DRN-4206293

The complaint

Miss R is complaining that she couldn't deposit money into her eToro (UK) Ltd trading account, resulting in substantial losses.

What happened

Miss R's been trading stocks, cryptocurrencies, and indices with eToro since April 2020. In June 2021 she was invited to be one of the early users of a new program, called eToro Money. She started using it straight away and was able to deposit and withdraw money instantly without any problems.

On the morning of 4 October 2021, Miss R had three buy positions open, all linked to the NASDAQ100 index. The index had been falling and Miss R had been extending the stop loss on each position over the preceding few days. On 4 October 2021, she wanted to further extend the stop loss. She transferred £2,000 to her eToro Money account and tried to move it on to her trading account. The funds showed as debited from eToro Money but weren't credited to her trading account. Miss R contacted eToro – firstly through the customer service team and then through her account manager. But she couldn't get an explanation as to what had happened or how to sort it out. Later that day, the price of the index fell below Miss R's stop loss limits and all three positions closed at a loss.

On 7 October 2021, a customer service representative told Miss R they'd experienced a temporary issue with the platform and her funds had now been credited to her trading account. She complained saying she'd suffered considerable losses because the funds weren't available to her to cover her stop losses.

By 13 October 2021, Miss R hadn't had a response to her complaint. She was expecting eToro to reinstate her positions and by this time the NASDAQ100 was climbing. Because she couldn't sell the buy positions at that point, she opened a sell position to hedge them. When the index continued to climb, this position also reached its stop loss limit and closed at a loss.

eToro didn't reinstate Miss R's positions or uphold her complaint. They said they weren't responsible for Miss R's losses - she could have used other methods to pay money into her account, or she could have closed other positions to cover her stop losses. eToro offered Miss R $100 as a goodwill gesture but Miss R declined. She said her account manager hadn't given her adequate advice and there was no guarantee that other payment methods were working. She added that she's a member of eToro's Platinum Plus Club which is supposed to mean she gets an exceptional level of service and is assisted in making good decisions.

Miss R brought her complaint to our service. Our investigator didn't uphold Miss R's complaint – she said eToro didn't guarantee that payments to the trading account would be instant, and said it was Miss R's responsibility to ensure there was enough money in the account to support her trades. Miss R asked for an ombudsman to review her complaint – so it's come to me.

I issued a provisional decision on 17 April 2023. I said:

"eToro have admitted there was a problem with transfers between eToro Money and the eToro trading platform which is what held up Miss R's money. So I haven't looked further into what the problem was – instead I've considered how eToro handled it.

Miss R was used to her transferred funds being available immediately – and this is also what the eToro Money promotional information says. So it was reasonable for her to expect the money to be available in her trading account. And it's understandable that she was concerned that it had disappeared from her eToro Money account without appearing somewhere else.

Over the course of the day, Miss R tried to get answers as to where her funds were from eToro's customer service team and then from her account manager. At 9.30am the customer service team said they would get back to her shortly and at 11.15am her account manager said the money was showing as pending and he would chase it up for her. But she didn't hear anything from either. By 3.30pm, she told her account manager she needed the money urgently to extend her stop losses. She said she could see eToro Money was down for maintenance and asked explicitly whether she could transfer the money to her account through PayPal. The account manager replied, saying he would continue to chase. He didn't answer Miss R's direct question as to whether another payment method would work, and he said: "please let me know if you happen to get stopped out".

I'm inclined to say eToro should have explicitly told Miss R that eToro Money was down for maintenance, and that she should try making a direct payment to her trading account. She'd made PayPal payments to her trading account without any problems before she started using eToro Money so it's likely this would have worked. I'm also inclined to say the account manager's invitation to Miss R to let him know if she got stopped out implied that eToro would remedy any losses caused by the problem.

In their response to Miss R's complaint, eToro said it was Miss R's responsibility to ensure she had enough funds in her account and that she could have done this by using a different payment method or to release funds from other open positions. But they didn't tell her this when she was urgently trying to avoid her stop losses closing. Miss R didn't want to transfer more money in while she had no idea what had happened to her first deposit and had been given no assurances about subsequent payments. And she wasn't inclined to close any of her positions in order to extend the stop loss as this would have crystallised losses on those positions.

On this basis I think it was reasonable for Miss R not to take any further actions. eToro were aware there was a problem with eToro Money but didn't communicate this to Miss R. They didn't give her clear information – and it was this that led to Miss R's stop losses being closed. It follows that I'm inclined to say eToro should compensate Miss R for the losses she sustained as a result.

Putting things right

The first thing to check is whether Miss R could have avoided a stop loss if the money she'd paid into eToro Money had been available in her trading account. Miss R had three positions open at the time she transferred her funds into eToro Money on 4 October 2021. I'm aware Miss R opened two further positions on 4 October 2021 – but she's told us these were opened in response to the first stop loss closure. So there's no need to take these two positions into account when calculating the aggregate stop loss she could have achieved with additional funds.

eToro have told us that if Miss R had successfully deposited £2,000 she'd have been able to move the stop losses on the three open positions to 14,363. The lowest price *reached that day by the index was 14,381.95 – so this move would have been enough to prevent the positions being closed. Miss R's trading history shows that she'd been repeatedly extending the stop loss on these three positions so I've no reason to doubt she'd have done the same again with those funds.*

So if eToro's systems hadn't failed, Miss R's £2,000 deposit would have gone through and she'd have been able to avoid the closures. And if eToro's customer service representatives or account manager had given her clear information at the time, she had a further £5,000 available so could have used a different payment method to transfer the money in and prevent the closures.

