

The complaint

C complain Real Money Services Limited (“RMS”) failed to act on their payment instructions and have withheld their funds.

To put things right, C wants their funds returned with interest for being unfairly deprived of access to them, and compensation for the inconvenience, and impact to their business that RMS have caused.

What happened

C started using RMS in September 2022 for foreign exchange (FX) services. RMS opened and managed a dedicated account with a third-party payment service provider, who I will now refer to as F.

C say they started having problems with RMS around January 2023 when their payment instructions weren’t being carried out. That’s because the intended recipients said they hadn’t received payment. C say specifically this related to a payment of \$15,000 which should have been paid on 31 January 2023. C say some €24,000 plus two other payments were also not made.

C say that when complaining to RMS about this, it said F had put all of RMS’ accounts under review in May 2023. That a payment for €27,200 sent in April 2023, was also withheld by F. C say they were also told by RMS their \$15,000 transfer had been sent through a different payment provider to F and should be returned soon. C are also unhappy that despite various requests, RMS didn’t send them any balance updates, statements nor access to online banking as promised.

C say that RMS’ actions and behaviours, through its officer’s, have been evasive and it’s failed to keep promises of face-to-face meetings.

On 5 May 2023, RMS informed C its banks accounts were under review. Unhappy with RMS’ actions, C complained. As they didn’t hear from RMS, and the relevant period for a final response had passed, C referred their complaint to this service. Upon referring their complaint to this service, RMS set-out the following to our Investigator:

- €14,000 FX currency order was undelivered. C were told RMS had this amount physically in cash, but it failed to release this to them despite several attempts to collect.
- Six wire payments totalling €31,010 have been credited to RMS in February and March. Individually they are €5,000 and €4,200 on 16 and 17 February 2023 by one company; €5,500 on 17 February 2023; €8,540 and €9,860 on 13 and 14 March 2023 from the one company; and €4,000 on 27 March 2023.

In summary, and in response to our Investigator’s questions, RMS said:

- It’s asked C to send documents as part of its Know Your Customer (KYC) obligations

- related to payments they received from four companies.
- C can provide this information through this service as its compliance team is ready to finalise the checks.

C didn't agree with what RMS said. In short, they said their explanation was a fabrication designed to cover up irregularities and its obstructiveness. They added that RMS hadn't asked them for any KYC documents related to any four of the highlighted payees. But were asked KYC information regarding ongoing payments which they complied with immediately. C added that it also informed RMS in advance of its transactions and provided related documentation.

C sent this service supporting information relating to this and explained its business relationship with all the payee companies. C also sent agreements and invoices associated with payee companies, email chains with RMS including about incoming payments, and set out its communication timeline and messages with RMS.

C said that it had reviewed some of the statements it was now able to get. But in the main they didn't show information consistent with their instructions. In response to further questions by our Investigator, RMS made the following key points:

- Its review has been delayed due to the head of compliance being on leave.
- RMS did ask the four companies that paid C for KYC information and its now waiting on C to send it information.
- Once the checks are completed, RMS will return the funds either to C or the senders based on any agreement with C.
- RMS are holding the funds on its client account. The amount its holding is €31,700.
- It has requested the \$15,000 undelivered wire and €14,000 order purchased with C's funds. A third-party firm has already credited the amount back to its client account.

Our Investigator asked C to verify RMS' assertion that it was holding €31,700. C said that alongside the \$15,000, the undelivered €14,000 FX purchase, and credits from other companies paying them, they estimate RMS owe them around €39,000.

In response to our Investigator, RMS said it had received the KYC documents it requested from C. But was still waiting on others relating to specific companies and payments. RMC also said funds would be returned to C no later than 15 February 2024 subject to compliance and due diligence being completed. And that C's account stopped being used in March 2023.

C then sent documents related to what was being asked of them – which included contracts with some of its payee companies. Amongst other things, our Investigator also asked RMS why it only asked C for more information on 30 January 2024, when it had received their responses earlier on 9 January 2024. And what new regulations and policies it was referring to when saying RMS needed to be compliant with them.

RMS say it asked C for missing documentation on 22 January 2024 and followed up on this on 30 January 2024. It also sent this service an email which it says shows this. RMS said that it started its compliance checks around January/April 2023 for C and not for any third-party companies. And that the compliance team later asked for full KYC details of companies that sent C funds in accordance with new Financial Conduct Authority (FCA) regulations which stipulates all senders and beneficiaries need to complete the checks.

