted was broadly reflective of the wider market and whether eToro were fair to ask Mrs K to liquidate her positions.

My role is to consider the evidence presented by Mrs K and eToro in order to reach what I think is an independent, fair and reasonable decision based on the facts of the case. In deciding what's fair and reasonable, I must consider the relevant law, regulation and best industry practice. Where there's conflicting information about what happened and gaps in what we know, my role is to weigh up the evidence we do have, but it is for me to decide, based on the available information that I've been given, what's more likely than not to have happened. And, having done so, I'm not upholding Mrs K's complaint – I'll explain why below.

It seems that Mrs K's concerns stem from the fact that the prices eToro were quoting were different to those which she could see on the London Stock Exchange (LSE). And, from what Mrs K has said, she felt that both prices should be the same or very similar. Mrs K explained that the discrepancy on eToro's charts prevented her from closing her trade with a small profit and instead meant it closed at breakeven.

In considering Mrs K's complaint, my starting point was to understand where eToro source their prices from. eToro's execution policy states:

'The Company's price for trading in underlying securities and CFDs (with the exception of Cryptocurrencies) is calculated by reference to the price of the relevant underlying asset, which the Company obtains from a range of independent third-party reference sources and independent financial market data providers that have been carefully selected and approved in accordance with the Company's internal procedures. These independent providers receive their price data from the relevant exchanges.'

As different brokers work with different liquidity providers, there's more likely than not going to be price variances between brokers and charts that consumers view. But in any event, eToro say that the charts they provide on their website are for indicative purposes only. eToro is a broker who take their prices from third parties so, whilst prices will be broadly aligned to the market in general, they won't match the LSE precisely and they won't necessarily match the prices of other providers either.

However, Mrs K opened a position on 20 February 2023 and entered a 'take profit' (which is an instruction to close a trade at a specific rate) of 176.34, and she set a stop-loss 175.38. It seems that whilst Mrs K's stop-loss was set at 175.38, it was actually triggered at a rate of 175.36, resulting in her breaking-even on the trade. From the data that I've reviewed, her take profit threshold was not reached in the market on that day (20 February 2023), during the window within which her position was open.

I've seen nothing to persuade me that eToro have used inaccurate pricing when closing out Mrs K's position, so I can't conclude that she has been treated unfairly and as such, I'm not upholding this part of her complaint.

Was it appropriate for eToro to close Mrs K's account?

I've looked at the transcribed telephone conversation between Mrs K and eToro. During the discussions with eToro's helpline, it came to light that the majority of the trading being undertaken on Mrs K's account was being carried out by her husband. Once eToro learned that Mrs K had shared her account sign on details with her husband, they asked her to liquidate her positions and made the decision to close her account because they felt that Mrs K was in breach of their client agreement.

I've looked closely at eToro's terms and conditions and clause 13.4 states:

'We may block access to your eToro account or block access to our Services if we believe that it is necessary for security of legal reasons. For example, if we think someone may have access to or is using your eToro account without your permission.'

In addition, clause 13.6 states:

'You must not give any third party (including minors) any access to and/or control of your eToro account.'

Whilst Mrs K states that she gave her husband permission to use her account and therefore, these terms are irrelevant, I don't agree. I'm satisfied the terms clearly set out that eToro consumers must not share their account sign on details with other individuals; no distinction is made of whether they're family members or not. However, there's also wider reasons that I suspect eToro don't wish their consumers to share sign ons with other individuals.

The Financial Conduct Authority (FCA) recognises that CFDs generally aren't suitable for most retail consumers. That's because they're complex in nature and they typically involve a high degree of risk because, more often than not, leverage is involved which as well as magnifying profits, can also magnify losses. So, there's a very real possibility that the consumer could lose all of their investment. In light of that, the FCA expects firms offering CFDs to undertake an appropriateness assessment with any consumer wishing to open an account, and that's to ensure that they understand the unique risks that apply to this type of investment.

Whilst I won't repeat those rules in any level of detail here, the rules that the regulator expects firms to follow when determining the appropriateness of a CFD account are set out under COBS 10A.

So, even though eToro will have undertaken an appropriateness assessment on Mrs K, they won't have any way of ensuring anyone else trading on the account will have also gone through the same rigour of those checks. And it's for that reason trading on the account is restricted to the named individual only.

I've also thought about Mrs K's view that eToro should have given her longer to wind down her positions, rather than forcing her to liquidate her holdings by 2 April 2023. Having looked at eToro's terms, they don't appear to state a minimum notice period that consumers will be provided with to liquidate their funds following notice of closure. However, it would seem that eToro gave Mrs K over a month's warning of their intention to liquidate and close her account, and I'm satisfied that this window was fair and reasonable.

Mrs K would like eToro to reverse their decision to close her account. She went on to explain that even if she was wrong, she's not harmed anyone and has found the whole experience extremely stressful. Whilst I do appreciate Mrs K's strength of feeling about this matter, I can't conclude that eToro have treated Mrs K unfairly by asking her to liquidate her positions and closing her account and I've seen nothing to persuade me that eToro treated her in a discourteous manner - as such, I'm not upholding this part of her complaint either.

My final decision

I'm not upholding Mrs K's complaint and as such, I won't be instructing eToro (UK) Limited, trading as eToro, to take any further action.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 24 June 2024.

Simon Fox
Ombudsman