

The complaint

Mr W complains about PayPal (Europe) Sarl et Cie SCA and their decision to decline the claim he made under their Buyer Protection Policy (BPP).

What happened

On 22 September 2021, Mr W purchased three games from an online retailer, who I'll refer to as "C". This purchase was made through Mr W's PayPal account, for a total of £81.56. But Mr W says he didn't receive the code for one of the games. And that the codes he received for the other two games didn't work. So, he asked C for a refund. And when this refund wasn't received, Mr W opened a dispute with PayPal under their BPP on 1 October. This claim was escalated to a "Significantly Not as Described" (SNAD) claim on 14 October.

But on 20 October, PayPal declined the claim, stating their belief that Mr W wasn't using the codes properly rather than the codes not being as described following information provided by C. And they said they were unable to refund Mr W for the game that hadn't been received, as the game itself hadn't been released yet. Mr W was unhappy with this, so he raised a complaint.

Mr W didn't think PayPal's decision to decline his claim was fair, as he was out of pocket for £81.56 without any of the games he paid for. So, he wanted this decision to be reversed. PayPal responded and didn't agree, maintaining their belief the claim decline was fair. Mr W remained unhappy with this response, so he referred his complaint to us.

While the complaint was with our service, C refunded Mr W for one of the games, worth £7.68. And as a gesture of good will, PayPal agreed to refund Mr W £29.99 for the game he didn't receive.

So, our investigation continued to look into the complaint with this in mind. And they upheld it. They recognised one game had been refunded by the merchant, so didn't consider this further. And they thought PayPal's gesture of goodwill was fair. So, their investigation focused on the remaining game, worth £43.89. And they didn't think PayPal were fair to decline the claim, and not refund this outstanding amount. They thought Mr W's claim satisfied the SNAD definition. And they didn't think it was fair for PayPal to rely on information provided by C, without requesting supporting evidence from Mr W. So, they thought the remaining amount should also be refunded.

Mr W agreed. But PayPal didn't. They didn't think Mr W had provided them with supporting information to assess the claim. So, they thought they were fair to decide in C's favour. Our investigator explained we'd received no evidence to show PayPal requested supporting information from Mr W, so asked for proof of this to reconsider their view. PayPal didn't provide this but still didn't agree. So, the complaint has been passed to me for a 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.

Having done so, I'm upholding the complaint for broadly the same reasons as the investigator. I've focused my comments on what I think is relevant. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

One game, worth £7.68, has been refunded by C since Mr W referred his complaint to us as they accepted the code sent wouldn't work on the console Mr W used. As Mr W received the outcome he was hoping for regarding this game, I haven't considered this any further.

PayPal have also agreed to refund Mr W £29.99 for the game he didn't receive, as they accepted he didn't receive this after the games release date had passed. Again, I think this provides Mr W with the outcome he was hoping for when he raised the claim. So, I think this offer is a fair one and I won't be commenting on this any further.

So, my decision focuses mainly on the final game Mr W ordered for £43.89. PayPal thinks their decision to decline the claim relating to this game was fair and so, a refund shouldn't be provided. For me to agree with this, I'd need to be satisfied Mr W's claim for this game fails to qualify under the SNAD criteria set out with PayPal's BPP. Or, if I think the claim does satisfy this, I'd need to be satisfied that Mr W failed to follow the claim process correctly and so, PayPal's decision to find in the favour of C was a reasonable one. And in this situation, I don't think that's the case.

PayPal's BPP states an item may be considered as SNAD for several reasons. I've considered all these reasons against the circumstances of Mr W's claim. In particular, PayPal's BPP states an item can be described SNAD if *"The item is unusable in it's received state and was not disclosed as such"*.

The item Mr W purchased was a code that would allow him to download a game to play on his console. And Mr W has stated the code C sent him didn't work. So, I think it's fair to say the item, in this case the code, was unusable as it didn't allow Mr W to download the game as he expected and as the code was intended. So, I'm satisfied the circumstances of Mr W's claim satisfies the SNAD criteria.

PayPal don't agree with this, and they've referred to e-mails between C and Mr W which they feel show Mr W was using the code incorrectly, rather than the code being unusable. But I don't think view of PayPal's is fair.

Firstly, I've seen no evidence that shows PayPal requested supporting information from Mr W, as well as C. So, I don't think it's fair of PayPal to rely on supporting information C provided as Mr W wasn't allowed a reasonable opportunity to argue against this. Nor do I think it's fair that PayPal use Mr W's failure to provide supporting information as a reason as to why they think the claim was declined fairly as I wouldn't expect Mr W to do this unless requested. And as I've already explained, I've seen no evidence to show he was requested to do so, despite our service's request for this information to be provided by PayPal.

And even so, the supporting information C provided is purely an opinion on what they believe may be the issue. Within the e-mail chain, I think it's made reasonably clear that C thought the location Mr W needed to set was different to the one they then told him to use. And Mr W confirmed within the e-mails he'd followed C's instructions and that neither location suggested by C worked. I don't think these e-mails suggested Mr W failed to understand the instructions of C.

Mr W has also confirmed he's purchased similar items from C before. So, I think it's

reasonable for me to assume Mr W had a working understanding of how these codes needed to be used. Because of this, I don't think it's fair for PayPal to decide that the code was working when, on the balance of probability, I don't think it was. And so, I think PayPal have acted unfairly when refusing to provide Mr W a refund for this game. As I think PayPal have acted unfairly, I've then thought about what I think they should do to put things right.

Putting things right

Any award or direction I make is intended to place Mr W back in the position he would've been, had PayPal acted fairly. And in this situation, had PayPal acted fairly, I think they would've upheld Mr W's claim. So, he'd have received a full refund of the £81.56 he paid.

So far, Mr W has received £7.68 of this from C directly. So, I think PayPal should refund Mr W the remaining £73.88. I recognise PayPal have already agreed to refund Mr W £29.99 of this, so I think they should add £43.89 to this amount to cover the final game that's been contested.

My final decision

For the reasons outlined above, I uphold Mr W's complaint about PayPal (Europe) Sarl et Cie SCA and direct them to take the following action:

- Refund Mr W the remaining £73.88 related to the payment he made to C in September 2021.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 7 June 2022.

Josh Haskey
Ombudsman