

The complaint

Mr A complains Epayments Systems Ltd (“Epayments”) restricted his account, withheld the funds in it, and took a long time to release them to him. Mr A adds that this has caused him financial loss through the loss of value of his funds, distress, and inconvenience.

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 Mr A couldn't access his funds.

Mr A complained to Epayments about this. Epayments upheld his complaint and said it needed to follow its legal and regulatory obligations and was working with the FCA. It also said that due to the FCA's actions it was withholding his funds and that it would continue to safeguard them.

Mr A referred his complaint to this service.

The original FCA restrictions were later lifted on 23 February 2022 and Epayments began the process of reviewing its customers' accounts and refunding them. In August 2022, Epayments initiated its refund process and asked Mr A to provide information related to the source of his funds. Mr A provided some information which Epayments forwarded to its banking partner.

In September 2022, Epayments announced it was closing its business and started reviewing its customers' accounts in line with its legal and regulatory obligations before processing any payments.

Also in September 2022, Mr A's release of funds was rejected due to not receiving sufficient information from him in relation to the source of funds checks it, and its banking partner, had to carry out. Unhappy about this Mr A complained.

In its response, Epayments said that its banking partner had not received enough information to evidence the origin of Mr A's funds. Epayments added that it couldn't provide a definitive timescale for the funds to be released.

Mr A said he had provided everything he could to show his entitlement to the funds. And that he had difficulty in getting some evidence as one of the financial businesses he was using to transfer funds into his Epayments account were no longer able to give him statements. He also pointed out that as he was trading in crypto currency the formats of statements wouldn't show the exact source. Mr A also set-out all the documents he had sent Epayments which covered his, and his wife's, income sources.

In March 2023, Epayments said checks for Mr A would now be conducted in line with its new 'Know Your Customer' (KYC) process. Mr A was sent a new form to complete as part of these checks and a request for information. Mr A completed the form and sent information to Epayments.

Later in July 2023, subject to its KYC checks being satisfied, Epayments offered to pay Mr A 1% of his account balance plus £150 compensation to resolve his complaint as full and final settlement. On 20 July 2023, Mr A accepted this offer but only on the condition that his funds were released to him within 14 days. Epayments said it should be able to release the funds within 14 days, but this was still subject to the KYC checks being completed.

Our Investigator then informed Mr A of this, and that Epayments still required further information from him in relation to its checks. Following this Mr A sent information in early August 2023 to Epayments.

In November 2023, Mr A was able to access and withdraw his funds. But he said fair compensation would be to calculate the loss of the value of funds from February 2020 up until their release based on the change in inflationary value. Mr A says this – based on what he'd seen on the Bank of England's website - is around €13,500.

After looking into Mr A's complaint, our Investigator recommended that it be upheld. In summary, some of their key findings were:

- Epayments is responsible for Mr A not having access to his funds. That's because its accounts were restricted due to weaknesses in its financial crime controls that were identified by the FCA
- As Mr A was deprived of his funds, Epayments should compensate him by paying 8% simple interest on them from when they were first blocked up until settlement. This is in line with our general approach and not based on accounting for any depreciation due to inflation
- Epayments should pay Mr A £150 compensation for the distress and inconvenience he's suffered
- Epayments, and its partners, may have charged currency conversion fees and commissions when refunding any balances. It's not fair for Mr A to pay any fees or charges for accessing his funds – so Epayments should refund such fees and charges if imposed against Mr A

Mr A agreed with what our Investigator said. Epayments didn't agree, and in summary said:

- Its terms allow it to withhold any refunds where KYC information is outstanding
- Epayments hasn't breached any terms of its contract
- As EMI's (Electronic Money Institutions) do not pay interest on its accounts, Mr A would have had no reasonable expectation or right to any. This service doesn't have evidence of what Mr A would have done with the money to show awarding interest in this way is fair – so awarding it is inappropriate
- By awarding 8% simple interest, Epayments ability to solvently wind-down will be adversely impacted

Epayments also questioned why our Investigator made the recommendation for compensation they did - given that Mr A had accepted its offer of 1% of the balance plus £150. Our Investigator explained this was because the refund didn't happen within 14 days as per Mr A's condition. And after receiving the funds, Mr A confirmed he wasn't accepting the offer.

