

The complaint

B, a limited company complains that myPOS Payments Limited (MPP) blocked its account and held the funds in the account for 180 days without giving a reason. B is also unhappy that MPP wouldn't release the funds to a personal account and then used the funds to pay legal fees.

B is being represented by its director Ms F.

What happened

The detailed background of this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

B had a business account with MPP, which was opened in June 2021. Between 29 June and 1 July 2021 four transactions amounting to £4,345 credited B's account. The payments flagged as unusual on MPP's fraud alert systems as the payments weren't consistent with the Know Your customer information that B had provided during its application process to open an MPP account.

MPP decided it needed to review how B was operating its account and reached out to Ms F for more information about the payments. In response, Ms F provided invoices from customers of B, which MPP reviewed, along with other information.

On 12 July 2021, MPP completed its review and blocked B's account. MPP also limited access to the money in B's account for 180 days. Following this MPP decided to close B's account and asked Ms F to provide it with alternative bank account details so that it could release B's funds.

In November 2021, Ms F filed a County Court claim for just under £90,000 against MPP— for damages, retention and loss of use of the funds in B's account, and miselling of MPP services. The claim was filed in the name of Ms F and not B, and was served at the wrong address for MPP. So MPP didn't respond to the claim and it was upheld by the court on 6 December 2021.

Legal representatives for MPP then got in touch with Ms F to try and work out what had happened. The representatives told Ms F that the claim had been misfiled due to it being in her name and not B's. Ms F then agreed to withdraw the claim.

The funds in B's account were unblocked at the end of December 2021 but the account was kept blocked for outgoing payments.

In early January 2022, Ms F asked MPP to send B's funds to an account with another bank. In response Ms F provided details of a personal bank account in her name, which MPP said it couldn't accept. Ms F asked MPP to pay the funds into her personal account because B's account with another bank had been closed.

On 18 January 2022 Ms F provided a personal bank statement which was not accepted, and MPP again asked her to provide details of a payment account opened in the name of B. Ms F then provided an account statement for the closed account. MPP tried to send the funds to this account, but due to it being closed they bounced back to MPP.

Consequently, a further request was sent on 25 January 2022, to B asking for details of another account into which the funds could be sent. Ms F said that B didn't have any other account. MPP was unable to make this payment as the funds could only be paid only into another account in the name of the customer – in this case B.

Whilst this was happening the legal representatives of MPP wrote to Ms F about her misfiled county court claim, setting out the costs they incurred to deal with the matter on behalf of MPP. On 23 February 2022, Ms F agreed that MPP could use B's remaining account balance to pay the legal costs they had incurred, which amounted to just over £5,000. On 24 February 2022, the funds were used to pay the costs and B's account was closed.

Ms F complained to MPP. She said she wanted B's account balance refunded to her along with interest for loss of use of the funds. And compensation for trouble and upset. In response, MPP said it hadn't done anything wrong. And said Ms F provided signed consent as sole director and shareholder of B to offset the balance of B's account - £4,329.37 to settle MPP's claim for legal costs. As such there were no funds left on B's account to refund.

Ms F remained unhappy and brought B's complaint to our service where one of our investigator's looked into what had happened. Ms F told the investigator that she wants B's remaining balance refunded to her. She says she didn't understand what she was agreeing to when she agreed to use the money in B's account to pay for MPP's legal costs. She says she was bullied by lawyers who told her they would bankrupt her. And take her home if she didn't agree to use the money to pay their costs. She said at the time she was not in the best of mental health so she did not understand the implications of her actions.

The investigator didn't uphold the complaint. She said MPP hadn't done anything wrong when it had reviewed, held onto B's account balance, and closed the account. She said it had done so to comply with its legal and regulatory obligations. The investigator also said Ms F had agreed to pay the court costs using the remaining funds in B's account. So there was no money left to return to B.

