

The complaint

X complains that PayPal (Europe) Sarl et Cie SCA has mishandled their Section 75 claim under the Consumer Credit Act 1974 following the return of a mobile phone to a merchant that they had purchased using PayPal.

What happened

In May 2022 X purchased a mobile phone from a merchant that was based abroad. They used their PayPal credit account to fund the purchase of £454.69 plus postage. They also had to pay import duty.

X says that within two weeks the mobile developed an issue with the battery and became unresponsive, and they contacted the merchant. The merchant appeared to agree to refund the purchase price of the mobile if X returned it and paid the postage costs, which they did. However, the merchant, having received the mobile, said that no fault had been found and it offered to return it to X having set the mobile back to its factory setting.

As there would be further costs incurred for X if the phone was returned to them, X declined the offer. X said they had lost confidence with the item and ask for a full refund. The merchant said that as the mobile had been used it couldn't provide a full refund. Eventually it refunded X the total amount of £350.

X was unhappy at not receiving a full refund for the mobile as they had incurred additional costs such as the import charge. They made a claim to PayPal. PayPal rejected X's claim under the PayPal Buyer Protection Program as it said this was a warranty matter and this wasn't covered by the program.

X made a claim under section 75 of the Consumer Rights Act 1974 for the outstanding amount they said it had cost them to bring the mobile to the UK.

PayPal opened a claim and requested various pieces of evidence to support the claim, in particular PayPal requested X provided a copy of the merchant's full terms and conditions and set out which term they considered had been breached.

PayPal says this evidence wasn't received and so it wasn't able to proceed with X's section 75 claim. X complained and said they had provided all the required information. PayPal said that the terms and conditions had never been received.

X complained to this service. Our investigator didn't recommend that their complaint should be upheld. He said he didn't think PayPal had treated X unfairly. Our investigator said that

the evidence didn't support that X had provided the necessary information for PayPal to consider their section 75 claim.

PayPal said that as a gesture of goodwill it would reimburse X the £113.27 being the amount outstanding of the cost of the phone. X has rejected that offer as they say they require the full amount that was outstanding and Pay Pal has acted unfairly when dealing with their

claim.

As the parties weren't able to reach an agreement the complaint was passed to me. I issued a provisional decision along the following lines.

I'd seen that X tried to resolve the matter with the merchant first but, having returned the mobile to them, they said they couldn't find a fault with the phone. The merchant at first offered to refund 50% of the mobile's cost but eventually reimbursed X £350 which was around 75% of the cost.

This left X out of pocket as there was £104.69 outstanding of the actual cost of the phone and £8.58 plus 24.77 USD for shipping together with the cost of the import duty for the phone amounting to £96.35.

PayPal originally informed X that it couldn't provide them with a refund as the mobile phone was covered by a warranty and so it didn't fall within the Buyer Protection Program, and they would need to resolve the matter with the merchant. Looking at the program and what it will and won't cover, I couldn't reasonably say that PayPal had acted unfairly in reaching that decision.

X was unhappy and made a claim under section 75 of the Consumer Credit Act 1974. The general effect of section 75 is that if a consumer has paid for goods or services with a credit agreement, such as a credit card, and they have a claim against the supplier of those goods or services for misrepresentation or breach of contract, they are given a like claim against the credit provider which here is PayPal. It is for the consumer to provide evidence of their claim.

My role was to decide whether PayPal had acted fairly and reasonably in its response to X's claim. I'd seen that it had requested X provide evidence to support their claim which included a statement as to what happened, a copy of the merchant's terms and conditions and a statement from X clearly identifying which term had been breached and supporting evidence of the breach of contract.

PayPal said X didn't provide the necessary evidence for it to be able to process their claim. X said they had provided the requested information. But looking at the chat transcripts that had been provided as to the messages exchanged between X and PayPal, I disagreed, particularly in respect of the merchant's terms and conditions and proof the mobile phone had been faulty. I'd seen X had provided a link to the merchant's refund and cancellations terms and some screenshots, but they hadn't provided the full terms and conditions as PayPal had asked. They also hadn't provided any report as to the fault with mobile and I'd seen that the merchant had disagreed there was anything wrong with it, stating they had been able to turn it on and charge it.

I appreciated that X had sent this service a handwritten invoice from a mobile phone shop dated June 2023 stating a mobile phone of the same make purchased by X had been seen and found to be "*dead*" as the "*logic board was dead CPU not booting up*". Due to the date of the report – many months after the mobile had been returned to the merchant – our investigator had said he couldn't give weight to it as establishing the mobile had an inherent fault.

X had then provided an amended invoice which had a handwritten comment on it that the mobile had been brought into the shop in June 2022. The invoice was unsigned but had a stamp showing the shop's name, address and contact details.

