

The complaint

Miss M complains eToro (UK) Ltd failed to protect her account from an unauthorised third party attempting to access her investments.

What happened

Miss M had a trading account with eToro. As of September 2023, she held a series of open positions within her account. Some of these positions had gone against Miss M and were running at a loss that was yet to be crystallised. She alleges an unknown third party accessed her account, sold these positions to generate cash (thereby crystallising heavy losses), and then attempted to withdraw that cash by way of a crypto-currency transaction.

eToro's security procedures halted this chain of events after Miss M's positions had been sold, but before the resulting cash could be transferred away from the platform. Miss M complained that eToro's security was insufficient, and that it'd unfairly allowed a fraudster to access her account and crystallise losses on her investments. She argued that, but for its failures, she'd have been able to sustain the positions she'd lost and ultimately realise a profit from each of them.

eToro didn't uphold Miss M's complaint. It appeared to accept Miss M's allegation that she hadn't authorised the sale of her positions. But to date, it's argued it had no cause to regard the instructions to sell the positions as being suspicious because whoever initiated them...

- Had the correct login credentials for Miss M's account.
- Successfully answered a two-factor authentication (2FA) challenge when logging in.
- Had an IP address with proximity to Miss M's typical login activity.

Miss M was unhappy with eToro's response and referred her complaint to our service.

Our investigator explained that in order to uphold Miss M's complaint, they'd need to be satisfied the transactions she'd identified as unauthorised, were suspicious enough that eToro ought to have scrutinised them more closely before approving them. And given the evidence at hand, they weren't persuaded the instructions to sell Miss M's positions were, by themselves, all that suspicious. The investigator appeared to accept that the subsequent request to withdraw all of the resulting cash was suspicious, but that this was the point at which eToro had come to a similar conclusion and prevented any further unauthorised access to Miss M's accounts. Because of this, they didn't recommend her complaint should be upheld.

Miss M didn't accept our investigator's opinion, so the matter's been referred 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.

As a regulated firm, eToro's required to arrange adequate safeguarding for any assets it holds on its customers' behalf. And to implement systems and controls to prevent its services from being manipulated by fraudsters. These obligations are significant. But I should be clear that in the circumstances of this complaint, there's no requirement for eToro to automatically reimburse Miss M if she's been the victim of fraud. I would only require eToro to do so if I was satisfied that both:

1. The transactions Miss M's identified as being unauthorised were suspicious enough that in order to meet with its obligations, eToro ought reasonably to have vetted them further prior to approving them. And,
2. Had eToro vetted the transactions in question then, acting fairly and considering Miss M's best interests as it's required to, it would've concluded that it should not approve those transactions.

I've begun therefore by reviewing the evidence to decide whether, in my opinion, eToro ought to have identified the instructions to sell Miss M's positions as being suspicious.

Having studied the evidence in this case I'm struck that, from eToro's perspective, the events leading up to the instruction to withdraw Miss M's funds could quite plausibly have been genuine account activity. The person operating the account at that point had been able to access Miss M's account using the correct login credentials at the first time of asking. They'd demonstrated they were likely to have access to Miss M's mobile device as they were able to provide a 2FA code texted to her as part of the login journey. In my opinion, putting myself in eToro's shoes, the person most likely able to complete the login process in this manner would be Miss M.

Following their successful login, the person operating Miss M's account ordered the sale of her open positions. Miss M has seemed to suggest that this ought to have been suspicious and worthy of further checks from eToro, because of the losses it crystallised on her account. But I'm not persuaded this should've been the case. I can appreciate that from Miss M's perspective, she'd never intended to sell her positions at a loss. I accept her testimony that her plan was to sustain the positions until she was able to realise a profit from them. But eToro couldn't reasonably have known this. It provides services to Miss M on an execution-only basis, and there's no requirement for it to second guess instructions it could credibly believe were coming directly from Miss M. Thinking about trading patterns more generally, it's not uncommon at all for an unprofitable position to be sold. And given the journey up to the point Miss M's positions were sold, it's my opinion that eToro could have reasonably concluded that what was happening was ordinary account conduct, and not something it had a reasonable basis to challenge.

I've considered that there was a slight variance in the IP address used for the login session within which Miss M's positions were closed. But I don't think eToro could've reasonably concluded that this by itself was an indication that someone other than Miss M was in control of the account. Especially not when the person operating the account had logged in and provided a 2FA code without any issues whatsoever. And the person most likely to be able to do so was Miss M herself.

It's my opinion that the subsequent attempt to withdraw all of Miss M's cash to a crypto wallet was suspicious. There's no evidence to suggest Miss M had arranged a crypto transaction like this before. And given the known fraud trends and the irreversible nature of these transactions, it's my view this instruction ought reasonably to have prompted eToro to review the account activity and ensure it was genuine. But this is precisely what happened. Ultimately eToro was able to prevent the withdrawal by acting to safeguard Miss M's accounts, and I consider that the firm met with its obligations to her when it did so. But I'm not persuaded eToro had any reasonable basis to intervene in Miss M's accounts prior to

that instruction being given, because of the manner in which her accounts were able to be accessed.

Miss M's suggested that as part of the fraudulent activity on her accounts, eToro was tricked into giving its approval for certain transactions when someone posing as her was able to provide a selfie and a doctored photograph of her passport. I'm satisfied however that there's no evidence of this taking place in the way Miss M has described. eToro did ask for a selfie and to verify Miss M's passport, but this was after her positions had been sold and came as part of its due diligence on the crypto withdrawal. The transaction that crucially, eToro did not approve. As such, I've identified no significant failing within this element of Miss M's complaint.

For all of the reasons given above, I'm not persuaded it would be fair or reasonable of me to uphold Miss M's complaint.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 22 November 2024.

Marcus Moore
Ombudsman