

The complaint

Mr T complains that eToro Money UK Ltd, trading as eToro Money, was unsuccessful in its pursuit of his chargeback claim about some NFTs.

What happened

Between January and August 2022 Mr T bought 85 digital non-fungible tokens (“NFTs”) and paid for them with his eToro Money debit card. The NFTs were accessories for an online computer game which had not yet been released. The release date kept being pushed back.

Over time, the game company (“the merchant”) made a number of public announcements updating consumers about the status of the game and the NFTs. Mr T says that these included significant changes to the way the NFTs would operate in the game, in ways that would make them less useful and less valuable. He complained to the merchant, but it refused to refund his purchases (except for the four most recent purchases, as those items had not yet been delivered). Mr T eventually concluded that the merchant was not a serious game developer but was running a scam. In December 2022 he asked eToro Money to raise a chargeback dispute for 28 unrefunded purchases, worth a total of over £18,000.¹

eToro Money raised a chargeback dispute, but it was unsuccessful. eToro Money told Mr T that he had raised the dispute too late, as under Visa’s rules a chargeback had to be raised within 120 days of a transaction, and all of Mr T’s purchases had been made more than 120 days earlier. When Mr T insisted that he should get his money back, eToro Money still raised two further chargeback disputes, which also failed for the same reason. Finally, eToro Money raised a fourth claim on what it described as a good faith basis, believing that it was out of time but in the hope that the merchant might still agree to refund at least some of the purchases. However, the merchant did not respond. eToro Money then told Mr T that it had taken the matter as far as it could.

Mr T then brought this complaint to our service. One of our investigators upheld it. She pointed out that the merchant had told Mr T in writing that he should expect to wait five to seven weeks for his NFTs to be delivered. So she thought that the 120 day time limit should not be counted from the date of each purchase, but from seven weeks after the purchase, being the latest delivery date. That meant that six purchases which Mr T had made in July and August 2022 would still have been in time under the chargeback scheme rules. She concluded that Mr T had missed the opportunity to have those payments refunded, and that this was eToro Money’s fault. She recommended that eToro Money refund those purchases, with interest on each refund at 8% a year from the date of each transaction to the date of settlement.

Mr T accepted that decision. eToro Money did not. It insisted that the time limit was 120 days from the date of each transaction, and that all of the purchases had been out of time. It had still done its best to get Mr T’s money back, by raising four claims despite knowing that they

¹ At the time he asked for a refund of 89 NFTs, but he has since realised that four of them had not been purchased with his eToro Money debit card. Altogether, Mr T made 34 purchases from the merchant with that card, of which he asked for 28 to be included in his chargeback dispute.

were time-barred. It added that NFTs were cryptoassets, which are not regulated by the FCA, and so did not fall within the jurisdiction of the Financial Ombudsman Service.

The investigator pointed out that although Mr T had been purchasing cryptoassets, his complaint was about a chargeback dispute, which was within our service's jurisdiction. She re-iterated that eToro Money had prejudiced Mr T's chargeback claims by failing to provide Visa with the evidence showing that the expected delivery date for the NFTs had been seven weeks after each purchase, so that six purchases had been wrongly deemed to be out of time. eToro Money asked for an ombudsman to review this case.

I wrote a provisional decision which read as follows. (I have made two small edits to clarify the correct number of NFTs purchased by Mr T.)

What I've provisionally 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 am currently minded to uphold it – not for the six most recent purchases, but for 25 of them. I will explain why.

I have already set out in detail in a separate decision why the Financial Ombudsman Service has jurisdiction to consider this complaint. Very briefly, it doesn't matter what Mr T was buying with his debit card; his complaint is about how eToro Money dealt with his chargeback dispute, which is a matter arising out of his use of the card, which is a specified activity.

The six payments which our investigator said were not out of time under the chargeback scheme rules were two payments made on 5 July 2022, and four in August 2022. But I can see that the four August payments were all refunded by the merchant (independently of the chargeback dispute), as they had not been delivered. They were not purchases of NFTs, and they were not included among the 28 payments which Mr T asked to be included in his chargeback claim.

That leaves 28 earlier payments to consider (including the two in July). Of those, three of them were made in January and February 2022, and Mr T now accepts that the eight NFTs he bought then were delivered too long ago for him to have raised a chargeback about them in December 2022.

So I now have to consider 25 payments which Mr T made between 16 March and 5 July 2022 (inclusive). These relate to 77 NFTs.

I think that the chargeback reason most relevant to Mr T's claim was Misrepresentation. Visa's chargeback rules say (at page 737 of the April 2022 version) that the time limit for raising such a claim is any of the following:

- 120 days from the date of the transaction, or
- 120 days from the date the merchandise was received, or
- 60 days from when the cardholder told the card issuer (eToro Money) about the dispute, if the cardholder negotiated with the merchant about the matter within 120 days of the transaction and evidence of that negotiation is provided with the claim.

