

The complaint

Mr T complains about the way PayPal (Europe) Sarl et Cie SCA dealt with a claim he made in relation to goods he bought from a third party using PayPal Credit.

What happened

Mr T bought a wooden self-assembly climbing frame online from a trader, W. He paid £1,369.95 for the item using running-account credit PayPal provided to him. The assembly instructions from W recommended securing the frame in concrete. Mr T paid another company £500 for the groundwork involved.

Unfortunately Mr T was unable to make use of the climbing frame. When he attempted to assemble it, a lot of the wood was warped, discoloured and damaged. Replacement parts W sent to Mr T had similar problems. W offered Mr T a partial refund, which he rejected, referring matters to PayPal.

Mr T says he found it difficult to discuss the situation with PayPal as it wouldn't adapt its correspondence channels despite his individual communication needs. And he's unhappy with PayPal's response, which found in his favour but told him that, in line with its Buyer Protection Policy, before he could be refunded he'd have to arrange to return the item to W at his own cost. Mr T also noted some of the parts had already been set in concrete and the difficulty this would present in returning the goods.

Mr T proposed an alternative resolution, by which he would accept a partial refund and make best use of the wood he was able to work with. PayPal rejected Mr T's proposal, and he referred matters to us, as he was unhappy at what he saw to be a failure to uphold his rights as a consumer and as a person with particular communication needs.

Our initial assessment

Our investigator noted that because Mr T had used PayPal Credit to fund his purchase, he had a right to claim directly against PayPal under section 75 of the Consumer Credit Act 1974 ("CCA"), in addition to PayPal's own Buyer Protection Policy. PayPal told us it had considered section 75 when it decided Mr T's claim, though the investigator found its final response letter was silent on its conclusions in this respect.

The investigator was satisfied that under the connected lender liability provisions of section 75, Mr T was able to make a claim that the climbing frame wasn't of satisfactory quality as implied into the purchase contract by the Consumer Rights Act 2015 ("CRA"). PayPal had already acknowledged the poor quality of the goods and found in Mr T's favour in this respect.

The investigator further concluded that Mr T was entitled to a full refund under the CRA, which also provides that any reasonable costs of returning goods should not be borne by the consumer. He also felt Mr T would be able to claim for losses incurred due to the breach, which included the costs Mr T had in the preparatory groundwork as well as those he was

likely to face in restoring his garden to its original condition. Mr T provided a quote indicating a likely cost of £800 for this further work.

In respect of the difficulties Mr T experienced in corresponding with PayPal, the investigator felt it could have acted more promptly to assist Mr T and accommodate his personal communication needs. He recommended PayPal pay £100 compensation for this.

PayPal didn't agree with the investigator's proposals and asked for this review.

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.

In responding to the investigator's assessment, PayPal hasn't offered any specific comment on any aspect with which it disagrees. It said its position was set out in its previous submissions. I've reviewed those submissions carefully. At no point did PayPal set out its position regarding section 75 liability other than to say it had taken it into consideration. Based on the evidence available to me, Mr T's transaction meets the requirements set out in section 75. Section 75 has the effect that where there has been a breach of contract or misrepresentation by the supplier, Mr T has the same claim against PayPal as he does against W.

As has already been noted, the CRA implies into a contract for goods certain terms relating to – among other things – satisfactory quality. The photographs and testimony Mr T supplied (and the response from both W and PayPal) suggests that the required standard wasn't met. None of the submissions from either party leads me to reach a different conclusion on this point. It follows that I'm satisfied Mr T has demonstrated breach of contract and has a valid claim against PayPal.

W attempted to remedy this breach by replacing damaged parts, but this proved ineffective. Mr T suggested a remedy available to him under the CRA; that is, a price reduction. I understand PayPal objected to this proposal on the basis it would have amounted to Mr T receiving a full refund (taking into account W's previous reimbursement offer).

