

## **The complaint**

Mr H complains that when eToro (UK) Ltd closed his contracts for difference (CFD) trading account, he received back less than he expected.

Mr H would now like eToro to reimburse him for the higher amount that he believes he should've received.

## **What happened**

In December 2022, eToro wrote to Mr H explaining that as part of their regulatory obligations, they were required to keep records of their client's personal financial information up to date. eToro said to Mr H that they needed him to provide evidence of his salary and bank statements and over the following weeks, Mr H submitted the information that eToro had requested.

On 16 February 2023, eToro wrote to Mr H explaining that following a review of the information that he'd submitted and in accordance with their terms and conditions, they were no longer able to retain him as a client. At the same time, eToro said that meant they needed him to close all of his open positions within three months (so, by 16 May 2023), otherwise they'd close his positions for him. eToro also explained that they wouldn't allow Mr H to either fund his account or open any new positions.

In response, Mr H contacted eToro asking them to grant him until the end of 2023 to bring his positions to a close. On 28 April 2023, eToro wrote back to Mr H, explaining that as a gesture of goodwill, they would extend the window within which he needed to have closed his open positions by another three months (until 16 August 2023).

On 17 August 2023, eToro wrote to Mr H to explain that as he'd not closed his positions out by their deadline, they would commence the liquidation of all of his trades at the prevailing market rates.

Shortly afterwards, Mr H decided to formally complain to eToro. In summary, he said that he didn't think they'd been fair in delaying encashing his investments and from what he'd seen, he felt that he'd lost out financially as a result of eToro delaying encashing his investments by two days.

After reviewing Mr H's complaint, eToro concluded they were satisfied they'd done nothing wrong. They also said, in summary, that as his "positions were not closed on a prior date to their previous notice, the closure was initiated as was mentioned in their email correspondence of 17 August 2023".

Mr H was unhappy with eToro's response, so he referred his complaint to this service. In summary, he said that he felt he'd been disadvantaged by eToro's failure to close his positions out when they said that they would. He said that by closing the positions two days later, this had resulted in him receiving back less funds than he thought he should have.

The complaint was then considered by one of our Investigators. He concluded that eToro hadn't treated Mr H fairly because they'd stated to him that they planned to close his account on 16 August 2023 but didn't do so until 18 August 2023. Our Investigator didn't feel it was reasonable for eToro to have kept volatile trades open an additional two days.

eToro, however, disagreed with our Investigator's findings. In summary, they said Mr H had been given every opportunity to manage and close out his positions at any time prior to the closure date of 16 August 2023 but he chose not to. In addition, eToro felt that as they'd already provided Mr H with six months to close his trades, they'd already been fair.

Our Investigator was not persuaded to change his view as he didn't believe eToro had presented any new arguments he'd not already considered or responded to. Unhappy with that outcome, eToro then asked the Investigator to pass the case to an Ombudsman for a decision.

After carefully considering the complaint, I issued a provisional decision on the case as, whilst I explained that I had reached the same conclusion as our Investigator, I wanted to add wider context and explanation around why I was of the view that Mr H's complaint should be upheld. The provisional decision gave both parties the opportunity to provide any final comments before I reached my final decision.

#### What I said in my provisional decision:

*I have summarised this complaint in less detail than Mr H 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 issue here, which is whether eToro acted promptly enough in closing Mr H's positions.*

*My role is to consider the evidence presented by Mr H 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 planning on upholding Mr H's complaint - I'll explain why below.*

*The regulator, 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. It seems that eToro decided to bring Mr H's account to a close because after asking for evidence of his source of funds that he was using to trade with, it became apparent to them that Mr H was unemployed and funding his trades from monies being given to him by a number of different third parties. In addition, Mr H had also explained to eToro that the monies being provided to him were loans which he intended to pay back, so with no income and no clear path evident to repay those loans, eToro decided to close Mr H's account.*

*To be clear, I won't be reaching a conclusion on eToro's decision to close Mr H's account - that's a commercial decision for them and whilst Mr H was initially unhappy with their*

decision, it's not a complaint point that he's asked this service to consider. So, the crux of the complaint is very simple – and that's whether eToro should have closed Mr H's positions earlier than they did.

