

complaint

Mr C complains that Paysafe Financial Services Limited (trading as Neteller) unfairly excluded transactions he made from a promotional cashback offer.

background

Mr C entered a reward scheme that said if he made transactions above a certain level he'd earn cashback. The terms of this promotion set out certain exclusions and confirmed the cashback would be paid by 17 January 2017.

Mr C made lots transactions to gambling websites during the promotional period. Paysafe went on to amend the promotion terms to exclude certain gambling websites, including some Mr C had used.

After the promotional period, Paysafe said Mr C's transactions weren't eligible to receive the cashback bonus. Paysafe said it thought Mr C's transactions had no commercial purpose and didn't meet the terms of the offer.

Paysafe says Mr C's transactions were flagged as suspicious by the gambling websites operator. It also said Mr C's payments were broadly the same as his withdrawals from those gambling accounts so it took the step of removing him from the promotion.

Mr C complained that this was unfair. He felt he'd been encouraged to increase his spending and had met the promotion's terms. He provided evidence that he had been making bets on those gambling sites and hadn't just been transferring funds in and out.

Mr C referred his concerns to this service and an investigator looked at what had happened. She didn't feel Paysafe had shown it was fair to remove Mr C from the promotion and recommended it reinstate him, paying him what would've been awarded had he not been excluded. She also asked Paysafe to pay interest on the award.

Paysafe didn't agree and maintained the transactions had no commercial purpose. As a result, the complaint's been passed to me to make a decision.

There has been a delay in allocating Mr C's complaint to an ombudsman. On 21 March 2019 the investigator contacted both parties and asked them to submit any further evidence or comments they wanted to make. Neither side responded so I'm proceeding to issue my 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.

I appreciate Paysafe has concerns that Mr C's transactions had no commercial purpose but I'm not satisfied it's shown why they should reasonably be excluded from the promotion. I can see Mr C appears to have increased the amount he was using his account and was receiving similar amounts back from the betting sites he used. However, the fact Mr C increased his transaction levels seems reasonable given the nature of the promotion – the more he used his account the more he'd receive back. I don't think it's fair to say increased use of his account meant he was acting outside the terms of the promotion.

The transactions in dispute here were to a few gambling websites and Mr C has provided evidence of his betting activity on those accounts. I understand that Paysafe says that betting activity amounted to bonus abuse but it's not supplied reasonable supporting evidence to show that.

I can see we've got information from a gambling websites operator that says customers had used their accounts to transfer funds from Paysafe without carrying out any bets. But the information provided is a list of names, personal details and deposit amounts without providing any additional context. I haven't been persuaded that this information is evidence that Mr C's betting activity wasn't in line with the promotion's terms.

The evidence from Mr C shows he was actively betting with the funds he transferred to the gambling websites via Paysafe. I appreciate the email from the gambling websites operator says there was little or no gambling carried out during the promotion period but that's not what I've seen. Neither Paysafe or the gambling websites operator have said exactly why they felt the bets Mr C made amounted to bonus abuse. As a result, I've based my decision on the evidence I have available which shows Mr C bet extensively during the promotion period.

Paysafe says section 6a of its promotion terms says eligible transactions can be disregarded if they have no commercial purpose. But I note section 3d of the same terms says that to participate in the promotion account holders must not use their account for commercial purposes. I think there's a lack of clarity here that makes Paysafe's decision to exclude certain transactions difficult to understand.

From what I've seen, I don't think Paysafe fairly excluded Mr C from the promotion so it should now reinstate him and put him back in the position he would've been in before it took that step.

I recently asked the investigator to get in touch with both Mr C and Paysafe to check whether they wanted to say anything else or provide any further evidence but neither party responded. I wanted to ensure both sides had been given the chance to explain their positions before I issued my decision.

Based on what I've seen, I don't think Paysafe fairly excluded Mr C's transactions from the promotion. Paysafe should put Mr C back in the position he would've been in had it not excluded his transactions from the promotion. It should also pay interest on the amount he should've received as he's been deprived of these funds.

my final decision

My final decision is that I uphold this complaint and direct Paysafe Financial Services Limited to settle as follows:

- Reinstate Mr C to the promotion;
- Include all transactions carried out via participating sites during the promotional period;
- Pay Mr C any cashback due under the promotion; and

- Pay interest on the above sum calculated at 8% simple interest a year from 17 January 2017 (the original date the promotion bonus was to be paid) to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 10 May 2019.

Marco Manente
ombudsman