

The complaint

Mr M is unhappy that PayPal (Europe) Sarl et Cie SCA is holding him liable for a debt he says he didn't agree to, nor benefit from.

What happened

As both parties are familiar with the circumstances of this complaint, I've summarised them briefly below.

Mr M held an account with PayPal. In June 2021, Mr M received a letter from PayPal informing him he was due to pay a fee for a late payment associated with his PayPal Credit account. Mr M says that he'd never applied for a PayPal Credit account and hadn't carried out the transaction associated with the debt.

PayPal looked into Mr M's claim but, after an investigation, continued to hold him liable for the debt. Mr M remained unhappy with the outcome of his complaint, so he brought it to our service for an independent review.

An Investigator considered the evidence provided by both parties and concluded PayPal had made an error. Broadly speaking, they felt PayPal weren't able to sufficiently evidence Mr M was responsible for opening the credit account or that he'd carried out the disputed transaction. He recommended PayPal write off the debt, interest and charges; remove any reporting of it from Mr M's credit file and pay Mr M £75 for the distress and inconvenience caused.

PayPal disagreed. It continued to defend its position and confirmed that it had acted correctly in the circumstances. As PayPal disagreed, the matter was passed to me for a decision.

On 26 May 2023 I issued a provisional decision setting out what I was minded to conclude taking into account the evidence and testimony provided by both parties. My provisional decision was as follows:

'Mr M throughout the investigation of this complaint has denied setup or usage of the PayPal Credit account. His submissions are that he hadn't used the account for almost a decade, that his email account and mobile telephone number had been compromised and that a third-party had set up the account and spent on it without his knowledge.

This, in some respects, fits in with PayPal's argument. It says that the PayPal Credit account was set up using Mr M's genuine PayPal account. And an authorisation code was sent to Mr M's genuine telephone number associated with the account to authorise the payment.

But PayPal have failed to provide some additional information relating to the account to support its position that Mr M was the authorising party. To the contrary, I find the information PayPal has supplied supports Mr M's assertion that he was subject to an email hack and SIM swap which allowed a third-party to access his account without his authority.

Mr M has provided significant new evidence to support that his email account was hacked. He has demonstrated through a third-party business that his email address and password had been published on the dark web. And this fits in with information supplied by PayPal that Mr M's password was changed prior to the transaction in dispute being carried out. PayPal has also supplied information from its own fraud investigation notes that a new device was registered against the account prior to the payment being made when the password was reset. This would suggest that it's likely a third-party used Mr M's email to reset the password of his PayPal account.

Information supplied by PayPal also shows that the item purchased was shipped to store rather than sent to Mr M's home address. Therefore, no evidence can be provided that supports Mr M receiving or benefitting from the item(s) purchased.

Mr M has also provided numerous documents to support the likelihood that his mobile telephone number had been taken over. On the day of the transaction, Mr M lost signal on his device and received a message from his network provider saying that it was sorry to see him leave. Mr M has supported this testimony with an email from the network provider ordering a new SIM two days after the transaction was made. And a further letter has been provided, dated three days after the transaction, setting out that a Porting Authorisation Code (PAC) had been requested from the network to port Mr M's number to another provider. It acknowledged that this had been reported as fraudulent.

I find this to be persuasive in explaining how a third-party likely accessed Mr M's PayPal account and received the code via text message to change his password and authorise the payment in dispute.

PayPal in its recent submission has asked that a Police investigation outcome be provided to support Mr M being the victim of a SIM swap. But I don't find this to a reasonable request. Mr M has reported the matter to Police, but he has no control over whether that Police Service pursues the matter further or not.

Having considered matters again, I'm still conscious that the credit account was set up circa six-month prior to the transaction being carried out. And I'm still of the opinion that, typically, a fraudster would unlikely wait this period of time to utilise funds they'd manage to access. But this doesn't detract from the evidence Mr M has provided supporting his position that he was likely hacked at the time of the transaction. And I must acknowledge that there are times where typical patterns followed by fraudsters aren't apparent for a variety of reasons.

Other than the correct sign in credentials being used to access Mr M's PayPal account, and the authorisation codes being sent to the telephone number associated with his account, PayPal has been unable to provide any other evidence to support its position that Mr M likely consented to the transaction. And as I've highlighted above, Mr M has provided evidence to support how these were likely compromised.

For all of the reasons I've given above, I find it more likely than not that Mr M hadn't authorised the payment in dispute. He therefore cannot reasonable be held liable for it.'

Both parties were given until 9 June 2023 to provide any further submissions prior to me issuing a final decision.

Mr M agreed with the findings set out in my provisional decision, but PayPal didn't. It responded stating that it'd asked Mr M for evidence to support his claim that he was victim to a SIM swap and hacking but deemed what he supplied to be insufficient.

As both parties have now responded to my provisional findings, I'm now in a position to

issue my final 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.

PayPal has responded to my provisional findings disagreeing with them for the reasons set out above. Having considered these new comments, I don't intend to depart from the findings set out in provisional decision.

While I appreciate PayPal's comments about the information it had at the time, it has since been provided additional evidence from Mr M that supports his claim that he was likely victim to an email hacking and SIM swap prior to the transaction being carried out.

I acknowledge that PayPal did ask Mr M for a Police report supporting his claim of a SIM swap, but as I've stated in my provisional findings, the Police's decision not to investigate the matter isn't one within Mr M's control. Mr M provided a crime reference number and had fulfilled his obligation to report the matter. Mr M received a response from the Police stating that as crime was committed against PayPal, it would need a report from PayPal directly to investigate.

I therefore cannot agree that this is a fair reason to continue declining Mr M's claim.

I don't intend to expand on the reasons set out in my provisional decision as no further comment or challenge has been made to the other points.

Putting things right

In order to put things right, PayPal should now go ahead and put Mr M in the position he would have been in had the unauthorised transaction not occurred.

I have considered a payment for the distress and inconvenience caused to Mr M, but don't find this appropriate in the circumstances. This is due to a large proportion of the evidence relied upon to draw my conclusions that the transaction was likely unauthorised was supplied by Mr M after referring his complaint to our service.

My final decision

For the reasons I've given above, I uphold this complaint and direct PayPal (Europe) Sarl et Cie SCA to:

- Recall the debt if it has been sold to a third-party.
- Write off the debt associated with Mr M's account and end any further liability.
- If applicable, refund any repayments, interest or charges associated with the debt paid by Mr M.
- Remove any adverse reporting associated with the debt from Mr M's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 7 July 2023.

Stephen Westlake
Ombudsman