

The complaint

Mr S complains eToro (UK) Ltd ('eToro') closed his trading positions unfairly and should've prevented him from trading when he was making losses.

What happened

Mr S opened a trading account with eToro in October 2021.

As part of opening an account Mr S completed eToro's appropriateness questionnaire. The information Mr S gave in response to the questionnaire indicated he had experience trading contracts of difference (CFDs) and relevant knowledge. And he recorded that his income, cash and liquid assets were at the lower end of the available responses. As part of the application process Mr S received a generic risk warning about CFD trading, and access to eToro's educational materials.

Once his account was open Mr S used it to trade frequently.

About one year later, on 29 October 2022, Mr S emailed eToro saying: *'I have lost everything in the last week from highs of \$85k to about \$2k, I'm struggling to cope with this and I don't know what to do. Are there any resources that can help me???'*

eToro replied saying: *'I understand how stressful situations can be when the markets do not react the way that you plan. It might be worth having a review of risk management tools as I understand you regularly trade with leverage which can be very risky.'*

eToro provide a link to resources in its online trading academy and said: *'Please let me know if you have any questions or have anything specific in mind.'*

In June 2023 eToro began a review of Mr S's account. It asked him for information about the source of his funds and his circumstances. During correspondence with eToro Mr S said amongst other things that he'd been made redundant in late April 2023 and had received a lump sum because of that. He said he was now unemployed but would resume work in January 2024. He was living with his parents and so was *'relatively bill free'* and the money he used to trade wasn't needed for day-to-day expenses.

On 9 August 2023, after a series of exchanges between eToro and Mr S, eToro told Mr S it had decided to close his account. It said the following:

'... based on a review of your individual circumstances, we believe in this particular case it is not in your best interests for us to continue to provide our services to you.

... you may be more likely to experience detrimental outcomes which - in the event they materialise - could be greater than if such characteristics/circumstances were not present. Consequently and in accordance with 26.4(a) of our customer terms and conditions, we are taking the prudent decision to close your account. Your account functionality will be limited in the meantime and you will be restricted from opening any new trades and from depositing to your account.

These limitations, however, do not affect your ability to manage any open positions or remove funds from your trading account.'

Section 26.4(a) of eToro's terms and conditions said the following:

'26.4 We may also freeze, block, or terminate our Services and/or your eToro account if: (a) we decide to stop providing you with Services...'

On the same day Mr S replied saying:

'Can you give me more details about what characteristics and circumstances are present? The fact that you've made the money in my account null and void because I can not extend the stop loss or open any new positions to dollar cost average. I have lost a lot, and etoro have benefited from my use of the service with commission and fees. How can it be fair to ban me when I'm trying to get my way back up?'

On 10 August 2023 eToro closed the positions that were open in Mr S's account at the time. The positions made a combined loss of US 1,981.67. Mr S emailed eToro saying it had said yesterday he would be able to manage his open positions and remove funds, but now eToro had closed his positions.

On 14 August 2023 eToro wrote to Mr S saying it was responding to his complaint. In summary it said the following:

- eToro reviewed accounts periodically in line with regulatory requirements and to ensure the best service for its clients. During a review in June 2023 eToro found out Mr S was unemployed, relying on savings, transacting with gambling websites and often in his overdraft. So eToro had classified him as a vulnerable customer.
- At that time the positions open in Mr S's account were five '*short*' positions on highly leveraged instruments. The instruments were characterized by volatility and might have incurred higher losses and fees.
- eToro's reference to '*management of your positions*' pertained to the interim period before eToro closed the positions. Closing the positions was done with Mr S's best interests in mind. eToro's primary concern was to prevent foreseeable harm in the form of further losses that might have been beyond Mr S's means.
- Because eToro had been unaware of Mr S's vulnerability until recently it couldn't be held responsible for previous trading losses which were due to normal trading activity.

Mr S referred his complaint to this service. In summary he said the following:

- He traded with eToro for some years. He had some success, but gradually invested more and more. Then he started to lose a lot of money. eToro allowed him to continue depositing money without reviewing his welfare until it was too late.
- Mr S had been made redundant and was unemployed for a time. During that time he continued using eToro's services. At that point he messaged eToro's support team and said he was struggling to cope with his financial loss and wasn't sure how to deal with it. eToro gave him a general response and didn't restrict or review his account until months later when he'd lost most of his capital and had just a few positions remaining which were showing large losses. eToro should've closed Mr S's account when he emailed it about his losses.

- Mr S was greatly affected by these events because he'd been saving towards his first home.
- eToro shouldn't have closed his positions the way it did. And when eToro paid him the money he'd lost on the closed positions, it wasn't a goodwill gesture – the money had belonged to Mr S.

