

The complaint

A charity, which I will call E, complains about SumUp Payments Limited. E's representatives say that in June 2022, the card payment system SumUp provided stopped working – causing losses of tens of thousands of pounds.

What happened

E's representatives told us:

- E entered into an agreement with SumUp in May 2022. The purpose of the agreement was to enable E to take card payments during events it ran through the summer and into autumn. The events are cashless, so it is particularly important that card payments run smoothly.
- They had many conversations with SumUp's staff during May 2022 to ensure that everything was ready for their first event at the beginning of June 2022.
- Their event opened, and at first the card terminals performed as expected. But less than an hour after opening the card terminals stopped working. When they called SumUp, it explained that E's account had not yet been verified and so their ability to take payments had been suspended. Until that point, they had been entirely unaware that any verification was necessary – and in particular they did not receive an email on 19 May 2022 requesting verification documents.
- One of E's trustees was present at the event, so they tried to verify E's account immediately. That wasn't possible, because the relevant staff at SumUp were not available in the evenings. The impact was that they were unable to make any sales for the remainder of the event, and they had to give away free food and drink to ensure their customers were comfortable.
- E's account was properly verified the following day, and they have been able to take payments using SumUp ever since.

SumUp told us:

- As an Authorised Payment Institution, it is obliged to verify the identity and business nature of the merchants it onboards. However, given that large numbers of people sign up for its service and then never process a single transaction, it does not start the verification process until after a merchant has processed its first transaction.
- In E's case, it was able to electronically verify the identity of E's finance manager (a Mrs H). However, Mrs H was not a trustee or director of E, and so it had no way of knowing whether she had permission to open an account on E's behalf. That meant it needed a power of attorney letter and identification evidence for one of E's trustees.
- It sent an email to E's representative on 19 May 2022 to explain that its profile

needed to be verified. The email explained that until SumUp received the documentation it had requested, it could only process transactions up to a total value of £5,000 – and warned that “once you reach this limit, our services will be interrupted”.

- It later clarified to our service that it allows “occasional transacting” before an account is verified. That means that it will allow an unverified merchant to process transactions up to a total value of £5,000, but after that limit is reached it will stop processing transactions until its verification requirements have been met. It doesn’t explicitly draw the £5,000 limit to merchants’ attention during the sign up process, because it is able to electronically verify most of them and so the £5,000 limit is not an issue. However, once an unverified merchant has processed £100 of transactions, it clearly displays a warning in its app to the effect that verification is required.
- Whilst it is sorry that E’s representatives are unhappy, it followed its process correctly in this case and did nothing wrong. As a goodwill gesture it has offered E a £100 credit towards fees, but E has declined that offer.
- In any event, its terms and conditions contain a clause exempting it from being liable for any loss or damage resulting from its compliance with requirements imposed on it by applicable laws, regulations or rules.

One of our investigators looked at this complaint, but she didn’t uphold it. She thought SumUp had sent the email of 19 May 2022, and so she concluded that E should have known that verification of its account was required.

E’s representatives did not accept our investigator’s opinion, and they asked for the matter to be referred to an ombudsman.

At my request, the investigator then wrote to SumUp to request more information about how E’s account was opened – and in particular, for any telephone recordings or notes about E’s representative’s discussions with SumUp before their June event. SumUp did not initially respond to her request, but did so after I issued my provisional decision.

My provisional decision

I issued a provisional decision on 7 November 2023. I said:

“My provisional conclusions are:

- Whether or not SumUp sent the disputed 19 May 2022 email, SumUp did not do enough to make E aware of its verification requirements.
- SumUp should have explicitly warned E’s representatives during the sales process that E’s account could not receive payments of more than £5,000 until it had been manually verified.
- SumUp’s failure to warn E about verification limits at an early stage was exacerbated by SumUp’s decision not to enable account verification during the evening.
- The fair resolution to this complaint is for SumUp to pay E £8,000 in compensation.

I explain my findings in more detail below.

I acknowledge that our investigator concentrated on the email SumUp says it sent on 19 May 2022. I can't be sure whether that email was sent, but I understand why our investigator concluded that it probably was. However, I don't think that whether the email was or was not sent should determine this complaint.

Given the evidence I have been given about both SumUp's usual procedures and about the way E operates, it is clear that E's SumUp account was always going to need manual verification. As SumUp has pointed out, E's finance manager Mrs H was not a trustee or director of E. Mrs H entered into the contract with SumUp on E's behalf, so SumUp would have known from the outset that it was going to need evidence to show she was entitled to do that. I consider that SumUp could and should have explained that to Mrs H well before the June 2022 event.

I don't know exactly what SumUp told Mrs H during May 2022. Her evidence is that she had several conversations with SumUp prior to the event with the aim of ensuring everything ran smoothly, but the verification process and £5,000 limit was not mentioned. She also told us that she made very clear to SumUp's sales team that E anticipated revenue in the region of £20,000 per event, and that E operates across 32 terminals (14 of which were purchased from SumUp) which itself gives an indication of the likely turnover per event.