It follows that I think eToro should put Miss R in the position she'd have been in if she'd had access to the funds to extend her stop losses. We've asked Miss R what she would have done had the positions not been closed. She said she'd have waited for the market to turn and held the position until she reached around 10% profit on each position. She said she'd then have reinvested the funds to open another buy position and held that until it reached 10% and extended the stop loss on the sell position that she was using to hedge the buy positions. She added that she'd have repeated this pattern until the market turned downwards again at which point she'd have stopped reinvesting in buy positions and held the sell position until it was in profit before closing it.

I've thought about Miss R's testimony and looked at her trading history, as well as the price history for the index she was trading. The NASDAQ100 index gained around 15% over the next month or so and if Miss R had held her positions until the market reached its peak her gains would have been huge. But that's not in line with Miss R's testimony or her trading history. Miss R's trading history supports her testimony that she'd have held the buy positions until she made a 10% gain. She's traded extensively and closed many positions around this level of gain. These positions were unusual in that Miss R had historically held positions for only a few hours or occasionally a few days, whereas each of these three positions was open for over a week. However, Miss R had extended her stop loss repeatedly and paid significant amounts in overnight fees to keep these positions open so I'm persuaded she'd have kept the positions until they became profitable. I'm persuaded it's reasonable to ask eToro to compensate Miss R as if she'd made a 10% profit on each of these three positions instead of the significant losses she did make.

I appreciate Miss R says she'd have then reinvested the proceeds and continued the pattern. And I can see that she's followed this strategy at times in the past. But it's difficult to say when she'd have taken the view that the market would fall and stopped doing so. Or there may have been other factors that would have stopped her from investing the proceeds. So I don't think it's reasonable to ask eToro to compensate Miss R beyond an initial 10% profit on her buy positions.

In addition to the buy positions, Miss R opened a sell position to hedge her buy positions. Miss R then had to extend her stop loss on this position several times because the index continued to climb. She received eToro's final response on 2 November 2021 – and the sell position closed soon after. I'm persuaded she wouldn't have opened this sell position if things hadn't gone wrong and she'd been able to extend her stop losses on the buy positions – she'd have been able to trade her buy positions as she wanted so wouldn't have needed to hedge them. So I'm inclined to say eToro should refund all of Miss R's losses on the sell position.

I've also thought about the impact this has had on Miss R and what level of compensation is appropriate for the distress and inconvenience she's suffered. I think it's fair to say it was foreseeable that Miss R would make significant losses as a result of her funds not being available in her trading account. The level of losses Miss R *sustained was life-changing and meant that Miss R had to cancel holidays and retract her resignation from her job. Whilst I can only consider what would have been reasonably foreseeable – which doesn't include Miss R retracting her resignation, it's clear eToro's mistakes had a significant impact on Miss R.*

Whilst trading these types of products is generally risky and large losses can be sustained, Miss R had previously managed her trading in such a way as to sustain only much smaller losses at any given time. So it's fair to say Miss R suffered a significant shock when initially suffering the losses, which would have been further compounded when she realised eToro weren't going to reinstate her positions or compensate her for her losses. She's since lived with the distress of that financial loss, for around 18 months. Miss R's been clear that it's had a significant impact on her mental health. Taking everything into account I'm inclined to say eToro should pay Miss R £800 to compensate her for the distress caused."

Miss R broadly accepted my provisional decision after some clarification but eToro didn't. They agreed to refund Miss R's losses on the three buy positions and pay her the amount she'd have made if she'd closed those positions at a 10% profit. They calculated these figures at $25,735.05 and $2,192.50 respectively. They also agreed to pay the £800 I'd recommended as compensation for distress and inconvenience.

But they didn't think they should refund the loss Miss R made on the sell position. I had further correspondence with both parties on this aspect of the redress and I'll set out their comments and my decision below.

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.

As noted above, Miss R opened the sell position on 13 October 2021 because she was expecting the buy positions to be reinstated and wanted to hedge them. I said in my provisional decision that she wouldn't have opened this position if things hadn't gone wrong, so eToro should reimburse her the loss she made.

In response, eToro said they don't reinstate positions retrospectively so Miss R shouldn't have expected them to – but I explained that Miss R wouldn't have known that.

eToro then said that Miss R had opened the original three trades at an average rate of 15,357.75. If she was assuming they'd be reinstated, it would be at that opening rate. But the sell position she opened was at 14,774.80 – effectively locking in a loss of around $16,500. eToro said this $16,500 that she was effectively locking in should therefore be deducted from the total loss on the trade when calculating Miss R's compensation.

I put this to Miss R. Whilst she could understand eToro's point she said she would only have sustained this $16,500 loss if she'd closed all positions simultaneously at the moment she opened the sell position. She said she thought it would be fair to assume she'd have held her sell position long enough until she could close if safely at a minimum of 10% profit or to break even. She'd have been able to extend her stop loss to do this by reinvesting the profit from her buy positions.

I've carefully considered all these arguments. I'm persuaded Miss R wouldn't have opened and held this position if it wasn't for the issues in gaining access to her funds. It follows that eToro should pay the full loss on the sell position, an amount of $30,823.77.

My final decision

As I've explained above, I'm upholding Miss R's complaint. eToro (UK) Ltd need to pay her:

- the losses she made on the three buy positions that were open at the time she paid money into eToro Money;
- the amount she'd have made if she'd closed the buy positions at a 10% profit;
- the loss she made on the sell position she opened on 13 October 2021; and
- £800 to compensate her for the distress and inconvenience they've caused.

The losses in relation to trading can be refunded to her trading account but the £800 for distress and inconvenience needs to be paid to a bank account of Miss R's choosing.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 20 July 2023.

Clare King
Ombudsman