

The complaint

Mrs G is unhappy with how PayPal (Europe) Sarl et Cie SCA dealt with a dispute she raised under its buyer protection policy.

What happened

On 4 December 2021 Mrs G has explained she purchased a washing machine and a dishwasher from an online retailer. And, paid for the items using PayPal credit.

She's explained that delivery of the items was arranged, and the delivery went ahead. However, although the washing machine was delivered in the condition expected, the delivery driver dropped the dishwasher when taking it out of the delivery van and caused damage to it.

Mrs G said arrangements were made for this damaged dishwasher to be collected, and a replacement delivered. But Mrs G has explained that the second dishwasher was also damaged. She said when it was unpackaged, it was clear that one of the dishwasher's side panels was protruding, and there were no clips in place to keep it where it should be.

Mrs G said at this point the retailer wouldn't do anything to resolve the problem with the dishwasher. Rather, it offered her £20 compensation for her experience. However, this wasn't what Ms G wanted to resolve the problem – she wanted to return the damaged dishwasher, or at least be given a new, unbroken one.

Because the matter wasn't resolved with the retailer, Mrs G made a claim under PayPal's buyer protection policy. She noted the dishwasher was "*significantly not as described.*"

On 10 February 2022, PayPal responded to Mrs G's claim, and said that in order to get a full refund she would need to return the dishwasher to the retailer. So, it asked Mrs G to do this, and provide it with the tracking information for the return, before 20 February 2022. Mrs G didn't do this, so the claim was closed in the retailer's favour. Mrs G was unhappy with this, so raised a complaint.

Mrs G said the reason she didn't return the item was because the shipping cost for the return, would cost her over £150 – and she wasn't able to afford this. And, she highlighted that the fact the dishwasher needed to be returned was no fault of her own.

PayPal said it had acted fairly. It said it had acted in line with the user agreement Mrs G had signed up to. It said that the terms included the requirement for Mrs G to provide PayPal with information it asked for, and to return items to the seller, at her own expense. But Mrs G hadn't done this. Given this, PayPal maintained its position on the matter. So, Mrs G referred her complaint to this service for an independent review.

Our investigator considered this complaint and thought it should be upheld. They said that the relevant terms and conditions noted that PayPal *may* ask for the item to be returned to the retailer at the buyer's cost. But, didn't require this to be done in every case. In Mrs G's case, the investigator said it didn't seem fair and reasonable to require Mrs G to return the

dishwasher – given the high cost of the return, and it wasn't a firm requirement under the terms.

Our investigator said photos provided by Mrs G clearly showed the dishwasher was damaged. And she had tried to sort the problem with the retailer in the first instance. Given this, our investigator recommended that PayPal refund Mrs G for the cost of the dishwasher. PayPal didn't agree. It maintained that it had acted in line with the user agreement in place. It also said that under its buyer protection policy that to be eligible for protection Mrs G must not have received a recovery or agreed to an alternative resolution related to the purchase, from another source.

Because PayPal didn't agree, this complaint has been referred to me to decide.

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've decided to uphold this complaint. I've explained why below.

Mrs G feels PayPal has acted unfairly in declining the dispute she raised. So, I've thought carefully about this. The starting point being the terms of the user agreement between PayPal and Mrs G. This being because it is the basis of the contract between the two parties.

On looking at the user agreement, I can see that PayPal offers the opportunity to raise a dispute in a number of different situations – including where an item purchased is received but is *"significantly not as described."* And this is what Mrs G did here.

The user agreement gives some information for disputes raised in this area. It provides a number of reasons why an item might be *"significantly not as described."* These reasons include the item being materially different to the seller's description of it, the item arriving damaged or missing major parts of features.

Mrs G has explained that the dishwasher she has ultimately received is damaged. The panel on the side of it protruding, with clips that are on the other side of the dishwasher being missing on this side. And she has provided photos, which illustrates damage to the item. So, I'm satisfied Mrs G did the right thing in raising the dispute under this category.

I'm aware PayPal accepted the claim the item was *"significantly not as described"* – providing that Mrs G return the dishwasher to the retailer and provide the tracking information for the return. So, it was willing to provide the refund – if a return was completed.

When it didn't receive this information, PayPal declined the claim. So, I've thought about whether that was fair, and in line with the user agreement in place. And I don't think it was.

PayPal has pointed to the user agreement saying Mrs G would need to return the item and was responsible for those shipping costs. But reading the terms, the following is actually said:

"Step 4: Comply with PayPal's shipping requests in a timely manner, if you're filing a Significantly Not as Described claim. PayPal may require you, at your expense, to ship the item back to the seller, to PayPal or to a third party (which will be specified by PayPal) and to provide proof of delivery."

Given the above, I'm aware the term says PayPal *may* require this action. The word "*may*" is important here. This doesn't say it is required in every claim – but it might be. It is at PayPal's discretion, and it suggests PayPal doesn't need to do this in every claim. So, I'm satisfied the above shows PayPal has some flexibility around this.

I've thought about whether it would have been fair for PayPal to use this flexibility in Mrs G's case. And I think it would have been.

I say this because, for Mrs G to return the dishwasher to the retailer, it would have meant her incurring a significant cost, that wasn't a strict requirement in the terms. Mrs G has provided a screenshot of a quote for collecting and returning the item – which was just above £155. I've also run a quote for this, and based on Mrs G's location, and the location of the online retailer, this came out at a similar cost.

I don't think it would be fair and reasonable to expect Mrs G to pay this amount to return the item, given the flexibility PayPal could use, the lack of firm requirement in the terms, and the fact the return cost would be around half of the total refund Mrs G would be due to receive back. Given the above, I don't think PayPal acted fairly in declining Mrs G's claim, when she didn't return the dishwasher.

PayPal have mentioned that Mrs G is required to provide documents it asks for – to be eligible to claim under buyer protection. But, given the user agreements only says it "*may*" require the return of the item and proof of delivery, I'm satisfied the lack of return or return documents doesn't make Mrs G ineligible here.

PayPal has also noted that Mrs G must not have received a recovery or agreed to an alternative resolution related to the purchase, from another source. But, she hasn't. When the dishwasher was sent to her, and was faulty, she did not receive a recovery – she wasn't given a new, fixed one. And she didn't agree to the offer of £20 compensation offered by the retailer. So, Mrs G still had an item that was "*significantly not as described*." Given this, I'm satisfied this point doesn't make a difference to the outcome of the complaint.

With the above in mind, I'm satisfied that PayPal should refund Mrs G for the entire value of the claim for the dishwasher. And as is usual in instances such as this, PayPal should provide Mrs G with 8% interest, simple per annum on this amount, from the date she raised the dispute to the date of settlement, less any tax properly deductible.

My final decision

Given the above, my final decision is that I require PayPal (Europe) Sarl et Cie SCA to:

- Refund Mrs G for the entire value of the claim for the dishwasher
- Provide Mrs G with 8% interest, simple per annum on the above refund, from the date she raised the buyer protection claim, to the date of settlement, less any tax properly deductible. If HM Revenue & Customs requires PayPal (Europe) Sarl et Cie SCA to deduct tax from this interest, PayPal should give Mrs G a certificate showing how much tax it deducted, if they ask for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 24 June 2022.

Rachel Woods
Ombudsman