SumUp has been given the opportunity to explain what its conversations with Mrs H covered, but so far has chosen not to do so. In the absence of further evidence I have therefore assumed that SumUp did not explain its verification process to Mrs H or to E despite having ample opportunities to do so.

I accept that the £5,000 limit was mentioned on SumUp's website, but since I've seen nothing to suggest that any of E's representatives were ever directed to that section of SumUp's website I don't think that is material.

I accept that E's staff were not aware of the contents of SumUp's 19 May 2022 email until after their June 2022 event started. I am satisfied that if they had been aware of it they would have taken action. I think it is more likely than not that the email was sent, but given the overall circumstances – and particularly E's structure and the nature of its business – I don't think a single email was enough to draw E's attention to the need for verification.

Mrs H told us that she didn't see any notifications or warnings in the app. I don't think that is surprising, given the expected pattern of E's transactions. E was never intending to take payments spread evenly throughout the year. It runs its events in summer and autumn, which means that it might need to process tens of thousands of pounds of payments during a single evening, then not take another payment for weeks or even months. Here, E took its first payment of £2.50 on 31 May 2022 – possibly as a test – then no further payments until its June 2022 event. Assuming everything on the app worked as SumUp has told me it should, the in app warning message would have been displayed for less than an hour – because E's total transactions reached £5,000 very shortly after they reached £100.

I am also satisfied that E's representatives acted quickly once they realised that verification was needed. If the relevant staff at SumUp had been available on the evening of E's event, I think it is likely that verification could have taken place during the event, which would have significantly reduced E's losses. But E's account was not in fact verified until the following day."

I went on to consider fair compensation, and reached the provisional conclusion that SumUp should pay E £8,000 (£7,500 for financial loss and £500 for non-financial loss). In more details, I said:

“I’ve considered what SumUp’s terms and conditions have to say about the limits of SumUp’s liability, but I don’t think there is anything in those terms to suggest that I should not order SumUp to pay compensation. There is no dispute here about whether SumUp should have complied with the relevant laws, regulations or rules, and I note that E’s representatives willingly shared verification documentation with SumUp once they realised it was needed. In my view, the issue here is not SumUp’s compliance with regulations; the issue is that SumUp did not give E sufficient information about its verification requirements.

Broadly speaking, my aim here is to put E in the position it would have been if SumUp had made no errors. If everything had happened as it should, I think E’s account would have been properly verified very shortly after SumUp had accepted E’s application for a SumUp account. In that case, E’s terminals would have worked throughout their June 2022 event, and there would have been no interruption to E’s service.

However, I don’t think it would be fair for me to order SumUp to reimburse E for all of the losses it claims, in part because I think E has claimed for some of its losses two or even three times over. For example, in respect of [one particular item] it appears to be claiming for the cost of purchasing each [item], for the money it did not receive when the [item] could not be sold, and also for the value of the [items] that had to be thrown away. But if everything had gone as it should have done, E would still have had to pay its supplier for the [items]. I am prepared to consider an award for loss of revenue, but not for the initial costs of purchasing the items. Similarly, I am not prepared to consider making an award for the disposal of the items unless E can demonstrate that the disposal itself cost money it would not otherwise have had to pay (for example if there was so much unanticipated waste that it had to pay additional amounts for waste collection).

I also note that E’s revenue figures include VAT. I don’t think E will be liable to pay VAT on sales it did not actually make, and so I don’t think I should include VAT figures in any loss calculation.

E has suggested that I should assume its revenue for the first 45 minutes of its June 2022 event is indicative of the revenue it would have received over the rest of that same event. Compensation calculated on that basis would be in the region of £15,000. But I don’t think that would be an appropriate way to assess compensation. I understand that E’s customers attended the event to see a show, and so I would anticipate food and drink sales just before the show to be higher than sales during the show.

E has provided me with revenue figures for the events it held in August and September 2022. I can see that revenue for each of those events was, on average, around £14,600 (excluding VAT). E’s revenue for the June 2022 event was around £7,100 (again excluding VAT). The difference between the two figures is around £7,500, and so I estimate that E lost £7,500 in revenue as a result of SumUp’s errors. (I am not clear on how E managed to take so much more than SumUp’s £5,000 limit during its first event, but I don’t think the answer to that question is likely to change my mind as to appropriate redress.)

Given the nature of the products E was selling – perishable food items – I think it is fair for me to order SumUp to pay E the whole of that £7,500 in respect of the financial losses it has suffered. If E had been selling something that could have been simply packed up and resold on a different day, then I would have considered whether I should make an award for loss of profit rather than loss of revenue. But I accept E's representatives' evidence that the goods had to be thrown away, and so I think it is fair for me to base my award on loss of revenue.

