

The complaint

Mr B complains that PayPal (Europe) Sarl et Cie SCA declined his claim under section 75 of the Consumer Credit Act 1974 for a refund of some cancelled flights.

What happened

In March 2022 Mr B booked international flights for his family, in order to attend a wedding overseas. He paid £2,793 with his PayPal credit card. The tickets were non-refundable. But in May the flights were cancelled; there is a dispute about whether they were cancelled by the airline or by Mr B. The airline refunded him £577. He asked the airline for the rest, but received no answer despite chasing it for a reply.

Mr B next raised the matter with PayPal. He told PayPal that he was making a claim for breach of contract under section 75. Instead, PayPal raised a chargeback dispute, but the airline defended it by saying that Mr B had cancelled the flights. As a result, the chargeback was unsuccessful.

Mr B reiterated that he wished to make a claim under section 75, but instead PayPal reviewed his claim under its own user agreement. It decided that he was not entitled to a refund because the tickets had been delivered to him. It didn't comment further about the fact that the tickets had been cancelled, or about who had cancelled them.

Being dissatisfied with that response, Mr B brought this complaint to our service. He also complained about the airline to a foreign alternative dispute resolution service ("ADR"). In response to that complaint, the airline agreed to pay him a full refund, without admitting any liability. But as that was six months after the flights had been cancelled, Mr B continued to pursue his complaint about PayPal, because he also wanted to be reimbursed for his consequential losses. He had had to rebook his flights with another airline at a higher price, and so he wanted the price difference, and a refund of some other expenses connected with his new travel arrangements. He provided the relevant receipts. He also asked for a refund of the interest PayPal had charged him on his credit card payment (£63.59).

Our investigator did not uphold this complaint. She said that she had based her view solely on the information which had been available to PayPal when the chargeback dispute had been raised, and not on any information which had come to light since then. She thought that PayPal had acted reasonably in relation to the chargeback dispute. She said that Mr B's claim for consequential losses was a new complaint point, and that as PayPal was entitled to eight weeks to investigate it, he should raise a new complaint with PayPal, as she could not consider it as part of this one.

Mr B did not agree with the investigator. He said he hadn't been complaining about a chargeback dispute, he had been complaining about how PayPal had not upheld his section 75 claim. Since that claim was based on a breach of contract, and his consequential losses had flowed from that breach, they were part and parcel of his section 75 claim, and so the Financial Ombudsman Service should consider them. He asked for an ombudsman to review his case.

I wrote a provisional decision in which I said (among other things) that PayPal had failed to consider Mr B's case as a claim under section 75; but PayPal has since provided evidence that it actually did do that. My provisional decision read as follows (but I have edited it to remove all references to PayPal failing to consider section 75).

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 currently minded to uphold it. I will explain why.

I have read Mr B's emails to PayPal, and he stated in terms that he was asking it to deal with his claim for a refund under section 75. And when he brought this complaint to our service, he made it clear that his complaint was about how PayPal had dealt with (or failed to deal with) his section 75 claim. It was not about how PayPal handled the chargeback dispute, or anything else. So I'm satisfied that his request for consequential losses has always been relevant to this complaint, and it is not necessary for him to start again.

There was nothing wrong with PayPal raising a chargeback dispute first, because the time limits for chargeback are much stricter than they are for a claim for breach of contract. And there was nothing wrong with PayPal considering Mr B's claim under its buyer protection policy either. But in this decision, I will focus on the section 75 claim. It is not necessary for me to make findings about the outcomes of the other processes.

Before I go on, I must first say that I have considered whether section 75 applied to Mr B's purchase, and I am satisfied that it did. PayPal has never argued otherwise. Section 75 makes PayPal jointly liable to Mr B for any breach of contract by the airline.

So the first question is whether the airline breached its contract with Mr B. If there was no breach, then section 75 would not make PayPal liable for anything. And PayPal appears to have taken the view that there was no breach, based on the airline's defence to the chargeback dispute, in which it said that the flights had been cancelled by Mr B. The airline provided a screenshot from its systems to that effect. It looked like this:

10 SSR OTHS 1A XXL BY CUSTOMER VIA REFUND FORM

That might well be sufficient evidence to defend a chargeback claim. But I think that a section 75 claim required a little more investigation than to just accept that screenshot as determinative. That is because the information in that screenshot was inconsistent with other information known to PayPal at the time: the fact that the flights were non-refundable, and yet the airline had still paid Mr B a partial refund (consisting of airport taxes and fees).

If Mr B had cancelled the flights himself, then there would have been no reason for the airline to refund him at all.¹ So I think that the partial refunds should have prompted PayPal to ask the airline some further questions (not as part of the chargeback process). If it had done so, this might have prompted the airline to do what it did when the foreign ADR raised Mr B's complaint with it: it agreed to pay him a full refund.

I don't think it matters that the full refund happened after PayPal had finished dealing with Mr B's claim. The point is not that PayPal should have taken into consideration information it

¹ There are a couple of exceptions for death, bereavement, or the rejection of a visa, but these result in full refunds, and nobody has suggested that any of these exceptions applied in this case.

didn't have yet, but that it failed to do enough with the information it did have at the relevant time.

If PayPal had questioned the airline, then Mr B might have got his refund earlier than he did; on the balance of probabilities, I think that is more likely than not. For that reason, I propose to uphold this complaint on the basis that PayPal's failure to do so affected the outcome of his case.

The main compensation due to Mr B has already been paid to him by the airline. But I think he is entitled to more than that. I think the further compensation that he should get falls into two categories: the consequential losses for which the airline is liable for breach of contract (if a breach occurred), for which PayPal would be jointly liable under section 75; and losses for which PayPal is liable independently of section 75, for how it dealt with Mr B's section 75 claim.

