

## The complaint

Mr C complains about the way eToro (UK) Ltd (eToro) executed a number of his Contracts for Differences (CFD) trades. He says the errors caused him losses.

## What happened

Mr C had a CFD trading account with eToro. In early 2022 he encountered issues with a number of his positions, in particular with their closure. He complained. The CFDs in question were all based on individual shares. In summary he said:

- The pricing of one CFD on a company I'll call O wasn't accurate, resulting in a stop loss triggering and executing which shouldn't have.
- He should have received price alerts about a CFD on a company I'll call X. If he'd got one he'd have updated his stop loss level and avoided a loss.
- He updated his stop loss instructions on a CFD on a company I'll call B, but eToro didn't update his order or carry out his instructions.
- The closing of his position in a CFD on a company I'll call S was delayed, causing him a loss.

eToro responded to Mr C and didn't uphold any part of his complaint. It said its prices were accurate, and all his orders had been executed correctly and in line with his instructions.

One of our investigators looked into things, and thought the complaint should be upheld in part, in relation to the O CFD.

She explained that Mr C's O position had been closed at eToro's price at the market open, which was 11.3298. But the underlying market opened with a first traded price of 11.6. Mr C's trade also didn't execute until about 12 seconds after the market opened (which eToro had said was due to the queue of orders at the start of trading). The investigator thought eToro's price at the time Mr C's order actually executed – which was 11.53 – was a fairer reflection of the market price when eToro carried out the order, and so it would be fair for Mr C's trade to be repriced based on an execution at 11.53 instead of 11.3298.

The investigator didn't think eToro had done anything wrong with regard to Mr C's other orders. She said she hadn't seen any evidence Mr C had subscribed for price alerts on X, and that in any event it was his responsibility to monitor his account and positions, and place orders as he saw fit.

She explained that she'd not seen evidence that Mr C had in fact amended his stop loss order on B, and so on balance wasn't persuaded he did so. She concluded eToro had fairly and reasonably closed Mr C's position in line with his existing stop order.

For Mr C's position in S, the investigator found that the delay in execution worked to Mr C's advantage, with the execution price more favourable than the rate available at the time the order triggered. She found Mr C hadn't suffered a loss as a result of this delay.

eToro accepted the investigator's view and agreed to compensate Mr C for his O position.

But Mr C didn't agree. He said that his O position had only been closed because he had a stop loss order set at 11.39. He said if the true price at the time was 11.53 and not 11.3298, his stop loss wouldn't have triggered in the first place. He said he ought to be compensated as if his trade had remained open. He said this meant he would have received his take profit level of 16.71, which was reached some months later.

Our investigator wrote to the parties to say she was persuaded by Mr C's testimony. She agreed that had eToro priced Mr C's O position correctly his stop loss wouldn't have triggered. She was also satisfied Mr C would have left his take profit and stop loss levels as they were. That being the case, she found the first time either of those prices were breached was when the market opened in June 2022 at 16.88. She therefore thought this was the fair price to use when revaluing Mr C's trade and calculating fair compensation.

Mr C agreed to this, but eToro didn't. It provided data it said showed the bid price of the underlying share was 11.32 at the market open on the day it had closed Mr C's position. So it argued the stop loss triggered correctly, and so it wouldn't be fair to compensate Mr C as if he'd kept the trade open beyond that day.

As agreement couldn't be reached, the complaint was passed to me to decide. Before making my final decision, I wrote to the parties setting out some initial thoughts on what I considered the central issue. I said:

*I'll start by addressing the key point – which is whether Mr C's stop loss order in [O] ought to have triggered and executed on 8 March 2022. His [stop loss] was set at a price of 11.39.*

*This was a CFD, and so traded directly with eToro and based on their price. I'm satisfied that a stop loss can rightly trigger when the bid or offer price reaches the set level, and that a CFD trade can therefore execute without an actual trade in the underlying happening at that price. However, I'm not currently persuaded that during the market's opening times on the day in question, there's persuasive evidence that the underlying market (on which I'd expect eToro's own bid and offer for the related CFD to be closely based) quoted a bid price beneath Mr C's stop loss level such that it was reasonable for eToro to have triggered and executed Mr C's trade. I say this for a few main reasons. Please note I've converted times from some data sources to make them consistent where they aren't in native GMT:*

