

The complaint

Ms F has complained that PayPal (Europe) Sarl et Cie SCA won't refund transactions she says she didn't make or otherwise authorise.

What happened

In 2020, Ms F lived with her partner at the time. She explained that he subjected her to financial abuse. He took out debts in her name and used existing accounts without her permission. He registered his thumb print on Ms F's phone without her consent, gained access to her accounts, and changed her passwords. He manipulated Ms F into believing that she was going crazy, and that she was the victim of a third party identity thief.

Eventually, Ms F discovered what had been happening. She reported her now ex-partner to the police, reported the fraud to the various financial businesses he'd used, and took out protective registration at CIFAS, the national fraud prevention agency.

Ms F explained that over several months, her ex-partner had been using her PayPal account without her permission, spending thousands of pounds using a mixture of PayPal Credit and non-Credit transactions.

The ex-partner confessed to the police and was charged with multiple counts of theft and fraud. However, he passed away just before his court date. Various financial businesses accepted Ms F had been the victim of fraud.

PayPal, however, held Ms F liable for the payments in dispute. It automatically declined her claim because she'd said a partner had carried out the transactions. It noted the disputed payments came from the same IP address she normally used, and that Ms F had made payments to her ex-partner before the fraud. The disputed payments had needed Ms F's password, and PayPal concluded that she must have either revealed her password to her ex-partner or not taken great enough care to keep her account safe.

Our investigator looked into things independently and upheld the complaint. PayPal didn't agree, though it did not provide any further reasons. The complaint's been passed to me to decide.

I sent Ms F and PayPal a provisional decision on 9 June 2022, to explain why I thought the complaint should be upheld. In that decision, I said:

As I understand, the payments in dispute used Ms F's password. But this is not enough, on its own, for PayPal to hold Ms F liable – it also needs to be able to evidence that Ms F consented to the transactions, or that she failed to keep her account safe either intentionally or through acting with gross negligence. Otherwise, PayPal has to refund the transactions.

As things stand, PayPal does not appear to have any significant evidence which actually substantiates that Ms F consented to these payments or acted with gross negligence.

PayPal pointed out that the disputed payments used Ms F's normal IP address. But that's unsurprising given that her ex-partner lived with her at the time. Similarly, it seems rather unsurprising that Ms F made a few genuine payments to a partner that she lived with. That's a normal thing to do, and does not negate the prospect of unauthorised payments, not least as her prior payments were not of the same amounts or frequency as the disputed ones.

PayPal says Ms F must have given her password to the ex-partner or otherwise failed to keep her account safe. But it is not clear what, if anything, PayPal has based this on. Ms F explained in detail just how controlling her ex-partner was. For example, he registered his thumb print on her phone behind her back when she left it unlocked once, he sometimes took her phone away, and he often would not allow her to be alone even to shop. And her ex-partner lived with her at the time. So it is both plausible and likely that he would've been able to observe Ms F entering her password at some point and learned it without her permission. Or he could've accessed her email using her phone and then used that to recover her password without consent. Indeed, I can see that Ms F's PayPal password was reset or changed back and forth often during the period of disputed transactions. PayPal appears to have simply assumed that Ms F either consented to the payments or was negligent with her account security. And that would have been a most unreasonable approach to take, especially in a sensitive case like this.

The police explained that the ex-partner admitted to everything in an interview in 2020, including stealing from Ms F and leading her to believe her identity was being cloned. Ms F has also provided written confessions, where the ex-partner apologised and said he'd plead guilty. And following a detailed investigation, the CPS charged him for multiple counts of theft and fraud, which seems to have included these PayPal payments.

Ms F's testimony has been consistent, candid, and credible, and I cannot see any good reason to disbelieve her. Her actions only support her side of the story too, such as in promptly reporting this to the police, taking it all the way to the CPS, seeking protection from CIFAS, having treatment for the acute distress she was caused, and so on.

The ex-partner clearly benefitted from the disputed payments. A very large proportion was for payments made directly to accounts of his. Others were for purchases such as men's clothing.

The account activity also seems indicative of fraud. It looks like the ex-partner drained Ms F's funds using various different payment methods of hers, taking large sums of money in quick succession. And as I mentioned before, it looks like the password was frequently changed or reset, and it seems Ms F had trouble logging in herself.

Lastly, I can see that for other financial businesses involved, they investigated things and concluded that Ms F had indeed been the victim of fraud.

So taking everything into account, I am currently satisfied that Ms F did not consent to the payments in dispute.

Turning to the issue of negligence, I will first note that some of the disputed payments were made using a credit facility, or they involved non-excepted distance contracts. So for those payments, PayPal could not hold Ms F liable on the basis of negligence in any case.

For the remaining payments, I've not seen any evidence which shows that Ms F deliberately failed to keep her account safe or was negligent in any way, let alone grossly so. There were clear and plausible points of compromise for her account password which did not involve any negligence on her part. And having an abusive partner does not constitute negligence in and of itself. Again, it seems that PayPal simply assumed that Ms F must have been negligent.

I find PayPal's conduct here to have been most disappointing. It does not seem to have taken this issue sufficiently seriously, despite its highly sensitive nature and the severe impact it had for Ms F. It doesn't look like PayPal investigated things properly, and its conclusions appear to be based on unfounded assumptions. It has added considerable distress and upset in what was already an extremely stressful situation for Ms F. And it has added considerable delay to this issue finally being sorted out. That needs to be put right.

I said I'd consider anything else anyone wanted to give me – so long as I received it by 7 July 2022. Ms F said she was happy with the decision. PayPal didn't reply.

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.

Neither side have sent me any new evidence or arguments. So having reconsidered the case, I've come to the same conclusion as before, and for the same reasons as set out in my provisional decision above.

Putting things right

I direct PayPal (Europe) Sarl et Cie SCA to:

- refund the disputed transactions, less any that have already been refunded;
- for payments made using PayPal Credit: refund any interest or fees that were charged. Then from the point the credit is repaid, pay 8% simple interest on each repayment from the date of the repayment until the date of the refund[†];
- for all other payments: pay simple interest to Ms F on those transactions, at the rate of 8% simple a year, payable from the date they were made until the date they're returned[†];
- remove any negative markers PayPal may have added to Ms F's credit file since this incident began; and-
- pay Ms F £650 compensation for the trouble and upset it caused.

[†] HM Revenue & Customs requires PayPal to take off tax from this simple interest. PayPal must give Ms F a certificate showing how much tax it's taken off if she asks for one.

My final decision

I uphold Ms F's complaint, and direct PayPal (Europe) Sarl et Cie SCA to put things right in the way I set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms F to accept or reject my decision before 9 August 2022.

Adam Charles
Ombudsman