

## The complaint

Mr P complains about how PayPal (Europe) Sarl et Cie SCA dealt with his claims to refund two payments under its buyer protection policy, and also complains about how difficult it was for him to make further claims about other payments.

## What happened

For a period of several months, Mr P habitually played a certain game online on a platform hosted by Google. He made a large number of purchases, and he says that all of these purchases were made via his PayPal account. These purchases (or at least some of them) were for upgrades to the game. Unfortunately, some of the later upgrades introduced glitches into the game, and the game stopped working properly. In time, the game eventually became all but unplayable.

Mr P complained to the game developer, who referred him to Google. Google referred him back to the game developer. After being passed from pillar to post, Mr P asked PayPal to refund his purchases.

PayPal opened disputes about two of Mr P's purchases under its buyer protection policy (under the reason "item not as described"). It closed one of them as ineligible (as it had not been brought in time), but PayPal raised the other one (£85.99 on 30 March 2022) with Google. In response, Google sent PayPal the terms and conditions of the purchase and its refunds policy. Based on that information, PayPal rejected Mr P's claim. But it acknowledged that Mr P had found this an upsetting experience, and so it apologised and offered him a £30 gift voucher.

Being dissatisfied with that outcome, Mr P brought this complaint to our service. He estimated that altogether he had made purchases adding up to between £15,000 and £20,000, and he asked for them all to be refunded as a resolution to his complaint. He argued that as the game had become unplayable, all of the earlier upgrades to the game were now defective too.

PayPal reconsidered its position, and conceded that it should have asked Mr P for further evidence that the game upgrade was defective before denying his claim. In recognition of that error, it offered to refund the purchase of £85.99. But it did not agree that this complaint should include the other purchases which Mr P had not raised specific claims for under its buyer protection policy. It said that Mr P should raise – or should have raised – claims for each of them.

Mr P said that was impossible, or at least unrealistic. He had lost count of how many purchases he had made over the months. He recognised that PayPal's policy required a claim to be made within 180 days of each purchase, but he still maintained that PayPal should refund all of them. He thought that PayPal could easily carry out a simple search on its systems to identify the relevant payments made on his account; he himself was unable to do this as the relevant information had since been deleted from his account by PayPal, which he suggested was because PayPal was trying to make it harder for him to dispute them.

One of our investigators considered this complaint. She asked PayPal for Mr P's entire transaction history for the years 2021 and 2022. But PayPal declined to provide that information, on the ground that it was not relevant to this complaint, which related to only one purchase. It maintained that it only knew about two relevant purchases, and that it was Mr P's responsibility to identify any others and to request refunds through the proper channels. It pointed out that it would not be liable for any purchases which had not been made via PayPal. Mr P reiterated that it was entirely impracticable for him to obtain this information, but it would be easy for PayPal to find it on its systems.

So one of the issues in this case is the scope of this complaint. PayPal maintains it is only about one payment (or perhaps two). Mr P maintains that it is about all of them; scores or perhaps hundreds of as yet un-itemised transactions. Our investigator took the view that this complaint should be confined to the single payment of £85.99 made in March 2022, because she did not have evidence of the others.

The investigator did not uphold this complaint. She thought that PayPal's offer of a full refund of the relevant payment and a gift voucher was fair.

Mr P did not accept that opinion, and he asked for an ombudsman's decision. And PayPal said that if the scope of this complaint was going to include any other payments, then it would want an ombudsman's decision too.

I wrote a provisional decision which read as follows.

### **What I've provisionally 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 am minded to say that this complaint should encompass all of the payments Mr P has made via PayPal, but that I should not uphold it. I will explain why.

#### The scope of this complaint

When PayPal gave Mr P its final response to his complaint, only one transaction was the subject of that complaint: the one on 30 March 2022 for £85.99. But when Mr P brought this complaint to our service, he said he wanted to be reimbursed for all of his purchases. At that time, our service had no jurisdiction to entertain a complaint about those other purchases. That was because rules made by the FCA say that PayPal is entitled to eight weeks to consider a complaint against it, before the complainant can bring that complaint to us.

However, we sent Mr P's complaint form to PayPal in November 2022, and eight weeks have elapsed since then, so I'm satisfied that the other payments now fall within our jurisdiction. I will therefore consider them as part of this complaint, although I have not found it necessary to request further details about them from either party, for reasons I will set out below.

#### The merits of this complaint

I will begin with the two payments which Mr P raised with PayPal under its buyer protection policy ("the policy").

One of those payments was raised too late. The policy says that a claim for a refund must be made within 180 days of the transaction. The payment was made in December 2021 and Mr P asked for it to be refunded in August 2022, so PayPal decided that it was ineligible.

That was certainly correct. (Mr P says he tried to claim that one again; but of course it would still have been ineligible.)

PayPal's original decision not to refund the other payment, according to its final response letter, was based on the evidence it had received from Google: its refunds policy and its terms of payment. PayPal concluded that Mr P was not entitled to a refund. I note that the buyer protection policy says that PayPal will make a final decision about a claim "in its sole discretion". But that does not prevent me from holding that a decision was wrong if it was patently unreasonable or if PayPal exercised its discretion unfairly, and I note that section 47 of the Consumer Rights Act 2015 prevents a trader from contracting out of its liability under the Act (which requires digital goods to be of satisfactory quality). So a no-refunds policy might not necessarily be a good enough reason to reject a claim. However, as I've said, PayPal later offered to refund the whole payment because it had not asked Mr P for evidence that the upgrade software he paid for was defective. I think that is a fair resolution to that issue, and so I will not require PayPal to do more about that.

