

## **The complaint**

Mr T is unhappy with the way PayPal (Europe) Sarl et Cie SCA ('PayPal') has responded to a claim he made to it in relation to a service he bought using credit it provided.

## **What happened**

Mr T used PayPal Credit to buy a flight. However, because of his concerns about travelling due to the Covid-19 pandemic he thought about cancelling the flight. In February 2020 he wrote about his concerns to the booking agent ('the Agent') he bought the ticket from.

The Agent wrote back to Mr T to ask him to confirm if he wanted to cancel and said he would be an eligible for a full refund. Mr T wrote back to say he wanted to cancel and get a full refund. However, Mr T had difficulty getting any response from the Agent after this. So he contacted PayPal for help.

Mr T wrote to PayPal to explain the situation and provided proof that the Agent had agreed to refund the money. Mr T said he was concerned that PayPal would start to charge interest on the transaction so wanted the matter resolved.

PayPal did not agree to uphold Mr T's claim via its Buyer Protection Policy ('BPP') or Section 75 of the Consumer Credit Act 1974 ('Section 75'). In summary, it said:

- Mr T was not eligible under the BPP for a refund in these circumstances; and
- The transaction was not covered by Section 75 as he bought the tickets via an Agent rather than from the airline directly – which breaks the 'debtor-creditor-supplier' chain required for a valid claim.

Mr T was unhappy with this and complained. PayPal wrote again in June 2020 with its final response letter – rejecting his complaint.

Mr T was dissatisfied with this, and also the way PayPal handled the matter. In summary, he considered the customer service was unresponsive and disregarded his consumer rights. He referred the matter to this service.

Our investigator looked at the matter. In summary, the investigator concluded:

- Mr T did have a valid Section 75 claim in respect of the actions of the Agent – and that it had breached its contract with him by not paying out the full refund as promised; and
- The customer service PayPal provided was not unreasonable in the circumstances.

Our investigator directed PayPal to refund Mr T for the tickets. Mr T agreed with this view, but PayPal did not. In summary, it said that it is not responsible for the failings of any third party company such as the Agent and all actions it took were in line with PayPal's agreed terms of use.

The matter was passed to me to consider. I clarified some of my thinking on the proposed redress with PayPal and Mr T, after which PayPal made an offer to settle the case which Mr T did not accept. So the matter has come to me for a 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.

#### *Buyer Protection Policy ('BPP')*

PayPal says it considered and rejected the matter under its own BPP. Because I think this complaint should be upheld on the basis of Section 75 I don't consider it necessary to go into great detail about whether the refund should have been made via the BPP. However, from the information I have seen it appears that Mr T would not be eligible for a refund under the BPP in the particular circumstances as the service was still available to Mr T at the time he cancelled it.

#### *Section 75*

Section 75 allows Mr T to hold PayPal responsible for breach of contract or misrepresentation in respect of goods or services purchased using the credit afforded here. However, there are certain technical criteria that have to be met for a Section 75 claim to be valid. These criteria relate to the cost of the goods or services, the parties to the transaction, or the way the payment was made. One of those is for a 'debtor-creditor-supplier' (DCS) agreement between the parties to the transaction.

I've considered what PayPal has said about DCS, but I feel that this is too narrow a description of the position here. It isn't in dispute that Mr T's payment went to the Agent and that he entered into a contractual relationship with it.

So rather, I think the position is that there is a valid DCS agreement between Mr T (the debtor here) and PayPal for the financing of purchases from the Agent. It follows that Mr T does have a Section 75 claim in respect of any misrepresentation or breach of contract by the Agent.

I have gone on to consider the actions of the Agent here in order to decide whether PayPal's response to the claim has been fair and reasonable. The terms and conditions from the Agent relating specifically to Mr T's transaction have been difficult to obtain. However, the information online does suggest that the Agent will take an active role in the cancellation process by requesting any applicable refund from the airline, and then refunding it to the customer in line with the airlines refund policy.

I have also looked at the terms and conditions of the airline which indicate that certain fares are fully refundable on cancellation. From the booking information we have it is unclear what category Mr T's ticket falls into. However, the email from the Agent dated 12 February 2020 categorically states that his ticket is eligible for a full refund should he confirm he wishes to cancel (which he promptly does). Furthermore, this email reaffirms the active role the Agent takes in the cancellation process as it goes on to ask Mr T to confirm to it that he would like to cancel and get a full refund so that it can process said refund.

Overall and on balance, I am satisfied that Mr T was eligible for a full refund and that as part of the service he paid for, the Agent had contractually agreed to arrange said refund. It follows that by failing to do this it has breached its contract with Mr T.

Despite what PayPal has said, Section 75 does make it liable for the failings of a third party in certain circumstances. In this case, because I consider the Agent has breached its contract with Mr T, and with Section 75 in mind, it is fair and reasonable that it refunds him for the tickets. I can also see that PayPal initially considered and declined his claim on the 19 February 20. So I think it also fair that it pay 8% yearly simple interest on the refund calculated from the date it declined the claim to the date of settlement.

### *Customer service*

I can see that Mr T is very unhappy with the way PayPal handled his claim including what he says was a lack of assistance from customer service and unfulfilled promises to contact him. I have looked at the customer service he received. I think some things that happened could have been better handled. For example, although Mr T got an initial response to his claim about a week after contacting PayPal, it didn't appear to consider the position under Section 75 until several weeks later and with further prompting.

I acknowledge the frustration caused, and I have also considered the unprecedented circumstances at the time of the global pandemic which presented a significant operational challenge for businesses and likely contributed to responses which did not appear to be as tailored or timely as Mr T would have expected. Overall, with this in mind, while some things could have gone better I don't think there is enough to warrant an additional award here.

### **Putting things right**

As I have said above – with Section 75 in mind I think it fair that Mr T gets a full refund for the ticket plus an award of interest from the date his claim was initially declined.

### **My final decision**

I uphold this complaint and direct PayPal (Europe) Sarl et Cie SCA to refund Mr T the full ticket price of £630 plus 8% simple yearly interest calculated from the 19 February 2020 until the date of settlement.

If PayPal considers it necessary to deduct tax from the interest element of this award it should provide Mr T with a certificate of tax deduction so he may claim a refund from HMRC if applicable.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 21 April 2022.

Mark Lancod  
**Ombudsman**