DRN-4985293

Financial Ombudsman Service

The complaint

Mr V complains eToro (UK) Ltd ('eToro') unfairly closed his trading positions and closed his account.

What happened

In November 2021 Mr V opened a trading account with eToro.

As part of that he completed eToro's appropriateness questionnaire. eToro decided its services weren't appropriate for Mr V and warned him of that. Mr V confirmed he had reviewed eToro's educational materials and was aware of the risks and wanted to proceed anyway.

Mr V began using his eToro account to trade CFDs in July 2022. He said the cash balance in his account became negative from May 2023 onwards, and his portfolio value was negative for three weeks from late November 2023. eToro gave this service a copy of Mr V's account statement and said Mr V began to have a negative cash balance in May 2023 mainly because of the overnight fees he was paying to hold his positions.

Mr V said eToro sent him a number of alerts about his account balance in November and December 2023 which warned that his positions might be liquidated due to a negative balance. He says that in November 2023 he added cash to his account with the intention of protecting his open positions. And he called eToro to discuss '*a few scenarios*'. He says eToro told him his positions wouldn't be liquidated unless his stop loss was hit. And he says that based on that, as well as what's on its website, and what his own experience with eToro had been over two years, he believed his positions would only be closed if his stop loss was triggered. He says on that basis he stopped adding funds to his account.

On Friday 15 December 2023 eToro sent Mr V an alert saying '*Margin Call Alert: Pay attention to the real funds level left in your account. Deposit now to avoid liquidation*.' An account statement from eToro for Friday 15 December 2023 shows Mr V had a negative portfolio balance on that day.

On Monday 18 December 2023 eToro closed the five positions that were open in Mr V's account at the time. An account statement from eToro for 18 December 2023 shows Mr V had an opening portfolio balance on that day of USD -3.67. And his closing portfolio balance after the liquidation was USD 36.19.

On the same day Mr V contacted eToro about his positions being closed. eToro said it had closed his positions '*due to CFD fee's reaching the total value of* [Mr V's] *positions.*' It said it had sent him an alert when his positions were at risk of being closed '*based on the amount of* [his] *portfolio value in* [his] *eToro investment account*'.

Mr V also spoke to eToro by phone on 18 December 2023. During the call he said he'd invested his life savings in eToro, he earned minimum wage and lived month-to-month, and he had multiple debts, including some unsecured loans with high interest rates.

eToro decided to close Mr V's account because it believed he was in vulnerable circumstances. The reason it believed Mr V was in vulnerable circumstances was that Mr V told eToro he'd invested his life savings in eToro, he earned minimum wage and lived month-to-month, and he had multiple debts, including some unsecured loans with high interest rates. It wrote to him on 21 December 2023 that the circumstances he'd declared meant he might have increased likelihood of experiencing detrimental outcomes, which - if they materialised - could be greater than if the circumstances weren't present. Because of that, and in line with 26.4(a) of eToro's terms and conditions, it had decided to close Mr V's account. eToro said it would send Mr V a copy of his account statement if he wanted one.

Mr V complained to eToro that it had closed positions when his account had a positive balance and when his positions were about to recover and make him a large profit. He also complained about the closure of his account which he said was unfair.

In response eToro thought it hadn't done anything wrong. In summary it said the following:

- eToro had sent Mr V an alert on 15 December 2023.
- To ensure accuracy and compliance eToro thoroughly reviewed all accounts that experienced margin calls. The review could cause a delay between sending an alert and closing positions.
- eToro could see Mr V had been using small deposits to maintain a positive balance for months.
- One reason his portfolio balance became negative was overnight fees. The five positions eToro had closed had incurred a total of more than USD 12,000 in fees.
- Schedule A: Sections 7.4-7.6 of eToro's UK Terms and Conditions document (page 33) said eToro could close his positions if he didn't meet margin requirements.
- eToro's decision to close Mr V's account based on its perception of him as vulnerable was based on statements he'd made which suggested low financial resilience. It wasn't related to the liquidation of his positions in December 2023.
- eToro had '*performed an in-depth technical analysis*' and confirmed it had been correct to liquidate Mr V's positions on the basis that he had negative unrealised equity (which was a term eToro also used for portfolio balance).

Mr V referred his complaint to this service. He said eToro manipulated what he said about his circumstances to justify closing his account. He said he hadn't meant to describe his financial position in such a negative light. And from information he'd provided when he opened his account eToro should've known he wasn't in vulnerable circumstances. He believed eToro wanted to close his account so it wouldn't have to compensate him for what it had done wrong and that it hadn't handled his complaint about the closure of his positions properly. He said his account didn't have a negative balance when eToro closed his positions, and eToro had led him to believe it wouldn't close his positions on the basis of negative balance, and so he'd decided not to deposit further money to protect his balance.

One of our investigators looked into Mr V's complaint. In summary he said the following:

- eToro acted within the terms and conditions of Mr V's account when it liquidated his positions because Mr V's portfolio had gone into negative balance.

- eToro gave him appropriate warning. And Mr V had deposited funds after receiving similar warnings in the past.

- eToro's decision to close Mr V's account was reasonable based on things he said to eToro which indicated he had low financial resilience.

