

The complaint

Mr E complains that Paysafe Financial Services Limited trading as Neteller, blocked his account and returned funds to source. He would like his money back and compensation.

What happened

The facts which led to Mr E bringing his complaint to our service are well known to both parties, so I am not repeating them in full here.

In summary, Neteller blocked Mr E's account whilst they carried out a review. The account was blocked from 6 November 2020 to 20 November 2020. Once the account was unblocked Mr E discovered that funds in his account amounting to USD 2,088 had been returned back to source. Mr E says the funds were his, he had received them from a user I will refer to as X once Mr E had paid X the same amount on a different platform.

Our investigator thought Neteller had done nothing wrong, and they had complied with their legal and regulatory obligations when they reviewed the account. He thought Neteller were entitled to rely on the terms of the account to return the funds to source.

Mr E disagreed with the view. He said Neteller should have kept his money safe instead of returning it to source. He said they hadn't notified him that they were returning the funds to source so he hadn't been able to claim from X through the different platform. He was now without funds when he had carried out a genuine transaction. Mr E asked for a final decision.

As no agreement could be reached the matter came to me and I issued a provisional decision.

In my provisional decision I said:

I'll start by setting out some context for the review of Mr E's account. UK legislation places extensive obligations on regulated financial businesses.

Financial institutions must establish the purpose and intended nature of transactions as well as the origin of funds, and there may be penalties if they don't. This applies to both new and existing relationships. These obligations override all other obligations. I am satisfied Neteller were complying with these obligations when they reviewed Mr E's account and asked him to provide information about how he was operating his account.

Neteller has to have in place security measures and procedures in order to try to safeguard its customers' accounts and ensure it complies with its legal and regulatory obligations. And it's not for this service to interfere with these processes. That's a matter for Neteller. I'm satisfied Neteller were entitled to request the information that it did from Mr E.

It follows I don't think Neteller did anything wrong when they reviewed and blocked Mr E's account and asked him for information.

Return of funds

Neteller returned USD 2,088 to source on 7 November 2020, whilst the account was blocked. Mr E said he only found out about this on the 19 November 2020 when his account was unblocked.

Neteller have said that the money was the result of fraudulent activity and have relied on their terms to return the funds to the source from which they came. Mr E says that the money was his and he had already transferred the same amount to X on a different platform.

Best industry practice in these scenarios asks businesses to investigate and determine whether their consumer has a genuine claim to the funds, and it seems Neteller haven't done so.

Neteller have said Mr E was running a business and his account was a personal account. This contravenes the terms. In addition, the business Neteller says he was running is a currency exchange business and Mr E didn't seek permission from Neteller to do so – this again is a breach of the terms

Neteller have relied on the terms and conditions to return the funds to source. Neteller have quoted section 6.11 of the terms of use:

“6.11 Transactions are final and are not reversible save in the following circumstances and at our sole discretion:

6.11.2 where there is illegal activity involving your Account; or

6.11.3 where you are in breach of these Terms of Use.”

“6.15 You must only use your Account for personal purposes and not as a means to trade or run a business unless, in certain circumstances as determined by us, we give our prior written consent for you to do so.”

In their final response letter to Mr E, Neteller have referred to section 14.6 of the terms of use that allows Neteller to reverse any transaction, “if the customer conduct or attempt to conduct it without the necessary approval under section 14.5. which state:

14.5. You may only accept payments for certain categories of business after approval from us in our sole discretion. Such business categories include but are not limited to: money exchange or [...]”

Neteller have said that Mr E was running a business or trade from his account. The trade they have identified is currency exchange. Neteller have confirmed they didn't give permission to Mr E to use his account for currency exchange.

The information that has been provided isn't as clear as I would like. I can only consider information that relates to this account and not any other account that Mr E may have whether with Paysafe or another provider. From what I've seen, I'm not satisfied that Neteller can fairly conclude on the evidence they have provided to this service that Mr E used his account for business purposes.

