

The complaint

Mr N complains that e-Toro (UK) Ltd failed to inform him that it didn't operate in Malaysia and would use third party bank transfers when making payment to him and that it provided the wrong information about two payments which led to him notifying his bank of the payments which in turn resulted in an investigation into his account and this being ceased and him being under scrutiny for money laundering.

What happened

Mr N opened an execution only account with eToro through which he made trades over the course of the following couple of years. He made deposits into his account and took withdrawals from it over that period without any issue. On 16 March 2023 he made a withdrawal of \$2,520 and was informed this would be around MYR 11,013.18 - depending on any exchange rate changes that took place before payment.

On 17 March 2023 he received one payment of MYR8,715 and another of MYR2,245, so a total of MYR10,960, into his bank account. The payments were from two businesses – Arrow Cliff Sketch and Excellent Bike Repair Service. Mr N queried these two payments with eToro through its online chat service, wanting to know if they related to the withdrawal he had made.

Mr N was informed by eToro that the payments weren't made by it and that his withdrawal had been processed that day and could take up to eight business days to show. During the chat he received an email from e-Toro confirming his withdrawal had been processed and that the amount was MYR10,960 - matching the total received from the two third party businesses. He therefore queried a second time on the same online chat whether the two payments he had received related to his withdrawal from his eToro account and was again told that they weren't.

Mr N stated he was going to report the transactions to his bank as his account had previously been barred for random transactions and he duly notified his bank. This led to his bank looking into his account in more detail and identifying that he had received other payments that were from random businesses.

There were various communications between Mr N and eToro following this with him seeking evidence that the payments in question had been made by eToro but whilst it confirmed that they had been and provided the evidence it had available to show it had made payments to Mr N matching the amounts received in his bank account these didn't identify the third party businesses that had actually made the payments.

Mr N informed eToro that his bank had pointed out that transaction proof it had provided didn't show funds transferred into his bank by it or payments from a UK bank account into his account and on 24 April 2023 informed it that his bank accounts had been seized by Bank Negara, the Malaysian central bank.

eToro had previously identified during the course of its correspondence with him that he had complained and it provided its final response to his complaint the same day, 24 April 2023,

stating that it didn't uphold his complaint. Mr N referred his complaint to our service and one of our investigators considered it. He thought that eToro should pay Mr N £750 for the distress and inconvenience caused by him being wrongly informed that the payments received from third party bank accounts on 17 March 2023 weren't from it. However, the investigator didn't think eToro should pay any redress resulting from his bank accounts being seized as he didn't think this was reasonably foreseeable.

Mr N didn't agree with the investigator and so the matter was referred to me. I issued a provisional decision the findings from which are set out below.

"I must determine a complaint by reference to what, in my opinion, is fair, and reasonable in all the circumstances of the case. In making that determination I must take into account but am not bound by; relevant law and regulations; regulators' rules, guidance, and standards; codes of practice; and (where appropriate) what I consider to have been good industry practise at the relevant time.

Before I make my findings, I want to acknowledge the impact on Mr N of what transpired following him notifying his bank about the two payments he was wrongly told weren't from eToro. Not only has his bank account being ceased with him being investigated for money laundering - with the possible consequences of that – but from what he has said this has also led to him losing his employment. In the circumstances his strength of feeling about what happened is very understandable but I have to be impartial in my decision and my sympathy for the position he is now in can have no bearing on my findings.

There is no dispute that Mr N was provided with the wrong information about the two payments he received on 17 March 2023. The record of the online chat clearly shows that he was wrongly told that the two payments showing as being paid from third party businesses weren't from eToro.

From the information that has been provided the reason that payments due from eToro were received from third party businesses and not direct from eToro is because it doesn't operate in Malaysia and so uses a payment services provider (PSP) – in this case Zotopay – to make payments to clients in Malaysia.

Mr N argues that he should have been made aware that eToro didn't operate in Malaysia when he opened his account. However, its terms and conditions state that it may not provide all its services to customers domiciled in certain countries due to restrictions under applicable law or its own internal policies. The terms further state that for further information customers should contact it.

