

The complaint

Mr R has complained that Skrill Limited allowed him to gamble online in a country where online gambling is largely prohibited.

What happened

Mr R lives in Norway and has explained that gambling is heavily restricted there and only specific licenced companies can provide gambling services to Norwegian citizens and residents. Mr R has told us that he had a serious gambling addiction in the past which he is now in recovery from.

Mr R had a Skrill account which provided him with an online e-wallet that he used to gamble, and lose, significant amounts of money. Mr R has said that Skrill shouldn't have allowed him to do this as it was against Norwegian law and also against the card scheme rules for merchants. He has said that if Skrill hadn't provided a service that allowed him to circumvent the restrictions in place he wouldn't have lost the money he did, so he wants Skrill to refund all of the gambling transactions he made while his account was open.

Skrill has said that in order to use its service in Norway Mr R had to indicate whether or not the transactions he was making were gambling related. It has said that on each occasion Mr R ticked a box to say that the transaction wasn't gambling related and lied about what he was using the account for. Skrill also says its terms and conditions say it's up to consumers to know what is and isn't legal within their own jurisdictions and it doesn't believe it's liable for any of Mr R's losses. It has suggested he contact the gambling merchants directly as it believes all liability falls with them.

Unhappy with Skrill's response Mr R took his complaint to our service. I issued a provisional decision on Mr R's case on 2 December 2022. In it I said that this service didn't have the jurisdiction to comment on whether or not Skrill broke Norwegian law by allowing Mr R to use its service to gamble.

I explained that I could only consider whether or not Skrill had behaved reasonably in relation to how it provided services to Mr R. In this instance I found that while there were questions around whether or not Skrill had sufficiently robust safety measures in place to ensure its services were not misused, I couldn't say it had failed to put any measures in place at all. And it seemed Mr R had deliberately circumvented the measures that were in place in order to gamble.

The second point raised within the provisional decision related to the rules set out by card schemes and gambling. Again I found that Skrill had followed the rules as they were set out at the time Mr R had his account so I didn't uphold on this issue either.

Skrill accepted my findings, but Mr R didn't.

He responded to the provisional decision providing detailed information regarding what he believed was evidence that the Norwegian courts had removed Skrill's permissions to

operate in Norway and stated this was a result of Skrill allowing Norwegian residents to use Skrill accounts to gamble while in Norway.

These arguments were sent to Skrill to give it the opportunity to respond to them. The response was finally received in April 2023.

I have considered Mr R's response and Skrill's comments on it in full and can now issue my final decision. For the sake of clarity and context I will repeat some of the findings from the provisional 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.

In order for me to consider whether or not Skrill has done anything wrong it is important that I set out what the purpose of this service is and what our jurisdictional remit allows us to consider. We are an impartial alternative dispute resolution service. We offer a free alternative to the courts but that does mean that there are certain restrictions in place about what we can and can't consider. It is not possible for us to consider every complaint that is brought to us, or indeed every aspect of the complaints we review.

In regard to Mr R's complaint, my provisional decision explained we can't consider whether or not Skrill broke Norwegian law when it allowed Mr R to gamble online in Norway using his Norwegian credit cards and Norwegian currency. This is because only a Norwegian court of law can definitively say whether or not its laws have been broken. Following the provisional decision Mr R sent a large amount of information regarding court cases he said reflect the fact that the Norwegian courts found Skrill was operating inappropriately in Norway.

I have considered this point and reviewed the terms and conditions of Skrill's accounts with this in mind. Having done so I note that clause 21.3 states:

Your Skrill Account is operated in the United Kingdom and these Terms of Use shall be governed by and interpreted in accordance with the laws of England and Wales. Any dispute under these Terms of Use or otherwise in connection with your Skrill Account shall be brought exclusively in the courts of England and Wales except where prohibited by EU law.