- I've considered eToro's various charts, tables, and tick data carefully. I have given them a lot of weight as I think is appropriate. But I'm not currently persuaded they show what eToro says.*
- In eToro's email of 25 August 2022 they provided a table showing what it referred to as tick data from Bloomberg. This showed a bid price of 11.33 at 14.29 and then bids of 11.53 at 14.30 and then 11.61 at 14.31. In this email eToro refer to the 11.33 quote as a "pre-market open quote"*
- In eToro's email of 17 August 2022 they provided another table referred to as "[O] tick data" which appears to show the development of eToro's own prices in that instrument on the relevant day. The first bid price is given as 11.3298 at 14.30.02, changing to 11.4897 at 14.30.15 and then to 11.5196 at 14.30.30 where it stays until 14.31.*
- Presuming a consistent spread, the prices provided in the 17 August email don't therefore appear to be directly derived from the Bloomberg tick data in the 25 August email.*
- In eToro's most recent submission of 16 August 2023, they provided yet another table, described as "the prices from Bloomberg where there is a bid price of 11.32".*
- This table shows four entries, one under another, all time stamped 14.30.00. The bid quotes in order run 11.53, 11.32, 11.55, 11.51.*

- The opening price for the underlying shares that day was 11.71. As I've mentioned above, this doesn't mean there weren't best bids/offers much lower or higher. And I don't know what time that trade happened. But it is evidence that I've taken into account of where the market was at the very beginning of the day.
- Taking all this into account, I think on balance there was a moment shortly before the market opened at right on 14.30 when the best, pre-open bid in the market was 11.32 or 11.33. But I've not been persuaded that there was a time, during the market opening, when the underlying market best bid was lower than 11.39. I am inferring from the layout of the table in eToro's 16 August 2023 email that those quotes were sequential, meaning that within less than a second and at the precise second the market was due to open, the bid went from in the 11.50s, one quote of 11.32 and then back to the 11.50s. On balance I think when the market opened, the underlying market more likely than not had a bid of over 11.39.
- Taking all this into account, whatever the reason behind eToro's CFD price being based off the pre-market open price it says it had received, I don't think that price fairly reflected the bid in the underlying at that moment. So I don't currently think it was fair and reasonable for eToro to have triggered Mr C's stop loss.

There remains the question of how to put things right. I think it's common ground that after that initial trading period, the share price never again approached 11.39. So I think that, if it weren't for eToro's closure of his trade then, [Mr C] wouldn't have had his stop loss level breached.

eToro said in its latest submission that potential profit can't be estimated accurately. And I acknowledge that it's impossible to say precisely what Mr C would have done, and therefore how much he would have made or lost on this particular trade. But I'm satisfied there is **some** loss. The price of these shares never traded that low again, so Mr C would undoubtedly have sold his position for some higher price. I must therefore set out compensation based on what I think is fair and reasonable and on balance more likely than not to have happened.

Mr C has said he'd have waited for the share price to reach his take profit level of 16.71. I understand the share price did reach that point some time in late May 2022. So our investigator said eToro should compensate Mr C based on him closing the trade at that price. I'm not currently persuaded that would be fair compensation.

Mr C opened this position in November 2021, so had already had it open for over four months when his stop loss executed. In this time he'd already amended his take profit rate twice – from an initial 17.71 up to 18.71 and then down to 16.71. So it's possible he would have amended it again – to a higher level that meant it wasn't triggered, or a lower level at which he would have been filled.

I've also considered Mr C's trading history carefully. Helpfully, eToro's statement shows the take profit and stop loss levels applicable to each of Mr C's closed trades. Looking across Mr C's winning trades, I can see he occasionally closed them at his take profit level. But far more often, he sold and closed positions before this level was achieved. Mr C also tended to hold trades for relatively short time periods. It wasn't uncommon for Mr C to hold trades for a few months. But I've not seen evidence Mr C very often held trades for over six months – which is how long this trade would have been open by the time it reached his take profit level.

