

The complaint

Miss H has complained about the way PayPal (Europe) Sarl et Cie SCA dealt with a transaction she says she didn't make or otherwise authorise.

What happened

In brief, Miss H explained that in February 2021 she signed up to a free trial with a merchant. As part of this, she set up a billing agreement via PayPal to cover any payments in case she kept the service after the free trial ended. However, the merchant immediately took £44.99 from Miss H's PayPal account, despite the free trial, which Miss H says she didn't authorise.

PayPal felt that because Miss H had set up a billing agreement for future payments, the merchant were effectively authorised to take as much money as they wanted whenever they wanted in spite of whatever Miss H had actually agreed to. So they declined to help.

After much back and forth, PayPal eventually agreed to refund the payment, but only as a goodwill gesture – they still felt Miss H had authorised the £44.99 that went out.

Miss H is unhappy with how she was treated in the meantime, such as being passed back and forth between departments and left on hold, being given incorrect advice, having to get her bank to block the merchant as PayPal would not at first, PayPal closing her case without resolving things, and so on.

The complaint's been passed to me to decide.

I sent Miss H and PayPal a provisional decision on 21 July 2022, to explain why I thought the complaint should be upheld. In that decision, I said:

Both sides accept that Miss H authenticated the use of her PayPal account with the merchant by setting up a billing agreement. But that is not enough, on its own, for PayPal to have held her liable for the disputed payment. They also needed to evidence that Miss H consented to the transaction that was taken. Otherwise, they had to refund it when it was disputed, and not just later as a goodwill gesture.

Taking into account everything that's been said and provided so far, I'm not persuaded that Miss H consented to the disputed transaction. So I currently think that PayPal were wrong to initially hold her liable for it.

The billing agreement that Miss H set up worked as a form of continuous payment authority, or CPA for short. These are recurring payments that merchants can use to take multiple amounts over time.

The Office of Fair Trading (OFT) had guidelines about how these types of payments should work. The Financial Conduct Authority (FCA) has said the guidelines still apply, and I think they reasonably set out what good practice looks like for payments like these. Among other things, the guidelines say:

- The customer should actively agree to the amounts and frequency of the payments. It's not good enough to only have an opt-out clause.*
- Key aspects, such as dates and amounts, must be displayed clearly and not just hidden in the small print.*
- Failure to get the customer's positive, informed consent may mean the contract is unenforceable and the consumer is entitled to a refund of all payments.*
- Changes to things like the amounts or timing of payments should only be made if the contract specifically allows for this, or if the customer gives their consent.*

In short, the merchant can only take payments that are actually due under the contract, and which the customer actively consented to in an informed manner. If a merchant takes a payment that was not due, and/or which the customer did not give their positive, informed consent to on signing up or when the terms are changed, then that payment is considered unauthorised. PayPal are mistaken in thinking that the merchant can effectively take any amounts at any frequency, even if it breaches the contract and the customer did not consent to this, and still have it be considered authorised. This should really be intuitive – it would clearly be unfair and unreasonable to consider a payment authorised if it was not due and not consented to.

PayPal have not provided any evidence to show that Miss H consented to the £44.99 payment that was taken. Again, the fact that she set up a billing agreement is not enough on its own. Miss H's testimony has been clear, consistent, and credible that she only signed up for a free trial, and did not consent to having a payment taken right away. I have not found any good reason to disbelieve her. And having looked up this merchant, I can see news articles and numerous reviews about them taking undue payments under free trials. It seems that following this and other scandals, their website was bought out by another company, and so it is no longer possible to see what Miss H would have seen when she signed up. So I've got nothing to show that key details like dates and amounts were set out clearly, or that Miss H was given the proper opportunity to give active, informed consent, and so on.

So the evidence I have indicates that the disputed payment was taken without Miss H's consent. And I have no evidence which reasonably substantiates that she did consent to it. It follows that PayPal should have refunded it in the first instance instead of sending Miss H round the houses beforehand. I do not think they took a reasonable approach here.

PayPal say that, as a payment service provider, they shouldn't be expected to evidence whether Miss H really agreed to this payment or not. But I'm afraid they are mistaken. As a payment service provider, they are required to refund unauthorised payments. So if a transaction is disputed, they need to either refund it or evidence that the payment was authorised – including both authentication and consent. And the onus is on them to provide this evidence. That may mean doing things like liaising with the merchant in cases such as this one.

I'm glad that PayPal refunded the payment in the end. Miss H questioned whether the refund went to her PayPal account or bank account, and I can confirm it went to her bank account. Miss H will be able to see the refund on her bank statements for late March 2021.

However, before refunding this payment, PayPal put Miss H through a good deal of unnecessary stress. That needs to be put right. Looking at our guidelines for amounts of compensation, I think they should pay her £150 for the trouble and upset they caused in the way they dealt with this matter.

I said I'd consider anything else anyone wanted to give me – so long as I received it by 4 August 2022. PayPal didn't add anything further. Miss H said she was pleased with the outcome. She said she'd closed her PayPal account, so she asked for the compensation to be paid to her bank 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.

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.

My final decision

I uphold Miss H's complaint, and direct PayPal (Europe) Sarl et Cie SCA to pay her £150 compensation to her bank account.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 1 September 2022.

Adam Charles
Ombudsman