Given that Mr H failed to close out any of his positions after eToro had advised him they were shuttering his account, this meant by default that he had passed that responsibility back to them. And, given that eToro had drawn a clear line in the sand by stating that Mr H had until 16 August 2023 to close those positions, I don't think it was unreasonable for him to conclude that date would be the point at which they would liquidate his trades. And, because the responsibility for closing all of Mr H's positions then shifted back to eToro, they were then obligated to act promptly to bring his deals to a close.

I'm satisfied that eToro understood the importance of executing trades swiftly because having looked at their Best Execution and Order Handling Policy, it states:

3.12 The importance that we place on speed and the likelihood of execution is high.

3.13 Due to the levels of volatility affecting both price and volume, we seek to provide client orders with the fastest execution reasonably possible.

Mr H was warned on multiple occasions of eToro's plans to close his positions if he didn't act before 16 August 2023. And, from the various email chains that I've seen, I'm content that he very clearly understood this. So, when he didn't take any action, the responsibility then passed back to eToro to obtain the best prices possible for his instruments. And given the volatile nature of the underlying instruments that Mr H was invested in, by deferring any action until two days later, this meant that Mr H was unreasonably exposed to further price fluctuations that could have been avoided.

I've given very careful thought to eToro's contention that Mr H could have closed his positions at any time prior to 16 August 2023, but he chose not to. However, it doesn't necessarily follow that just because Mr H didn't close his trades prior to that point, that eToro then has license to delay liquidating his holdings until they saw fit.

I've looked very closely at all of the email and WhatsApp correspondence that eToro exchanged with Mr H. I'm satisfied that from what I've seen, Mr H would have reasonably concluded that his instruments would be liquidated on 16 August 2023, and not two days later. For example, in their email to Mr H on 28 April 2023, eToro said:

*"You may continue to adjust or close your open positions until the closure date (16 August 2023) and you may request a withdrawal at any time via the platform."*

When Mr H asked eToro to reconsider their decision because it appeared his investments were increasing in value, he contacted eToro on WhatsApp and received the following response (bold text is my emphasis):

*"Hello (Mr H's first name), it is very unlikely to happen. I would suggest to start closing your trades while they are in profit. **Otherwise on August 16 all of your trades will be closed by us** regardless how much loss they will be caring. I am really sorry about this, but knowing our internal processes, decisions like these will never be reverted back."*

So, I don't think that Mr H was unreasonable in expecting his positions to be closed on 16 August 2023, rather than several days later. I don't think Mr H has been treated fairly by eToro's delays.

## Responses to my provisional decision

After considering my provisional decision, eToro responded by stating that they had nothing further to add.

In response to the provisional decision, Mr H explained that this was a large amount of money for him and as a result of eToro's actions, he's lost out on a number of investment opportunities with those funds. Mr H went on to say, in summary, that he could've purchased more shares with those funds and gone on to undertake further transactions but has been prevented from doing so.

## **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've thought very carefully about Mr H's comments following the provisional decision. I think it would be challenging to determine what investments or actions he would have taken with his funds and what the outcome would be had he received the money when he should have done. And, as we're a quick and informal complaints handling service, I'm satisfied that the approach I've set out in resolving the complaint is the fairest for both parties because the 8% simple interest I've asked eToro to add to the settlement amount takes account of the fact that he was deprived of those additional funds for a period of time.

As neither party has submitted any new evidence that's made me change my mind, I'm upholding Mr H's complaint and I therefore require eToro to put things right for Mr H in the manner that I've set out below.

## **Putting things right**

The aim of my decision is to put Mr H back into the position he would've been in were it not for eToro's failure to close his positions when they said that they would.

As eToro have failed to provide sufficient reason as to why they didn't close Mr H's positions on 16 August 2023 when they stated they would, they should:

- Compare what Mr H received when his positions were closed on 18 August 2023 to what he would have received were his positions closed at the average value on 16 August 2023.
- eToro should pay that difference to Mr H.
- eToro should add 8% p.a. simple interest to that amount to the date of settlement.
- Income tax may be payable on any interest awarded.

## **My final decision**

I uphold Mr H's complaint and require eToro (UK) Ltd to pay to Mr H the amount that I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 6 September 2024.

Simon Fox  
**Ombudsman**