DRN-4572266

The complaint

Mr F complains that eToro (UK) Ltd's default leverage on its platform was too high and was easily missed. He said he placed trades in gold, oil and gas in February 2022 using the default leverage and this caused him financial loss.

What happened

One of our investigators looked into Mr F's complaint, but didn't think it should be upheld. In summary, he said that eToro's terms and conditions covered the relevant information about using its service, and it explained that it was Mr F's responsibility to understand the trades he was placing.

He said the terms explained the risks of CFD trading, including leverage, and covered scenarios when orders would be closed out automatically. The investigator concluded that Mr F had been given fair, clear and not misleading information about the services eToro provided. He also found that the leverage could be changed, along with any stop loss or take profit levels. So he didn't consider eToro was responsible for any losses caused.
Mr F didn't agree with the investigator. In summary:

- He said the default leverage was easily missed, which is what happened to him – and this cost him thousands. He said that it would've been more reasonable to set the default leverage to 0, and allow consumers to decide how much leverage they wanted to use.
- He said that leverage was suddenly offered at x20, when it wasn't offered on all other trades, including stocks and cryptocurrencies. He said that it was a 'spot the difference' exercise on a 'small mobile screen', and customers could easily 'sleepwalk' into that 'trap'. He said there was no pop-up or warning, just a small digit change from x1 to x20.
- He said that he never questioned that the leverage could be changed, but purely that that he was not aware that it needed to be as he had never had to do it before. He said all other information was the same, it was only the leverage that changed.
- He also said that eToro itself had admitted that it could see how the error had occurred, and could see that he had never used leverage before. He said it was a clear he'd made a mistake, and he said that eToro had implied that it was 'aware the journey needed better signposting'.
- He said eToro had now changed the customer journey and provided more questions on leverage, and asking active questions about this since he opened his account. He said this suggested to him that other customers had been losing money this way. He believed that the investigation needed to focus on his 'journey' as a customer when he opened the account, and then after that, to consider whether having 'traded only on assets/commodities which are offered at 1x leverage, whether you could genuinely realise you had been switched to x20 on Gold, without any warning'.
- He said he was never asked to provide financial knowledge or trading experience of CFDs, and further, and no protective measures were applied to his account – particularly when he kept getting closed out at 50% losses.
- He said the leverage wasn't even applied consistently across CFDs, as he had tried to open one at it was x1, not x20.

- He concluded by saying that eToro didn't signpost the online mobile journey clearly to show the 'astronomical switch' in leverage, and this caused him a financial loss.

I asked eToro and Mr F for some further information, including the outcome of its appropriateness assessment, and detail around Mr F's knowledge and experience. And I asked Mr F to confirm what knowledge and experience he actually had prior to opening his account with eToro.

In response to my questions, eToro provided further detail around the assessment it carried out of Mr F's knowledge and experience.

It confirmed that Mr F's account allowed him to trade 'real stocks and CFDs' – although he was only able to trade commodity CFDs. It said that eToro offered 'a single, multi-asset Platform' and therefore it did not 'offer separate Platforms/accounts for trading certain products only'.

It said that Mr F passed the appropriateness test – eToro said that 'in response to the question about CFD trading experience the client answered "0-10 times" suggesting that the client had CFD trading experience'. It confirmed that Mr F first traded an X1 CFD position in June 2021, four months later, and it said that no inference could be drawn from this. It reiterated that in terms of his CFD trading experience, 'he had traded CFDs 0-10 times before'. It said this answer 'suggested Mr F had CFD trading experience'. It said that Mr F's answers, including the fact that he said he had 'attended trading courses' showed that he knowledge and experience.

eToro then said that Mr F would've been presented with a further extended risk warning communicating his 'appropriateness statement' – and he would've been encouraged to refer to its educational tools to gain more knowledge and experience. He would also have been presented with links to a General Risk Disclosure notice and eToro's terms and conditions. It provided screenshots of several risk warnings it displays on its website about the risks of trading CFDs, as well as a pop-up risk warning when attempting to open a CFD position for the first time. This risk warning says:

'You're about to invest in a Commodity CFD. Contract for Difference (CFDs) enable to you to trade on price movements of various assets and financial products. They allow you to gain exposure with less capital. Note you are hot holding the underlying asset. CFDs may not be appropriate for you. CFDs are complex products and come with a high risk of losing money (see the KIID to learn more) therefore are not appropriate for you. By continuing trading, you confirm that you are aware of and understand the risks'.

