

## **The complaint**

Company M ("M") complain Epayments Systems Ltd ("Epayments") blocked their account and withheld the funds in it.

## **What happened**

On 11 February 2020 the regulator, The Financial Conduct Authority (FCA) placed limitations on Epayments. As a result Epayments were not able to process any transactions until the limitations were lifted. So, because of this M couldn't access their funds.

The original restrictions were later lifted on 23 February 2022 and Epayments began the process of reviewing its customers' accounts and refunding them. Unhappy with their funds being withheld, M complained.

In September 2022, Epayments announced it was closing its business. The business hasn't closed yet, as Epayments is staying open to refund account holders, like M, who haven't received their money yet. As part of this process, Epayments is reviewing accounts in line with its legal and regulatory obligations before processing payments.

In October 2022, M complained to Epayments. In its response, and in short, Epayments made the following key points:

- Epayments has begun the process of entering into a solvent wind-down. It encourages customers to withdraw their funds subject to supplying any required information to allow it to do so
- Its sorry M aren't happy about how Epayments communicated its issues and what was going on. But it published details of the event and its plans at the earliest opportunity
- Epayments informed M that several checks should be completed on their account to ensure the information it had for M's account is up to date and complete. After this, Epayments would be able to grant M access to their funds. In October 2022 Epayments reached out to M with the request for additional information and documentary evidence
- Epayments is under a regulatory obligation, under the AML process, to request such information. As a regulated company, it is required to put in place the necessary procedures to mitigate the risks to which its exposed to. Collecting and verifying the personal data of its customers is a mandatory process that it must complete

M then referred their complaint to this service. Epayments made an offer to M to resolve their complaint. It offered to pay them 1% of the account balance plus £150. M did not accept this.

In November 2022, Epayments temporarily suspended processing some payments. This was done to allow checks to be carried out to ensure any refunds paid were consistent with

Epayments' legal requirements.

One of our Investigator's looked into M's complaint. In summary, they found:

- Epayments should refund M the funds held in their account subject to further checks being completed as required by the FCA
- Epayments is responsible for M not having access to their funds. That's because its accounts were restricted due to weaknesses in its financial crime controls that were identified by the FCA
- As M was deprived of their funds, Epayments should compensate them by paying 8% simple interest on them from when they were first blocked up until settlement
- Epayments should pay M £150 compensation for the inconvenience they've been caused
- If any currency conversion fees, or other fees/commissions are charged by Epayments, or their banking partner, during the refund process, these should also be refunded

M agreed with what our Investigator said. Epayments explained that its requested specific information about their transactions, which is what's holding up their checks and release of funds.

Epayments later said its doesn't accept our Investigator's findings. In short, it said:

- Epayments is required by the FCA to withhold the funds until the FCA's Know Your Customer ("KYC") checks are outstanding
- Epayments hasn't breached its contract with M
- This service has no evidence that M would not have either put the funds into another non-interest bearing EMI (Electronic Money Institution) account or invested in a highly lucrative investment vehicle. Therefore the award of 8% is inappropriate
- The ombudsman service should refrain from making any award that interferes with its ability to wind down in an orderly manner in the interests of all its customers

As Epayments didn't agree with what our Investigator said, this complaint has now been passed to me to decide.

### **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've decided to uphold this complaint. I'll explain why.

As a regulated business, Epayments has certain obligations which it must comply with. Epayments is subject to regulation by the FCA. The FCA applied restrictions on Epayments for reasons widely publicised and also detailed on its company website. As a result, Epayments suspended its operations. This impacted M, given they had no access to their funds from February 2020.

Whilst the FCA requested Epayments to suspend its activities there was nothing it could

have done in relation to returning M's funds during this period. Epayments say it shouldn't be held liable for any detriment to M whilst the FCA's limitations were imposed.

After carefully considering this, I'm not persuaded it's fair or reasonable in the circumstances of this complaint to find Epayments didn't do anything wrong. I say that because Epayments had to suspend its operations due to failures on its part. So I think Epayments should put things right by addressing the fact M has been deprived of their funds through no fault of their own.

From the information I've seen it doesn't appear as though M have had their funds returned. I note Epayments have been asking them for information related to checks its obligated to carry out relating to identity of its directors, and origin and entitlement to the funds.

As a regulated business, Epayments must comply with extensive legal and regulatory obligations. These generally cover the entire period of its customer relationship – from application to eventually the end of the relationship. This includes KYC checks and/or Customer Due Diligence (CDD).

So any refund of funds should be subject to these checks. It's worth noting these checks include not just the verification of a customer's identity, but also establishing the purpose and intended nature of the business relationship and origin of funds.

Epayments argue there isn't any way of knowing how M would have used their funds should they have had access to them. Awarding 8% simple interest when a regulated businesses' customer has wrongly been deprived of their funds is in line with the approach at this service. I haven't seen compelling enough reasons why M shouldn't be awarded compensation in this way, so I'm satisfied this is fair redress.

I'm also satisfied £150 compensation is fair award for the inconvenience this matter has likely caused M. In reaching this award, I've considered M's directors, and any staff involved, would have had to take timeout of their normal business activity to deal with this matter. So I'm persuaded they would have been inconvenienced by Epayments' restricting their account through no fault of their own.

When Epayments is able to release the funds to M, I don't think it's fair or reasonable for it, or its banking partners, to charge them any conversion or commission fees. So these should not be applied.

I'm aware Epayments is going through a winding down process. To be clear, it's not my intention to interfere with Epayments winding down of its business – that's not the role of our service. My role here is ultimately to decide what a fair way to resolve individual complaints between businesses and their customers, based on the individual facts of the complaint.

Based on the facts of M's case, I'm satisfied it's fair for Epayments to redress them as detailed above.

### **Putting things right**

Epayments must satisfy its legal and regulatory obligations - which include any KYC or CDD checks - before releasing the funds to M. Once it's able to do this, Epayments must do the following to put things right:

- Pay 8% simple interest on M's funds from when it first restricted their access up until settlement\*

- Not apply any fees or charges when releasing the funds to M – as detailed above. If it or its banking partner do apply such charges, they should be refunded
- Pay M £150 compensation for the inconvenience it has caused

\*If Epayments considers that it's required by HM Revenue & Customs to deduct tax from that interest, it should tell M how much it's taken off. It should also give Mr M a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

### **My final decision**

For the reasons above, I uphold this complaint. Epayments Systems Ltd must now put things right as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 8 December 2023.

Ketan Nagla  
**Ombudsman**