

The complaint

Mr G complained about eToro (UK) Ltd (eToro). He said it failed to trigger a stop loss order and close a contracts for difference (CFD) position he had opened. Mr G said this resulted in him making a loss of all of his initial investment.

Mr G said he has made investment losses because eToro didn't trigger the stop loss order, and he would like it to compensate him for this.

What happened

Mr G has a trading account with eToro. On 9 May 2022 Mr G opened a CFD buy position in UPST stock and put in \$14,000 at a price of 77.94. Mr G said when he opened his position, he initially put a stop loss order in with a price of 70.20. So, if the price of UPST were to fall to that price, he had instructed eToro to close his position.

Mr G went back into the system on 9 May 2022 and amended his stop loss price. He said he changed it to 67.77. Mr G said he had calculated that for him worst case scenario he would have \$4900 left if the stop loss order was triggered at this price.

Mr G said the following day UPST price fell below the stop loss but eToro didn't trigger it, instead closing his trade at 62.36. Mr G said this resulted in all of his initial investment of \$14,000 being lost.

Mr G said eToro should have closed his position at the stop loss order that he had set. He said he has made investment losses and would like eToro to pay compensation of \$4900, the amount he would have had left in his account had it triggered his agreed stop loss amount. Mr G said in addition, that he has also suffered several months of depression and financial instability. Mr G complained to eToro about this.

eToro said in response that it could see Mr G's stop loss order was set at 67.70 for the position he had opened with UPST on 9 May 2022. It said Mr G then went back in after the market closed on 9 May 2022 and changed it to 76.91 and shortly after this 76.92. It said the market closed and when it opened again on 10 May 2022, the first available rate for it to trade on was 36.86 which was much lower than Mr G's stop loss position of 76.92.

eToro said it did not get the opportunity to carry out Mr G's instruction as UPST had begun trading at a buy price of 36.86. It said Mr G's stop loss price that he set, was not traded in the market. It said that it had an automatic trading platform cap though where its clients can lose a maximum of 100% of their investment and no more. So, it closed Mr G's position at a price of 62.36, meaning he made losses at around what he had originally put in.

eToro said it did nothing wrong and limited Mr G's losses to what he put in due to how its trading platform is designed. It reiterated that it was not able to execute the stop loss instruction as the opening price was much lower than that.

Mr G was not happy with eToro's response and referred his complaint to our service.

An investigator looked into Mr G's complaint. She said she could see the stop loss order wasn't triggered on 9 May 2022 at any time. She said she could see the opening price on 10 May 2022 was significantly lower than the closing price the day before, and much lower than the stop loss order. She said eToro doesn't offer guaranteed stop loss orders and she had seen the terms and conditions, where it states the same. She said she couldn't reasonably attribute losses to eToro. She didn't uphold Mr G's complaint.

Mr G is not in agreement with the investigator's view. He said in response that stop losses are supposed to prevent unexpected losses from sharp market moves like this one. He said clearly half of the traders got out of their positions, and he got left behind waiting for eToro to react.

As Mr G did not agree with the investigator, his complaint has been passed to me, an ombudsman, to look into.

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 am not upholding Mr G's complaint and I will explain why.

Mr G said the stop loss order that he put on his CFD position in UPST was supposed to prevent unexpected losses. His complaint all along has been that eToro should have executed the stop loss order price that he entered on eToro's trading platform on 9 May 2022.

Mr G said he had amended the stop loss to 67.77 on 9 May 2022 and has asked why eToro didn't close his position at this price. eToro on the other hand said Mr G went back into the system later that evening and changed the stop loss price on a couple of occasions, settling on 76.92.

I have been able to see a screenshot from eToro where it has listed out the times Mr G went into the trading platform and changed the stop loss amount. It has given the date and times that he has done this. The last entry on 9 May 2022 was for 76.92. So, as the market opened for trading on 10 May 2022, on seeing this, I am satisfied that Mr G would have had a stop loss on his open trading position in UPST for 76.92 and not 67.77.

I have been able to see bid / ask prices for UPST at the start of trading on 10 May 2022. eToro said the first available price that it could trade in on that day was 36.86. This was the opening price for UPST on 10 May 2022. I have seen a table of bid / ask prices and can see this correlates with what eToro has said.

Mr G said eToro should have carried out his instruction and executed his stop loss, this being 76.92 at the start of trading. It is clear from what I have seen though, that the stop loss price entered by Mr G was not traded in the market at the start of trading. The opening price being offered was 36.86. I can see eToro didn't offer guaranteed stop orders with the account that Mr G opened with it. Instead, it offered a standard stop loss order service. eToro said there are times when it wouldn't be able to execute a stop loss order, if trading in an instrument was volatile, as was the case here.

I have looked at the terms and conditions that Mr G signed up to when he opened his account and can see that it has explained this here. It has described that there could be slippage where it is not able to execute a stop loss order at the price someone has requested. It said when this happens, it will execute the order at the next best price in

accordance with its best execution and order handling policy. I can see that it has been clear here about the service it provided to Mr G in terms of the standard stop loss feature on his account.

I have been able to look at the bid / ask prices that eToro said it would have seen and can see that the first available price it was able to trade in was 36.86 on 10 May 2022. At this stage it was clear that the stop loss set by Mr G the evening before of 76.92 had been breached and so eToro needed to close his position.

As I have already concluded, eToro did not provide a guaranteed stop order service for Mr G's account. And it wasn't able to trade at the price Mr G had set on his stop loss order. Under the terms of the account the scenario that Mr G faced, fell under the terms described as slippage as the price had plummeted to 36.86.

eToro closed Mr G's position, and at 36.86 Mr G would have been faced with a significant negative balance. However, eToro had negative balance protection built into the service it provided Mr G. This means that in Mr G's circumstances, eToro wrote off his balance to zero. eToro, like other brokers, have put this protection in place following regulation about it from The Financial Conduct Authority (FCA). So, even though 36.86 was the first price available on 10 May 2022, eToro closed Mr G's position at 62.36 and absorbed the loss.

The rule relating to negative balance protection is found in COBS 22.5.17, where the FCA states *"The liability of a retail client for all restricted speculative investments connected to the retail client's account is limited to the funds in that account."*

So again, I can see in the circumstances of Mr G's complaint, that eToro closed his position out at 62.36 because it had negative balance protection built into the service it provided Mr G, to meet its regulatory obligation, and not because that price was available at market opening on 10 May 2022.

In conclusion, I have looked in detail at what happened when Mr G opened his position in UPST on 9 May 2022 and then eToro closed it on 10 May 2022. I have empathy for Mr G and what happened when he lost his money by deciding to open a position in UPST when he did. He said that he suffered with depression and anxiety for months afterwards and I am sorry to hear the difficult time that he had. But I can't find fault with the actions eToro took. I don't think it could have done anything differently and so I won't be asking it to do anything further with Mr G's complaint.

I appreciate that my decision will be disappointing for Mr G, and I acknowledge the strength of his feelings in the submissions provided. But based on everything I have read and the findings I have given, I don't uphold his complaint.

My final decision

My final decision is that I do not uphold Mr G's complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 24 April 2024.

Mark Richardson
Ombudsman