

The complaint

Mr M complains Nvayo Limited ("Nvayo") trading as Club Swan hasn't returned money he deposited into his account. Mr M wants his money released.

What happened

Mr M has a Club Swan account. Between July and August 2023, he tried to make a withdrawal from his account. Mr M has explained this was so that he could pay money lenders that he'd been repaying on a monthly basis.

On 8 August 2023 the regulator, The Financial Conduct Authority (FCA) placed limitations on Nvayo. As a result, Nvayo were not able to process any transactions, including allowing account holders to withdraw their money, until the limitations were lifted. These restrictions are still in place, meaning Mr M can't access the funds in his account.

Mr M complained to Nvayo and asked how long the restrictions would be in place and when he would be able to access his money. In response Nvayo said it wasn't upholding Mr M's complaint. In summary it said:

- On 8 August 2023, the Financial Conduct Authority (FCA) issued a Supervisory Notice to Nvayo. The notice places certain restrictions on Nvayo activities, including its ability to pay withdrawal requests with prior consent from the FCA.
- At the time of responding to Mr M's complaint, the FCA had not provided approval for Nvayo to complete withdrawal requests.
- Nvayo are in regular dialogue with the FCA, but regrettably, it's unable to provide a timeframe for the processing of Mr M's withdrawal request.
- For further information on Supervisory Notice, Mr M should visit its page on the FCA website.

Unhappy with this response, Mr M brought his complaint to our service. One of our Investigator's looked into his complaint. In summary, they found:

- Once the FCA restrictions are lifted Nvayo should refund Mr M's funds held in his account subject to further checks being completed as required by the FCA.
- Nvayo is responsible for Mr M 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 M has been deprived of his funds, Nvayo should compensate him by paying 8% simple interest on them from when they were first blocked up until settlement.
- Nvayo should pay Mr M £150 compensation for the inconvenience he's been Caused.

Nvayo said it doesn't accept our Investigator's findings. In short, it said:

- The reason for the restrictions being imposed was due to circumstances outside their control. And it must adhere to restrictions imposed on it by the FCA.
- It has been working and cooperating with the FCA to try and find a solution to expedite the return of customer's funds. But it has encountered problems with the timeframe and cost associated with the review.
- To speed things up Nvayo made a business decision to close its clients' book and return customer funds as soon as permissible by the FCA.
- It's unfair for our service to say Nvayo is responsible for causing any consumers harm when Nvayo is acting in accordance with the regulatory obligations imposed by the FCA. And it's not fair to say Nvayo has done something wrong as there is a wider context that would need to be considered when reviewing Nvayo's situation with the FCA.
- Nvayo has made efforts to prioritise customer redemptions as it felt customers were caused harm due to the situation and length of time that a remediation or in fact closure of the business may take.
- The time period for the proposed 8% compensation will vary as not all customers requested a redemption in August 2023 therefore the period customers were unable to access their funds varies from customer to customer and compensation should only be considered from when the customer felt the 'impact' – when the customer requested their funds.

As Nvayo didn't agree with what our Investigator said, 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. I'll explain why.

As a regulated business, Nvayo has certain obligations which it must comply with. Nvayo is subject to regulation by the FCA. The FCA applied restrictions on Nvayo for reasons widely publicised and also detailed on its company website and the FCA register. As a result, Nvayo suspended its operations. This impacted Mr M, given he had no access to his funds from August 2023.

Whilst the FCA requested Nvayo to suspend its activities there was nothing it could have done in relation to returning Mr M funds during this period. Nvayo say it shouldn't be held liable for any detriment to Mr M whilst the FCA's limitations are in place as its complying with its regulatory obligations. Nvayo has also argued that its working with FCA to try and get into a position to be able to return customers funds, which includes a decision it's made to cease operation.