Mr V didn't agree with the investigator's view. In summary he said the following:

- His account wasn't in negative balance at the time eToro closed his positions. He'd ended up with a positive balance of about £30.

- Due a surge in prices, if eToro hadn't closed his positions his account would've gone on to reach a positive balance of about £5,000.

- eToro had said his positions wouldn't be liquidated on the basis of negative balance.

- Mr V mentioned his financial situation to eToro merely to convey the gravity of his complaint. eToro used the information against him.

- Mr V did receive the margin alert, but he'd also received them in the past when his account had a positive balance. So he was led to believe the notifications were wrong and/or meaningless.

The investigator further said the following, in summary:

- The margin call which resulted in the liquidation of Mr V's assets was generated on 15 December 2023. On 17 and 18 December Mr V's account had a negative portfolio balance.

- If eToro didn't liquidate his positions on previous occasions when his account went into negative balance, that didn't mean it couldn't do so on this occasion.

- eToro was entitled to liquidate Mr V's positions under the terms and conditions that applied to margin requirements (7.4-7.6).

- Amongst the evidence provided the investigator had seen no evidence eToro told Mr V his positions wouldn't be liquidated if his account went negative. On the balance of probability he thought it more likely there was a misunderstanding than eToro told Mr V that. But in any case eToro's warning of 15 December 2023 should've reasonably indicated to him that liquidation was possible due to negative balance.

- The information Mr V disclosed about his financial circumstances would've resulted in the closure of his account on most trading platforms.

One of our investigators also considered whether eToro had acted appropriately in providing an account to Mr V in the first place. In summary he said eToro had acted in line with regulatory rules which required it to gather information from Mr V to decide whether trading CFDs was appropriate for him, and to warn him of the risks if he still wanted to go ahead with trading CFDs. The investigator said once eToro had warned him of the risks it was up to Mr V to decide whether to trade, knowing that trading might not be appropriate for him.

The investigator also said Mr V had maintained a negative cash balance for some time, but his overall portfolio balance could be positive even if his cash balance was negative. And he provided a copy of a record from eToro showing Mr V's portfolio balance had been negative from 10 December 2023 onwards.

Because no agreement could be reached, Mr V's complaint was passed to me to review afresh and make a decision.

I issued a provisional decision in which I said I was minded not to uphold the complaint but I would consider any further comments or submissions in response to my provisional decision before making a final decision. Neither Mr V nor eToro provided anything further.

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 V has complained about eToro closing his positions. Having looked at all the communication that's taken place around this I believe the reason eToro closed Mr V's positions was to protect his account from negative balance.

On several occasions eToro referred to its requirement for Mr V to maintain the required level of margin. And it cited the terms and conditions which allowed eToro to close positions on the basis that margin requirements have been breached. But eToro didn't say what the margin requirements were and how Mr V had breached them. So, as I've said, I think eToro closed Mr V's positions on the basis of negative balance protection.

eToro's terms and conditions said at 2.4:

> *'If you are a retail client, we will make sure that you do not lose more money than what you have deposited into your account when you trade CFDs, as required under any Applicable Law. This is called "negative balance protection".'*

eToro's website expanded on this as follows:

> *On rare occasions, very sudden price movements could cause your portfolio value to become negative when you trade CFDs.*
>
> *In these cases, eToro will make sure that you do not lose more money than the total sum you have invested in CFDs.*
>
> *We will review your portfolio value to check if it's still negative after all your trades have closed. If your account is eligible, we will absorb the loss and reset your portfolio value to zero. You will then be able to deposit more funds and continue investing as normal.*
>
> *NOTE: It is possible for your 'Cash Available' balance to be negative when all your funds are invested in open positions and overnight fees have been deducted, or you*

have incurred trading losses. Negative balance protection does not apply in these cases if your portfolio value remains positive.

Negative balance protection is required by the rules of the regulator, the Financial Conduct Authority (FCA). The FCA Handbook says at COBS 22.5.17R, '*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'*. FCA guidance at COBS 22.5.19G explains that '*For the purposes of COBS 22.5.17R, funds in a retail client's account are limited to the cash in the account and unrealised net profits from open positions. "Unrealised net profits from open positions" means the sum of unrealised gains and losses of all open positions recorded in the account*.'

Having looked at the statements provided by eToro I'm satisfied Mr V's portfolio balance was negative on 15 December 2023 when eToro sent Mr V an alert, and also at the beginning of 18 December 2023 which was the day eToro closed Mr V's positions. And so I think eToro acted in line with its own terms and conditions as well as FCA rules when it closed Mr V's positions. And I don't have any persuasive reason to say it wasn't fair and reasonable for eToro to follow its terms and conditions and the FCA rules and guidance in these particular circumstances.

