

The complaint

Mr P complains that due to a system outage he was unable to extend a stop loss for a contracts for difference (CFD) position on his eToro (UK) Ltd trading account. As a result, the position executed, and he incurred a loss of around \$1,700, which he feels would've been avoided if the outage hadn't occurred.

What happened

In August 2022 eToro experienced a technical issue on its platform that prevented some customers from carrying out certain trading actions on their accounts, including editing stop losses.

Mr P complained to eToro, providing screenshots that showed that he had been unable to edit the stop loss and that he had contacted eToro's customer service team during the outage for help with the issue.

eToro acknowledged that there had been a technical issue. It explained that during the period in question the stop loss on the position had been triggered but due to the technical issue it had closed later, at a worse price. It said that to put matter right it had therefore refunded Mr P's account based on the difference between the actual close price of the trade and the stop loss price that it should've close at. It had also credited him as a gesture of goodwill a small sum to reflect a spread not being charged.

Mr P didn't accept eToro's response. He was of the view that as it had been responsible for the outage it should therefore pay him the amount of his loss on the position. He referred the complaint to this service.

An investigator considered the matter but didn't think the complaint should be upheld. She said, in brief:

- Mr P's screenshots showed he'd been unable to extend his stop loss on the position in question, but they didn't show what he had intended to adjust the stop loss to.
- eToro had acknowledged the technical issue and adjusted Mr P's account to reflect the position having been closed at the stop loss price Mr P had originally set. That is what she would've expected eToro to do in the circumstances.
- Without evidence showing exactly what Mr P had intended to do she couldn't fairly say that eToro should further compensate him as she didn't know what he would otherwise have done, or whether it would've put him in a better or worse position.
- eToro's terms and conditions confirm that if there were platform issues it wasn't liable for any losses and Mr P would've agreed to the terms when he opened his account.
- eToro had acted in accordance with its terms by putting Mr P in the position he would've been in but for the technical issues experienced.

Mr P didn't accept the investigator's opinion. He maintained that as eToro was responsible for the issue it should refund him, as he firmly believed that he wouldn't have incurred the loss on the position but for the technical issue.

As no agreement could be reached, the matter was referred to me to review.

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've come to the same conclusion as the investigator and for broadly the same reasons. As such, there's not a great deal I can add to what's already been said.

I do understand Mr P's frustration with the technical issue. I note the evidence he's provided that confirms he was unable to edit the stop loss and shows his subsequent attempts to get the matter put right.

There's no dispute that eToro experienced a technical issue on the day in question, meaning various types of orders and adjustments couldn't be made. It's accepted that was the case. The issue in dispute is how the impact of the issue on Mr P should be addressed.

As noted, eToro's resolution was to put Mr P in the position he'd have been in had the issue not occurred and the stop loss been at the level at which it was originally set. I can understand why Mr P feels that wouldn't actually have been the position, as he would've edited the stop loss, as he feels his evidence shows. The problem is determining what the situation would ultimately have been if he *had* edited the stop loss. The evidence supports his intention to edit it, but it doesn't show what he intended to change it to, in terms of a new level and at precisely what point that would've happened.

This being so, I don't think an alternative resolution to that which has already suggested by eToro can be fairly determined. Had the technical issue not occurred it is possible Mr P would've ended up in a worse position. And it can't be said with any certainty that he would've not incurred any loss at all on the position, as his proposed resolution suggests.

As I've said, I do appreciate that this type of situation, where a technical issue impacts the functionality of a trading service, is very frustrating. But it's not an uncommon one, across all trading platforms of this type. And, as is the industry norm, eToro's terms, which Mr P agreed to at the outset, take account of this and explain that its service is not guaranteed.

My final decision

For the reasons given, while I recognise Mr P will be very disappointed, my final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 21 December 2023.

James Harris
Ombudsman