Damages under section 75

The airline has never actually admitted liability, but I doubt that it would have agreed to pay a full refund if it had not been obliged to pay one. And as I don't believe it would even have paid a partial refund in the first place if it had not cancelled the flights, I am satisfied on the balance of probabilities that the airline did breach its contract with Mr B, notwithstanding what the screenshot says.

So I currently think it would be fair to require PayPal to pay the foreseeable consequential losses arising out of that (I've seen the relevant receipts). These are:

- The difference between the prices of the original flights and the replacement flights with another airline, which is £377.96;
- The difference between the car park charges at the original airport of departure and the different airport which the replacement flights left from, which is £131.99; and
- As a result of booking replacement international flights, which had a return date one day earlier than the original flights, Mr B had to book a night in a hotel at his destination country, at a cost of £105.12.

This all adds up to £615.07.

The replacement flights also had a departure date which was one day earlier than the original. This meant that Mr B had to rebook an internal flight in his destination country. That was entirely reasonable of him, but I don't think that it was foreseeable by the culpable airline, and damages for breach of contract are restricted to foreseeable losses. PayPal's liability under section 75 is limited similarly. So I won't compensate Mr B for this.

Other damages

In the latter category of damages are interest, and also compensation for Mr B having been inconvenienced by PayPal not upholding his claim.

This service's usual approach to interest is not to tell the credit provider to refund the interest it was charging on the credit card payment, but rather to award interest on the refund at the rate of eight percent a year from the date on which the airline would have refunded Mr B (but for PayPal's error) to the date when it actually refunded him. This period won't be quite as long as six months, because it was three weeks before Mr B first asked PayPal for a refund; the airline did not respond to PayPal until mid-June; and then if PayPal had challenged its response, it might have been a while longer before the airline conceded – after all, the timescale for Mr B's other case with the foreign ADR was about three months altogether

(from August to November 2022). Taking all of that into account, I will assume that Mr B could have got his refund in August, or in three months instead of six.

That interest will be calculated based on the difference between the partial refund and the full refund, which is £2,216. A quarter of a year's interest at 8% a year on £2,216 comes to £44.32.

For Mr B's inconvenience I propose to award him £100.

My provisional decision

So I am provisionally minded to uphold this complaint. Subject to any further representations I may receive from the parties, I currently intend to order PayPal (Europe) Sarl et Cie SCA to pay Mr B:

- The additional cost of his new travel arrangements, which come to a total of £615.07;
- Interest on his late refund, which comes to £44.32; and
- £100 for his inconvenience.

Responses to my provisional decision

Mr B had nothing to add.

PayPal objected to my provisional decision. It insisted that it had considered Mr B's case under section 75, but he had failed to provide certain documents it had asked him for, and so his claim had been rejected. It provided email correspondence between PayPal and Mr B to demonstrate this.

I accept that those emails prove that PayPal did treat Mr B's claim as a claim brought under section 75. So I have reconsidered how PayPal dealt with his claim in the light of what those emails say.

My findings

On 28 June (after the airline had responded to the chargeback dispute), PayPal wrote to Mr B to ask him for the following:

- A receipt or other proof of purchase;
- A written summary about the details of his purchase;
- A copy of the airline's terms and conditions;
- A written summary of his claim, setting out what had happened and how much compensation he was seeking; and
- Any other supporting evidence he cared to provide, such as photographs.

It said this was needed to establish whether his purchase was eligible, and to establish the basis of his claim.

On 6 July Mr B replied with a detailed description of his purchase, with the details of the date of the booking, the price paid, the name of the airline, the method of payment, and the details of the ticket itinerary, including the names of the passengers, ticket numbers, dates of each flight, and the cities of departure and destination. The same email contained a lengthy account of what had happened since his purchase. So I'm satisfied that the email fulfilled the requirements in the second and fourth bullet-points on the above list.

That email also says that Mr B was sending three attachments. These were:

- The booking confirmation;

- A screenshot from the airline's website showing that he was unable to check the status of his tickets; and
- His conversation with the airline on Twitter.

On 13 July PayPal sent Mr B another email repeating its request for the five items in the first list above. It added that it had received two (not three) of the documents attached in Mr B's previous email (without identifying which two), but said that these were "not valid to proceed with the section 75 request." It did not explain why not, or what was needed instead. PayPal said it would close Mr B's case if it did not receive the requested documents.

In response, Mr B told PayPal the same day that he had already sent PayPal enough material for it to consider his claim. A week later, PayPal closed his claim, on the ground that he had not sent it what it had asked for.

The booking confirmation which was sent to PayPal on 6 July serves as proof of purchase. It might have been prudent if Mr B had sent it again on 13 July, when PayPal mentioned receiving two attachments when he had sent three, but I'm not going to hold that against him because PayPal could have told him which document was missing, and since it didn't actually say that any document was missing – only that it had received two documents (without mentioning that he had tried to send three) – it might not have been obvious to Mr B that there was a problem.

So it seems that the only item which Mr B had failed to provide to PayPal on 6 July was the airline's terms and conditions. But by then the airline had already provided PayPal with excerpts of the relevant terms and conditions in its defence to the chargeback dispute. It's unlikely that Mr B providing the full and complete terms and conditions would have made any difference to the outcome of the section 75 claim. For that reason, I think that PayPal's decision to close his claim just because he didn't do that, when he had provided everything else it had asked for, was not proportionate or reasonable. And I think that instead, PayPal should have investigated his claim in the manner that I set out in my provisional decision, and that this would have resulted in him getting a full refund earlier than he eventually did.

For that reason, I remain of the view that I should uphold this complaint.

My final decision

My decision is that I uphold this complaint. I order PayPal (Europe) Sarl et Cie SCA to pay Mr B £759.39.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 26 September 2023.

Richard Wood
Ombudsman