I have looked at the movements on Mr E's account which was provided to us by Neteller. From these I can see that Mr E was carrying out some Crypto currency trading, and he was receiving some money transfers, but I can't see any evidence from the account statements that he was using the specific Neteller account for business purposes or for currency exchange in particular. Because of this I'm not satisfied that Neteller are able to return funds to source through the terms they have relied on.

I appreciate that Neteller's terms may allow it to return funds to source in certain circumstances, but in this case, I don't think the circumstances are such to allow them to apply the term. In addition, I don't consider that its fair and reasonable for them to return the funds as from the evidence it appears Mr E has a genuine claim to these funds.

Neteller haven't provided me with sufficient information for me to fairly conclude that it was fair and reasonable for them to return the funds to source. I say this because Mr E has maintained that he was entitled to the funds he received, and he provided X with the funds through a different platform. Neteller haven't asked Mr E for any information to establish if he was an innocent recipient of fraudulent funds. They have also confirmed that they think Mr E was likely an innocent recipient of fraudulent funds. In view of this I am not satisfied that they are entitled to deprive Mr E of his funds. There's no evidence to suggest Mr E dishonestly procured the funds from X Nor is there any evidence that he knew, believed, or suspected that the funds had been illegitimately procured by someone else in order to pay them into his account. Despite this Neteller made the decision to return the payment back to the original source. But it's only fair for a financial business to return funds to source when they're completely satisfied a customer isn't entitled to the funds.

In summary, I've looked at the evidence which Neteller relied on to return the money. Having done so, I don't think it was reasonable for Neteller to return the money to its source. Neteller ought to have asked Mr E for information to establish his entitlement to the funds in his account. Had they done so they would have realised that Mr E was carrying out a genuine transaction with X and had parted with his money on a different platform once he had confirmation of receipt of the money into his Neteller account.

In summary for the reasons stated above I am minded to uphold this complaint. And to ask that Neteller pay Mr E USD 2,088 which they have returned to source. As well as interest at 8% for the period of time he was without his money from 7 November 2020 until payment is made.

Mr E has been inconvenienced by this situation and I think Neteller should pay him £150 in compensation.

Replies to my provisional decision

Mr E agreed with my provisional decision.

Neteller disagreed with the provisional decision. They said they disagreed with the 8% interest proposed as the complaint was received and responded to in August 2021. Neteller has said the delays of over 24 months are at the ombudsman service end and Neteller should not be required to pay interest for the period that the complaint was with the ombudsman.

Now both sides have had an opportunity to comment I can go ahead an issue my final decision.

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.

I acknowledge Mr E's comments.

In response to my provisional decision Neteller has highlighted some concerns which I will deal with below.

Neteller have said they are unhappy with the provisional decision. They haven't specified any particular issues in relation to the merits. Neteller have objected to the 8% interest as they consider that the delay in resolving the complaint is down to delays in the ombudsman service. I appreciate what Neteller are saying however Neteller had an opportunity to settle early when Mr E originally brought the complaint to Neteller. Neteller didn't do so, and Mr E has been out of pocket from 7 November 2020. Neteller is also aware of the financial ombudsman's timescales. So, on balance I am satisfied that the payment of 8% by Neteller is fair and I don't see a reason to change this.

In summary I thank Neteller for its submissions which I have considered in full. Having reviewed all the information received by both parties and their responses to my provisional decision I see no reason to depart from my original provisional findings. I remain of the view that this complaint should be upheld for the reasons set out in my provisional decision, which are repeated above and form part of this decision.

My final decision

For the reasons stated above I uphold this complaint and direct Paysafe Financial Services Limited trading as Neteller to pay Mr E:

- USD 2,088 which belonged to him. As well as interest at 8% for the period of time he was without his money from 7 November 2020 until payment is made.
- £150 in compensation for the inconvenience this matter has caused him

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 29 February 2024.

Esperanza Fuentes
Ombudsman