Our Investigator also said that it was reasonable for Epayments to deduct any compensation Epayments may have already paid to avoid Mr A being paid twice.

As Epayments didn't agree, 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 significantly impacted Mr A, given he had no access to his funds from February 2020 up until they were released in November 2023.

Whilst the FCA requested Epayments to suspend its activities there was nothing it could have done in relation to returning Mr A's funds during this period. Epayments say it shouldn't be held fully liable for any detriment to Mr A 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 Mr A has been deprived of his funds through no fault of his own.

Mr A received his funds in November 2023 after the process was started, albeit intermittently ceased, from September 2020. 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 Know Your Customer (KYC) checks and/or Customer Due Diligence (CDD).

So any refund of funds would have been 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.

I note that from the point the checks were instigated in 2022, they were once declined and Epayments later changed its processes. This meant Mr A had to provide information again, and that there were understandable reasons why he couldn't get everything in the format that was being asked of him. Because of this, it wasn't until November 2023 that Mr A's funds were released to him.

It's difficult to find if Epayments caused any delay here given it had to intermittently stop the refund process and it involved a liquidated business and other banking partners. But I'm persuaded the award I will be making of 8% simple interest will address the matter of Mr A being deprived of his funds for as long as he was.

I've also looked at Epayments reasons for initially finding the checks weren't satisfied and its renewed information requests. I've already explained that Epayments had important legal and regulatory checks it needed to carry out. And from what I've seen, I'm satisfied it did nothing wrong in asking for the information it did – albeit that Mr A was making every effort he could in garnering it. So I don't think Epayments caused any avoidable delay here.

I note Epayments doesn't agree with 8% simple interest being added because there isn't any way of knowing how Mr A would have used his funds should he have had access to them. I also note Epayments wants to see evidence of how he would have utilised these funds.

Awarding 8% simple interest when a consumer has wrongly been deprived of their funds is in line with the approach at this service. I haven't seen compelling enough reasons as to why Mr A shouldn't be awarded compensation in this way, so I'm satisfied this is fair redress.

Mr A has said he should be awarded around €13,500 compensation for the financial loss he's suffered due to the impact of inflation. But that isn't in line with our approach as I've explained above. But he is clear that having his money withheld by Epayments through no fault of his own caused him worry and inconvenience. Having carefully considered this, and what our approach to such awards is, I'm satisfied £150 is fair compensation for the trouble and upset Epayments actions caused him.

If Epayments, or its partners, have charged Mr A any conversion or commission fees when releasing the funds, these should be refunded as I don't think it's fair or reasonable for them to be applied.

Epayments has questioned why our Investigator reached their own finding on Mr A's complaint after he had accepted its offer to pay 1% of the balance plus £150 in compensation. But Mr A was clear that he would only do so if the funds were released to him within 14 days from the 30 July 2023. Mr A didn't receive his funds until much later in November 2023. Epayments were also made aware of this condition from Mr A. Mr A also later said that he didn't accept - given he wanted more compensation.

It appears Epayments has paid Mr A the 1% and £150 compensation when it released Mr A's funds to him. If that is the case, this amount should be deducted from any compensation for the deprivation of funds and distress and inconvenience I have made in this decision.

Lastly, 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 a fair way to resolve individual complaints between businesses and their customers, based on the individual facts of the complaint.

Putting things right

To put things right, Epayments must:

- Pay 8% simple interest on the funds it released to Mr A from when it first restricted his access up until settlement*
- Pay Mr A £150 compensation for the distress and inconvenience it has caused
- Epayments should deduct any compensation, which I understand is 1% of the balance plus £150, if it has already paid this to Mr A from the compensation I'm awarding here
- Not apply any fees or charges for releasing funds to Mr A – as detailed above. If it or its banking partner has applied such charges, they should be refunded

*If Epayments considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr A how much it's taken off. It should also give Mr A a tax deduction certificate if he asks for one, so he 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 Mr A to accept or reject my decision before 31 January 2024.

Ketan Nagla
Ombudsman