

The complaint

Mr M complains that PayPal (Europe) Sarl et Cie SCA won't refund the cost of items which weren't successfully delivered to him.

Mr M is represented by his wife in bringing this complaint. But for ease of reading, I'll refer to any submission and comments she has made as being made by Mr M himself.

What happened

Mr M ordered items from a third party retailer and paid £249.60 for the items through PayPal. But he says he never received the parcel his items were in, so he contacted the retailer about this. He also raised a dispute, and later a claim with PayPal. The retailer had initially refunded £12 to Mr M but they said that since a dispute was raised with PayPal then Mr M would have to liaise with them for the remaining £237.60.

On 11 May 2021, PayPal did not uphold Mr M's claim as they said they had received shipment tracking from the seller, confirming that the item had been delivered. Mr M got in touch with the retailer after the courier told him to, on 12 May 2021, as the courier admitted they had left Mr M's parcel behind a plant pot, which the courier deemed to be an unsafe location. The courier said they had to assume the parcel was now lost and they apologised for this happening.

Mr M brought his complaint to our service. Our investigator upheld the complaint and she said PayPal should refund Mr M the cost of the purchase (minus the £12 the retailer had already refunded him) and pay him £50 for inconvenience. She said that the retailer's terms and conditions refer to leaving goods in a safe place, but as the courier confirmed they left the parcel in an unsafe place, it wasn't fair to say that the retailer had adhered to their agreement. She said PayPal's buyer protection policy would protect customers when a courier doesn't deliver. So she thought it would be fair for the policy to apply when the parcel hadn't been delivered to a safe place.

PayPal asked for an Ombudsman to review the complaint as they said they had acted in accordance with their User Agreement. Before the complaint was escalated to me, our investigator sent PayPal proof that the courier had admitted to leaving the parcel in an unsafe place. She also sent PayPal one of the terms of the retailer, where the retailer reserves the right to leave the parcel in a safe place, in and around the property. So our investigator concluded that as the seller's agreement stipulates a safe place for an alternative delivery and the courier's evidence shows it wasn't delivered to a safe place, she didn't think it would be fair to say the items were delivered or arrived.

PayPal replied and said that they reached their decision based on the information provided by both parties. They said that Mr M had not provided any additional information or any additional information he received from the courier. PayPal also said that he didn't forward any further information to appeal the outcome of the case, therefore they remained satisfied that they had acted within the User Agreement and its policies and they wanted an Ombudsman to review the complaint.

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 declined the claim on 11 May 2021. I say this as they had received information from the courier which stated the parcel was "delivered to secure location". The courier had met the criteria of PayPal's definition of "proof of delivery".

So I'm satisfied that PayPal were entitled, under the User Agreement of the account, to decline the claim made by Mr M. 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 it was only evidenced after PayPal had closed down the claim for Mr M on 11 May 2021, that the courier had sent an email on 12 May 2021, confirming that the parcel was left in an unsafe location and that they now assumed the parcel was lost.

PayPal have said that Mr M did not appeal their outcome. But I'm not persuaded that it should be apparent to him that he would need to do that here. I say this as the email PayPal sent Mr M, confirming his claim had been declined, did not outline the appeals process. And even if Mr M had read the PayPal User Agreement regarding appeals, there does not appear to be a time limit outlined in the User Agreement for Mr M to lodge an appeal. But another reason is because the courier company told him to contact the seller, which is what he did. Then, when they didn't help him, he brought his complaint to this service within days of his last communication with the seller.

I'm persuaded if PayPal had not closed down the claim on the date they did – which they were entitled to – that when Mr M had the evidence from the courier company effectively confirming that they hadn't given the correct information about the safety of the location they left the parcel, then he would have sent it to PayPal. And PayPal would have realised that the retailer did not meet their terms and conditions of leaving the parcel in a safe location. I'm persuaded that this information should have given PayPal no choice but to uphold Mr M's claim as they said they would consider the evidence from both parties. So if both parties agree that the parcel was lost/not delivered in a safe place (which they do from 12 May 2021), I can't see how PayPal would have not upheld his claim if they had this information.

So when our investigator showed this evidence to PayPal, I think it would've been fair for PayPal to think about what was proportionate here, realised that Mr M did not receive the items from the retailer and to have refunded the purchase cost (minus the £12 the retailer already refunded him). 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.

So, in summary, up until 11 May 2021, I'm satisfied PayPal acted as I would expect them to regarding their item not delivered part of their User Agreement. 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 Mr M's individual circumstances, as the following day the courier confirmed that they left the parcel in an unsafe location, the courier assumed the parcel was lost and told Mr M to contact the retailer (and not PayPal), which he did.

So I'm persuaded that what would be fair here, taking into account the individual circumstances of this complaint, would be to refund Mr M the purchase cost of the item, minus the £12 that the retailer already refunded him. I also agree with our investigator that it would be fair for PayPal to pay Mr M £50 for inconvenience. I say this as I'm persuaded, for the reasons I've already given, that when PayPal were made aware that they were given incorrect information about the unsafe place that the courier left the parcel, they should have put things right for Mr M."

I invited both parties to let me have any further submissions before I reached a final decision. Mr M had no further information to add. PayPal accepted 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 Mr M £237.60 for the cost of the items he didn't receive and £50 compensation 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 Mr M £237.60 for the cost of the items he didn't receive and £50 compensation for inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 31 March 2022.

Gregory Sloanes
Ombudsman