

The complaint

Miss L complains that PayPal (Europe) Sarl et Cie SCA won't refund her for transactions she says she didn't agree to.

What happened

Miss L has an electronic money account with PayPal. She says in December 2020 she noticed a payment had gone out to a merchant which she wasn't expecting. It appeared to be for a subscription she thought she'd cancelled in 2017. She later found another payment for the same amount in 2019.

She complained to PayPal, but they declined to refund her. They said the billing agreement with the merchant had been set up in December 2018. Since then Miss L had made a number of payments to the merchant that she hadn't disputed. They said the billing agreement is between the merchant and the account holder, and Miss L should contact the merchant directly.

Miss L referred the complaint to our service, saying she had not agreed to the payments. One of our investigators took a look, and asked PayPal if they'd received anything from the merchant to show that the payment was for a subscription. PayPal confirmed they had not approached the merchant, and declined to do so. They said they had no evidence that the account was accessed by a third party.

The investigator felt the complaint should be upheld. She felt Miss L had demonstrated that she had cancelled the subscription in 2017. She said PayPal hadn't provided enough evidence to support that Miss L had agreed to these payments, and as such should be treated as unauthorised. As the payments were distance contracts, she thought PayPal should be liable for them. She asked for the payments to be refunded, and 8% interest added from the date of payment to the date of settlement.

PayPal disagreed, saying they had shown evidence Miss L had logged in to her account to set up the billing agreement. What this agreement entailed they did not have access to, but they said the IP address used had been used for 65 transactions on her account.

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.

Firstly, I don't think there's any real dispute that Miss L set up the billing agreement herself – she's accepted making purchases from the merchant directly and hasn't disputed these. But an arrangement like this doesn't mean that all payments taken by the merchant would automatically be considered authorised.

PayPal haven't provided any specific information on the goods or services provided by the merchant, although both parties seem to believe it is a subscription service. This seems likely as both payments were taken exactly a year apart.

The user agreement for Miss L's PayPal account say that PayPal can't know what has been agreed to with the merchant, or why they have decided to collect payment.

However, the generally accepted industry best practice when considering disputes around recurring payments, such as a subscription service, is that there should be enough evidence to demonstrate that the consumer has entered into an agreement with the merchant. This would include being provided knowledge of the dates and amounts agreed.

In the event of a dispute over recurring payments I would expect the financial business to provide some information to the consumer about what the transaction was for. This would be a reasonable course of action.

PayPal have commented that a billing agreement is set up between the consumer and the merchant, and they are purely a payment processor. But I also note from their user agreement, under the section of reversals, it says *"We may have to compensate your payer when they claimed that there was a problem with their payment (including that their payment was unauthorised or incorrect or that their billing agreement payment was not expected)."*

This shows me PayPal can carry out investigations into payments made using a billing agreement, and that they can be reversed. In this case it's unclear why PayPal haven't requested anything from the merchant.

Miss L has been consistent in that while she has made use of the merchant, she didn't agree to these payments. Nothing I've seen from PayPal has disputed this central point.

It doesn't seem likely this was a malicious third-party carrying out the transaction. But I can't discount the possibility this may have been an error on the part of the merchant. In any case, I've not seen anything to persuade me these were authorised transactions. As they are distance contracts – payments made not in the presence of the merchant – then the relevant regulations say Miss L shouldn't be held liable for them.

On that basis, I'm satisfied the fairest outcome would be for PayPal to refund them to Miss L.

My final decision

My final decision is that PayPal (Europe) Sarl et Cie SCA must

- refund Miss L the two payment transactions totalling £99.98, and;
- add 8% simple interest from the date of the payments to the date of settlement.

If PayPal considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Miss L how much it's taken off. It should also give Miss L a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 10 October 2022.

Thom Bennett
Ombudsman