After 8 March 2022, although the price of course fluctuated, it tended in an upwards direction. Taking the above into account, I think it's more likely than not that, with his trade in profit, Mr C would have closed his [O] position some time between 8 March and 27 May, when I understand it first reached 16.71. I can't say with any great certainty exactly when or

*at exactly what price Mr C would have closed his trade. But I'm satisfied it's fair to say it would probably have been across this period. I therefore think fair compensation would be for eToro to calculate the volume weighted average price of the shares across the period 8 March 2022 to 27 May 2022 (using the daily closing prices). It should compare that to the price Mr C received when his position was sold. It should then pay him the difference, adding 8% simple interest from 8 March 2022 until the date it settles this complaint.*

eToro accepted what I'd said and agreed to compensate Mr C as I set out.

Mr C maintained that he'd have waited until the price of O reached 16.71 before exiting his position. He said he'd already amended his take profit level higher, showing he was willing to hold the trade in the hope of more profit. And he noted that he could have changed it again as the underlying shares traded even higher than 16.71 afterwards.

He also said he ought to be compensated for the stress and frustration due to how long eToro took to respond to his complaint and how long things have taken to resolve.

### **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've seen no reason to depart from the substantive findings I made in my previous correspondence to the parties, and so make those findings final here.

For completeness, neither party has provided any responses disagreeing with the investigator's findings about Mr C's trades in X, B, or S. I agree with the investigator's findings on those issues too, for the same reasons. I haven't been persuaded Mr C signed up for price alerts on X, and even if he had I don't think it would be fair to hold eToro responsible for Mr C's lack of awareness of his positions. I'm also not persuaded there's compelling evidence Mr C tried to change his stop order on B, and so I don't find eToro to have acted unfairly in closing that position. And like our investigator, I'm satisfied the delay in the closure of Mr C's position in S left him better off.

The remaining issue has been the closure of Mr C's position in O, and what would have happened had it not closed.

I remain of the view that had eToro priced the instrument fairly, Mr C's stop loss wouldn't have triggered, for the reasons given above. I've considered Mr C's further points carefully, and I acknowledge I can't say for sure if or when he'd have closed that trade, or at what price. I've given weight to the fact the position moved fairly consistently in his favour, and that he had previously moved the take profit level higher. But overall, I'm still not persuaded that using a higher price than the one I set out in my correspondence above would be fair and reasonable in these particular circumstances.

Where I can't say for sure what would have happened I have to make a decision on the balance of probabilities. And I've also given significant weight to Mr C's trading history across a range of instruments and profitable trades. I find this to be the most reliable indicator of how he traded and therefore what I think he's more likely than not to have done had he retained his O position. Holding trades for longer than a few months, whether they were profitable or not, was very unusual for Mr C and I've seen nothing to persuade me that's what he'd have done in these circumstances. So I remain of the opinion he'd have closed the trade for a profit in the two months or so after eToro closed it. I think that using an average price across that timeframe gives a fair and reasonable estimation of the position Mr C would have been in but for eToro's error.

I've considered Mr C's further points about compensation for stress and frustration too. But our service can't make an award for the way a firm has handled the complaint, only for losses (financial or otherwise) stemming from the original issue. I've given this careful consideration, but I think that the compensation I set out below – putting Mr C in the position he'd have been in had his O trade not been closed for a loss – is a fair and reasonable way to put things right in all the circumstances of this complaint. I don't consider any further payment is necessary.

### **Putting things right**

eToro must calculate the volume weighted average price of O shares across the period 8 March 2022 to 27 May 2022 (using the daily closing prices). It should compare that to the price Mr C received when his position was sold. It should then pay him the difference, adding 8% simple interest from 8 March 2022 until the date it settles this complaint.

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 26 August 2024.

Luke Gordon  
**Ombudsman**