

The complaint

Mr C complains that eToro (UK) Ltd applied a stop loss to his share dealing account against his wishes and didn't notify him of a change in the risk level of his investments.

What happened

Since 2017 Mr C has been using the copy trading facility in his investment account with eToro. This allows Mr C to invest by automatically copying the trades of another investor of his choice. On 13 October 2022 Mr C found that his positions attached to his copy trading of one trader in particular, were closed without his knowledge. eToro explained that this was done due to a Copy Stop Loss ("CSL") that had been applied to his copied trades.

Mr C complained about this, as he remembered asking eToro to remove all stop losses from his trading. He'd said a similar situation had happened previously in 2021, when a CSL had occurred due to an increase in the level of risk the trader was taking. At that time, he says he asked to be notified if the risk level of his chosen Popular Investors changed, but upon checking following the CSL in October 2022, he discovered the risk level of his other copy trading had increased without notification.

eToro didn't uphold the complaint – they explained that a CSL is mandatory on all copy trading, but the percentage or amount of loss that triggers the CSL can be varied by Mr C. They explained that the CSL works differently from a regular stop loss as the entirety of the copied trades will close when the value of the entire copy drops below a specified percentage or dollar amount, rather than when an individual asset reaches a certain point, as with a normal stop loss. The value takes into consideration the initial invested amount, funds that were added to/removed from the copy, profits/losses and any fees or dividends. eToro found no evidence that they'd promised Mr C not to apply the CSL as standard. Regarding the risk level, they explained they don't send notifications about changes to the risk levels.

Mr C remained unhappy with this outcome, as the CSL had crystallised a loss of \$5,535.61, so asked our service to look into the complaint. An investigator considered Mr C's complaint and didn't uphold it – he said that the terms and conditions are clear on both the CSL and level of risk questions. He also found no evidence that eToro made promises regarding the CSL and notification of risk levels. Mr C disagreed and so the complaint was passed to me for a final decision.

Upon receiving the complaint, I requested more information. Mr C had said he spoke to eToro about stop losses in 2021 as he had experienced an unfavourable stop loss. As well as conversations with the customer service department, Mr C said he had many conversations with his dedicated account managers. He said it's the account managers who agreed to remove the stop losses from his investments. I asked for more evidence from eToro – in particular for any call recordings with Mr C. The ones eToro provided were passed to Mr C for his comment, and he confirmed they weren't relevant to his complaint points in this case.

Not all conversations – especially those with account managers – appear to be recorded by eToro, and nor do those account managers take notes of any of the discussions that take place between them. So, I asked Mr C to expand on his recollections of what he was told – he said:

“It was a phone conversation following a Stop Loss being hit on some cryptocurrency I believe. This would have been mid to late 2021.

In the conversation, I said that I wanted to make sure there was no SL on any trades or copy trades. I was told that was fine and would be done, but they just needed to make me aware that the Copy Trades wouldn't be 'true zero', but a low percent. I think it might have been 5% or 10% perhaps? I'm afraid I can't remember...

Had that been done as promised, the high Stop Loss left on the Copy Trade wouldn't have been hit. I think it even only crept over by a few pounds, so it would have been perfectly fine.”

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.

My role here is to consider whether eToro gave Mr C clear, fair and not misleading information about the service they were providing. In order to give a fair and reasonable outlook on this, I've considered all of their interactions with Mr C, beginning with the terms and conditions that he agreed to when opening his account with eToro, the information he would have seen when placing instructions, and any other information they've given him in writing or by phone. I've looked at the two issues separately, for clarity.

The copy stop loss

I note that the agreement between eToro and Mr C is that eToro provides him with an execution only service. This means eToro's responsibility lies in providing Mr C with clear, fair and not-misleading information about the products and services they offer. It's Mr C's responsibility to ensure he understands the functionality of the account and the products and services he uses on that account.

The terms and conditions of the account have a specific 'Copy Trading' section, at Schedule D, however this doesn't set out how the CSL works. I've noted that clause 8.2 talks about the restrictions on copy trading, and refers to the website for the full restrictions. I don't have a copy of what the website said in 2022 or earlier when Mr C initially opened the copy trade in question. I can see the website currently says:

“Copy Stop Loss (CSL) is an instruction to close a copy if the value of the entire copy drops below a specific dollar amount or ratio...

