

The complaint

Mrs J complains Nvayo Limited (“Nvayo”), trading as Club Swan, blocked her 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.

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

Nvayo explained it was working closely with the FCA to resolve matters and return funds to its customers. Unhappy about this, Mrs J complained. Nvayo didn’t uphold Mrs J’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
- Mrs J requested withdrawal of her funds in September 2023

Unhappy with Nvayo’s responses, Mrs J referred her 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 Mrs J as soon as it is able to once any further checks required are completed
- Mrs J has been deprived of her 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 the impact on Mrs J for not having access to her funds
- Once Nvayo is able to, it should refund the funds to Mrs J and pay her 8% simple interest on them from when the account was blocked up until settlement. It should also pay her £150 for the distress and inconvenience she’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 and 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

In response, our Investigator explained that Nvayo is responsible for any detriment to Mrs J 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 Mrs J 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 Mrs J, given she had no access to her funds from August 2023.

As the FCA has suspended Nvayo's activities, there is nothing it can do in relation to returning Mrs J's funds. So Nvayo say it shouldn't be held liable for any detriment to Mrs J 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 Mrs J has been deprived of her funds through no fault of her 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. But Mrs J has been restricted access to funds she might otherwise have utilised. 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 Mrs J 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 Mrs J. She has explained that because of being denied access to her funds she has struggled financially and has a young family to care for. And the matter has caused her anxiety and distress.

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

Putting things right

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

- Pay 8% simple interest on Mrs J's funds, which relates solely to Fiat currency, from when it first restricted her access up until settlement*
- Not apply any fees or charges when it releases the funds to Mrs J – as detailed above. If it or its banking partner do apply such charges, they should be refunded
- Pay Mrs J £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 Mrs J how much it's taken off. It should also give Mrs J a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

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

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

Ketan Nagla
Ombudsman