

The complaint

Mr H complains that eToro Money UK Ltd won't refund the money he lost when he was the victim of a scam.

What happened

In October 2023, Mr H received a number of messages on his phone from someone claiming to be one of his children. The messages said they had dropped their phone so had got a new number while it was being repaired. And they then asked if Mr H could pay an invoice for them.

As Mr H believed the messages were coming from his daughter, he agreed to pay the invoice, and a second invoice the messages then asked him to pay as well. I've set out the payments Mr H made from his eToro account below:

Date	Amount
2 October 2023	£2,450.10
2 October 2023	£1,810

Unfortunately, we now know the messages weren't coming from his daughter but were being sent by a scammer. The scam was uncovered when the messages kept asking for more payments and Mr H realised something was wrong. He then reported the payments he had made to eToro as a scam and asked it to refund the money he had lost.

eToro investigated but said the payments were authorised and it hadn't made any technical errors, so it didn't agree to refund the money Mr H had lost. It also said it contacted the bank the payments were sent to, but couldn't recover any of the money. Mr H wasn't satisfied with eToro's response, so referred a complaint to our service.

One of our investigators looked at the complaint. They didn't think the payments Mr H had made were suspicious enough that eToro should have been expected to intervene before allowing them to go through. And they didn't think anything we would have expected eToro to have done would have been able to recover the money. So they didn't think eToro should have to refund the money Mr H had lost. Mr H disagreed with our investigator, so the complaint has been passed to me.

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 don't think it would be fair to require eToro to refund the money Mr H lost. I'll explain why below.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards;

codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

In broad terms, the starting position in law is that an account provider is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the customer's account. And a customer will then be responsible for those transactions that they have authorised.

It's not in dispute here that Mr H authorised the payments. He accepts he made them himself, as he thought he was sending money to his daughter. So while I recognise that he didn't intend the money to go to scammers, the starting position in law is that eToro was obliged to follow his instructions and process the payments. So Mr H isn't automatically entitled to a refund.

The regulatory landscape, along with good industry practice, also sets out a requirement for account providers to protect their customers from fraud and financial harm. And this includes monitoring accounts to look out for activity that might suggest a customer was at risk of financial harm, intervening in unusual or out of character transactions and trying to prevent customers falling victims to scams. So I've also thought about whether eToro did enough to try to keep Mr H's account safe.

But the payments Mr H made here weren't for what I'd consider to be particularly large amounts, or for amounts where I'd expect eToro to identify them as suspicious based on their size alone. The payments don't appear to have used up the full available balance in Mr H's account, or left the balance of his account at a particularly unusual level. The payments weren't immediately preceded by any significant credits into the account. And there were only two payments, of differing amounts, so I don't think the payments formed a particularly suspicious pattern.

I appreciate Mr H has said the account was fairly dormant before these scam payments were made. But there were other payments made out of the account in the weeks before the scam payments. And even if it wasn't used every day, the account had been in fairly regular use – with payments made every few weeks or so since it was opened around five months earlier. So I don't think the two scam payments being made on the same day was, by itself, enough to be suspicious.

Mr H has also said he deliberately mis-spelled the recipient's name on the payments, as he thought this would add some security for him. But eToro wasn't required to check that the name Mr H entered matched the name on the account the payments were going to at the time these payments were made. So I wouldn't have expected this incorrectly spelt name to have caused eToro any significant concern here.

And so I wouldn't have expected eToro to identify that Mr H could be at risk financial harm as a result of these payments. And I don't think it's unreasonable that it didn't intervene to ask any further questions before allowing them to go through, and just followed his instructions and made the payments.

I've also considered whether eToro did enough to try to recover the money Mr H lost. We expect businesses to take reasonable steps to try to recover any money their customers have lost, once they have been notified of a scam. But the money Mr H sent was removed from the account it was sent to before Mr H told eToro about the scam. And so I don't think anything we would reasonably expect eToro to have done could have recovered the money Mr H lost.

Mr H has said he doesn't think eToro did enough to stop the fraud, and could've done more as he was still in contact with the scammer when he reported the payments. But it isn't the responsibility of account providers to catch the scammers – this is a matter for the police. And, as I explained above, I don't think anything I would reasonably have expected eToro to have done would have recovered the money Mr H lost here.

I sympathise with the position Mr H has found himself in. He has been the victim of a cruel scam and I appreciate that it was difficult for him to contact his daughter at the time, he took steps he thought would help protect him, and that my decision will come as a disappointment to him. But, for the reasons I've set out above, I don't think eToro has acted unreasonably or that anything I would reasonably have expected it to do would have prevented this scam or recovered Mr H's money. So I don't think it would be fair to require eToro to refund the money Mr H has lost.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 24 May 2024.

Alan Millward
Ombudsman