As for the other payments, Mr P has not claimed refunds for them in accordance with the policy, so PayPal has not considered them. I think that PayPal is entitled to insist on compliance with its policy. It is not for PayPal to identify the relevant payments for its customer; it was for Mr P to do so. I recognise that this would have been an onerous task for him, because of the sheer number of payments that he made. But it is not my place to re-write PayPal's policy and substitute my own rules.

I could stop there, because I think that is a sufficient reason to reject this complaint, but I will say a little more about it, because otherwise it might seem unfair to Mr P to have his complaint rejected on a purely procedural or technical ground. So I have thought about what would probably have happened if Mr P had taken the time to raise a dispute under the policy about each and every payment he made to Google via PayPal in connection with the game.

Firstly, many of these payments would have already been more than 180 days old, and so they would have been ineligible for a refund. Mr P has acknowledged that, but has still argued that they should be refunded nonetheless. But PayPal has no obligation to refund ineligible payments. It is entitled to rely on the time limit.

(Incidentally, I think the time limit might explain why the transactions no longer appear in Mr P's account on the website. They must all be over 180 days old by now. Even if that isn't the reason, although I have seen screenshots showing that the payments are no longer visible, that does not tell me who deleted them. So I am unable to conclude that they were removed by PayPal in bad faith.)

Secondly, although it would be possible to show that these payments were all made to Google, I do not know whether there would have been evidence of which game on Google's platform they were for. One of the reasons why PayPal insists, and is entitled to insist, on each one being raised as a specific claim under the policy is so that PayPal can verify (if it can) that each payment is relevant to the game in question. That may not have been possible.

Thirdly, PayPal would have needed to see evidence that each payment was for an upgrade to the game, and not just for something else, such as an in-game purchase which would not have affected the game's performance. Since the essence of the problem is that it was the upgrades which caused the game to deteriorate, there would have needed to be evidence linking each payment to a purchase of an upgrade.

Fourthly, just because the game has become defective does not mean that every upgrade was defective. Some of the upgrades were probably fine. PayPal would not have had to

refund them all just because it would not have been possible to prove which ones had caused the problem. At present, there is no evidence (other than Mr P's description of events) that more than one upgrade was not of satisfactory quality, and PayPal has offered to refund one of them.

Furthermore, in Mr P's complaint form he described the game gradually deteriorating with each upgrade. That means he knew some of the upgrades didn't work properly, but he kept spending money on them. I don't think it would be fair to expect PayPal to reimburse him for throwing good money after bad. (And although that scenario does not come within the letter of section 34(4) of the Consumer Rights Act, I think it does come within its spirit.)

For all of the above reasons, I am currently of the opinion that PayPal does not have to do anything else to fairly resolve this complaint.

### **Responses to my provisional decision**

Mr P did not accept my provisional findings. He clarified that what he had been purchasing were not upgrades to the game itself, but optional upgrades to his account – in-game tools and accessories. (He described what they were, but I don't need to do that here.) These had not caused the game to fail; rather, it had been upgrades made by the game developer. Those upgrades had caused the game's performance to get worse over time, as the glitches that were introduced became more and more serious. Mr P had therefore asked for a refund as the game was defective. He reiterated that the accessories he had bought had no use outside of this particular game. He argued that as the game had become defective, this therefore made the in-game purchases defective as well, since they can no longer be used.

Mr P also argued that time limits are unfair. He said that he had managed to obtain refunds of around £2,400 from Google. Then, after it was clear that Google was no longer talking to him, he had approached PayPal. By then, very few of the purchases had been less than 180 days old. Mr P reiterated that PayPal's claims procedure is glitchy and difficult to use; sometimes it fails and deletes all progress, and so he would have to start again. So it had not been practical to raise individual claims for each eligible purchase. So rather than itemising each of the purchases that were still in time, he had claimed one of them (£85.99), and had then tried to raise a second claim for 1p, which was meant to represent all of the other purchases, in which he had attempted to describe the entire situation. That claim had been rejected without investigation. Meanwhile, more purchases had fallen out of PayPal's time limit and so had become ineligible. He argued that digital goods should be eligible to be refunded no matter how much time has elapsed.

PayPal did not reply to my provisional decision by the deadline.

### **My findings**

I have considered all of Mr P's new arguments, and taken into account his helpful correction of the facts of this case, but I remain of the view that I should not uphold this complaint.

Goods, including digital goods, are only considered defective for the purposes of the Consumer Rights Act and PayPal's buyer protection policy if they were defective at the time they were sold. So PayPal is not liable for software which was fine when it was sold but then became defective later on.

The game accessories were not defective when Mr P bought them. I understand that he can't use them now because the game no longer works. But that is not because of anything that was wrong with the accessories when he bought them. PayPal isn't responsible for what happened later.

Also, the accessories are only unusable now because the game doesn't work. The accessories themselves didn't develop a flaw, it is just that they can only be used on a platform that stopped working. So the accessories are not really defective within the meaning of the policy or the Act. PayPal is not responsible for the game itself, or for the upgrades to the game.

I remain of the view that it is reasonable of PayPal to enforce the time limit for bringing a claim under this policy, for the same reasons I set out in my provisional decision.

I am therefore satisfied that PayPal's offer to refund £85.99 is a fair resolution to this complaint.

### **My final decision**

My decision is that I uphold this complaint in part. I order PayPal (Europe) Sarl et Cie SCA to pay Mr P £85.99. I do not require it to do anything else.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 28 December 2023. But apart from that, this final decision brings our service's involvement in this case to an end.

Richard Wood  
**Ombudsman**