

The complaint

Mr E complains that eToro (UK) Ltd ('eToro') its fees for holding his trading positions overnight without notifying him about the increase.

What happened

Mr E had a trading account with eToro. The account allowed trading in contracts for difference (CFDs) and other assets.

Mr E complained to eToro that, for a number of CFD positions he'd opened on a particular currency pair, eToro had substantially increased its overnight fees without notice. He asked eToro to refund the overnight fees he'd paid on those positions.

eToro wrote to Mr E saying it'd had to increase its overnight fees on certain positions in line with exceptionally volatile price movement on those positions. It said it applied its overnight fee at 5pm New York time, and it charged for any positions that were open at that time. But weekend charges were applied on weekdays. It said the fees were adjusted daily to be in line with financing costs in the market.

Mr E said the fee increases were applied without notice so he missed the opportunity to close his positions before being charged the fee. And he said the regulations of the Financial Conduct Authority (FCA) required fees to be reasonable and transparent.

eToro replied to Mr E's complaint. In summary it said the following:

- Overnight fees were charged whenever customers held positions overnight. They were a normal part of trading leveraged CFDs and not unique to eToro.
- Overnight fees varied according to the size and direction (long or short) of a position, the respective rates of the currencies involved, the market forces, and the day of the week on which the fees were charged. Because they were dependent on market forces, they could change from day to day.
- eToro's website set out how overnight fees were calculated. Rates were published on eToro's 'FAQ' page and its 'Fees' page.
- The particular position Mr E held was affected by a geopolitical event that caused an exceptionally high level of volatility.
- When a customer enters a trade the eToro deal ticket indicates the overnight fee that will be charged based on the prevailing rate (which is not static and subject to change).
- eToro had adjusted its overnight fees to reflect the prevailing market conditions arising from the geopolitical conditions mentioned above – in doing this eToro had reasonably reacted to current market conditions.

Mr E referred his complaint to this service. In summary he said:

- eToro increased the fees it charged without communicating the change in advance to Mr E. That caused Mr E to lose money and suffer stress.
- The overnight fees for his CFD positions were shown as zero on the eToro website and mobile app all day until 17:00 New York time which is when eToro says it will apply overnight fees. Mr E therefore expected not to be charged any fees. But eToro charged excessive overnight fees and updated the displayed fees at the same time which prevented Mr E making an informed decision.
- eToro charged its fees 15 minutes later than it should've.
- FCA regulations required fees to be reasonable and transparent.
- Mr E wanted eToro to refund the fees and compensate him for the inconvenience caused by preventing him from profiting from his trades.
- eToro should be required to improve its communication and clarify its fee structure.

Mr E provided two screenshots from his eToro account taken at 8.21pm UK time for two positions he'd held overnight for one night on 1 June 2023. They showed two open trades. They said *'click to edit stop loss or take profit'*. Underneath the option to *'close trade'* they showed overnight fees of zero.

One of our Investigators looked into Mr E's complaint. In summary he said eToro hadn't done anything to justify being asked to pay compensation. He said the following:

- Independent research into the geopolitical events mentioned by eToro confirmed significant price volatility occurred in the particular currency pairing on which Mr E held positions. And that would've affected the overnight fees eToro charged Mr E for those positions.
- The *'Fees'* page on eToro's website said:
'Rollover (weekend/overnight) fees change from time to time based on global market conditions. When this happens, we will implement the changes. Please be aware that fee changes always apply to open positions. We encourage you to keep up to date with current rollover fees/refunds by checking our fees page. Please note that fees may change without advance notice.'
- eToro's terms and conditions (10.2 in Schedule A) said:
'Our overnight fees/credits are subject to change and can be viewed on our website, and the overnight fee relevant to your order will also be displayed to you when you open a position and on our fees page.'
- Mr E would've agreed to the terms and conditions when he opened the account.
- While eToro's terms and conditions gave it discretion to vary fees, it should still act fairly when exercising that discretion. In this case eToro had acted fairly because it adjusted fees according to external market conditions.
- eToro had charged its fees only seven minutes after the time it said it would.

- Mr E was generally aware of overnight fees and should've expected to be charged fees when he held positions overnight. Because he knew fees were meant to be charged at 5pm each day, he shouldn't have expected that fees wouldn't apply even if he saw fees listed at nil during the day.
- The investigator couldn't see eToro had failed to comply with any FCA provisions.