I don't think a general warning with the option of clarifying the position in respect of any particular country by contacting eToro was unreasonable. I am not persuaded that eToro needed to specifically inform Mr N that it didn't operate in Malaysia and I think it was for him to check this with eToro.

Mr N also argues that he should have been made aware that when making withdrawals from his eToro account payment would be made through a PSP and not directly by eToro. I acknowledge that eToro's terms don't make reference to this but I am not persuaded it needed to specifically refer to this given the general warning I have referred to above about not providing all its services in certain countries.

Moreover, even if Mr N had been made aware that payments would be through a PSP I am not satisfied this would have changed what happened on 17 March 2023. I have come to that conclusion for a couple of reasons.

Firstly, even if Mr N knew that payment could be received through a PSP this wouldn't of itself have made him aware that payments due from eToro would be received from third party businesses that it had no connection with. In other words knowing that a PSP was involved wouldn't necessarily have made Mr N aware of how the payment would be made.

Secondly, and in any event, I am of the view that Mr N was aware how payments were being made before he raised his query on 17 March 2023. He had been operating his account and making withdrawals from it for a reasonable time by that date and I think it is more likely than not he would have been aware that eToro wasn't identified in relation to payments received in his account and instead such payments were being received from third party businesses.

If he was unhappy with this then he could have raised this with eToro sooner but he didn't. I am reinforced in my view that Mr N was aware of how he was receiving payments by what he has stated in correspondence after 17 March 2023. In an email dated 6 April 2023 he stated:

"Since my account is under scrutiny for AML due to these unknown transactions and I am unable to justify those I was under the impression that these transactions are from etoro as amount of my withdrawal matching amount transferred into my account."

The reference to being under the impression that the payments he had received were from eToro when it wasn't named as the payer I think shows he was already aware that payments he was receiving were from third party businesses whenever he made a withdrawal from his eToro account.

And on 20 April 2023 he stated:

"On March 16, 2023 I was expecting a refund of \$2,520 for withdrawal id (anonymised). However, I received two different amounts of \$2,000 and \$515 from two random business accounts: arrow cliff sketch and excellent bike repair service. Since I was not expecting a split bank transfer (I was not informed that withdrawals can be split by EToro without user knowledge, I contacted the EToro hotline and chatted with an agent named (anonymised) and shared my concern."

I think this shows that it wasn't the receipt of payments from third party businesses of itself that led him to raise a query with eToro on 17 March 2023 but that he had received two payments neither of which matched the withdrawal amount. Put another way, if he had received one payment from a third party business that matched what he expected to receive from eToro rather than two payments I think it is unlikely he would have queried the payment as this is what had happened previously.

I think this is why he has raised an issue about not being informed payments could be split – because it was this that led to him querying the payments. Mr N has said that he wasn't made aware that payments to him could be split. I acknowledge that there wasn't anything to suggest a withdrawal payment would be split but I am not persuaded that eToro needed to specify this or that in not doing so it did anything wrong.

Turning to the main issue in this complaint, namely Mr N being misinformed about the two payments he queried on 17 March 2023, as I have already said eToro was at fault and as such I am upholding this complaint because it failed to provide clear, fair, and not misleading information to Mr N as it was required to do.

However, it doesn't then follow that eToro is responsible for everything that then transpired following this. I accept it was aware that Mr N was going to notify his bank about the two payments, as he made clear his intentions in that regard during the online chat. However,

eToro couldn't, in my view, reasonably have foreseen that the consequence of it providing the wrong information about the two payments would be that Mr N's bank would question other payments he had received into his account over the past couple of years or that ultimately this would lead to his account being ceased and Mr N being under investigation for money laundering.

eToro was subsequently made aware that N's bank was looking into previous payments it had made to him through third party businesses as he informed it of what was happening with his bank and asked it to provide evidence to show the payments made into his bank account were from eToro. I have therefore considered whether it did anything wrong following this.

Having considered the evidence I am satisfied that eToro did try and provide supporting evidence for the payments made to Mr N to assist him with the ongoing enquiries by his bank. It confirmed in writing that the payments the subject of enquiry were made by it and provided various documents to try and support this, such as a transaction statement and SWIFT confirmations.