Mr F also provided more information. He said that prior to opening his account with eToro he had never traded CFDs 'or had any idea what they were'. His basic understanding of trading involved buying or selling whatever the value was, and the 'whole idea of leverage and having my investment multiplied was something I was entirely unaware of'. He said it was clear from his initial call with eToro that he couldn't understand what had happened to his trades, and why everything had gone 'so volatile'.

He said that when he opened his account with eToro it was to trade stocks and cryptoassets, and the only reason he 'fell into the trap with oil and gold' was due to the market crash and the war in Ukraine. He thought 'moving his trades into gold and oil would be a safer bet' which he says they would've been 'had they not applied all the leverage without my understanding, which therefore triggered wild fluctuations in tiny percentage movements and auto closing so many of my trades at a loss'.

Mr F said that since he opened his account, eToro had made significant changes to the way accounts were opened, with far more detailed questions and resources. He says that if these detailed questions and resources had been there when he opened his account, he 'would've understood what it was and stayed well away from it'.

I issued a provisional decision in January 2024. In it I said:

The rules which govern how eToro needed to treat Mr F's application to open the account are set out in the Conduct of Business Rules (COBS) which are contained in the Financial Conduct Authority's (FCA) Handbook. COBS10A sets out the obligations around assessing appropriateness – the following provisions are of relevance to this complaint:

COBS10A.2 'Assessing appropriateness: the obligations' says:

'A firm must ask the client to provide information regarding that client's knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded to enable the firm to assess whether the service or product envisaged is appropriate for the client'.

COBS10A.2.3 says:

'56(1) Investment firms, shall determine whether that client has the necessary experience and knowledge in order to understand the risks involved in relation to the product or investment service offered or demanded when assessing whether an investment service as referred to in [COBS 10A.1.1R] is appropriate for a client.'

COBS10A.2.4 says:

'55(1) Investment firms shall ensure that the information regarding a client's or potential client's knowledge and experience in the investment field includes the following, to the extent appropriate to the nature of the client, the nature and extent of the service to be provided and the type of product or transaction envisaged, including their complexity and the risks involved:

> *(a) the types of service, transaction and financial instrument with which the client is familiar*
> *(b) the nature, volume, and frequency of the client's transactions in financial instruments and the period over which they have been carried out;*
> *(c) the level of education, and profession or relevant former profession of the client or potential client.'*

COBS10A.3 says:

> *(1) If a firm considers, on the basis of information received to enable it to assess appropriateness, that the product or service is not appropriate for the client, the firm must warn the client.*
>
> *(2) This warning may be provided in a standardised format.'*

COBS10A.3.3 says:

'If a client asks a firm to go ahead with a transaction, despite being given a warning by the firm, it is for the firm to consider whether to do so having regard to the circumstances.'

How did eToro assess appropriateness in Mr F's case?

In looking through the information that eToro has provided to me, I'm satisfied that its assessment was not fair and reasonable. The rules I've set out above show clearly that some detail around the types of transactions, as well as the nature, volume and frequency of the relevant transactions ought to be taken into account when assessing whether a consumer has sufficient knowledge and experience to understand the risks involved.

In Mr F's case, his answer indicated his experience included trading CFDs '0-10 times', but I'm not persuaded this means Mr F had 'some experience', and importantly, I'm not persuaded it was reasonable for eToro to assume that this is what this answer meant. In my view, eToro either needed additional options so that Mr F could select '0' on its own, or it needed to assume that 0 to 10 trades amounted to no or little experience.

Mr F has told this service he didn't have any experience and wasn't looking to trade CFDs – so I can see why he would've answered the question in this way. He didn't tell eToro he had more experience than he had – because he ticked the box that included 0 as an option. Furthermore, I'm not persuaded eToro took any reasonable steps to ascertain whether Mr F, despite not having any experience, actually had any knowledge of CFDs or the specific risks involved in trading them.

