

The complaint

Mr D complains about the way eToro (UK) Ltd executed one of his trades. He said the order was executed at a higher price than was available and this caused him a financial loss.

What happened

In August 2023 Mr D placed an order to buy shares in a company called DMK Pharmaceuticals (DMK). There was some volatility in the share price and Mr D's initial order wasn't executed. Mr D says the order was pending at a price of 3.80 and eventually it executed at the much higher price of 7.74 – so he complained. In short he said that he was initially quoted a much lower price, and due to a system fault he bought the shares at a higher price which he didn't want – he also complained that the price had already dropped by the time the trade was executed so he was caused a financial loss.

eToro looked into his complaint but didn't think it had done anything wrong, so Mr D referred his complaint to this service. One of our investigators looked into the complaint but didn't agree to uphold it, so Mr D asked for a decision and made several submissions. In summary:

- He said the evidence eToro had given the investigator was not reliable. He said he needed to see data from the application or instrument in its “raw nature”.
- He said that when he put through his order, it came back “pending” for 20 to 25 minutes – he explained that eToro's system went down but kept his order hanging. Then “when their system back on-line it put my order through 20-25 minutes later”.
- Mr D said that there had to be more evidence from eToro and he felt that the investigator hadn't sufficiently interrogated the evidence or obtained more information from eToro.
- He said he lost £14,000 through no fault of his own.
- He had been trading for many years and would never have tried to open a trade when the market price had peaked as eToro was suggesting. He said eToro was also saying that he then tried to buy more when the market was on its way down which didn't make any sense. He said this was clearly when the instrument was halted and freezing and the trade went through without any confirmation from him.
- He made some additional submissions about issues, post-dating this complaint, affecting a different share that he was looking to buy.

As agreement couldn't be reached, the case was passed to me to decide.

Before reaching my decision, I asked eToro for some more information about the prices received on the day in question and any evidence of the technical issues Mr D said he experienced on the day.

eToro said in summary:

- Mr D had clicked on “open order” at 14:35:22 and received a price of 8.01, but this order failed. It provided a screenshot as evidence.
- Mr D tried again at 14:35:44 and was quoted a price of 7.89. This trade executed successfully at 14:35:47 at a slightly better price of 7.74.
- It wasn’t possible to obtain the second by second tick data from Bloomberg.
- It provided all the evidence from the technical investigation that was carried out the time of the complaint – this corroborated what it had said in the final response letter.
- Given the length of time that had passed, it couldn’t be sure of the exact technical error that had caused Mr D’s initial order to fail. It provided a copy of its execution policy as well as relevant terms that it said applied.
- It confirmed that the price of the instrument in question was subject to extreme volatility on the day and the fills Mr D received were within that price range. It said that its investigation at the time had confirmed that the price of 7.74 had been “validated by our liquidity providers and was traded in-market”.

As a result of this information, I wrote to Mr D to set out my provisional conclusions and give him a chance to look at this evidence. I said:

"I understand Mr D's strength of feeling on the matter and why he considers it necessary to obtain additional evidence. It is unfortunately the case that no further evidence is available and I therefore intend to base my decision on the balance of probabilities – this is how we decide what is fair and reasonable when the information available is limited or incomplete, as some of it is here.

The investigator has attached some of the evidence provided – most of it Mr D has already seen. What isn't available is the tick data from the date in question which would resolve the issue of any price discrepancy Mr D complains about. However, that isn't the only information that I can use to base my decision. I've explained what I've considered below.

Mr D's complaint is based on two key issues. The first is whether he was executed at a vastly different price to the one he was quoted. I'm sorry to disappoint Mr D, but on this issue I'm satisfied the evidence available is conclusive – the record indicates that Mr D was never offered a price of 3.80. The only two trade attempts for which I have a record are the failed attempt at a price of 8.04 and the successful trade attempt, which received a better fill than quoted at 7.74.

In the absence of any other record showing the platform suspended or any other trade being attempted at the prices Mr D alleges, I'm sorry to say that I cannot uphold this aspect of Mr D's complaint.

Mr D's second issue is the fill he eventually received. He says that not only was this higher than the 3.80 he was quoted (which as I've said above, I'm satisfied is not supported by the evidence), but it was higher than the prevailing market price at that point, which he says was around 5. I've considered this aspect very carefully. Without the tick data, it isn't possible to know what the exact minute by minute or second by second price was at that point in time.

So I've had to base my conclusion on some other information:

- *Looking online, it's clear to me that this particular stock was subject to extreme volatility on the day (the difference between the opening price and high of the day is*

evidence of this), which means that even if I thought Mr D's recollection of the price being around 5 was reliable, this wouldn't necessarily mean he had been executed at the wrong price. I should be clear that Mr D was taking a high risk when trading such a volatile stock and attempting to time the price in such a way as to make a short term intra-day profit.

- *The evidence showing the difference between the initial price Mr D was quoted 7.89 and the fill he received at 7.74 just a few seconds later corroborates that the price of the stock was subject to significant volatility. With this level of volatility it's entirely possible for the price to have shifted that much after the order was executed.*
- *Mr D has not been able to provide any evidence to show the discrepancy between the fill he received of 7.74 and what he says should've been the correct price. He did supply some pricing information with his complaint, which I presume he received from eToro, which corroborates that he received the price it was quoting for the instrument at the relevant time. Although I acknowledge Mr D didn't consider this evidence persuasive, I'm satisfied it is and sufficiently shows the prices eToro was quoting at the time.*
- *eToro has been consistent in its explanation to Mr D of what happened throughout the complaints process.*

Taking all this into account, I'm satisfied on balance that Mr D was executed at the next best available price – I'm not persuaded there's sufficient evidence to conclude that the price of the instrument had dropped to 5 at the time eToro executed his order.”

Mr D provided some additional comments. He said he was disappointed I'd not considered the 20-25 minutes the platform was down, which is when he made the order but it wasn't executed. He said that usually when he had tried to place an order and the price changed, the order wouldn't go through. He said the platform had been the problem and I had failed to find this. He also provided evidence of another instrument had tried to trade, after this referring this complaint to the service, which he said demonstrated that eToro's platform had technical issues.

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 reconsidered the evidence and Mr D's comments, I've not been persuaded to change my provisional conclusions. I'm sorry to disappoint Mr D – I know he feels strongly that eToro is to blame for the losses he incurred. But I can assure him that I have carefully considered all the evidence available to me – including whether there were any issues with eToro's platform.

In order to decide what is fair and reasonable, I need to consider the evidence that is presented to me. This includes Mr D's testimony, which I have taken into account.

It also includes the technical evidence that eToro has provided.

In its explanations, it has confirmed that it did not have any platform issues on the day. There were halts on the exchange, and eToro confirmed in its responses to Mr D that one such halt occurred between 14:06 and 14:27 on the day in question. It is possible that Mr D recalls attempting to place an order at that time and not being able to.

But there is no evidence of Mr D actually placing an order that took 20 minutes to fill – or placing an order at the price of 3.80. There is only evidence of Mr D attempting to place an order once, which failed, and then placing a second order which was successfully executed at a slightly better price than what he was quoted.

So although I can understand Mr D's strength of feeling, there is insufficient evidence for me to conclude that eToro didn't execute an order from Mr D at the best available price in line with the rules. For these reasons, and those that I outlined to him before this final decision, I don't uphold Mr D's complaint.

My final decision

My final decision is that I don't uphold his complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 8 January 2025.

Alessandro Pulzone
Ombudsman