

The complaint

Mr K complains Epayments Systems Ltd (“Epayments”) blocked his account and withheld the funds in it. Mr K adds Epayments isn’t fairly processing its KYC review, and as a result is causing delays in refunding his funds.

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 K couldn’t access his funds.

The original 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 contacted Mr K to initiate the refund process.

Since then Mr K has been asked to provide information on numerous occasions relating to the source of his funds, and his identity and proof of address. Much of the information he’s been asked to provide relates to specific transactions Mr K says he carried out as part of his business activity.

Epayments, and the business partner’s it’s been working with, haven’t been satisfied with the information Mr K has provided. Because of this Mr K is still waiting for Epayments to complete its review and refund him the funds.

In December 2022, Epayments upheld Mr K’s complaint but said it needed to act in line with its regulatory obligations before releasing the funds. Mr K referred his complaint to this service.

One of our Investigator’s started looking into Mr K’s complaint. Epayments made Mr K an offer to resolve his complaint of £150 compensation and 1% of the balance. This was subject to the “Know Your Customer” (KYC) review being completed. Mr K did not agree and asked that Epayments pay him 1% of the balance for each year he’s been without the funds. Epayments didn’t agree.

Our Investigator recommended Mr K’s complaint be upheld. In summary, they said:

- Epayments is responsible for Mr K 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 K 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
- Epayments should pay Mr K £150 compensation for the distress and inconvenience he’s suffered
- If any currency conversion fees, or other fees/commissions are charged by Epayments, or their banking partner, during the refund process, these should also be

refunded

Mr K agreed with what our Investigator recommended but highlighted that he was continuing to have problems with Epayments around documents it required for the KYC review and releasing his funds.

Epayments didn't agree. In short it made the following key points:

- 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 K would have had no reasonable expectation or right to any. This service doesn't have evidence of what Mr K 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

Our Investigator then looked into what was going on with the KYC review Epayments and its partners were carrying out. Based on what they found, they varied their recommendations on what Epayments must do to put things right.

They said they did this because Epayments had shown them, in confidence, that it would've needed to have restricted Mr K's account regardless of the actions the FCA had taken against it. This period was from 3 February 2023 until 6 September 2023. Because of this, Epayments didn't need to pay Mr K 8% simple interest during this period.

Our Investigator also said that KYC checks are a regulatory requirement, and Epayments hasn't done anything wrong in carrying them out.

More recently, Mr K has said that Epayments has passed his funds to one of its partner's ready to forward to him.

As there is no agreement, 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 in part. 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 has significantly impacted Mr K, given he's had no access to his funds since February 2020.

Whilst the FCA requested Epayments to suspend its activities there was nothing it could have done in relation to returning Mr K's funds during this period. Epayments say it shouldn't be held fully liable for any detriment to Mr K 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 K has been deprived of his funds through no fault of his own. Because of this I think Epayments should pay Mr K 8% simple interest for the period he's been unfairly deprived of his funds.

I note Epayments doesn't agree with 8% simple interest being added because there isn't any way of knowing how Mr K 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 K shouldn't be awarded compensation in this way, so I'm satisfied this is fair redress.

Mr K has had several interactions with Epayments in terms of providing an explanation and evidence as part of the KYC checks it must carry out. This process has been ongoing since August 2022, and I can understand why Mr K is frustrated it is taking so long – and why some of the information requests appear unnecessary and/or unreasonable.

I'd like to assure Mr K that I've closely reviewed all the information I've been sent in confidence by Epayments about this. And having done so, I'm satisfied that Epayments hasn't done anything improper – and its actions all relate to carrying out its obligations.

After all, 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). 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.

This means I don't think Epayments have caused any avoidable delays with carrying out its KYC checks.

I've also looked at the information Epayments has provided which shows why it would have had reason to restrict Mr K's account in the absence of the FCA restrictions. I'm in agreement that would've been the case here too. So I don't think Epayments' was doing anything wrong in withholding the funds between 3 February 2023 until 6 September 2023.

I would add here too that our rules allow us to receive evidence in confidence. We may treat evidence from regulated businesses as confidential for a number of reasons – for example, if it contains security information, or commercially sensitive information. Some of the information Epayments has provided is information we consider should be kept confidential.

Having read what Mr K says and given how long he's been trying to recover his funds and having them blocked in this way through no fault of his own for most of the time, I'm persuaded that he has been caused some distress and inconvenience. Because of this, I'm satisfied £150 is fair compensation for this.

If Epayments, or its partners, have charged Mr K 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.

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, and once its satisfied its KYC checks, Epayments must:

- Pay 8% simple interest on the funds its withheld to Mr K from when it first restricted his access up until settlement. Epayments should not pay 8% simple interest between 3 February 2023 until 6 September 2023*
- Pay Mr K his withheld funds – this is subject to Epayments completing and meeting its KYC obligations
- Not apply any fees or charges for releasing funds to Mr K – as detailed above. If it or its banking partner has applied such charges, they should be refunded
- Pay Mr K £150 compensation for the distress and inconvenience it has caused

*If Epayments considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr K how much it's taken off. It should also give Mr K a tax deduction certificate if he asks for one, so they 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 – subject to the conditions being met.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 15 February 2024.

Ketan Nagla
Ombudsman