Mr E didn't agree with the Investigator's view. In summary he said he knew market conditions could affect the cost of CFD positions and eToro had to reflect such changes in its fees. What he objected to was eToro changing fees without notice. He said FCA regulations required eToro to pay due regard to the interests of customers and treat them fairly. He also said most stocks on eToro's platform had no overnight fees for short positions, and in the context of CFD trading even seven minutes was a significant duration for eToro to delay charging its fee.

Because no agreement could be reached, the complaint was passed to me to review afresh and make 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.

Having done so, I'm not upholding the complaint. I'll explain why.

The purpose of this decision is to set out my findings on what's fair and reasonable, and explain my reasons for reaching those findings, not to offer a point-by-point response to every submission made by the parties to the complaint. And so, while I've considered all the submissions by both parties, I've focussed here on the points I believe to be key to my decision on what's fair and reasonable in the circumstances.

Mr E has said he knows eToro must adjust its fees and charge fees that reflect market costs. His main concern has been that the increase in fees wasn't communicated to him fairly and reasonably – in particular that eToro didn't give him notice of the change. Mr E mentioned eToro's obligations under FCA rules to pay due regard to the interests of customers and treat them fairly. But I don't see that eToro has failed to have regard to his interests or failed to treat him fairly and reasonably on this occasion.

I'm satisfied eToro's terms and conditions gave it the discretion to change fees without notice. And this was communicated clearly in the terms and conditions. I've considered whether eToro used that discretion fairly and reasonably on this occasion. eToro said the change was in response to volatility in the currency pair on which Mr E was trading. That's consistent with how eToro's terms and conditions said it would charge its fees. I don't think it's generally unreasonable. And Mr E hasn't disputed the way eToro calculated its fees.

As well as saying eToro didn't proactively notify him about the fee increase, Mr E said eToro led him to believe he wouldn't be charged any overnight fees on the positions in question. Having carefully considered all the evidence and arguments, I can't conclude eToro gave Mr E reason to believe he wouldn't be charged overnight fees on the positions in question.

In response to our investigator's view Mr E said it was part of eToro's business model to charge zero overnight fees for some positions. He said most stocks on eToro's platform had no overnight fees for short positions. I can see eToro's website says most stocks won't incur overnight fees. But for CFDs it says overnight fees will apply. I've seen nothing to show

eToro often charges zero overnight fees for CFDs. Mr E's trading history shows it's the norm for him to pay overnight fees on his CFD positions if he keeps them open overnight.

Like our investigator I don't think the screenshots Mr E provided show he had a basis to expect zero overnight fees. The screenshots appear to show the overnight fees Mr E would pay if he were to close the positions displayed – and at the time of the screenshots he hadn't incurred any overnight fees on those positions. Mr E said the fees showing on the screenshotted pages were updated when the overnight fee was charged. So, the screenshots don't suggest to me that Mr E should've expected to be charge zero overnight fees if he went on to hold the positions overnight. And in the wider context of eToro's charging history and Mr E's trading history I don't think those screenshots should've caused Mr E to think eToro wouldn't charge overnight fees for those positions.

In response to the investigator's view Mr E said seven minutes was a significant amount of time for eToro to have delayed charging its overnight fee. But I don't think the delay that occurred before eToro applied overnight fees to the positions in question would've given Mr E a reasonable expectation that he wouldn't be charged an overnight fee. Mr E's trading history shows he had a long history of paying overnight fees on CFD positions. Having looked at some of the many transactions on his account I see they've consistently appeared as having been charged at a similar time each day, including on the days Mr E has complained about. So I don't think the timing of the fee should've come as a surprise to Mr E on the transactions he's complained about. In any case, even if eToro delayed charging its overnight fees on the two transactions Mr E has complained about, that didn't have a bearing on the amount of the fees he paid on those transactions. If the fees had've been charged earlier, Mr E would still have paid them. Mr E also hasn't said that he made any trading decisions – such as the decision to open a new position – during the time he says eToro delayed charging its fees. And having looked at his trading history I can't see that he carried out any trading during that time.

Overall, I can certainly understand Mr E's feelings about the increase in overnight fees on the transactions in question. But I can't conclude eToro has treated him unfairly. So I won't be asking eToro to do anything to put things right.

My final decision

For the reasons I've set out above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 5 August 2024.

Lucinda Puls
Ombudsman