

The complaint

E, a limited company, complains eBay Commerce UK Ltd hasn't fairly compensated it following its account being hacked. E is represented by Mr Z, a director.

What happened

E's eBay marketplace account was hacked and numerous fraudulent items were placed for sale. These listings meant fees were charged to E's marketplace balance and a total of over £135,000 owed was showing on E's marketplace balance.

E wasn't able to transfer any of the marketplace balance to its bank account because of this large amount of money owed, what had been in the balance was offset by the amount owed.

Mr Z complained to eBay as it was taking too long for it to remove the listing fees and allow E to use its account again. E's marketplace balance was amended, the listing fees removed, and E's been able to make and administer sales.

Mr Z says this activity on the marketplace, and inability to transfer money, has severely impacted E's ability to trade and pay its debts. Mr Z says E missed some payments on its debts, and this could impact Mr Z's finances.

Mr Z says E's sales haven't recovered and the damage done by the hack isn't recoverable, previous purchasers haven't returned. Mr Z says E's reviews were very good before, and now they're not and this could affect future sales.

The marketplace responded to say it thought it had done enough to support E through the period of the hack and refunding the listing fees.

E brought its complaint to this service and an investigator looked into things. The investigator thought E's complaint wasn't one they could look into further as it didn't fall under this service's jurisdiction.

The investigator explained the hack, and the marketplace's actions or inactions, weren't regulated activities, so they couldn't investigate this part.

The investigator explained eBay Commerce was regulated but wasn't involved in any of the administration around the refund of listing fees or the balance on the marketplace.

Mr Z disagreed and said he understood the hack was outside of our service's jurisdiction. Mr Z also said he'd never claimed E's account was suspended.

Mr Z said he wanted this service to look into eBay stopping payouts, which stopped E trading and meeting its financial obligations.

The negative balance on the marketplace stopped E's legitimate sales being paid out and stopped orders being fulfilled. And Mr Z said E stopped receiving daily payouts.

Mr Z said eBay allowed E's account to be hacked through its negligence.

Mr Z said it wasn't a coincidence eBay needed to verify details following the hack.

Mr Z asked for an ombudsman to decide things.

My provisional decision

I thought some of what E complained about was in our jurisdiction, so I issued a provisional decision, and in it I said:

I can only look at complaints about firms that are authorised by the Financial Conduct Authority to carry out regulated activities. eBay as a marketplace isn't an authorised financial services firm. But eBay Commerce is a regulated entity. eBay Commerce, among other things, handles payments from E's marketplace account to a linked account.

But there's an important distinction between money held on a balance at the marketplace and what eBay Commerce does as a regulated activity. This is because a balance on the marketplace isn't held in a regulated capacity. The balance is simply held by marketplace until such time as E asks for it to be sent to its linked account.

Once E asks for this balance to be moved, eBay Commerce handles this payment, and the payment itself will usually become one this service can look into. If there's a problem with the balance itself, it's too low or too high, that is something that the marketplace – rather than eBay Commerce – would be responsible for.

So I can't look into the balance on the marketplace. And this means I don't think the offsetting of any legitimate sales, because of the fraudulent listing fees, is something I can consider either.

It's not in dispute the fraudulent listings caused a large negative amount on E's marketplace balance. But eBay Commerce wasn't involved in the administration of this balance or the charging of the listing fees.

eBay Commerce would be involved in any payment out, or collecting of money from the linked account, but this didn't happen. The payouts to E's account weren't stopped because eBay Commerce failed to do something.

The payouts were stopped because E's marketplace balance was negative. And I don't think this negative balance, or offsetting, was because of anything eBay Commerce did.

Although Mr Z says he understands the hack is outside of this service's jurisdiction, he's gone on to mention eBay being negligent in allowing this to happen. For similar reasons to those already given, I don't think I can consider the hack, as it isn't related to anything eBay Commerce did.

And I can't decide if marketplace was negligent or not either. The same reasoning extends to the concerns E has raised around poor reviews and E failing to complete orders. This is all related to the balance held on the marketplace account and the actions it took.

Mr Z's sent this service a screenshot of E's marketplace balance when it said there was a negative balance of over £135,000. On this screenshot is a red banner saying payouts have

been suspended.

eBay Commerce has explained it did this to stop any money being taken from E's account to settle the fraudulent listing fees. This is, I think, something I can consider, as it relates directly to the services eBay Commerce has provided E. But in the circumstances, this seems a reasonable step for it to take.

And in any event, E's marketplace balance was a negative, so even if eBay Commerce had allowed payouts, there was no money to payout. And this is something that relates to the marketplace, not eBay Commerce.

Mr Z's also sent a screenshot of E's balance later, when the negative balance was over £25,000, but the red banner isn't there. It seems eBay Commerce suspended payouts for a short time to protect E's linked account, and I think eBay Commerce acted fairly here.

