

complaint

Mr W has complained Paysafe Financial Services Limited, trading as Neteller, haven't paid what he believes is owed under a promotional cashback offer.

background

Mr W got an offer from Neteller about an end-of-year promotion. If he made transactions over a certain value, he would earn up to 10% cashback. Certain merchants were excluded from this offer.

By 16 November 2016, Neteller told Mr W he'd reached silver VIP level. Within another couple of days, he was told he'd reached the target to earn his 10% bonus on cash rewards. On 28 November 2016 Neteller sent Mr W another email excluding further merchants from the promotional offer. This was from 1 December 2016.

At the end of January 2017, Neteller told Mr W they were excluding the transactions he'd made to certain merchants from the offer. Term 6 (a) of their *VIP End of Year Campaign* terms and conditions stated "*transactions that have no commercial purpose*" could be excluded from the promotion. Term 10 said that people could be removed from the promotion where Neteller believed the terms were breached.

Mr W didn't believe this was the case. He says he had been placing bets as normal, before withdrawing money from his Neteller account on a regular basis. As Neteller wouldn't pay what he believed he was owed, Mr W brought his complaint to the ombudsman service.

Our investigator considered the evidence showing Mr W's account and usage with certain gambling sites. This covered the period of the promotion but also covered his use before the promotion started and after it finished. She thought this showed Mr W was placing bets and therefore Neteller hadn't fairly applied term 6 (a). She asked Neteller to count those transactions towards the promotion.

Neteller did not agree, and argued that Mr W may have been abusing the promotional offer to increase his bonus cashback payments. They've asked an ombudsman to make 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 done so, I've reached the same conclusion as our investigator. I'll explain why.

I've reviewed both the terms and conditions of Neteller's promotion and whether these were fairly applied to Mr W.

It's clear Neteller were alerted by the owners of certain games that people with Neteller accounts were potentially abusing the terms of the promotion. Essentially it was argued people were just placing money on an account and then withdrawing the money, rather than playing the games and betting. Some of these games were then excluded from the promotion from 1 December 2016.

Neteller believed Mr W was one of those customers. They looked at his transfers made to the gaming sites, and noted the amounts being transferred in were broadly the same as those being withdrawn. They said this means those transfers fell under term 6 (a) of the promotion terms and conditions.

I specifically asked Neteller for further information about what constituted transactions with “*no commercial purpose*”. Particularly as their own terms and conditions say the Neteller account can’t be used “*for commercial purposes*”. This seems to me to suggest a certain conflict within their own terms. I didn’t receive a clear response.

So to help me decide, like our investigator, I reviewed Mr W’s Neteller account history. 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 doesn’t mean he wasn’t making proper use of the funds transferred.

What also convinced me is that Mr W’s account history for the period of the promotional period looks very similar to the period before and after the promotional period. I can see no real difference in how the account transactions are represented. So I don’t know why Neteller would say Mr W wasn’t using his account properly.

In fact after Mr W knew some sites were additionally excluded from the promotion, he continued to use these sites in exactly the same way. This certainly suggests he wasn’t part of any concerted attempt to abuse the promotional offer as the way he used these sites didn’t differ.

So I don’t agree with Neteller that it’s obvious Mr W’s transactions had no commercial purpose. And on that basis, I don’t think it’s fair to exclude these from the promotion. I’m asking Neteller to put this right and make sure Mr W is paid what is now owed, along with 8% simple interest a year.

my final decision

For the reasons I’ve given, my final decision is to instruct Paysafe Financial Services Limited, trading as Neteller, to:

- Reinstate Mr W to the promotion;
- Include those transfers to those gambling sites between 3 and 30 November 2016 in its calculations relating to the promotion;
- Pay Mr W 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 cashback was to be paid) to the date of settlement.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr W to accept or reject my decision before 27 March 2018.

Sandra Quinn
ombudsman