

## **The complaint**

Mr H complains about PayPal (Europe) Sarl et Cie SCA and their decision to decline claims he made under their Buyer Protection Policy ("BPP"). Mr H also complains about PayPal's decision to limit his eligibility for this protection on future purchases.

## **What happened**

Mr H held an account with PayPal, that he used to buy items on a regular basis. In April and May 2022, Mr H purchased items that arrived damaged or faulty. So, he made claims under PayPal's BPP. But both of these claims were declined. Mr H was unhappy about this, so he raised a complaint.

Mr H didn't think PayPal acted fairly when declining the claims. And he was unhappy PayPal had told him he no longer qualified for this protection, when he'd called PayPal to confirm he'd still be covered before making the purchases. So, Mr H wanted PayPal to refund him the purchase amounts in full. And he wanted to be compensated for the inconvenience he'd been caused.

PayPal responded and didn't agree. They thought they'd made it clear a warning limitation had been placed on his account on 1 December 2021. And they thought the advice Mr H was given on the 26 April 2022 was general advice regarding their BPP, rather than specific advice to Mr H's individual situation. So, they thought they'd declined Mr H's claims fairly, and that their decision to limit Mr H's access to the BPP was reasonable. Mr H remained unhappy with this response, so he referred his complaint to us.

Our investigator looked into the complaint and didn't uphold it. They thought PayPal's user agreement allowed them to suspend Mr H's eligibility for the BPP where they believed Mr H had engaged in restricted activities. And our investigator felt PayPal had provided evidence that satisfied them PayPal were fair to deem Mr H had done so. So, our investigator thought PayPal's decision to decline the claims were fair. And our investigator thought the advice Mr H was provided in the call was general, rather than specific. So, our investigator didn't think PayPal needed to do anything more regarding this.

Mr H didn't agree. He was unhappy our investigator only referred to two declined claims, rather than three. Mr H also explained his belief that PayPal had removed his eligibility to the BPP without any prior notification or warning, which left his future transactions open to financial risk. And Mr H explained his purchases were mainly for vinyl records, which often arrived damaged, resulting in a high number of claims being made. And he didn't think it was made clear anywhere that he was only able to raise a certain number of claims under PayPal's BPP. For these reasons, he maintained his belief that PayPal had acted unfairly and so, he wanted to be compensated for this. As Mr H didn't agree, the complaint was passed to me for a decision.

I issued a provisional decision on 19 December 2022, where I explained my intention to uphold the complaint. In that decision I said:

*"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, it's my intention to uphold the complaint. I've focused my comments on what I think is relevant. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.*

*Before I explained why I intend to make this decision, I think it would be useful for me to explain exactly what I've been able to consider. I'm only able to consider events that have been complained about to PayPal, where they've then been given up to eight weeks to issue their response. In this situation, Mr H raised a complaint about the two declined claims in April and May 2022, and PayPal issued their response in July. I'm aware Mr H made a further claim under PayPal's BPP, which was rejected in August. But as this claim was rejected after PayPal had issued their response, and after our service had received Mr H's complaint, I've not been able to consider this claim, or any complaint about it, within this decision.*

*So, I've thought about PayPal's decision to decline Mr H's two claims made in April and May 2022, and whether I think they've acted fairly, in line with the terms of the BPP and their user agreement.*

*PayPal have explained the two claims were declined as Mr H's eligibility to protection under the BPP had been limited. And PayPal have explained they were able to limit this eligibility under the terms of the user agreement.*

*I've seen the user agreement. And it explains that PayPal are able to "suspend your eligibility for PayPal's Buyer Protection programme" where they believe a customer has engaged in any Restricted Activities.*

*The user agreement also lists a variety of reasons they believe constitute as a restricted activity. This includes "Abuse of our online dispute resolution process and/or PayPal's Buyer Protection programme". This doesn't stipulate exactly what would be considered abuse of this process and so, I think it was within PayPal's power to determine what this abuse would look like, dependent on any individual situation.*

*PayPal have provided me with their reasoning, including evidence of their internal system, explaining why they believe Mr H engaged in what they deemed to be restricted activities. And having considered this information, I don't think I'm able to say PayPal were unfair to take this decision. So, as I think PayPal acted fairly when deciding that Mr H had undertaken restricted activities based on their own internal processes, I think they acted in line with the user agreement when they limited Mr H's eligibility to the BPP for future claims. And because of this, I can't say they've done anything wrong when declining the claims.*

*The user agreement also explained that when a limitation or suspension is applied to an account, PayPal would usually look to notify a customer of their actions. But crucially, the user agreement also explains that "but we may, if it's reasonable to do so (for example if you are in breach of this user agreement or we consider it advisable for security reasons), take any of these actions without prior notice to you". So, as I think PayPal were reasonable to say Mr H engaged in restricted activity, I think it's reasonable for PayPal to deem Mr H to be in breach of the user agreement and so, I don't think PayPal needed to notify Mr H of the limit in his eligibility.*

*But crucially, PayPal say they did notify Mr H in the correspondence with him on 1 and 8 December 2021. So, I've considered this correspondence at length. And while I do think this correspondence gave Mr H guidance on how to avoid making excessive claims, and talked to actions PayPal may take, I don't think this correspondence made it clear to Mr H that he*

