

## The complaint

Mr S complains about the actions of Bilderlings Pay Limited when he was the victim of a scam in which his money was sent to one of its customer's accounts.

Mr S has been helped by a representative, his father, Mr S2 in bringing this complaint. But for simplicity and ease of reading I've mostly referred to Mr S throughout. And any reference to him includes the comments and actions of his representative unless otherwise specified.

## What happened

At the time of the alleged scam (June 2021) Mr S was under the age of 18, so he transferred money to Mr S2 for the purchase of computer equipment that he'd seen advertised for sale on an online marketplace. In June 2021 Mr S2 transferred around €1,600 (on Mr S' behalf) to an account held with Bilderlings. Mr S was expecting the item to arrive within a week. He says when it didn't arrive and the seller ceased communication, he realised he might've fallen victim to a scam. The matter was reported to the remitting bank, who notified Bilderlings, but no funds were recovered and returned. Mr S also contacted Bilderlings, asking it to confirm if the account which received the funds was held in the name of the person/limited company from whom he was purchasing the item.

Bilderlings informed Mr S it couldn't share with him information about its accountholder and recommended that he contact local law enforcement authorities. It also gave assurances that it would co-operate with an appropriate authority's investigation and would provide them with all available information.

The matter was referred to our service and one of our Investigators thought the complaint should be upheld. In short, she reached the conclusion that whilst Bilderlings refusal to share third party information was not unreasonable. She didn't think it had acted reasonably by not returning Mr S' funds (which were available at the time) back to the remitting bank following receipt of notification of fraud. Mr S accepted this outcome, but Bilderlings didn't. It asked for an Ombudsman to make a decision.

The complaint was passed to me. Having reviewed everything, I agreed with our Investigator, and for broadly the same reasons. So with a view to resolving the complaint informally without the need for a written decision I wrote to Bilderlings explaining why I intended to direct it to refund Mr S' full loss and pay him 8% simple interest per annum from the date it completed its internal investigation to the date of settlement. I also addressed the points Bilderlings had asked me to consider.

Bilderlings responded. It reiterated that it had carried out an investigation and its accountholder had shared, with it, evidence about the delivery of the item Mr S had purchased. It maintained Mr S had failed to take reasonable steps to mitigate his risk by not making the payment through the online marketplace platform. It said when making the payment Mr S ought to have been aware that making a payment directly to the seller could pose a significant risk including the possibility of non-delivery of the item bought.

Bilderlings confirmed it would like me to issue a written 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.

I'm satisfied that there weren't any failings by Bilderlings when opening the account. I appreciate the account has since allegedly been used to receive fraudulently obtained funds, but from what I can see, Bilderlings couldn't reasonably have foreseen this at the point at which it opened the account.

Further, having looked at the operation of the account since opening, I can't say that it was unreasonable, in this case, for Bilderlings to have not intervened/blocked the account prior to the point at which it did – which crucially was before Mr S' funds were spent. I acknowledge Bilderlings comments about its actions being in accordance with the applicable regulations, that being the Payment Services Regulations 2017 (PSRs). However, to be clear the question here isn't about the execution of the payment, and whether there was an error by Bilderlings when crediting the payment to the account details (unique identifier) provided on the payment instruction. It's ultimately about how Bilderlings responded to notification of fraud and the steps it ought to have taken in relation to the recovery of those disputed funds – this for me being the crux of the matter that needs deciding.

Bilderlings say it was not entitled to debit its customer's account without a court order or similar law enforcement documents. I've carefully considered this, but I disagree that this would be the only basis upon which Bilderlings could do so. I say this because Bilderlings account terms and conditions state that in specific situations it reserves the right to reverse a transaction; or to carry out checks before authorising/agreeing to any withdrawal of funds from its customer's account (which includes returning any funds to its customer after account closure).

I accept that as part of its investigation Bilderlings did question its customer, who responded and shared a photo of a parcel tracking website search confirming delivery of a parcel on 7 July 2021. But in my opinion, the responses given, and the evidence provided wasn't satisfactory evidence of source of funds/entitlement, particularly against the backdrop of the account being relatively newly opened; Bilderlings being in receipt of a couple of notifications of fraud (including Mr S' payment of which the funds still remained in the account); a couple of incoming payments having a beneficiary name mismatch; and the account not operating in line with its expected/intended use (based on the information gathered at account opening). I also note that Bilderlings took the decision to close the recipient account due to the concerns it had. So taking all of this into consideration the funds which remained in the account ought to have been returned to the remitting bank (from whom Bilderlings had received notification of fraud), and in this case I don't think the step Bilderlings took, of returning the funds to its own customer, was reasonable.

I've also considered the comments made by Bilderlings regarding Mr S sending the payment directly to the seller, rather than through an escrow service offered by the marketplace, and its suggestion that Mr S contributed to his own loss. But I agree with the Investigator that I don't think Mr S' actions amount to negligence where I'd say it would be fair to make a reduction in award. I say this because at the time of making the payment I don't think Mr S was aware, nor that he ought reasonably to have been aware that the payment he was making could be fraudulent, and that he ignored this or failed to take steps I'd reasonably have expected him to have taken before going ahead with the payment.

For completeness, I'm also satisfied Bilderlings haven't acted unfairly or unreasonably when informing Mr S that it can't share (with him) information about the recipient accountholder and the investigation it carried out. As the information contains someone else's personal data, in the circumstances of this case, without their being a lawful basis and/or consent from the third party whose data it is, Bilderlings can't share this with Mr S. Bilderlings has said, and I'm confident that it would respond appropriately to any information requests from the relevant authorities.

### **Putting things right**

Bilderlings must pay Mr S his full loss of €1,680.

8% simple interest yearly should be added to compensate Mr S for being without funds he otherwise would have had access to. This should be calculated between the date Bilderlings completed its internal investigation and the date of settlement.

### **My final decision**

For the reasons outlined above, my final decision is that I uphold this complaint. Bilderlings Pay Limited must take the steps outlined at 'Putting things Right' above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 7 February 2024.

Sonal Matharu  
**Ombudsman**