Ms F disagreed. She said MPP are a complete scam and submitted various online reviews in support of her view point. She said MPP never attempted to return B's funds and that B was a new business and hadn't had a single dispute raised against it. So it was unfair for MPP to hold onto B's account balance for as long as it did. Ms F said MPP continued to deduct fees and the legal costs were excessive. Ms F maintains that MPP took advantage of her, threatened her family and abused its position to steal B's funds.

As no agreement could be reached the matter has come 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.

I would add too that our rules allow us to receive evidence in confidence. We may treat evidence from financial businesses as confidential for a number of reasons – for example, if it contains information about other customers, security information or commercially sensitive information. It's then for me to decide whether it's fair to rely on evidence that only one party

has seen. It's not a one-sided rule; either party to a complaint can submit evidence in confidence if they wish to, and we'll then decide if it's fair to rely on it. Here, the information is sensitive and on balance I don't believe it should be disclosed. But it's also clearly material to the issue of whether MPP has treated B fairly. So, I'm persuaded I should take it into account when deciding the outcome of the complaint.

Firstly, I'd like to make clear that this service isn't a regulatory body or Court of law and doesn't operate as such. This means that it isn't within my remit to decide whether MPP and this includes its agents, have acted in a non-regulatory way or unlawful way. Our service is an informal alternative to the courts. And I can't make a finding as to whether the law has been broken, and I don't need to in order to decide this complaint.

I also want to make it clear that it is for MPP to decide on its commercial strategy as to how to run its business. We can't make MPP change its policies or procedures. That's the role of the regulator, The Financial Conduct Authority. My remit here is to decide whether I think MPP acted fairly and reasonably when it decided to block and close B's account. And used B's funds to offset its legal costs.

I recognise the impact this complaint has had on B. I appreciate the 180 day limitation, block and closure of the account would have come as a surprise to Ms F. I can understand the difficulty this would place on B to plan how it intended to trade moving forwards, and I can understand the financial impact the limitation as had on B, as it was unable to access a significant amount of money held in the account until the 180 day time scale had elapsed. This was further compounded by the difficulties Ms F had with providing a suitable bank account for MPP to release the funds. And then MPP using the money to offset its legal costs. So, I can understand why Ms F thinks MPP has treated B unfairly and unreasonably.

I'll deal first with MPP's decision to block B's account. As the investigator has already explained, MPP has extensive legal and regulatory responsibilities they must meet when providing account services to customers. They can broadly be summarised as a responsibility to protect persons from financial harm, and to prevent and detect financial crime. It's MPP's duty to reasonably ensure accounts are being used in the way they should and to protect the money which is held in them.

Having reviewed all the evidence I'm satisfied that MPP were acting in line with its legal and regulatory obligations when it restricted B's account in July 2021 and asked Ms F to provide information about a number of transactions. The terms and conditions of B's account permit MPP to block the account. I've kept in mind that B's account had been recently opened and the payments had received were in excess of B's expected turnover and activity. I've also considered the information MPP has shared with this service in confidence. Having done so, I don't think it was unreasonable for MPP to block and review B's account.

Ms F says MPP treated B unfairly by withholding its account balance for 180 days after it had blocked its account. For me to say MPP has done something wrong here I'd need to be satisfied they failed to act within the terms of the account. Or if I think MPP did work within these, that it was unfair of them to do so. And in this situation, I don't think that's the case.

I say this because the terms and conditions and the legal agreement Ms F agreed to when she opened B's explains under section 14.3 that

"in case of any risk of Damages for us, resulting from reversals, chargebacks, claims, fees, fines, penalties, Client's non-compliance with AML/FT or other regulations and other similar liabilities arising from Client's use of the Service, we may hold Client's funds for up to 180 Days even after the Termination of Agreement or shorter or longer period, as required by law, including Statutory Consumer Protection.

So, I think MPP were able to limit B's access to its funds and prevent them from being used without any notice, if they had reason to believe the account was engaging in activities that placed it at greater risk. Having looked at the information MPP has shared with this service in confidence, I'm satisfied its concerns were reasonable.

The agreement also explains that where MPP believes a client has breached any provision of the agreement, law, or other regulations they may suspend and close an account without notice and with immediate effect. Here, MPP blocked B's account before closing it. So, I consider MPP closed B's account with immediate effect in July 2021 - since after this date B wasn't able to operate the account fully.