What Mr T suggested doesn't strike me as an entirely unreasonable proposal; after all, section 24(2) of the CRA includes the possibility that a price reduction might, where appropriate, be the full amount of the price. Although it would mean Mr T would have the benefit of goods at effectively no charge, the condition of those goods as supplied to him appear to have been of minimal value other than any use Mr T could himself make of them.

As such, had PayPal agreed to that suggestion, I might have considered it a reasonable way to resolve the complaint. But it did not, and that leaves Mr T with a final right to reject the goods, and/or to seek alternative remedies available to him under section 19 of the CRA, including claiming damages.

Mr T has sought to exercise that right of rejection. I'm satisfied he's entitled to do so, and that he should receive a full refund (less any amount he might already have received from W). I don't consider the circumstances in this case suggest that it would be reasonable to make a deduction in respect of those parts Mr T is unable to return in their original condition. They have no material value other than as part of the whole frame, which as already acknowledged, was not of satisfactory quality.

As the investigator noted the CRA says that where the right to reject goods is exercised, it's the trader – not the consumer – that must bear any reasonable costs of returning them.

While PayPal's Buyer Protection Policy makes different provisions, where the CRA applies (as it does here) it is the legislation that takes precedence. That means that, having due regard for its section 75 liability, it was unreasonable for PayPal to make a refund contingent on Mr T returning the goods at his own cost.

To address this aspect, PayPal should either make suitable and prompt arrangements to collect the materials from Mr T and bear any reasonable cost of doing so. Alternatively, if PayPal decides it doesn't want the goods it should make this clear to Mr T and also confirm that he can dispose or make use of the items as he sees fit.

I now turn to the additional costs Mr T is claiming in respect of the groundwork – both in preparation and in making good after the frame is removed. I see no reason why he would be unable to make a claim in damages for those costs. They are directly connected to the nature of the breach.

W's instructions include a guide to the preparatory work necessary for installation, which Mr T had to pay for. As the frame couldn't be constructed due to the breach, it follows that this cost represents a £500 loss to Mr T.

Similarly, if Mr T now faces further cost in restoring his garden to its original condition, it seems reasonable that the cost of doing so is borne by the breaching party. In this case, that's PayPal. Mr T has provided a quote for this work indicating he faces paying a further £800. So taking these aspects into account, I find that PayPal should cover both of these connected costs as well.

I accept Mr T has had difficulty in correspondence with PayPal. He has personal communication needs that he informed PayPal about. Noting those needs I consider PayPal ought to have done more in terms of making reasonable adjustments to the way it engaged with him in relation to this dispute. This was clearly a source of some upset to Mr T and I think it's appropriate that PayPal pays him compensation for that. I share our investigator's opinion that £100 represents a fair sum in this respect.

My final decision

For the reasons I've set out here my final decision is that to settle Mr T's complaint, PayPal (Europe) Sarl et Cie SCA should, within 28 days of Mr T's acceptance, take the following steps:

1. rework Mr T's account removing the £1,369.95 from the purchase date (less any refunds PayPal can show he has already have received from W)
2. If PayPal charged any interest or fees to Mr T's account in relation to the purchase, these should be refunded. If this results in a balance owed to Mr T, this surplus should be added to the sum in 1.
3. pay Mr T interest on the sum in 1. (including any surplus arising from the calculation in 2.) at 8% simple per year. This should be calculated from the date of the original transaction until the date it pays this settlement. If PayPal deducts tax from the interest element of my award, it should confirm to Mr T that it has done so and provide him with the relevant tax deduction certificate
4. pay Mr T £1,300 representing the associated costs he's incurred in preparatory groundwork and in restoring the condition of his garden
5. pay Mr T £100 in recognition of the distress and inconvenience he experienced from

the way it corresponded with him

6. Note Mr T's preferred communication method in its records and ensure its future correspondence with him takes account of any reasonable adjustments he might tell it he requires

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 22 March 2022.

Niall Taylor
Ombudsman