RMS sent this service a copy of the National Audit Office's September 2023 publication, entitled "Financial services regulation: Adapting to change. Financial Conduct Authority" to highlight what the new FCA obligations it was referring to. Within this report, its scope is set

out as:

“3 This study examines how well placed the FCA is to respond to the changes that the financial services sector is undergoing, and to support government’s ambitions for the sector. Our evaluation is based on our published good-practice principles of effective regulation and criteria for performance measurement by regulators. We have identified and focused on the key processes and enablers for managing change and this approach is supported by insight from previous work on regulators facing change.

4 This report examines how the FCA is responding to changes in its regulatory powers and remit, and wider developments in the financial services sector.

It sets out:

- *the changes to the financial services landscape, what this means for the FCA’s accountability and strategy, and how it is changing in response (Part One);*
- *whether the FCA has the tools and resources it needs to identify and respond to change, and to influence future innovation and change (Part Two); and*
- *how the FCA measures, reports and learns from its performance (Part Three).*

5 As this report is focused on how the FCA is responding to changes in the market and to its remit, it does not seek to establish the overall effectiveness of the FCA’s business-as-usual work, nor does it review how the FCA has managed individual regulatory decisions or cases”.

Our Investigator then sent their outcome to both parties in which they said they were recommending the complaint be upheld. In summary, their key findings were:

- As a regulated financial business, RMS has ongoing obligations which require it to carry out reviews and checks – including KYC. RMS started checks for C in January 2023 and still hasn’t completed them (as of February 2024). Given its obligations, RMS haven’t made genuine efforts to complete its checks in a timely manner nor when asking C for more information.
- RMS has provided C with misleading information about its funds and when they will be returned.
- C has responded to RMS when it has asked for information. C has also provided information to show its entitlement to the funds RMS received. And RMS hasn’t provided any evidence to justify why it continues to hold C’s funds. It’s not fair RMS continue to do so indefinitely.
- So, RMS should release C’s funds and pay 8% statutory simple interest on the sums held until they are returned. RMS should also pay C £500 for the inconvenience its delays have caused.

In response to what our Investigator said, C said they were happy with the outcome. They also made the following key points:

- The 8% simple interest award is fair for any other business in a similar situation that has other sources of revenue and financing to be able to wait for funds in this way. But RMS’ actions have put C out of business.
- C still haven’t had any proof provided of F’s review which was allegedly the source of the problem. Nor has it had proof of €15,000 being credited or credit of any funds withdrawn, nor that RMS still has their funds.
- RMS still hasn’t released C’s funds to the nominated account details they sent it. And when chasing RMS up, it said payment was being organised.

- C also expressed concerns about wider operational and business solvency issues about RMS. They also wanted (i) a set time for RMS to return their funds; (ii) get statements, proof of credits, and proof of funds for C to establish its ability to pay.

C's director then sent this service a copy of an email they sent RMS dated 22 February 2024. The email sets out that RMS contacted C and agreed to release their funds to C's nominated bank account.

RMS also responded and apologised to this service for sending the wrong set of new rules and regulations it had referring to – so it said it would send the correct details. RMS also said it was following the correct procedures that its obligated to do so. RMS added that it must act on payments its banking partner, F, flags to it and this must be monitored.

RMS didn't agree with what our Investigator said, because it never received any payment in sterling as they'd mentioned. And that all payments received from C were in Euros. RMS also sent a screenshot of a spreadsheet and related FX receipts with C. And that it made a payment in the UK to C in 2023 for €29,777: this was made up of payments of €10,000, €9,777 on 10 February 2023 and €10,000 on 4 April 2023.

The other payment processing firm, that RMS say conducted the payment of C's \$15,000 transfer, informed this service that RMS had provided supporting documentation for this transaction - when asked if it had satisfied their KYC requirements in January 2023 by our Investigator. This firm also said the documentation was provided prior to sending the transaction and they have no live concerns about C.

Our Investigator also asked F directly for information. This related to C and the company payments RMS had said F had asked for KYC information on. F's response was:

- RMS no longer holds an account or sub accounts with F.
- F didn't have any KYC concerns regarding the funds credited to its account from C between January and April 2023.
- F didn't ask RMS to complete any KYC checks on the funds credited to C's account.
- F doesn't have any outstanding KYC checks related to C.
- F aren't holding any funds in its RMS account on behalf of C given the accounts have closed.

As there was no agreement, this complaint was passed to me to decide. I asked our Investigator to obtain more information from C which included about its business arrangements. In short, and pertinent to the merits of this complaint, C made the following key points:

- RMS never provided C with any statements or reports. They also haven't seen any proof of FX transactions, funds, or alleged KYC review requests from F.
- C's account statements from F show RMS spent €30,685 without their knowledge or consent. This is evidence of misconduct and RMS should be reported to law enforcement.
- C's total claim is for €36,885 and \$15,000 (USD).
- RMS mixed C's funds with another business entity they were associated with.
- RMS hasn't returned any funds to C.