Mr Z's eBay Commerce facility was suspended soon after the hack. Mr Z says this isn't a coincidence, but I think it was.

eBay Commerce has previously explained to this service it was reviewing the relationships it held and requesting identification from its users. eBay Commerce has explained this is what it did for E too.

E's account was hacked on 23 July 2023. Marketplace removed the last of the listing fees on 4 August 2023 and eBay Commerce asked E to verify its details, or payouts would be suspended, on 10 August 2023.

I realise there was less than a week between marketplace's last remedial actions and the verification check, but I think this was coincidental. E's account appears to have been selected for review prior to the hack, but the suspension came soon after the hack.

eBay Commerce says it suspended payouts from 10 August 2023, because Mr Z hadn't sent in valid identification. eBay Commerce says Mr Z sent in an out of date driving licence.

eBay Commerce says it doesn't have proof of the driving licence Mr Z sent in, but it does have notes indicating the identification was out of date. eBay Commerce says it received valid identification on 22 August 2023 and allowed payouts again on 23 August 2023.

I've looked at E's payout history and can see payouts happened on 5, 6 and 10 August 2023 and then restarted on 24 August 2023.

Mr Z says his driving licence wasn't out of date. Mr Z holds an overseas licence with what appears to be some slightly different rules around expiry, dependent on when it was issued.

I think it's likely Mr Z sent eBay Commerce the same licence and it initially decided this was out of date before deciding it was still valid. Mr Z appears to have first sent eBay the driving licence in July 2023, before eBay Commerce suspended payouts.

Given that eBay seems to have lifted the suspension based on the same driving license Mr Z has always provided - it doesn't seem fair that eBay Commerce suspended payouts between 10 and 23 August 2023. This suspension is going to be inconvenient for E.

Because I think eBay Commerce unfairly suspended E's payouts between 10 and 23 August 2023, I've considered what Mr Z's said about E's failure to pay its financial obligations.

Mr Z's sent this service a screenshot of missed payments, but the missed payments begin in February 2023. There are two missed payments showing for March, April and May 2023. June and July 2023 show 3 missed payments and August 4.

I can't see the suspension of E's eBay Commerce payouts, in August 2023, could have impacted the earlier missed payments.

There is an increase, from 3 to 4 payments, between July and August 2023, but this could be related to the hack, and not something I can consider. It seems E was able to reduce its total missed payments in September and there are none showing for October 2023.

I don't think I can fairly hold eBay Commerce responsible for E's missed payments, especially those happening before it suspended payouts in August 2023.

But, in any event, E's main concern seems to be the hack and resulting negative balance on the marketplace account.

I don't think I can consider the balance on the marketplace account, so I can't ask eBay Commerce to compensate for the lack of payouts between 23 July 2023 and 5 August 2023.

I think the impact on E was limited, because of the suspension of payouts between 10 and 23 August 2023. But I'm also aware the suspension came very soon after E was recovering from its marketplace being hacked.

Since E is a limited company I can't consider distress, only inconvenience. And I think a payment of £200, to compensate for the suspension between 10 and 23 August 2023, is a fair amount for eBay Commerce to pay.

Responses to my provisional decision

eBay Commerce responded to say Mr Z initially sent in a driving licence, but on 22 August 2023 he sent in an overseas identity card, which eBay Commerce accepted.

But eBay Commerce said it accepted it could have done more to support E during the suspension of payouts and accepted with my provisional decision.

Mr Z responded to ask for a month's extension, and this was granted. Mr Z then asked for a further extension totalling three months. Mr Z said he'd had some health issues and was getting professional advice.

The investigator asked for some further information around Mr Z's health issues and the advice he was getting, but Mr Z didn't send in anything further.

It doesn't appear Mr Z's been incapable of responding to my provisional decision. I use the word incapable because this is what DISP says when we're considering late referrals to this service. I think the same considerations should be used for extensions for responses.

And any professional advice Mr Z's receiving can, I think, be shared with this service now. At some point I assume the advice would be shared, I don't feel there's a reason not to give this service some indication of what the advice is or how long it might take.

I've decided to issue a final decision on this complaint as we can't hold complaints open indefinitely, and I have to be fair to both Mr Z and eBay Commerce.

I would be unlikely to agree a three-month extension for eBay Commerce without something solid to explain why it needed the extension. So, I would expect the same from Mr Z.

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.

Since eBay Commerce accepted my provisional decision, and E hasn't responded, my final decision is unchanged from my provisional decision.

My final decision

My final decision is I uphold this complaint and eBay Commerce UK Ltd should pay E £200 to compensate for the inconvenience it was caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask E to accept or reject my decision before 15 January 2025.

Chris Russ
Ombudsman