

complaint

Mr O complains that Paysafe Financial Services Limited have wrongly excluded some transfers he made from the terms of a promotional cashback offer. He says that he is owed money under the terms of the promotion.

background

Mr O was contacted by Paysafe in relation to a promotion. Under the terms of this promotion, he was set a transaction target and deadline.

Upon reaching this target, cashback would be paid on selected further transactions for the remainder of the promotional period. This sum would be paid by 17 January 2017.

Mr O used his Paysafe account to transfer funds to certain gambling sites. Effective from 18 November 2016, those gambling sites requested to be withdrawn from the promotion.

Term 5.2(b) of the promotion terms was amended to explicitly remove the gambling sites from the promotion. In effect, transfers to those sites would no longer attract the cashback. Mr O says that this change in the terms was inappropriate.

Paysafe looked at the transfers Mr O had made to the gambling sites, and noted that the amounts being transferred in were broadly the same as those being withdrawn. It says that this means that those transfers fell under term 6(a) of the terms of the promotion.

Term 6(a) provides that 'transactions that have no commercial purpose' would be disregarded for the purposes of the promotion. Paysafe then relies upon term 10, which removes people from the promotion where it has reason to believe the terms have been breached.

Mr O says that the transactions had a commercial purpose in that he used them to place bets. He says that he won some and lost others, before withdrawing money at the end of each session.

The adjudicator considered Mr O's account with the gambling sites over the relevant period. They noted that bets were being placed and thought that this meant term 6(a) had not been fairly applied. They said that the transfers should count toward the promotion.

Paysafe did not agree, and argued that Mr O might have been colluding with other users of the sites, so this has come to me for a final decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having considered the terms, I think that Paysafe has acted fairly in amending term 5.2(b) as it did. The term sets out that the cashback will relate to transfers to 'selected' merchants. Term 5.2(b) then sets out some specifically excluded merchants.

I do not think it is right to say that any merchants not on the list at 5.2(b) can be assumed to be among the selected merchants, nor that the list of selected merchants can never be changed. Paysafe was entitled to keep a list of exclusions up to date as it did.

Having considered term 6(a), I am satisfied that if Mr O were simply moving money in and out of the gambling accounts, without placing bets, it would apply here. It could also apply if Mr O were only betting a small proportion of the amounts transferred.

But considering his account history on the sites, I can see that he placed bets the value of which broadly match the amounts being transferred in on each occasion. The fact that he was breaking roughly even does not mean that he was not making proper use of the funds transferred.

It is not right to say that the transactions had no commercial purpose. They should not be excluded under term 6(a).

Paysafe say that Mr O might have been colluding with other players, but offer nothing further in support of this. Having considered the games which appear to have been played, this seems unlikely. I can see no reason to think that it is something which Mr O has done here, nor can Paysafe fairly assume that he has done.

Having considered the evidence, I am satisfied that Paysafe did not have reason to believe that Mr O had breached the terms of the promotion. I am satisfied that it ought not to have applied term 10 to remove him.

I agree with the adjudicator that the transfers to the gambling sites ought to qualify for the promotion.

my final decision

For the reasons given above, Paysafe Financial Services Limited must:

1. Reinstate Mr O to the promotion;
2. Include those transfers to the gambling sites between 3 November 2016 and 17 November 2016 in its calculations relating to the promotion;
3. Pay Mr O any sums due under the promotion; and
4. Pay interest on the above sum calculated daily at 8% simple per annum from 17 January 2017 to the date of payment.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 7 August 2017.

Marc Kelly
ombudsman