E's representatives have also asked me to make an award for loss of reputation. That is a difficult area to assess. I acknowledge that some of E's customers posted negative reviews on social media as a result of this incident. But I can also see that E has many positive reviews afterwards, and I understand that the events it ran later in 2022 were successful. I therefore think that overall SumUp's error had a relatively minor effect on E's reputation, but it is still appropriate for SumUp to pay some compensation as a result.

SumUp's error also caused E some inconvenience, but again I think the inconvenience was relatively minor compared to the direct financial loss. If everything had happened as it should, E would still have needed to provide verification documents to SumUp. SumUp's error meant that E's staff had to complete the verification requirements in a rush, but overall I don't think E had to do substantially more work than it would otherwise have done. I therefore intend to make a relatively small award for inconvenience.

I entirely accept that E's trustees and employees suffered distress as a result of this incident, but the complainant here is E – which is a corporate body, and is not itself capable of suffering distress. I do not have the power to make an award to E in respect of any distress suffered by people associated with it.

In the circumstances, I think it would be fair for me to make an award of £500 in respect of E's non-financial losses. That amount is intended to cover both loss of reputation and inconvenience."

E's representatives accepted my provisional findings in full, but SumUp did not. Briefly, it said:

- It rejects the assertion that SumUp failed to warn E about the £5,000 verification limit. It proactively wrote to E on 19 May 2023, and that email was sent approximately two weeks before E's event. It is sympathetic to E's representative's requirements, but it communicated the need for additional documentation to E far in advance of E's event.
- Whilst it understands that there is some dispute as to extent to which SumUp should have made E aware of its verification procedures, it is wrong to flatly state that SumUp failed to notify E. Its 19 May 2023 email clearly stated what was needed, and explained that if E did not provide the necessary documentation SumUp's services would be interrupted once E reached the £5,000 limit. It considers it has provided ample evidence to show that its 19 May 2023 email was sent.
- It could not approve the account during the evening of E's event because it had no evidence that Mrs H was authorised to operate the account on E's behalf.
- It has not retained telephone recordings of Mrs H's discussions with its staff. However, it notes that the email exchanges between E and SumUp do not mention

the June 2022 event. It also says that its customer facing staff are aware of the £5,000 limit, and it finds it highly unlikely that they would not have told Mrs H about the limit if she had raised any concerns about E's June 2022 event.

- Overall, it considers that the provisional decision chastises it for fulfilling its obligations relating to anti money laundering and counter terrorist financing.

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 have come to the same conclusions as I did in my provisional decision for the same reasons. I now confirm those provisional conclusions as final.

I do not accept that my findings amount to criticising SumUp for fulfilling its regulatory obligations. I entirely accept that SumUp is required to verify the people that use its services – and I note that E and its representatives have never disputed that. My criticism of SumUp is that I don't think it did enough to explain its verification requirements to Mrs H and to E.

To be clear, I am not saying that I think SumUp should have allowed E to operate its account without being subject to verification, and I am not criticising the verification requirements themselves. What I am saying is that I think SumUp should have done more to ensure E was aware of SumUp's verification requirements. Given the importance of the June 2022 event to E, I am satisfied that if E's representatives had understood the verification requirements, they would have complied with them in time.

I know there is a dispute about whether E received SumUp's 19 May 2023 email. But even if E did receive that email, in the particular circumstances of this complaint I don't think SumUp did enough to tell E about its requirements.

It is very unfortunate that SumUp is not able to provide recordings of its staff members' conversations with E's representatives. I acknowledge that SumUp says its staff would have told Mrs H about the verification requirements, and I also acknowledge that Mrs H's evidence is that it did not. Given the importance of this issue to E, and the speed with which its representatives gathered the required verification documentation once they were aware it was needed, I find it very unlikely that E's representatives knew about the verification requirements before their June 2022 event. On balance, I remain satisfied that SumUp's staff had ample opportunity to draw the verification requirements to Mrs H's attention verbally but did not do so.

E's representatives say that the reason SumUp gave for being unable to verify its account on the evening of its June 2022 event was that the relevant staff from SumUp were not available. I consider that that is a more likely explanation than the fact that Mrs H was not one of E's trustees – I understand that one of E's trustees was present at the event, and was willing to complete paperwork at the time.

Overall, I don't think SumUp treated E fairly.

Putting things right

For the reasons I gave in my provisional decision, I consider that a total payment of £8,000 (£7,500 for financial loss and £500 for inconvenience and loss of reputation) is fair and reasonable in the circumstances of this complaint.

My final decision

My final decision is that I uphold this complaint. I order SumUp Payments Limited to pay E £8,000.

Under the rules of the Financial Ombudsman Service, I'm required to ask E to accept or reject my decision before 29 December 2023.

Laura Colman
Ombudsman