Mr V has pointed out that he ended up with a small positive balance after his positions were closed. He said that showed his account wasn't in negative balance and so eToro shouldn't have closed the positions. But I'm satisfied on the balance of probabilities that it's more likely than not that Mr V's account was in negative balance when eToro decided to liquidate his positions, and volatility in the market caused the balance to change slightly by the time eToro had carried out the liquidation. I say that having considered account statements from eToro which indicate negative unrealised equity (which on eToro's statements refers to portfolio balance) at the opening of 18 December 2023. I've also considered the overnight fees Mr V was paying, which eToro said contributed to Mr V's portfolio balance becoming negative, and as well as the fact the positive balance Mr V ended up with was small and so the final portfolio balance was close to zero. I've also taken into account the fact eToro told Mr V there might be a delay in liquidating positions after a negative balance was identified because eToro carried out a thorough manual review before liquidating in these circumstances. And eToro told Mr V that – once a customer had negative equity – the exact date of liquidation was irrelevant because eToro would absorb whatever loss occurred that was beyond the funds in the account.

Mr V said he had a negative balance for some time during which time eToro took no action. He also said eToro had provided an account statement which wrongly showed his account had been in negative portfolio balance since 9 September 2023. I've looked at Mr V's account statement from eToro and found that 9 September 2023 was the date Mr V's realised equity became negative. And the figures Mr V quoted were his realised equity. Realised equity isn't the same as portfolio balance (which eToro also referred to as unrealised equity). And so I don't agree eToro wrongly showed Mr V had a negative portfolio balance since September 2023. And I don't think the figures Mr V quoted showed that eToro failed to act on a negative portfolio balance from September 2023.

As I've said, records from eToro show Mr V's portfolio balance was negative from 10 December 2023. I think on that basis eToro could've closed Mr V's positions sooner than it did. But I don't see that not doing so caused Mr V to lose out. He didn't make any deposits in the interim and so he didn't lose any additional capital. And price movements suggest that had eToro liquidated Mr V's positions sooner he would most likely have ended up with a negative balance upon liquidation which would've been absorbed by eToro.

Although Mr V has said his positions would've recovered in value if eToro hadn't closed them, that's not something that could've been reliably foreseen. Mr V is able to say with hindsight what would’ve happened to his positions at particular times if they hadn’t been closed, but at the time of closure it was also possible Mr V’s negative account balance could’ve become more negative which would’ve caused him increasing debt. In any case, eToro wasn’t obligated to allow Mr V’s balance to be negative in the interim – it was in fact obligated to protect his account from negative balance.

I don’t have enough evidence to say eToro led Mr V to believe his positions wouldn’t be closed if his account balance became negative. Information in eToro’s terms and conditions and on its website say eToro will act to protect accounts from negative balance. As I’ve said, that’s a requirement of the FCA. And the alerts Mr V received warned him his positions could be liquidated. In the absence of anything to show eToro contradicted this, I must conclude on the balance of probabilities that a misunderstanding occurred if Mr V thought eToro told him it wouldn’t liquidate his positions in the case of a negative portfolio balance.

Regarding the closure of Mr V’s account, eToro’s conditions said at 26.4 that it could close Mr V’s account if it decided to stop providing services to him. The terms didn’t require eToro to have a reason for stopping providing services, but I’ve considered whether it had a fair and reasonable basis for making that decision. eToro’s ‘*Vulnerable Customers*’ policy said eToro might decide to ‘*exit a relationship*’ if allowing a customer to use its services would be unfair, based on the level of detriment the consumer was likely to experience. eToro has explained why it considered Mr V was vulnerable to increased detriment based on the circumstances he described. And I’m satisfied eToro acted reasonably in concluding Mr V was vulnerable to detriment due to financial resilience, based on the difficult financial circumstances he described. Although Mr V later said he didn’t mean to convey that he was vulnerable, eToro was entitled to rely on what Mr V said about his circumstances. So it wasn’t unfair or unreasonable for eToro to close Mr V’s account when it did.

I also don’t accept eToro closed Mr V’s account as a response to his complaint, or to avoid having to take responsibility for closing his positions. eToro was entitled to close Mr V’s positions. So it didn’t need to exit him as a customer to avoid any liability for having done that. In any case, as a former customer Mr V remained entitled to complain to eToro and to this service about actions eToro took while his account was still open. And finally, eToro’s stated rationale for closing Mr V’s account was reasonable. So, again, I don’t find it likely that eToro closed the account to escape liability for closing Mr V’s positions.

In relation to whether eToro acted fairly and reasonably when opening Mr V’s account, I agree with our investigator that eToro fairly and reasonably acted in line with regulatory requirements when it assessed the appropriateness of a trading account for Mr V. In particular, it sought and considered information about Mr V in line with COBS 10.2R in the regulator’s handbook. And it warned Mr V of the risks of trading CFDs in line with COBS 10.3R. I’ve looked at the information Mr V provided at the time. And, in the particular circumstances of this complaint, I’m not persuaded his circumstances when he opened his account were such that eToro couldn’t fairly and reasonably permit him to use its services, having regard to the circumstances. Although eToro later determined Mr V 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 V opened his account.

Overall, I have sympathy for Mr V’s position. But I hope he can be reassured that eToro’s decision to close his positions was fair. And I can’t say eToro has treated him unfairly or unreasonably in the particular circumstances of this complaint. So I’m not asking eToro to do anything.

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 V to accept or reject my decision before 10 April 2025.

Lucinda Puls
Ombudsman