As I've already explained MPP has provided me with evidence, as well as detailed comments, which I have accepted in confidence, about why they decided to limit B's account withhold its account balance and then close its account. Having considered this, I'm satisfied MPP were fair to do so and that this evidence qualified the account to be limited and closed as shown in the terms I've quoted above.

Whilst I appreciate B would like to understand the exact reasoning, this isn't something I'm able to disclose as its commercially sensitive information. And it wouldn't be appropriate for me to require MPP to disclose this information either, as by doing so they would be revealing information that forms part of their commercial judgement relating to how they assess the risk of the accounts/services they provide. So, whilst I understand Ms F's frustration surrounding this, I can't say MPP have acted unfairly here. And I don't think they need to do anything more for this aspect of B's complaint.

I also don't think it was unreasonable when MPP told Ms F that it couldn't release B's account balance to an account not in B's name. I say this because B is a separate legal entity to Ms F.

The crux of Ms F's complaint is that she wants MPP to return B's account balance. The problem here is that there isn't an account balance to return. That's because Ms F agreed to use the funds to offset the legal costs MPP incurred dealing with Ms F's failed County Court claim. And she instructed MPP, as director of B, to make the payment to settle the costs. MPP followed these instructions and used the funds to settle the legal bill.

I know Ms F says she was bullied into agreeing to do this, but that's not supported by the evidence that I've seen. I say this because I've seen email correspondence between Ms F and MPP's legal representatives, which sets out Ms F agreed to this course of action – the option of contesting the costs and having them assessed was also explained. I'd also expect a limited company to get legal advice before entering into an agreement like this. I can't hold MPP responsible if Ms F didn't seek any advice. So, I won't be directing MPP to refund B's account balance back to Ms F and I'm satisfied that MPP has treated B fairly.

I'd also add that Ms F filed the County Court claim in her personal capacity – not B's. If Ms F is now saying that she has suffered a personal loss, I can't consider her complaint under the dispute resolution rules (DISP), which set out which complaints we can look at. That's because Ms F's complaint about the legal costs doesn't arise from any such relationship, *she* had with MPP; she wasn't MPP's customer, B was. So, I don't have the power to consider this aspect of Ms F's complaint.

Ms F has said that MPP actions meant she had to borrow money to pay bills and B ceased to trade. She wants compensation for loss of use of the funds in B's account as well as the balance returned. I've already said why I won't be asking MPP to return the account balance. So, I won't make any further comments on this.

After considering what Ms F has said and the content of MPP's review, I don't find awarding Ms F compensation would be fair or appropriate. I understand Ms F would naturally want to know the information I have weighted in order to reach this finding. But as I've set out already, I am treating this information in confidence, which is a power afforded to me under the Dispute Resolution Rules (DISP), which form part of the Financial Conduct Authority's regulatory handbook.

Accordingly, I have accepted information in confidence which I am not disclosing to Ms F. And the description of that information is that it's of a nature which justifies MPP's review, and which has led me to decide that awarding B compensation would not be a fair or appropriate outcome for any of the matters Ms F has brought as part of this complaint. So, I'm not requiring MPP to compensate Ms F for any inconvenience that she as director of B, may have experienced as a result of the time taken by MPP carrying out its review, and the further dissatisfaction she experienced which ultimately flowed from not having access to the funds in B's account, including her unhappiness with MPP's communication about the return of the funds.

In summary, I realise Ms F will be disappointed by my decision. But having looked at all the evidence and circumstances of this complaint, I can't conclude that MPP have treated B unfairly. So, I won't be telling MPP to do anything to resolve B's complaint.

I note that Ms F has indicated that she may wish to pursue the matter through other means, I can't advise her on how to go about doing that, but my decision brings to an end what we – as an informal dispute resolution service can do for B.

My final decision

For the reasons I've explained, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask B to accept or reject my decision before 9 October 2024.

Sharon Kerrison
Ombudsman