This means that the laws governing the relationship between Skrill and its users, in this case Mr R, are the laws of England and Wales, not Norwegian law. So, I can only consider whether or not Skrill was in contravention English law and I've no evidence to show that was the case. So, I can't say this is because it did anything illegal under English law.

It is worth noting that in its response to Mr R's submissions Skrill has clarified that it does still provide services to consumers in Norway and has not been banned from doing so. It has said:

... Skrill benefited from EU passporting rights to provide payment services to Norwegian residents. Between 2011 and 2020, Skrill Limited, authorised by the UK Financial Conduct Authority, operated as an electronic money institution in accordance with E-Money Directive (2009/110/EC) to provide cross-border payments services into Norway. Since 2020, Skrill has been serving EEA customers (including Norway) under Paysafe Payment Solutions Limited, which is an authorised electronic money institution regulated by the Central Bank of Ireland.

...In 2020, Norway implemented a new law requiring financial institutions to block financial transactions relating to gambling providers which were blacklisted by the Norwegian Lottery Authority. Paysafe has complied with the local legislation since its adoption.

So, from what I can see the laws Skrill were obliged to adhere to were English laws and although Mr R believes Skrill was banned by the Norwegian courts from operating in Norway following the court case he cited, this doesn't seem to be the case. So, I still can't uphold his complaint on this point.

It is the case that in order to use his Skrill account to gamble Mr R had to circumvent some safeguarding measures put in place by Skrill and so I will repeat my earlier findings relating to that process here.

Mr R has explained that when he went to make a payment through his Skrill account to a gambling website he would do a number of things. Firstly, he would buy cryptocurrency using his Norwegian credit card as this was an approved transaction and there was no block from his credit card provider for using his card in this way. He would then immediately sell the cryptocurrency back into Norwegian krone, which would be credited to his Skrill e-wallet account. This system allowed Mr R to use his Norwegian credit card to gamble. He would then go to a gambling website to spend the money. A pop-up box would appear on the Skrill site asking him to confirm if he was about to complete a gambling transaction. Mr R has said that so long as he ticked 'no' to this option he would be able to use the funds credited to his Skrill account to gamble online. He says if he ticked 'yes' then the transaction would've been blocked.

Skrill has said that Mr R was dishonest when he ticked 'no' to the above question and that it doesn't monitor users accounts so wouldn't have been aware that he was using his to gamble. It has said that once Mr R contacted Skrill in 2020 to explain he was a gambling addict and that he'd been able to use his Skrill account to lose enormous amounts of money, despite gambling being heavily restricted in his country, it closed his account. It has explained that if Mr R had answered the gambling transaction question honestly it would've added the correct merchant code to the purchase, and it would've been blocked. However, it doesn't believe it should be held liable for Mr R's losses given he was dishonest and failed to adhere to its terms and conditions.

The question I need to consider in relation to the above is whether or not Skrill did enough to try to stop consumers, and in particular vulnerable people with gambling addictions, from abusing its services, the way Mr R did. This is particularly important as Skrill has previously confirmed that the majority of its consumers use its services to access online gambling and so, I would expect Skrill to have considered that some of its customers would be compulsive gamblers and try to take steps to mitigate any harm they might experience using its services.

I do agree with Mr R that requiring a consumer to tick a single box to confirm whether or not a transaction is related to gambling, is unlikely to be sufficient to prevent those with compulsive spending vulnerabilities from abusing their Skill wallets and incurring unaffordable losses. Looking at Mr R's statements it is very clear that he was using his Skrill account to gamble. The transactions are easily identifiable as the gambling merchant is clearly named as the acquirer receiving the funds from Mr R's account.

Likewise, any payments in, as the result of bets won, are also easily identifiable as coming from gambling merchants. So, I think it would've been apparent to anyone who reviewed Mr R's transaction history that he was using his account in a way that he shouldn't have been. Therefore, the next thing I need to consider is whether or not there was any reason why Skrill should've reviewed Mr R's transactions. The types of things that are likely to prompt Skrill to review the account manually include anything that could pose a financial risk to

Skrill, so primarily disputed transactions or potentially fraudulent transactions. In addition to this anything explicit that Mr R told Skrill about his gambling should also have impacted the way Skrill interacted with him.

