

The complaint

Mr L complains Nvayo Limited (“Nvayo”) blocked his account and withheld the funds in it.

What happened

The details of this complaint are well known by both parties, so I won’t repeat them again here in detail. Instead, I’ll focus on setting out some of the key facts and on giving my reasons for my decision.

Mr L’s account has been blocked since August 2023. Nvayo said that due to temporary restrictions placed on it by the FCA - Financial Conduct Authority – its not permitted to process any customer account payments without authorisation.

Nvayo explained it was working closely with the FCA to resolve matters and return funds to its customers. Unhappy about this, Mr L complained. Nvayo didn’t uphold Mr L’s complaint. In short, it made the following key points:

- In August 2023, the FCA issues a Supervisory Notice to it which placed certain restrictions on its activities including its ability to pay withdrawal requests without prior FCA consent
- Mr L requested withdrawal of his funds in November 2023

Mr L referred his complaint to this service. One of our Investigator’s looked into it and recommended it was upheld. In summary, they made the following key findings:

- Once the restrictions on Nvayo are lifted by the FCA, it should refund the funds to Mr L as soon as it is able to once any further checks required are completed
- Mr L has been deprived of his funds for a significant period. Nvayo accounts are restricted due to restrictions imposed upon it by the FCA. The FCA has publicly said it has serious concerns about Nvayo and its compliance with financial crime controls. So Nvayo is responsible for Mr L for not having access to his funds
- Once Nvayo is able to, it should refund the funds to Mr L and pay him 8% simple interest on them from when the account was blocked up until settlement. It should also pay him £150 for the distress and inconvenience he’s suffered

Nvayo didn’t agree with what our Investigator said. It explained:

- It can’t act any differently as it’s under the FCA’s supervision and so this matter is outside of its control. Nvayo has been trying to resolve matters to the FCA’s satisfaction and resume its business activities
- The original restrictions placed in August 2023 didn’t relate to Nvayo’s money laundering systems and controls. So it’s unfair this service suggests Nvayo is at fault for consumer harm when it has acted in accordance with regulatory permissions. The

wider context of this matter needs to be considered

- Nvayo wants this service to review the proposed compensation particularly when 8% simple interest should be paid from. Mr L only asked for his funds in November 2023

In response, our Investigator explained that Nvayo is responsible for any detriment to Mr L as the restrictions imposed upon it by the FCA relate to issues identified against it. And to award interest from when the account was blocked until any settlement is in line with this service's approach.

As there is no agreement, this complaint has been passed to me to decide.

What I've decided – and why

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 Mr L and Nvayo have said before reaching my decision.

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 have decided to uphold this complaint. I'll explain why.

As a regulated business, Nvayo has certain obligations which it must comply with. Nvayo is subject to regulation by the FCA. The FCA applied restrictions on Nvayo for reasons it has publicised. As a result, Nvayo suspended its operations. This impacted Mr L, given he had no access to his funds from August 2023.

As the FCA has suspended Nvayo's activities, there is nothing it can do in relation to returning Mr L's funds. So Nvayo say it shouldn't be held liable for any detriment to Mr L whilst the FCA's limitations are imposed.

After carefully considering this, I'm not persuaded it's fair or reasonable in the circumstances of this complaint to find Nvayo didn't do anything wrong. I say that because Nvayo has had to suspend its operations due to failures on its part. I note Nvayo say that the reasons initially for the FCA's restrictions didn't relate to concerns about its financial crime controls. But from what I've seen, the FCA's actions have always related to concerns it had about Nvayo and its compliance with its obligations overall.

So I think Nvayo should put things right by addressing the fact Mr L has been deprived of his funds through no fault of his own.

It's important to note that as a regulated business, Nvayo must comply with extensive legal and regulatory obligations. These generally cover the entire period of its customer relationship – from application to eventually the end of the relationship. This includes KYC checks and/or Customer Due Diligence (CDD). So once it's in position to do so, any refund of funds should be subject to these checks if Nvayo is required under its obligations to carry them out.

Nvayo argue that awarding 8% simple interest from when the account was restricted isn't fair given Mr L only requested them in November 2023. There isn't any way of knowing if Mr L would have used his funds any sooner given the restrictions. And ultimately he has been restricted access to funds he might otherwise have utilised.

I'd add too that awarding 8% simple interest when a regulated businesses' customer has wrongly been deprived of their funds is in line with the approach at this service. I haven't seen compelling enough reasons why Mr L shouldn't be awarded compensation in this way, so I'm satisfied this is fair redress.

I'm also satisfied £150 compensation is fair award for any distress and inconvenience this matter has likely caused Mr L. Mr L has after all had to chase this matter up with Nvayo and would be distressed by not knowing what will happen to his money.

When Nvayo is able to release the funds to Mr L, I don't think it's fair or reasonable for it, or its banking partners, to charge him any conversion or commission fees. So these should not be applied.

Putting things right

Nvayo must satisfy it's legal and regulatory obligations before releasing the funds to Mr L. Once it's able to do this, Nvayo must do the following to put things right:

- Pay 8% simple interest on Mr L's funds, which relates solely to Fiat currency, from when it first restricted his access up until settlement*
- Not apply any fees or charges when it releases the funds to Mr L – as detailed above. If it or its banking partner do apply such charges, they should be refunded
- Pay Mr L £150 compensation for the inconvenience it has caused

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

My final decision

For the reasons above, I uphold this complaint. Nvayo Limited must now put things right as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 28 October 2024.

Ketan Nagla
Ombudsman