It seems to me that eToro provided the evidence that it had available however, this didn't show any link between eToro and the third party businesses that made payments into his account. This is because it was the PSP that used the third party businesses that made payments into Mr N's accounts and as such eToro didn't have direct evidence linking it to those businesses.

It's possible that eToro could have obtained further documents from Zotopay showing its use of third party businesses to make payments due to Mr N from eToro. However, even if this was possible there is no way for me to know if this would have been enough to change what happened.

In summary my findings are that:

- Mr N was unaware on account opening that payments made to him by eToro would be through a PSP but even if he had been made aware of this it is more likely than not he would still have opened his account.*
- It is more likely than not that Mr N became aware before 17 March 2023 that he was receiving payments due from eToro through third party businesses rather than directly from eToro and chose to continue using its service with that knowledge.*
- Mr N was misinformed on 17 March 2023 that the two payments from third party businesses received that day wasn't the money paid from his account with eToro.*
- eToro was aware that Mr N was going to notify his bank about the two payments but it couldn't reasonably have foreseen that Mr N volunteering information to his bank would lead to it investigating previous payments into his account and in due course to his bank account being ceased and Mr N under investigation for money laundering.*
- eToro provided the information it had available to try and help Mr N establish that the payments into his bank account had been made by eToro.*
- It is possible that further information could have been obtained from Zotopay to try and assist Mr N but there is no way of knowing if this would have led to a different outcome for him."*

I awarded Mr N £750 for the distress and inconvenience caused by eToro wrongly informing him that the two payments he queried weren't from it. I thought this amount was fair and

reasonable taking into account eToro couldn't reasonably have foreseen that his bank account would be ceased and he would be under scrutiny for money laundering as a result of it providing the wrong information.

I gave both parties the opportunity of responding to my provisional findings and providing any more information they wanted me to consider before making my final decision. eToro responded and said they were willing to offer Mr N £750 but asked this be put to him before my final decision. Mr N responded and said that he isn't sure how I calculate amounts and validate information but that eToro must pay him the amount ceased by his bank due to the wrong information being provided which is very clear and there is no dispute about.

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.

As I said in my provisional decision, I must determine a complaint by reference to what, in my opinion, is fair, and reasonable in all the circumstances of the case. In making that determination I must take into account but am not bound by; relevant law and regulations; regulators' rules, guidance, and standards; codes of practice; and (where appropriate) what I consider to have been good industry practise at the relevant time.

Both parties have responded to my provisional decision but nothing they have said changes the findings in my provisional decision which, for the avoidance of doubt, form part of my findings in this final decision unless I state to the contrary. I note eToro asked me to put the offer of £750 to Mr N before issuing my final decision but as this is simply the amount I have already awarded in my provisional decision I don't think there is any basis for putting it forward as an offer from eToro.

Mr N has simply argued that Mr N must pay him his financial losses because it isn't in dispute it provided the wrong information to him. I explained why I wasn't awarding him his financial losses in my provisional decision and he has provided no information or argument in response which would lead me to change my findings about this.

In short, I am upholding this complaint because eToro wrongly informed Mr N that the two payments he received on 17 March 2023 weren't from it. However, whilst it isn't in dispute that eToro provided the wrong information to him and was made aware that Mr N was going to inform his bank of the payments, I am not satisfied it was reasonably foreseeable that this would lead to his bank ceasing his account and him subsequently being under investigation for money laundering.

So, whilst I am satisfied that eToro is responsible for some distress and inconvenience resulting from providing the wrong information, I don't think it is responsible for the financial consequences resulting from the actions taken by Mr N's bank and/or the Malaysian central bank.

Putting things right

I am satisfied that Mr N was caused distress and inconvenience as a result of being provided with the wrong information for which he should be compensated. I think an amount of £750 is fair and reasonable for this in the circumstances.

My final decision

I uphold this complaint for the reasons I have set out above. eToro (UK) Ltd has to pay Mr N

£750 for the distress and inconvenience caused by it providing him with the wrong information.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 25 April 2024.

Philip Gibbons
Ombudsman