

## **The complaint**

Mr C complains that eToro (UK) Ltd hasn't refunded transactions from his trading account which he says he didn't make or authorise.

## **What happened**

Mr C says that he had two women living with him for several months and that he was in a relationship with one of them. It's his contention that on 30 November 2021 these women drugged him and proceeded to carry out unauthorised transactions across several of his accounts.

The disputed transactions include transfers between bank accounts and credit cards in his name, with funds then being moved into his eToro trading account. From there, the funds were moved to a money account which was connected to the trading account but held with a different legal entity. Mr C says he didn't set up that money account (opened on 19 November 2021), though it was in his name and applied for through his trading account. Finally, the money was moved from the money account to a third party's account held elsewhere.

This complaint will only address the actions of eToro (UK) Ltd and the trading account held with it. None of the other accounts, including the money account, will form part of this assessment, though I may at times refer to activity on those accounts.

Mr C first became aware something was wrong when he found an email from eToro which stated there'd been a change of email address on his account. The email said to contact eToro if this change was unauthorised and to use a link provided within the email, which would generate a customer service ticket.

Mr C replied to the email at 7:44am, rather than using the link provided. As such eToro didn't pick up on his concerns until Mr C contacted it again later that afternoon, after 2:00pm, through a friend's account. It then stopped any further activity.

Mr C asked eToro to return his money because he hadn't authorised any of the activity. But it declined to do so. It said everything had been done through Mr C's registered device and using his login details. As he was unhappy with eToro's response, Mr C brought his complaint to our service.

Mr C has also reported these events to the police. My understanding is that there have been no arrests to date.

One of our investigators considered what had happened and said eToro had acted fairly and reasonably in the circumstances. In summary, he said there was nothing to suggest to eToro that anyone other than Mr C was issuing the instructions to trade and make payments on his account. His finding was then that eToro needn't refund the disputed transactions.

Mr C disagreed and so the complaint has been passed to me for a final 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.

It's not possible for me to determine exactly what happened here. I must use the evidence and information that is available to form my opinion on what I think – on the balance of probabilities – is more likely than not to have happened.

I know Mr C's position is that he didn't agree to any of the disputed activity on his eToro trading account, or any of the other accounts that have also been affected. But I'm not persuaded the evidence supports what he's said, and so I'm not upholding his complaint.

The evidence shows it was Mr C's registered device that was used to carry out all the disputed activity. That includes all the transactions on the trading account that is the subject of this complaint, but also all the other accounts that aren't.

I've thought about just how much someone would have needed in order to carry out the activity Mr C has disputed. This would include, but is not necessarily limited to:

- unfettered access to Mr C's mobile phone, from which the disputed activity was conducted;
- knowledge of his phone passcode;
- the ability to add an additional FaceID to his phone;
- access to at least two banking apps;
- access to his eToro trading app;
- access to two different bank cards, each used to fund the trading account;
- access to Mr C's emails.

Mr C has said that because the two women he suspects were living with him they could have obtained this level of information and access over time. I can't discount that as a possibility. But the more the list of what was required grows, the more remote it becomes as what's more likely than not to have happened.

There would have to have been a few other things that went unnoticed by Mr C. He would have to have missed the fact a money account, connected to his trading account, was set up in his name. He would have received correspondence about that account, and a debit card was sent to his home address. But none of that was noticed. Again, this isn't impossible, but when added to the wider circumstances the likelihood of all this occurring decreases.

The money account was set up on 19 November 2021 and was ready to use from that date. There was no need to wait for anyone to carry out transactions on the account as it could be used to make faster payments. So it seems strange that someone with the premeditated idea to steal from Mr C wouldn't go ahead as soon as possible. After all, the longer the money account was open, the more likely it would be that Mr C would have discovered it and questioned it.

This isn't the only question that arises when looking at the timing of different elements of the dispute.

The first disputed transaction from Mr C's trading account to the money account in his name was at 9:44am. Prior to that there was a cryptocurrency trade that appears to be very much in line with Mr C's normal account activity. And it's difficult to see why someone intent on taking Mr C's money would create new trades just before starting to clear his account. So it seems more likely than not it was Mr C that initiated those trades. That was just 25 minutes before the first disputed payment and so leaves little time for one of Mr C's suspects to obtain his phone without his knowledge and use it for at least another eight hours (there's a payment out of the money account at 5:59am).

Mr C has said he was drugged, potentially as an explanation as to how someone was able to carry out this activity. I've seen no evidence to substantiate that. And I note that detail wasn't included in Mr C's statement to the police, where it seems to be an important part of his

testimony. It's worth me saying here that the existence of the police statement, and even the messages from the police about pursuing suspects, doesn't alter the outcome of this complaint.

There is a further transaction out of Mr C's trading account at 9:34am, a transfer of £4,719.46 into the money account. But Mr C had emailed eToro about not authorising the change of email address at 7:44am. That must mean that, even if he wasn't fully aware of the disputed activity, he must have at least regained access to his device. But, as I've said, transactions take place on that same device. That means the device used to carry out the transaction was in Mr C's possession at the time. It's then difficult to see how anyone else could have carried it out, or to have done so without Mr C's knowledge.

Even if I'm wrong about all I've said here, and it is the case that a nefarious third-party carried out all the disputed activity – however improbable and remote that seems in the face of the evidence – I still wouldn't be upholding the complaint. I say as much because I can see why the transactions all appeared to be properly authorised by Mr C, for many of the reasons I've already explained. Everything was done on his registered device, with no signs of any tampering, new devices being added, or incorrect attempts at login details.

Mr C's device had been verified and had two-factor authentication in place. That means that his phone would occasionally be checked by eToro, with the requirement to supply a verification code, to keep access live. It isn't the case that such a code would be generated for every transaction. Instead, as Mr C opted to have his device remembered, a code would be generated after a period of time. All of the transactions took place within a session (lasting several days) that had already been verified. It's also worth noting that any code that might have otherwise been generated would have been sent to Mr C's phone. So whoever was in possession of the phone would have had access to the code.

It's also the case that all the transactions out of the trading account were going to a money account in Mr C's name. This would further add an appearance of legitimacy to the transactions. So I can see why eToro would have believed everything was being properly authorised and didn't have any concerns. I appreciate the money account was quite new. But it had been open and operational for eleven days by the time the disputed transactions start, with correspondence and a debit card having been sent. Not to mention that the money account was applied for through Mr C's eToro trading account. As a reminder, I'm not considering the actions of the firm which set up and operates the money account as it is a separate legal entity. But there is a lot here that points to the transactions being properly authorised and so I find eToro's position on the matter is fair and reasonable.

I know Mr C attempted to contact eToro at 7:44am and that there was further disputed activity after this time. I'm satisfied eToro hasn't made an error in not restricting his account at the point he sent the email. It's clear Mr C replied to eToro's message, instead of following the steps it said he should take. He might have done so in a panic, which could be understandable in the circumstances. The impact was that eToro essentially didn't receive the notification from Mr C and so had no idea anything was wrong. I can't say it has been at fault here.

### **My final decision**

I don't uphold this complaint against eToro (UK) Ltd.

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

Ben Murray  
**Ombudsman**