This means that I'm not persuaded it was fair and reasonable for eToro to have concluded, as it did, that trading CFDs was appropriate for Mr F. In my view, had it carried out a fair and reasonable assessment, it would've concluded that Mr F did not have sufficient knowledge and experience to understand the risks involved – and it would've given him a warning to that effect as required under COBS10A.

But the question I then need to resolve is what would've happened had such a warning been provided to Mr F.

It's clear to me that a warning of the risks of CFD trading was provided to Mr F when he opened his account, and this did not dissuade him. And the rules didn't require eToro to prevent Mr F from having access to CFDs just because trading them wasn't appropriate for him – it's clear that Mr F had some investment experience, and I'm not persuaded there were any other circumstances which would've required eToro to block his account from trading CFDs or other leveraged products.

This means that whilst I agree that eToro did not fairly and reasonably assess Mr F's circumstances in line with COBS10A, in my view he would've opened the same account with the same access to leveraged products.

Did eToro cause or contribute to Mr F erroneously placing leveraged trades without knowing?

This therefore brings me to Mr F's second complaint – which is that he didn't know he was trading CFDs until he saw the extent of the losses he had made.

I've considered this complaint point very carefully, particularly in light of my provisional findings above that he should've been warned that trading CFDs wasn't appropriate for him. In looking through his trading statement, however, I'm not persuaded by Mr F's submissions. I should say firstly that I agree with the investigator – this was an execution only account, and it was for Mr F to ensure that each trade he placed was accurate and in line with his expectations. It isn't my role to tell eToro what default leverage should be on the derivative markets it offers.

But I can also see that Mr F opened a number of Oil CFDs before the Gold CFDs which caused him such significant losses.

For example, on 22 February he opened an Oil CFD with a £123 stake, and closed it two days later, on 24 February, at 9.47am for a £62 profit – in other words around 50%. Similarly on the same day at 10.12am he made a £135 profit off a £270 Oil CFD position, and at 10.16am made a £250 profit off a £500 position.

Mr F has explained that as he was new to commodities trading, he 'didn't realise that a 50% gain should have been so suspicious on the day of war breaking out, it seemed feasible'. He explained that the performance of these trades 'seemed to suggest my investment had been wise', so he continued with his strategy of 'closing existing trades and moving them into gold, oil and gas' – but he was 'entirely oblivious that the eToro system had automatically applied a leverage of 20x to Gold and 10x to my oil and gas trades'. He said that leverage was not something he understood at the time, and given what he had previously heard about it, he would never have sought to knowingly use it. Later that day, Mr F explained that he was 'hit by a barrage of 50% stop losses on gold, oil and gas […] which I simply could not fathom at all'. He explained that he 'kept on checking the price of gold, oil and gas' and 'none of them had dropped very much, maybe a couple of percentage points or so, so it made no sense why my investments should have nose-dived'.

I've taken into account Mr F's testimony, but I'm not persuaded that his assumptions mean that eToro ought to bear the financial consequences of the performance of his trades. Mr F explains that on realising his substantial losses, he checked the various prices of the commodities he was trading to establish why his trades had performed so badly – I'm satisfied that he had an opportunity to do this on the morning of 24 February 2022, when the profits of his trades were so significant. There was no better evidence at the time for Mr F to see that he had been trading on margin, and had he adopted that same level of diligence, he would've avoided the subsequent loss-making trades.

Whilst I understand Mr F's explanation that the war in Ukraine caused him to think that his profits were realistic, I'm not persuaded it was reasonable for him to have made this assumption without checking the price itself – something he would've seen on his statement between the opening price and the closing price. This would've shown that his profit was not commensurate with any large swing in the price of Oil but was in fact magnified by the leverage he was trading with.

At this point, Mr F was aware, or should've been aware, that he had access to leverage on some positions and given his testimony to the service that this was not what he was intending to trade, he ought to have been especially cautious when opening new trades. Instead, having closed a number of profitable trades Mr F proceeded to open around 23 Gold CFDs after 10.16am – that is, after closing the above trades. Unfortunately for Mr F, these trades turned out to be loss-making and were closed later that day – but given what I've said above, I'm not persuaded these losses were caused by something eToro did or didn't do.

