

### The complaint

Mr J complains about PayPal (Europe) Sarl et Cie SCA. He says that PayPal didn't do enough to protect him when he became the victim of a scam and would like PayPal to refund him the money he has lost.

### What happened

Mr J was contacted via Facebook by an individual pretending to be from a legitimate investment company. Mr J was persuaded to make a supposed investment. Initially, the payments started off small, but gradually Mr J was pressured into paying more money with the promise of returns that did not materialise.

Mr J made the following payments

| Date         | Amount           |
|--------------|------------------|
| 02/10/2022   | £52.49           |
| 02/10/2022   | £52.49           |
| 02/10/2022   | £202.98          |
| 03/10/2022   | £202.98          |
| 06/10/2022   | £102.98          |
| 07/10/2022   | £302.99          |
| 08/10/2022   | £302.99          |
| 08/10/2022   | £202.99          |
| 10/10/2022   | £702.99          |
| 11/10/2022   | £702.99          |
| 11/10/2022   | £802.98          |
| 12/10/2022   | £802.99          |
| 12/10/2022   | £702.98          |
| <b>Total</b> | <b>£5,137.82</b> |

Mr J then realised he had been scammed and made a complaint to PayPal.

PayPal didn't uphold his complaint, so he brought his complaint to this Service. Our Investigator looked into things and thought that Mr J's complaint should be upheld in part – they also thought that Mr J and PayPal should share responsibility for the payments that could have been prevented.

Mr J accepted this, but PayPal did not. So, the complaint has been passed to me to make a 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.

Having done so., I've decided to uphold this complaint in part, for broadly the same reasons as our Investigator. I'll explain why.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider having been good industry practice at the time.

In broad terms, the starting position at law is that a payment service provider (PSP) is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (PSR's) and the terms and conditions of the customer's account. And I have taken that into account when deciding what's fair and reasonable in this case.

However, taking into account the law, regulator's rules and guidance, relevant codes of practice and what I consider having been good industry practice at the time, I consider PayPal should:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which PSP's are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

In this case, I need to decide whether PayPal acted fairly and reasonably in its dealings with Mr J when he authorised the payments or whether it could and should have done more before processing them.

As I've explained above, Mr J authorised the payments in question here – so even though he didn't intend for the payments to end up with a scammer, he is presumed liable in the first instance.

However, this isn't the end of the story – and PayPal has a responsibility to take proactive steps to identify and help prevent transactions – particularly unusual or uncharacteristic

transactions – that could involve fraud or be the result of a scam. However, there is a balance to be struck: PSP's had (and have) obligations to be alert to fraud and scams and to act in their customers' best interests, but they can't reasonably be involved in every transaction.

Having considered the first 11 payments that Mr J made, I am not persuaded that PayPal should have become involved at this point. I don't think that they are sufficiently unusual or uncharacteristic to have triggered PayPal into taking any further steps before processing these payments.

However, by the time that Mr J made the 12<sup>th</sup> payment, a pattern had emerged that I think should have prompted PayPal to take a closer look at what was going on and check that all was well with the payments that were being made. By this point, there was an increase in the frequency of payments, along with an increase in the amount of each payment – which is a common indication of a scam. This was also a marked change in the way Mr J used his PayPal account.

I think that had PayPal got in touch with Mr J, it would quickly have been able to establish what was going on and give Mr J a meaningful warning that it was likely he was being scammed. But it didn't do so. If PayPal had contacted Mr J, I haven't seen anything to suggest he would have ignored what it had told him, and I don't think he would have continued making the payments.

I understand that PayPal says that Mr J made the payments himself, and that he chose 'personal' payments rather than good and services – but this doesn't mean that PayPal is absolved of responsibility here. It still needs to be alert to the possibility of its customers getting scammed. And although Mr J said that the payments were personal – this doesn't mean that such payments cannot be made as part of a scam.

While I do think that PayPal could have prevented payment 12 and 13, I do need to consider if Mr J should bear some responsibility for what happened here by way of contributory negligence – and I'm satisfied that Mr J should here. I say this because I think that there were enough red flags for Mr J to have seen that something wasn't right. Mr J had been told that he would receive immediate profits from his investment – but he did not – and was asked to pay more money instead. It also seems that Mr J may have had some concerns which he raised with the scammer – but I don't think that the answers he was given were particularly convincing. And while Mr J says that he did some research into the company he thought he was investing with, I can see that the legitimate company has a warning on its website about a fraudster using its company name.

So, I think that Mr J should have applied more caution than he did – and share responsibility with PayPal on payment 12 and 13 at 50% each.

### **Putting things right**

PayPal (Europe) Sarl et Cie SCA should pay Mr J 50% of payments 12 and 13.

I calculate this to be £752.99.

On top of this PayPal (Europe) Sarl et Cie SCA should also pay Mr J 8% simple interest on this amount from the date of payment to settlement (minus any lawfully deductible tax).

### **My final decision**

I uphold this complaint in part. PayPal (Europe) Sarl et Cie SCA should put things right as

set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 27 February 2024.

Claire Pugh  
**Ombudsman**