

Complaint

Mr N is unhappy with Paysafe Financial Services Limited's decision to close his account and retain his funds.

Background

Mr N opened up an account with Paysafe and made a deposit into it. He was asked to submit an identification document as part of its verification procedure. He appears to have submitted an ID document that belongs to a member of his family, rather than his own.

Mr N had agreed to Paysafe's terms of use. One of the terms in that agreement was as follows:

14.4 - *It is strictly forbidden to use your Account for any illegal purposes including but not limited to fraud and money laundering. We will investigate and report any suspicious activity to the relevant law enforcement agency. We reserve the right to charge you in our sole discretion an administration fee as displayed in the "Fees" section of the Website for every investigation into any such suspicious activity. You are prohibited from using your Account in an attempt to abuse, exploit or circumvent the usage restrictions imposed by a merchant or a Third-Party Provider on the services it provides.*

Mr N failed that verification check and Paysafe opted to close his account. It also retained Mr N's funds by deducting an administration fee. It relied on the above term to justify its decision to do so.

Mr N was unhappy with the actions taken by Paysafe and so he referred a complaint to this service. It was looked at by an Adjudicator who upheld it. The Adjudicator said that Paysafe was free to close down Mr N's account. As a general principle, a business has the commercial discretion to decide whether it wants to continue offering an account to a customer.

However, he didn't think that it was fair for Paysafe to retain Mr N's funds. He said the term in the agreement gave Paysafe total discretion as to whether or not this administration fee would be charged which was potentially unfair on Mr N. He also thought it was written as if to suggest the fee is charged to cover the cost of an investigation into whether or not an account has been used for fraudulent purposes. In this instance, \$120 US was retained from Mr N's account. All that he had done was submit a driving licence as an identification document which clearly belonged to another person. He didn't think it could possibly have cost that much in staff time to carry out an investigation.

The Adjudicator issued his view on the complaint on 6 September 2022. Paysafe was given a deadline of 20 September to respond. On 27 September, the Adjudicator told Paysafe the case would be referred for decision and asked that it provide any final submissions by 11 October. To date, no response has been received from Paysafe.

Findings

I've considered all the available evidence and arguments to decide what's fair and

reasonable in the circumstances of this complaint.

Our statutory rules provide – at DISP 3.5.8 to 3.5.15 of the Financial Conduct Authority Handbook – that we may give case-management directions and fix or extend deadlines and that we may:

... reach a decision on the basis of what has been supplied and take account of the failure by a party to provide information requested;

And that:

If a respondent fails to comply with a time limit, the Ombudsman may: (1) proceed with consideration of the complaint; and (2) include provision for any material distress or material inconvenience caused by that failure in any award which he decides to make.

I've therefore concluded that, in the absence of a response from Paysafe, it is fair and reasonable to proceed on the basis of the evidence we already have and to take account of its failure to reply to the Adjudicator's opinion.

I'm persuaded that Paysafe cannot justify its decision to retain Mr N's funds. It's implausible that it genuinely reflects the costs it incurred in investigation whether or not Mr N was making improper use of his account.

The Adjudicator also recommended that Paysafe pay Mr N £100 in recognition of the inconvenience he suffered in having to bring a formal complaint in order to access funds that belonged to him. I think that was a fair sum at the time the Adjudicator issued his view – but I'm mindful of the time that has elapsed since then and that Mr N has had to wait longer still for this matter to be resolved. In the circumstances, I'm persuaded that £150 would be a fairer reflection of the inconvenience he has suffered.

Final decision

For the reasons I've explained above, I uphold this complaint.

Paysafe Financial Services Limited should now:

- Return Mr N's funds to him without delay.
- Pay him £150 in recognition of the inconvenience that has been caused to him.

If Mr N accepts the final decision by the deadline below, it will be legally binding on both sides. Paysafe Financial Services Limited must pay Mr N promptly and no later than 28 days after this decision is accepted. After this time, simple interest will accrue daily at a rate of 8% per year.

I'd like to remind both sides that the law establishing the Financial Ombudsman Service – the Financial Services and Markets Act 2000 (FSMA 2000) – made an ombudsman's decision legally enforceable in court.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 25 November 2022.

James Kimmitt
Ombudsman