

The complaint

Mrs V complains about the way PayPal (Europe) Sarl et Cie SCA dealt with a claim she sought to make in relation to a phone she'd bought online from a third party seller "S".

What happened

In May 2022 Mrs V bought a phone from S using credit provided by PayPal. In September she contacted PayPal and S to say that the phone was faulty and didn't meet the sale description. S suggested Mrs V get the phone fixed or replaced using the warranty supplied with the purchase. PayPal told Mrs V it was unable to assist saying the issue wasn't covered by its buyer protection policy.

Mrs V was unhappy with PayPal's response. She said PayPal had previously told her she'd get a refund. Mrs V reminded PayPal that the purchase was subject to the connected lender liability provisions of section 75 of the Consumer Credit Act 1974 ("section 75") and asked it to look again at the information she'd sent. PayPal says it asked Mrs V for further information to support her claim. After further attempts to engage PayPal with the claim, Mrs V felt it wasn't dealing with the matter appropriately and complained to us.

Our investigator was satisfied PayPal had dealt fairly with the claim under the buyer protection policy. After reviewing the sale description she concluded that the phone was not 'significantly not as described' as required under the policy. The investigator noted that under section 75, Mrs V had a potential claim against S (and by extension, against PayPal) both in misrepresentation and in breach of contract. She wasn't persuaded that S had misrepresented the terms of the warranty to Mrs V. But she did think there were grounds under which a breach of contract claim might be successful.

The investigator noted the Consumer Rights Act 2015 ("CRA") applied to the transaction between Mrs V and S. That implied a satisfactory quality term into the contract between the parties. Mrs V had reported the faults with the phone within a reasonable period, and that made it incumbent on the supplier either to show the phone wasn't defective when it was supplied, or to take action to rectify the breach.

She suggested that Mrs V obtain a report establishing the likely cause of the phone's faults and the cost of repair. If the report indicated a manufacturer's fault, then PayPal should bear the cost of repair (and possible replacement, should that repair prove unsuccessful). In light of the difficulties Mrs V had experienced in getting PayPal to engage with her claim, our investigator proposed that PayPal also pay her £75 compensation.

PayPal accepted the investigator's proposed settlement. But Mrs V felt the investigator hadn't had proper regard for her rights under the CRA. And she didn't think the £75 proposed for her time and trouble went far enough. She's asked for this review.

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'm conscious PayPal's initial response to the complaint dealt only with the question of whether Mrs V could claim against S under its buyer protection policy. As a matter of good practice I would generally expect PayPal also to have considered any additional obligations or liabilities it might have faced, such as those arising under section 75 due to the fact it provided credit to fund the purchase.

It did subsequently treat Mrs V's claim as one made under section 75, though I think it could have done more to set out a response to that claim based on the information Mrs V submitted. While I appreciate it did log the claim, much of the time and trouble she experienced can be attributed to the approach PayPal took in asking for further evidence.

In my view, the information it already held about the purchase and the faults Mrs V asserted were sufficient for PayPal to have formed a response to her claim. With our investigator's assistance it has now done so. But I can see why the investigator recommended compensation for the unnecessary inconvenience Mrs V was caused by this approach.

I don't consider the arguments Mrs V makes in terms of misrepresentation or misleading advertising by S are as clear-cut as her correspondence suggests. As our investigator set out in her assessment, there were some statements that indicated the phone was new and came with a full warranty. But there were also statements that the phone was 'open box', new and unused – which is consistent with the terminology used on the website Mrs V used to buy the phone – and that S would 'top-up' the manufacturer's warranty if less than 12 months remained when purchased.

In such circumstances I can't fairly conclude Mrs V could properly be said to have entered into the purchase in reliance on the phone being brand new and having the full manufacturer's warranty. She could rely on it having a 12-month warranty, as S had said it would top-up any warranty less than 12 months. But when Mrs V approached S to discuss the faults with the phone, it was still within the manufacturer's warranty period. So whether or not the top-up was provided made no difference at that point.

It's correct to say that the CRA creates a rebuttable presumption as to the presence of faults reported within the first six months of ownership. But it's also true to say that, had Mrs V returned the phone to S, it would have been entitled to have the faults diagnosed before being obliged to provide a repair or refund. It would also be entitled to attempt a repair before replacing or refunding the phone.

It's unclear to me why Mrs V didn't follow up S's suggestion that she have the phone fixed or replaced by the manufacturer under warranty. That would have established the root cause of the faults with the phone and enabled her to get a replacement if it couldn't be repaired.

Having the phone looked at under the manufacturer's warranty does not now appear to be an option, due to the passage of time. So the investigator proposed what she considered to be a suitable remedy, which is for Mrs V – who is in possession of the phone – to take it for fault diagnosis and for PayPal to cover the cost of repair unless it can be shown that the faults were down to reasons other than manufacturing defects.

Although Mrs V has objected to this, I see no reason to think that it presents an unfair resolution to the current problem, or that it places the burden of proof on her. Rather, it enables the cause of the faults to be established, which seems to me to be in the interests of all the parties concerned. The alternative is that Mrs V sends the phone to PayPal for it to take the same steps, which seems to me slightly more convoluted, risks the phone being lost or damaged in transit, and is therefore less suitable as a resolution.

Putting things right

Having thought carefully about the time Mrs V spent in correspondence with PayPal I think it's only fair that PayPal pays her compensation. I appreciate Mrs V feels she should receive more than the £75 our investigator proposed. However, I'm satisfied it's an appropriate sum to recognise her time and trouble.

I also consider it appropriate that PayPal has the opportunity to respond to the claim in line with the CRA, notably in terms of establishing the cause of the fault and in the remedy it provides if the contract has been breached. So on receipt of an independent third party report diagnosing the likely cause of the faults and the cost of any repair, PayPal should take the following steps:

- reimburse the cost of the fault diagnosis report
- subject to the report showing the faults should not be deemed to have been present at point of supply, cover the cost of repairing the phone (or replacing the phone, if PayPal so chooses)
- If any such repair fails within a reasonable time period – for clarity, I specify a period of not less than two years – then PayPal should ensure it provides an appropriate alternative remedy in line with the CRA, which might include replacement or a refund.

My final decision

My final decision is that to settle this complaint, I direct PayPal (Europe) Sarl et Cie SCA to take the steps I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs V to accept or reject my decision before 18 September 2023.

Niall Taylor
Ombudsman