Ultimately, whilst I accept Mr F's testimony that he wasn't fully aware of the trades he was placing, I'm not persuaded the financial consequences of those trades is something I can or should hold eToro responsible for.
Mr F opened trades on an execution only basis and had all the information he needed to be able to verify that he was trading in a way that was consistent with his aims. If leverage wasn't something he wanted to take advantage of, I'm satisfied it ought to have been clear enough to him at the time that he could've avoided opening those trades. I'm not persuaded he was misled by eToro into doing something he didn't intend to do.

Putting things right for Mr F

This means that I'm not persuaded Mr F's claim for a refund of the financial losses he incurred would be fair and reasonable – and so I'm not currently minded to make that award.

I do agree however that eToro's initial failure to properly assess his knowledge and experience likely added unnecessary distress and inconvenience. In determining the size of this award, I've taken into account that Mr F had an expectation that eToro would follow the appropriate rules and treat him fairly. I've also taken into account Mr F's evidence of how eToro has now changed the account opening process to make it more robust, so I can understand that this matter has caused him a degree of upset. However, I've also taken into account the fact that Mr F would've opened his account regardless, and his financial losses were not caused by eToro's poor assessment. For all these reasons, I'm satisfied that compensation of £250 is fair and reasonable.

Responses to my provisional decision

eToro did not respond to my provisional decision by the deadline I gave. Mr F did. In summary, he said:

- Although he acknowledged my provisional conclusions on the opportunities he had to identify he had been trading on leverage, he had no suspicion at the time that this is what was happening because he was trading with own cash and leverage was something he had been trying to avoid.

- It wasn't accurate, as I said in my provisional decision, that it was checking the prices which caused him to realise what was happening when he started making losses – it was in fact a comment on the eToro social page that caused him to realise he had been trading on margin.

- The volatility in the markets meant that he didn't have much time to figure things out – and he said that given how much he had invested with eToro, he didn't need it and that's why he wasn't expecting it or looking out for it.

- He acknowledged my conclusions around the way his account was opened, but added that he thought I ought to be able to make a finding on ways in which eToro could be more explicit with customers when they're about to open a leveraged position. He provided some examples that he thought would make it clearer.

- Mr F explained that the main driver of his complaint was to help avoid other consumers falling into the same trap as he did. He said that he hoped eToro would acknowledge its failings in the way it allowed him to trade as he did and accept that it needed to make this clearer than it is.

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 neither party has provided any reasons to change my key findings, I confirm them here as final. In relation to Mr F's comments, I'd like to thank him for the time and attention he has taken in raising his important complaint and I understand his broader aim of helping other customers. As Mr F is probably aware, the rules which govern how firms like eToro can offer and market these types of accounts have been strengthened considerably over the years, and so complaints like Mr F's are vitally important. However, my role requires me to focus solely on Mr F's complaint – how eToro broadly complies with its obligations is down to the FCA. That said, as eToro rightly points out on its website, two thirds of its customers lose money trading CFDs, and they carry a high risk of capital loss. As with all cases like Mr F, eToro is required by the relevant rules to ensure it has learned from customer experience and decisions by the service, so I'm pleased to see from Mr F that sign-up process has changed.

I acknowledge he has also provided some additional evidence to show that the clarity of when trades are leveraged is still not, in Mr F's view, sufficiently clear. I'd hope that should he share that information with eToro, it'll consider it in light of its ongoing obligations. However, I cannot comment on this evidence or make any findings on it at this stage.

Putting things right

In my view eToro's initial failure to properly assess Mr F's knowledge and experience likely added unnecessary distress and inconvenience.

In determining the size of this award, I've taken into account that Mr F had an expectation that eToro would follow the appropriate rules and treat him fairly. I've considered Mr F's evidence of how eToro has now changed the account opening process to make it more robust, so I can understand that this matter has caused him a degree of upset. I've also considered the fact that Mr F would've opened his account regardless, and his financial losses were not caused by eToro's poor assessment.

For all these reasons, I'm satisfied that compensation of £250 is fair and reasonable – so that's what I award.

My final decision

I partly uphold Mr F's complaint, and direct eToro (UK) Ltd to pay him £250 within 28 days of when we tell it he has accepted this final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 21 February 2024.

Alessandro Pulzone
Ombudsman