CSL is mandatory on every copy... You can set the CSL anywhere between 5% and 95%.

For example, you choose to copy a trader with \$1,000 and set the CSL at 60%. If the copy value, including the profit/loss over all trades, drops below 60% of \$1,000, the whole copy would close, and the remaining funds (\$600) would be returned to your balance.

You can adjust the Copy Stop Loss (CSL) to your preferred level of exposure while opening the copy or at any time after the copy is opened.

Every time you edit your CSL once the copy is opened, the new value will reflect as a percentage of your copy equity at the time of the edit and not the original allocated amount.”

This reflects the way eToro explained the CSL during the complaint and also reflects what Mr C remembers being told in 2021. As a result, I'm persuaded it's likely the website was at least similar in October 2022, and I find it to be clear and fair information. We don't have a call recording of the conversation Mr C had where he remembers being told the CSL would be set at 5 or 10% and I can't be sure of whether the firm gave any guarantees on this point. So, I've considered the other information Mr C was given which set out the level of the CSL on his trades.

I'm satisfied that the CSL parameters were clearly visible to Mr C when opening a copy trade. When adding an amount into the copy, directly beneath the amount that the investor manually types in, it says: *“Close this investment if its value drops below [amount]”*, with an 'edit' button next to it. Mr C's CSL was set at \$13,880.77 - so when the value of his copy dropped to that amount on 13 October 2022, all his open trades in the copy were closed.

Looking at the whole picture, Mr C admits he was aware that a CSL would apply to his copy trading, but wasn't told the exact amount over the phone – though he remembers it being low. When adding money into the copy, I'm satisfied it would have clearly shown him the exact amount. I'm mindful that as an execution only customer, it's his duty to monitor the performance of his investment. And I've seen no evidence to suggest the CSL level was in any way hidden from Mr C.

Having reviewed everything, I'm satisfied eToro gave Mr C enough information to ensure he was reasonably aware that a CSL would apply, and the amount at which it was set. So, I don't uphold his complaint about this.

Changes to the risk level

Again, I've looked at the terms and conditions of the copy trading facility, which say at 6.3:

“Past performance, risk scores, statistics and any other information with respect to eToro traders under our CopyTrader and/or CopyPortfolio functionality, or of different portfolios and trading strategies under our CopyPortfolio functionality are not reliable indicators of future performance. We do not represent or guarantee that you will achieve profits or losses similar to those shown on the eToro trader or portfolio that you are copying. We also do not represent or guarantee that the risk score of a trader will accurately reflect the risk of their future performances.”

I'm satisfied this reasonably clearly states that the risk scores of traders shouldn't be relied on for future performance. Essentially, no guarantees are given that the risk score would stay the same. I'm also satisfied that the high risk nature of copy trading was clearly set out in eToro's Risk Disclosure document, which says:

“In making a decision to Copy a specific trader or traders and/or follow a particular strategy, You must consider your entire financial situation including financial commitments and you understand that using Social Trading Features is highly speculative and that you could sustain significant losses exceeding the amount used to copy a trader or traders. The risks associated with Social Trading Features, include but are not limited to, automated trading execution whereby the opening and closing of trades will happen in your account without your manual intervention.”

Mr C says that the last time the risk score of a trader he was copying changed drastically, causing him losses, eToro compensated him for those losses in 2021. He feels it ought to be a function of eToro's offering that they let him know when the traders' risk scores change.

I've considered what eToro told Mr C under that previous complaint. In that case the trader Mr C was copying breached eToro's policies and eToro offered to refund Mr C's losses as a gesture of goodwill. However, I note that they didn't admit fault, and explicitly said that they are not able to notify clients in advance of such incidents.

I've seen no evidence to suggest that eToro agreed to tell Mr C when a trader's risk profile changed and this isn't a service they offer – and in fact they clearly told him they wouldn't be notifying him of this. Mr C has instructed them to place trades on his behalf that proportionally copy the trades of another investor. The risks he takes in doing so are clearly set out and eToro makes no guarantees that the trading strategies won't change.

Overall I'm satisfied eToro has given Mr C clear, fair and not misleading information about this, and he was clearly told he wouldn't be notified of risk level changes, so I don't uphold Mr C's complaint about the risk level.

My final decision

I don't uphold Mr C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 10 May 2024.

Katie Haywood
Ombudsman