One of our Investigators looked into Mr S's complaint. He didn't think eToro had done anything wrong by not closing Mr S's account sooner than 10 August 2023. In summary he said the following:

- Mr S had an execution-only account with eToro. That meant he was responsible for his own trading decisions. And he would've been aware of that from the terms and conditions he had to agree to in order to open the account.
- eToro was required by rules in the regulator's handbook to check whether an eToro account was appropriate for Mr S. It did that by obtaining information about his employment, financial position, experience, and knowledge before granting him an account.
- Section 3.11 of eToro's terms and conditions required Mr S to inform eToro when his circumstances changed. So he should've told eToro when he became unemployed in April 2023. Had he done so, it's likely eToro would've closed his account sooner.
- When Mr S contacted eToro in October 2022, the information he provided wasn't such that eToro should've closed his account. His email mentioned high investment losses. But it wasn't high investment losses that led to his account closure.
- The investigator had asked eToro what would've happened if Mr S had been allowed to close his positions rather than have them closed by eToro. The evidence from eToro indicated Mr S would most likely have made a larger loss than he did.
- Blocking and closing Mr S's account wasn't unfair or outside the terms and conditions of the account. So eToro wasn't obligated to refund any losses caused by its closure of Mr S's positions. So it was fair and reasonable for eToro to give Mr S USD 2,000 as a gesture of goodwill (rather than as a return of money owed to him).

Mr S didn't agree with the investigator's view. He reiterated what he said to eToro in October 2022. He said by trading leveraged products he was effectively being given credit. And a credit provider wouldn't continue to allow him to borrow if he'd said he was struggling to cope.

Because no agreement could be reached, this 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.

The crux of Mr S's complaint is that eToro should've protected him from losses by closing his account sooner. In particular he said it should've known in October 2022 that it wasn't appropriate for him to continue trading.

Having considered carefully what Mr S said to eToro in October 2022 I don't think it gave eToro reason to think Mr S was in vulnerable circumstances and so should have his account closed.

eToro responded to Mr S's email with information about leveraged trading and how to manage the associated risks. So it treated Mr S's email as one of concern about his losses and a request for help with his trading – which was what it appeared to be. I can see why Mr S feels eToro should've read the email as saying Mr S was in financial difficulty – particularly in hindsight, given eToro later classified him as a vulnerable customer. But the email didn't say that. And when eToro invited Mr S to say if he had any questions or specific support in mind, I haven't seen that he replied. And given Mr S also didn't update eToro about his change in circumstances, I don't see, on balance, that he gave eToro enough information for me to say eToro acted unfairly or unreasonably in these particular circumstances.

Mr S made the point that a provider of credit wouldn't offer further credit after a customer reported being in financial difficulty. He suggested eToro should've refused him further leveraged trading on the same basis because leverage was similar to credit. It's worth noting that leverage doesn't itself represent a debt owed by the customer – and when trading leveraged CFDs Mr S was subject to negative balance protection which meant his losses were limited to the amount of money he put into his account. But I understand his general point that eToro should've been sensitive to his interests and not allowed him further services when he was in difficult circumstances. For the reasons I've given I don't think that, in the circumstances of this case, Mr S gave eToro enough reason that it was obligated to prevent him using its services.

I've considered whether eToro acted fairly and reasonably when it opened Mr S's account in the first place. And I've found that it did. The information Mr S gave eToro indicated he had experience of CFD trading and relevant knowledge. The information I've seen indicates to me that in the particular circumstances of this case eToro acted reasonably in determining Mr S had sufficient experience and knowledge to understand the risks involved in using its services. And as part of the application process Mr S received a generic risk warning about CFD trading, and access to eToro's educational materials – both of which would've helped ensure he understood risks involved.

Similarly I don't consider the information Mr S gave eToro when he opened the account meant that, in the particular circumstances of this case, eToro ought to have classified him as vulnerable at that point. Although eToro later determined Mr S was in vulnerable circumstances and so should no longer be permitted to use its services, the circumstances that led to that determination were not all present or evident at the time Mr S opened his account.

Mr S was also unhappy about eToro closing his positions then saying it had made a goodwill gesture when it paid him USD 2,000. I can't agree this was unfair or unreasonable by eToro. eToro had the right to close Mr S's account, and as part of that it had the right to close his positions on his behalf. Because eToro hadn't acted unfairly or unreasonably in closing Mr S's account and positions, the closure didn't obligate eToro to reimburse any losses Mr S made on his positions. And even if eToro had been wrong to close Mr S's account and

positions, that wouldn't mean eToro was responsible for the full value of his trading losses on those positions. Closing Mr S's positions crystallised the loss he was already experiencing on those positions. It didn't cause the loss. And eToro has shown Mr S would most likely have made a greater loss if it hadn't closed the positions when it did.

eToro did tell Mr S he'd be able to manage his open positions, and then it closed them without further warning. I do think that to be fair and reasonable here eToro should've told Mr S more clearly what it would do and what its timeframe was for that. But, as I've said, Mr S was likely to have made a greater loss if his positions had been closed later than they were. And I think the goodwill payment eToro has given Mr S is more than enough to put right any distress and inconvenience he suffered over being led to think he'd have time to close the positions himself.

Overall, I have sympathy for the experience Mr S has had. And I'm very sorry to know of his difficult circumstances. But I'm unable to say eToro has acted unreasonably or unfairly in the particular circumstances of this complaint. So I'm not asking eToro to take any action.

My final decision

For the reasons I've set out above, my final decision is that I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 25 March 2025.

Lucinda Puls
Ombudsman