As both parties didn't agree on the amount of funds that should be returned to C, I asked them to provide further evidence.

C added that RMS withdrew €30,897.39 from their account without their knowledge or consent – and broke down each transaction based on C's dedicated statement from F. And

before RMS set up a dedicated account for C, they were instructed to send payments to RMS' general client account.

C later said they claim:

- (1) €30,897.39 that RMS took from its dedicated client account.
- (2) Undelivered \$15,000 USD wire payment.
- (3) €6,200 from the unpaid €14,000 cash. The remainder €7,800 is being claimed by an affiliated company that is a separate legal entity to C.
- (4) So, altogether, C claim €37,097.39 and \$15,000.

RMS said that it had already released funds from its branch, as well as completed wire transfers. RMS say its receipts show it released €29,770 at its offices in London: €10,000 and €9,770 on 10 February 2023; and €10,000 on 4 April 2023. So, it doesn't agree with the figures C say they are owed.

I then sent both parties my provisional decision, in which I explained why I was planning on upholding the complaint in part. For ease of reference, here is what I said:

Provisional decision

"I'm very aware that I've summarised the events in this complaint in far less detail than the parties and I've done so using my own words. No discourtesy is intended by me in taking this approach. Instead, I've focussed on what I think are the key issues here. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

If there's something I've not mentioned, it isn't because I've ignored it. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome. I do stress however that I've considered everything C and RMS have said before reaching my decision.

It's important to note, my decision focuses only on C as the complainant and not any losses it says an affiliated company has suffered. I note that complaint has been dealt with another a separate reference at this service.

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 am planning on deciding to uphold this complaint. I'll explain why.

Failed payment instructions and withholding of funds.

A payment service provider is expected to execute a customer's instruction for payment promptly, which is line with the provisions of the Payment Services Regulations 2017 (PSR's). The PSR's also go onto explain when its appropriate for the payment service provider to affect a delay.

RMS say that it didn't release C's funds or act in accordance with its mandate as the two money remitting third party companies it was using at the time, including F, asked for KYC and/or due diligence documents from C. These included about the companies that were sending payments to RMS.

But both F and the other firm have said they didn't ask for any KYC or other related due diligence information from C.

When asked by our Investigator about what new rules and regulations RMS were referring to by asking C for the information it wanted to fulfil its compliance checks, RMS sent an irrelevant document from the National Audit Office.

RMS apologised for this but haven't since sent what it's been referring to despite promising to do so. So, based on what I've seen, I'm not persuaded RMS were withholding C's funds because of information the money remitting businesses asked for.

I accept that as a regulated business RMS will have certain obligations to meet – including those of KYC and due diligence which stem from the Money Laundering Regulations 2017 and other related laws and regulations. I note that C has acted expediently and comprehensively when asked for information about the payments and their relationship with the payee companies. Based on what I've seen, I'm satisfied that even if there was a legitimate requirement for such information, C has done enough to satisfy those checks.

But importantly, and as I have already found, RMS wasn't being asked to delay and withhold RMS' funds and onward payments by the intermediaries it was using. So, I'm satisfied RMS needs to refund RMS' funds from when this issue first started in early 2023, and when they wanted their funds returned.

Fair redress

There are three elements that I need to consider here: (i) how much must RMS return to C and how it fairly compensates them for the deprivation of the use of their funds; (ii) how much should RMS pay C for the inconvenience it caused them; and (iii) whether any compensation should be paid for C saying their business has diminished because of RMS' failings. I will now consider these in turn.

Return of funds

It's clear from what I've said above in the 'What Happened' part of this decision that there are significant discrepancies in what both parties say should be returned. C originally said RMS were holding €31,700 and \$15,000 USD. They also said RMS failed to pay them €14,000 cash it kept promising to do so at its London offices. More recently, C say they calculate what they are owed as €37,097.39 and \$15,000. And have broken these sums down.

I would expect a regulated financial business like RMS to have kept diligent records of its accounts. But this unfortunately doesn't appear to be the case here. Instead, RMS has sent me a basic spreadsheet screenshot in which the figures don't appear to add up. This evidence is also difficult to put any weight on given there is little context to the different headers. But it's also not likely very useful any longer given RMS say they paid C €29,770 in cash and bank transfer between February and April 2023.

