

The complaint

D complains that PayPal (Europe) Sarl et Cie SCA did not refund their money after a customer refused to pay local custom charges on the items they ordered.

What happened

D received an order from a customer which was processed using PayPal for £254. Their courier attempted to deliver the purchase to the customer who lived overseas, however, the customer refused to pay the local taxes and declined to receive the order, despite D's terms and conditions stating the customer would be responsible for paying any local taxes/charges. D's customer asked PayPal to refund the full £254.

After PayPal's investigations, they refunded the customer £254 and charged D a £12 administration fee. D says that PayPal should not have returned the money at all, but even if they found in favour of the buyer, then PayPal should refund D at least the costs of the shipping (£91.25) and they should not have charged D a £12 administration fee.

D complained to PayPal, however, PayPal did not uphold the complaint. PayPal said that D had not met their definition of their proof of delivery requirements, as the information from the courier did not show the parcel was delivered to the recipient and it was returned to D.

D brought their complaint to our service. Our investigator upheld D's complaint. He said that we knew the item was delivered as the customer refused to pay the local taxes, which wasn't D's fault. As the customer had broken the terms and conditions with D by not paying the local taxes then a full refund should not have been given to the customer. Our investigator said that PayPal should pay D £100 for inconvenience and refund the £12 administration fee.

Both parties asked for an Ombudsman to review the complaint. PayPal said they had acted correctly in line with their User Agreement and therefore no compensation should be paid to D.

D said that they were still charged the courier fee and attached an invoice to prove the costs. They said that their view is that PayPal should reimburse them £91.25 for courier costs, £12 for the administration fee refund and £100 for inconvenience. So D wanted PayPal to pay them £203.25 in total.

As my findings differed in some respects from our investigator's, I issued a provisional decision to give both parties the opportunity to consider things further. This is set out below:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've considered whether PayPal acted in line with their User Agreement during the dispute and claims process. And I'm satisfied they did act in line with it when they didn't allow D to keep the proceeds of the sale. I say this as PayPal had not received information from the courier with the status of delivered, which is one of the requirements to meet PayPal's "proof

of delivery" in order for D to be eligible for seller protection.

So I'm satisfied that PayPal were entitled, under the User Agreement of the account, to not pay D, despite the information which they gave PayPal. But, I do need to think about what's fair and reasonable in all the circumstances of a complaint. In doing so, there will be times that a strict application of any terms and conditions, will result in an unfair outcome for a customer in the individual circumstances of a dispute.

In my view that's what's happened here. I say this as D's terms and conditions show that the buyer would be responsible to pay any local taxes/charges. As a result of D's customer refusing to pay the local taxes, then D's customer broke the terms of the agreement. It's clear from the information D had sent PayPal, that the items had been shipped. I checked the registered address that PayPal had for D's customer and the destination of the purchase for D's customer. Both addresses match, so I'm satisfied that the items were to be delivered to the correct same address, which would be part of the proof of delivery conditions of PayPal's User Agreement.

So I'm persuaded that the only thing which stopped the courier showing a successfully delivered status is because the customer refused the delivery. So I asked PayPal if they could forward me any policy they had regarding customer's refusing to accept items. PayPal responded that "for whatever reason if the item is not delivered to the recipient (whether it was shipped to the wrong address, lost in transit, held by customs, or automatically returned to sender) PayPal reserve the right to deny PayPal Seller Protection." But here it wasn't automatically returned to the sender as the customer had refused to pay the local charges, which they would have agreed to pay as part of their agreement with D. So I'm persuaded that this has resulted in an unfair outcome for D.

I say this as not only have they lost out on a sale which had been agreed with the customer, but they would incur courier costs through no fault of their own. The customer of D would be rewarded with a full refund, despite them breaking the agreement of the sale. I'm persuaded that PayPal should have realised that D's customer did not meet the terms and conditions they agreed to and that D had attempted to successfully deliver the purchase to their customer, therefore this shouldn't have prompted PayPal to refund D's customer the full amount of the purchase.

So I need to consider what would be a fair outcome here. D have received their goods back. So I don't think it's proportionate to ask PayPal to refund them the full cost here. But there was a courier cost involved for D of £91.25, which I do think PayPal should pay back to D. I say this as D have had the item returned by the customer, through no fault of D's actions and therefore I'm not persuaded D should incur these costs after PayPal have decided to refund the full amount of the purchase to D's customer. That's not to say that PayPal should always do this for every customer where PayPal had initially followed their User Agreement. It's just that I think this would be fair given the circumstances here.

I've then considered the £12 dispute fee. I know D feels this should be refunded as they feel PayPal should have ruled in their favour. So I asked PayPal whether this fee would be payable regardless of the outcome of the claim. PayPal responded and they said their User Agreement says "The Dispute fee applies when the buyer pursues a claim directly with PayPal, a chargeback with their card issuer, or a reversal with their bank." It goes on to say that "The Dispute fee will be deducted from your PayPal account after the claim is decided."

So here, the buyer (D's customer) did pursue a claim directly with PayPal. As the wording above shows, the dispute fee will be deducted from the PayPal account after the claim had been decided, indicates that this fee would be payable regardless of whether PayPal found in D's favour, or D's customer's favour. It is for this reason that I can't ask PayPal to refund

the £12 dispute administration fee here, as this appears to have been fairly applied and would be payable regardless of the outcome.

I've then considered whether D should be awarded any compensation for inconvenience. I agree with our investigator that £100 would be a fair level of compensation for PayPal to pay D for inconvenience. I say this as it is clear from the information that D sent PayPal that D had shipped the items and attempted to deliver these to the customer. The delivery address matched the registered user's address and D had followed their agreement in good faith by trying to deliver the items to the customer, who had agreed to abide by their terms and conditions.

I'm persuaded that PayPal should have considered this at the time D provided the information that D's customer chose to break the agreement they made with D, by not paying the local custom charges. And a fair outcome would have been to at least provide the courier costs incurred by D at the time.

So, in summary, PayPal were entitled to find in the buyer's favour after the conditions of the seller protection had not been strictly met. But while they were entitled to strictly enforce the terms and conditions of the account, in this particular instance, this led to an unfair outcome based on D's individual circumstances, as D's customer broke their agreement but got a full refund, despite D keeping to their side of the agreement.

So I'm persuaded that what would be fair here, taking into account the individual circumstances of this complaint, would be to refund D their courier costs of £91.25. I also agree with our investigator that it would be fair for PayPal to pay D £100 for inconvenience for the reasons I've already given."

I invited both parties to let me have any further submissions before I reached a final decision. PayPal accepted the provisional decision. D said they had no further additional points to add to the provisional 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.

As neither party have provided me with any further information to consider, then my final decision and reasoning remains the same as in my provisional decision.

Putting things right

In my provisional decision I said I intend to ask PayPal to pay D £91.25 for the courier costs they incurred and £100 for inconvenience. I'm still satisfied this is a fair outcome for the reasons given previously.

My final decision

I uphold the complaint. PayPal (Europe) Sarl et Cie SCA should pay D £91.25 for the courier costs they incurred and £100 for inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask D to accept or reject my decision before 17 March 2022.

Gregory Sloanes

Ombudsman