Nvayo says the reason for the restrictions being imposed was due to circumstances outside their control. But they haven't given me any information to show that the restrictions were imposed on them by the FCA despite Nvayo having done nothing wrong. After carefully considering this, I'm not persuaded it's fair or reasonable in the circumstances

of this complaint to find Nvayo didn't do anything wrong. I say that because based on the evidence I've seen, which includes the information on the FCA register, Nvayo had to suspend its operations due to failures on its part, which included a number of concerns including its risk and money laundering controls.

I've not seen any evidence that contradicts this position. If it hadn't been for issues identified by the FCA, the account wouldn't have been subject to these restrictions. Given this, I think it's most likely that the restrictions are in place due to errors or omissions by Nvayo. As such they're responsible for the impact on Mr M of his not having access to the money. So, I think Nvayo should put things right by addressing the fact Mr M has been deprived of his funds through no fault of his own.

Nvayo are not currently in a position to refund the money to Mr M due to the FCA limitations still being in place. So, I'm not going to be directing them to refund Mr M. I'm sorry but I can't provide Mr M with a timeframe for when this is likely to happen. But once the restrictions are removed, I think Nvayo should refund Mr M funds as soon as possible once any further checks (if required) to satisfy its legal and regulatory obligations are completed.

I can see that Mr M wrote to Nvayo almost immediately after transferring money into his account, asking for his funds to be returned. This seems to have been before the FCA imposed the restrictions on Nvayo, which no doubt prompted Mr M into action. Mr M told Nvayo that he needed the money to repay money lenders and his son, and he was worried about its whereabouts and whether he would get the money back. So, I'm satisfied that Mr M wanted his funds returned. And he has therefore been impacted by not having access to his money.

Our general approach is that the financial business (in this case Nvayo) should pay 8% simple interest to compensate them for the financial impact of being deprived of funds. This is calculated from the date the account was first blocked to the date the refund payment is made. This interest is taxable income. If Nvayo deducts income tax from this amount, they should tell Mr M. And if Mr M asks for one, Nvayo should provide a tax deduction certificate so he can reclaim the tax from HM Revenue and Customs if appropriate.

Nvayo has said that 8% interest, if awarded, should only be calculated from the date Mr M first tried to redeem his funds, not the date the account was restricted. This isn't our normal approach to such cases. Our approach is to start the period from the date the funds were first restricted. This is in line with the approach taken by the courts. This approach is designed to compensate consumers for being kept out of money that ought to have been available to them, rather than compensation from what someone may have done with the money. Nvayo haven't given me any information that persuades me that I should deviate from this approach.

I also think there would've been a non-financial impact on Mr M from his account being blocked for so long. I'm satisfied £150 compensation is fair award for the inconvenience this matter has likely caused Mr M. In reaching this award, I've taken into account that Mr M has had to spend time contacting Nvayo, and from what he's told us he was clearly worried he wouldn't see his money again – despite Nvayos' best efforts to reassure him that his money was safe, he reached out to the FCA to get help. So, I'm persuaded Mr M was likely inconvenienced and upset by Nvayo restricting his account through no fault of his own.

I'm aware Nvayo has made the decision to wind down its business and close its client book. To be clear, it's not my intention to interfere with Nvayo winding down of its business – that's not the role of our service. My role here is ultimately to decide what a fair way to resolve individual complaints between businesses and their customers, based on the individual facts

of the complaint. Based on the facts of Mr M's case, I'm satisfied it's fair for Nvayo to put things right as detailed below.

Putting things right

Once the restrictions currently imposed by the FCA are lifted, Nvayo Limited should take the following actions to put things right for Mr M:

- Refund the money in Mr M's account to him by making payment to his nominated bank account.
- Pay Mr M 8% simple interest on the money in his account, calculated from 8 August 2023 to the date they refund the account balance to Mr M*.
- Pay Mr M £150 compensation for the trouble and upset this matter has caused him.

*If Nvayo Limited considers that it's required by HM Revenue & Customs to deduct tax from that interest, it should tell Mr M how much it's taken off. It should also give Mr M a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons above, I uphold this complaint. Nvayo Limited must now put things right as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 1 November 2024.

Sharon Kerrison
Ombudsman