*was no longer eligible for the BPP at all. In the message sent by PayPal on 8 December, it states specifically “you can open a dispute up to 180 days after the transaction date” as well as stating “we offer Buyer protection for cases of unauthorised account use, non-receipt of goods and items that are significantly not as described”. Mr H has confirmed that both claims were opened as the item’s he received were faulty and so, I feel it’s fair to class these as significantly not as described. Based on this, I don’t think the correspondence sent to Mr H made it clear to Mr H that he could no longer make a claim in this sort of situation.*

*And further to this, in the call between Mr H and PayPal on 26 April, the call handler confirms BPP is available when purchases are made through PayPal. While I do agree this advice seemed to be general, and not specific to Mr H’s situation, I also must recognise that at the beginning of the call the handler took personal information from Mr H to access his account file. So, as PayPal are saying a limitation was in place, I would’ve expected this to be made clear to Mr H. And it wasn’t.*

*So, while I can’t say PayPal were wrong to decline the claims, I don’t think their communication with Mr H regarding this was reasonable. I appreciate PayPal didn’t need to notify Mr H, under the terms of the user agreement. But PayPal say they did, and so, I’d expect this notification to be clear. And I don’t think it was.*

### **Putting things right**

*As I don’t think PayPal acted fairly regarding their communication with Mr H, I’ve then thought about what I think they should do to put things right.*

*I think the lack of clarity in PayPal’s correspondence, both in writing and in Mr H’s call with them, led Mr H to believe he still qualified for the BPP. And so, I think this is likely to have influenced his decision to make his purchases through PayPal, rather than through another means of payment. So, I think Mr H lost the opportunity to decide which method of payment would offer him the best level of protection, for example, the ability to make a section 75 claim if he used a credit card.*

*While I can’t say for certain what Mr H would, or wouldn’t have done, I think Mr H lost the opportunity to consider all options he had available to him. And I think PayPal should compensate Mr H for the upset this caused. But I don’t think this compensation should place Mr H in a position of betterment, nor do I think it should be based on the actual declination of the claims as I think PayPal acted within the terms of Mr H’s user agreement when declining them. So, considering all of the above, I intend to direct PayPal to make a payment of £50, which I think is a fair compensatory amount in this situation.”*

### **Responses**

Mr H didn’t agree. He was unhappy the third claim wasn’t considered, as he felt he was directed by our service to introduce it as part of this complaint. And Mr H didn’t agree with the compensation that I provisionally directed as he didn’t think the payment of £50 placed him back in the position he would’ve been in, had PayPal’s communication been reasonable. So, he wanted PayPal to pay him the total value of all three claims he raised, totalling £156.88. PayPal didn’t respond to the provisional decision and so, I’ve assumed they have no additional comments to provide.

### **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.

I've noted Mr H's comments regarding the third claim he wishes to be considered. But I explained in my provisional decision why I'm unable to consider this third claim, as it was made after PayPal had issued their final response. This means that any events that occurred after this final response would need to be raised as a separate complaint with PayPal, who would then be afforded up to eight weeks to issue another response. Mr H would then be able to raise this issue with our service should he remain unhappy. This decision focuses solely on the events that took place before PayPal's final response letter in July 2022. And so it follows that the value of this third claim is unable to be considered as part of the resolution to this complaint.

I've then turned to Mr H's other dispute, which centres around what PayPal should do to put things right regarding their unclear communication that I discussed in my provision decision.

### **Putting things right**

I note that Mr H has also expressed his unhappiness about the compensatory payment I recommended. And he believes he should be refunded the total value of the two claims he made that I have been able to consider. But as I've explained in my decision, I think PayPal were able to decline these claims, without prior notification, as per the terms of their user agreement. So, I don't think PayPal are liable for the actual claim values.

Instead, I think PayPal should compensate Mr H for the lack of clarity in their communication. While I appreciate Mr H may have decided to make the purchases through other means, such as a credit card where he would've been able to make a section 75 claim, I can't say for certain that he would've done. And even if I could, I'm unable to say for certain that any claim he made would've been upheld.

So, I don't think I can say that, had PayPal communicated with Mr H reasonably, that Mr H would definitively been able to secure refunds for the purchases he made. So, I don't think I'm able to say PayPal should pay Mr H the value of these claims, as I can't say for definite this would've been the position he would've found himself in.

Instead, I think PayPal should compensate Mr H for the upset he would've felt when he realised he was unable to make use of the BPP, when he'd been led to believe he could. And I think the £50 payment I've recommended is a fair one, as I think it also takes into consideration the fact PayPal were able to decline these claims under the terms of the agreement Mr H held due to the activity they've provided evidence of. So, I think PayPal should pay Mr H this £50.

### **My final decision**

For the reasons outlined above, I uphold Mr H's complaint about PayPal (Europe) Sarl et Cie SCA and direct them to take the following action:

- Pay Mr H £50 to recognise the upset he's been caused due to their unclear communication surrounding his BPP eligibility.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 14 February 2023.

Josh Haskey  
**Ombudsman**