There is a longstop of 540 days from the date of the transaction.

I therefore do not agree that the 120 days begins with the latest expected delivery date of seven weeks after the purchase date. Rather, the correct deadline is 120 days from the dates the NFTs were received.

Mr T has provided evidence that the 77 NFTs were all received on 6 September 2022 or later. I have verified that these NFTs correspond to the purchases he made, by comparing them with Mr T's receipts and also with a spreadsheet provided by eToro Money showing each of the transactions between Mr T and the merchant.

Counting 120 days from 6 September 2022, Mr T had until 4 January 2023 to raise a chargeback, which he did on 14 December 2022. So I think that these 25 transactions were all raised in time.

Mr T was therefore deprived of the opportunity to have his chargeback dispute considered on its merits, because the wrong time limit was applied to his claim.

I do not think that Mr T's claim was spurious or speculative; it appears to have been supported by evidence and that it had a reasonable prospect of success. I won't speculate about what the outcome would have been if the dispute had been decided on its merits, and I don't need to; I think that the his claim was not properly pursued by eToro Money, and so on that basis I am minded to uphold this complaint.

Putting things right

I will order eToro Money to refund the relevant purchases, with interest.

I would normally also award further compensation to a complainant for their inconvenience. But in this case I won't, in recognition of the fact eToro Money did pursue the chargeback dispute four times. Whatever its shortcomings in this instance, it was not for indifference or apathy that eToro Money failed to obtain Mr T's refunds.

The 25 payments to be refunded are listed in the attached spreadsheet. (These were the 25 payments highlighted in red between rows 157 and 293 of eToro Money's spreadsheet.)

My provisional decision

So my provisional decision is that I intend to uphold this complaint. Subject to any further representations I receive from the parties ... I intend to order eToro Money UK Ltd, trading as eToro Money, to:

- Refund the 25 payments in the attached list to Mr T, and
- Pay interest on each refund at the rate of 8% a year, from 13 January 2023 to the date of settlement.

Responses to my provisional decision

Mr T accepted my provisional decision. eToro Money did not reply to it by the deadline (which was five weeks after the provisional decision), and did not ask for more time to reply. So, subject to what I've written in the next section, there is no reason for me to depart from my provisional findings, and I confirm them here.

My findings

Before I conclude, there are three matters I need to address which I had overlooked earlier.

Firstly, I cited the wrong *FCA Handbook* rule in my jurisdiction decision. eToro Money is an authorised electronic money institution, so instead of DISP 2.3.1, I should have referred to DISP 2.3.2B, which makes the issuance of electronic money a specified activity (that is, an activity within the jurisdiction of the Financial Ombudsman Service). I think that handling a chargeback dispute is ancillary to that activity, and so Mr T's complaint is still within our service's jurisdiction, irrespective of what he was buying with his debit card. That correction does not affect the outcome of this complaint, or the reasons for making my findings as described above.

Secondly, I have made some corrections to the Background section and the next following section of my decision to clarify the correct number of NFTs involved in this case. Mr T bought 85 NFTs with his eToro Money card (in 28 transactions), of which eight NFTs were delivered too long ago to qualify for chargeback, leaving 77 NFTs which were paid for in the 25 transactions I have decided could have been charged back.

Thirdly, I should have said earlier that in cases of this kind, a cardholder would normally be expected to return or attempt to return the goods he had purchased. It was impossible for Mr T to do that unilaterally, but I think he tried to get the merchant to accept them back when he asked it for a refund, so I think that chargeback condition was satisfied. For the same reason, I have reconsidered whether the refunds and interest I had proposed to award are fair compensation, since Mr T still has the NFTs. But I am satisfied that he derived very limited use from them, due to the changes I mentioned above. And he has told me, and I accept, that the 77 NFTs have greatly diminished in value, to as little as \$10 each. So I think that the fairest way to take this into account is to reduce the total compensation by \$770. I have proposed this to Mr T and he has not objected.

My final decision

So my decision is that I uphold this complaint. I order eToro Money UK Ltd, trading as eToro Money, to:

- Refund the 25 payments in the attached list to Mr T,
- Pay interest on each refund at the rate of 8% a year, from 13 January 2023 to the date of settlement, and
- Deduct \$770 from the total compensation.

If eToro Money considers that it is required by HMRC to withhold income tax from that interest, it must tell Mr T how much it has taken off, and give him a tax deduction certificate if he asks for one, so he can reclaim the tax from HMRC if appropriate. Mr T should refer back to eToro Money if he is unsure of the approach it has taken, and both parties should contact HMRC if they want to know more about the tax treatment of this portion of the compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 13 February 2024.

Richard Wood
Ombudsman