However, the evidence to show RMS did this is also of a rudimentary nature. There are no formal or technical records of the bank transfers, and its receipts haven't been countersigned by C. RMS also hasn't provided anything to show where it withdrew these funds from, and that they correspond with the amounts it's alleging it's paid to C.

I also find this position somewhat disingenuous given RMS said in its submissions long after this complaint was referred to this service in June 2023 – after it says it paid the money – that it was holding €31,700.

So, I'm persuaded RMS hasn't most likely paid C in the way it says it has.

Given the scarcity of technical information and poor record keeping, I must make a finding on what amount of money RMS needs to return to C. To that end, I think:

- The \$15,000 that the intermediary money remitter says it never asked for any KYC information on must be returned to C. These funds should have been paid to the intended recipient on 31 January 2023. The evidence suggests this didn't happen. So, I think RMS should pay 8% simple annual interest on this amount from 1 February 2023 up until settlement.*
- The strongest evidence of any records I have is from F's business account statements for RMS. From there I can see five payments which marry with the companies C has consistently said paid them funds which have been withheld. They are:*
 - €5,500 on 15 February 2023*
 - €3,900 on 6 March 2023*
 - €8,450 and €9,850 on 13 March 2023*
 - €4,000 on 27 March 2023*

Its worth noting this amounts to €31,700. The same amount RMS said it was holding and what C originally said when referring their complaint. So based on the records I do have, and what both parties originally said, I'm persuaded that RMS needs to also return €31,700 to C. As C kept receiving payments into its account with RMS in March 2023, on balance, I think its reasonable that RMS should pay 8% simple interest on an annual basis from 1 April 2023 until settlement.

- C say RMS also owe them €6,200 from €14,000 cash it was supposed to pay them. C say the reminder of the funds belongs to another affiliated company. Principle to my award is to see where funds have come in from, and I can't see where this amount emanates from for C. I'm also think its most likely any cash arrangement with RMS would've been from the funds it was holding and that were paid into C's account with it. So that means any of C's funds RMS promised as cash would represent a debit from the €31,700. So, I will not be asking RMS to return a further €6,200.*

Compensation for inconvenience

I can'[t] compensate the director of C for any distress they suffered given C is a separate legal entity to them, and the eligible complainant here. As a limited company it cannot suffer distress – which is an emotion that a private individual may suffer. But I can consider the inconvenience C has been caused, and within that, the time its officer(s) have spent outside of normally operating the business in reasonably trying to sort their issues out.

Having carefully considered this, which includes weighing up the significant messages and correspondence between RMS and C, and what C has been asked to do to compile KYC information that it appears wasn't needed, I'm persuaded RMS should pay £750 for the avoidable inconvenience it caused.

Business disruption and demise

C say that RMS' actions has caused their business to demise. I haven't seen strong, compelling, or persuasive evidence that this is what happened. I would also expect a responsible business to take reasonable measures in mitigating any loss to itself. I also note that C is still an active business on the UK Companies House website. So, I won't be making any compensation award for this".

The deadline for both parties to send me any further comments and evidence to consider has now passed.

C accepted what I said in my provisional decision. Amongst other things, C added they were out of operation for seven months, and RMS' actions meant they had to put their main project on hold. C say it could provide evidence of this but are now exhausted and want a resolution to this complaint. C also repeated several arguments about RMS' failings being unprofessional and immoral.

C also wanted it noted that they are *'not an ordinary creditor from RMS general trading activities, rather we're their client, simply requesting a return of our own funds that disappeared'*. C also provided account details for where it wants the fund sent.

RMS sent details of the FCA handbook that it says it meant to send to this service of the regulations it was relying on regarding KYC information on senders and beneficiaries. RMS said it wants to emphasise that it halted transactions until it could confirm with the sender that no money laundering or other financial crimes were involved. But RMS is eager to reach an agreement that resolves this matter amicably.

I will now decide this complaint.

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 again, I have decided to uphold this complaint. The reasons for doing so are the same as those in my provisional decision – see above. I have considered what both parties have said in response to my provisional decision, but I'm satisfied I have already dealt with these points in my provisional decision.

Putting things right

To put things right, RMS must:

- Pay C \$15,000. RMS should also pay 8% annual simple interest on this amount from 1 February 2023 up until settlement*
- Pay C €31,700. RMS should also pay 8% annual simple interest on this amount from 1 April 2023 until settlement*
- Pay C £750 for the inconvenience its failings have caused.

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

My final decision

For the reasons above, I have decided to uphold this complaint. Real Money Services Limited must now put things right as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask C to accept or reject my decision before 11 April 2025.

Ketan Nagla
Ombudsman