Looking at the account history it would seem that in November 2018 Mr R asked for his account to be closed but didn't mention anything about gambling at this time. In January 2019 he contacted Skrill to request his account be reopened, which it duly was. Within four weeks of the account being reopened Mr R had messaged Skrill about some betting transactions he had tried to make in Norwegian krone that hadn't gone through. While he doesn't explicitly reference them as betting transactions, the name of one of the merchants he mentions in the message is '10bet' so I think it should've been apparent the transactions were likely linked to online gambling. This is the only time Mr R requests help from Skrill that is linked to gambling transactions not going through. The transactions were approved by Skrill and completed. He does message again for statements and with enquires about cryptocurrency transactions but none of these imply that he is experiencing any financial problems or that they are linked to gambling transactions.

So, I need to consider whether or not it's reasonable to have expected the Skrill representative who answered Mr R's query in February 2019 to realise that he was using his account to gamble in a jurisdiction where gambling is heavily restricted, or in a way that might have been causing him harm.

Skrill has said that it's the responsibility of the consumer to ensure they're accessing Skrill's services for legitimate and legal purposes in their countries of residence. It therefore admits no liability for the fact that Mr R was able to circumvent the national gambling restrictions in Norway as easily as he did via his Skrill account. Given Skrill's response to this I think it's highly unlikely the staff member Mr R was communicating with in February 2019 would've known he was breaking Norwegian law by using his account the way he was.

So, I'm not surprised this wasn't queried with him at the time. And the reason the transactions didn't go through seemed to be linked to available funds, not any potential blocks, so there was nothing else on the account notes that indicate Skrill had flagged the transactions as potentially problematic for any other reason.

Therefore, while I agree with Mr R that is a massive oversight on the part of a business that admits the majority of its customers are gamblers to not have realised the transactions were restricted in the country of origin, I can't say that Skrill failed to pick up on any indicators that Mr R was likely to experience financial difficulties as a result. I say this because while I agree Skrill could have, and arguably should have put more robust measures in place to prevent its services from being misused in this way, Mr R did have to bypass the measures that were put in place to prevent him from gambling before he could use his account this way. In particular the fact that Mr R had to buy and sell cryptocurrency before gambling shows the level of thought and active avoidance of preventative measures, he went through to ensure his bets would be processed.

The final part of Mr R's complaint is that Skrill has broken the rules set out by card schemes in relation to gambling transactions. Having reviewed Mr R's comments on this and how he has interpreted the rules I don't agree Skrill have done anything wrong. Looking at the scheme rules as they were published in 2018, when Mr R was using his Skrill account to gamble, I note it says the following:

5.9.4.1

Merchant website requirements:

An Electronic Merchant website and/or application must contain all of the following: ...

•In addition, on an Online Gambling Merchant's homepage or payment page, all of the following:

- The statement "Internet gambling may be illegal in the jurisdiction in which you are located; if so, you are not authorised to use our payment card to complete this transaction.

- A statement of the cardholder's responsibility to know the laws concerning online gambling in the cardholder's country..."

So, I'm satisfied that the rules also set out that the cardholder bears responsibility for knowing whether or not a gambling transaction is restricted when they are using their card. And this is further highlighted by the steps Mr R had to take in order to use his card to gamble in the way he did.

I also note the card scheme rules now explicitly mention merchant codes as necessary ways of identifying gambling transactions. Skrill has said if Mr R had ticked the box confirming the transactions were gambling related the correct code would've been applied to them, which would've met the requirements set out in the rules.

My final decision

Therefore, having taken everything into consideration I don't uphold Mr R's complaint against Skrill Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 9 June 2023.

Karen Hanlon
Ombudsman