However, although X had got the invoice amended, I was still not able to give it any

significant weight as to proof the mobile had had an inherent fault as there were no details given as to the tests that had been carried out nor how this fault had arisen. It was possible that such a problem could have been due to another cause other than a manufacturing issue. So, I didn't think it established the mobile phone was of unsatisfactory quality at its point of supply to X.

I didn't think PayPal had acted unfairly in saying it was unable to proceed with X's section 75 claim as they hadn't been provided with the required documentation. However, PayPal had, as a gesture of goodwill, offered to reimburse the outstanding balance of the mobile phone to X. And I didn't think this gesture was an acknowledgement by PayPal that it had done anything wrong in respect of X's claim, rather it was a decision made in respect of providing customer service to them. I thought this was a fair offer to X and, having been made, I was going to ask PayPal to reimburse X the amount of £113.27 in respect of the mobile phone.

I appreciated this offer would still leave X out of pocket in respect of the import duty they had paid plus the cost of returning the mobile phone to the merchant, but I was not going to ask PayPal to pay these amounts. I hadn't made any findings as to whether these outstanding expenses would be considered as a consequential loss for X as I didn't think there was sufficient evidence to find a breach of contract. And without a breach of contract being established, I didn't think it was fair for PayPal to cover these additional expenses.

I was therefore intending to partially uphold X's complaint in that I was asking PayPal to reimburse them the cost of the phone, but I'm not going to ask it to pay the remaining amount in respect of the shipping and import duty.

PayPal hasn't asked me to look at any part of my decision again, but X has raised a number of areas he said were inaccurate in the background and also raised other issues they would like me to consider. X disagrees with my provisional view.

X says that the background I set out in my provisional decision wasn't accurate enough in places and while I have made some amendments, I haven't made all the changes they raised. This is because the background is only a summary and not everything that happened needs to be recorded. I do however apologise for the error I made in respect of the Consumer Credit Act 1974. I'm satisfied the background now sets out sufficiently what happened here.

X also says they had provided the requested information by PayPal and are concerned that I didn't see all the messages that went between them and PayPal.

X has queried my approach to the invoice they had provided from the mobile phone shop. They say our investigator hadn't said that the mobile phone needed to have been tested to show the cause of the fault only that the report should confirm there was a fault.

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.

As I have said above, I have made some amendments to the background I had given in my provisional view. In particular this concerned the amount that was outstanding to X having returned the mobile phone to the merchant. I also accepted that the merchant had said initially they would provide a refund once the mobile had been returned but then said as they could find no fault, they wouldn't do so. Although the merchant had given X the impression they would refund them this wouldn't mean that PayPal would be bound by that. It was reasonable for PayPal to have considered X's claim under both its Buyer Protection Program

and then later section 75.

In respect of my view as to the invoice provided by X from the mobile phone shop, I don't accept I have been biased as suggested by X. I have seen in the original view provided by our investigator that he set out he had asked for an independent report confirming the problems with the mobile phone. Our investigator said as the mobile hadn't been inspected, he didn't think there was evidence that the mobile phone hadn't been of satisfactory quality when supplied to X.

Following that view, X had then contacted our investigator and explained that unbeknown to them their partner had taken the mobile phone to a shop to be looked at. Listening to the phone call between our investigator and X, our investigator said that X should, if possible, provide a copy of the report from the shop "*setting out what they did and what their findings were*", and he would then consider it.

As explained above, when the invoice was first received our investigator said he wasn't able to accept it due to the date recorded on it, as he couldn't say it showed any assessment had been carried out on the mobile phone. X then provided an amended copy. But I haven't changed my view that this amended invoice didn't show there was an inherent fault with the mobile phone. And I think my approach to this invoice has been in keeping with that of our investigator in that an independent report should set out what the cause of the fault was. I still don't think I have sufficient information that the mobile phone was of unsatisfactory quality at its point of supply to X.

I have seen a number of chat scripts between X and PayPal from January, February and June 2023 and that PayPal has confirmed it didn't receive the terms and conditions of the contract with the merchant in the required documentary form. It wasn't able to accept the screenshots X provided. And while I accept this is frustrating for X, I can't say PayPal's process of requesting this documentation as it did was unreasonable. And even though I may not have seen all the contact between the parties I accept PayPal's evidence that it hadn't received the merchant's terms and conditions as required. I haven't seen any evidence they were sent by X other than in the form of snapshots and a link. As explained it is for X to establish that there has been a breach of contract when making a section 75 claim and I think PayPal's decision that they hadn't provided sufficient information for it to consider a claim under section 75 was reasonable. PayPal hasn't actually declined the claim.

However, PayPal has now offered to reimburse X the amount of £113.27 being the outstanding cost of the mobile phone. I think this is fair and reasonable, particularly as X was struggling to provide the necessary documentation to PayPal. So, I'm going to ask it to make that payment to them. But, although I appreciate this will be of disappointment to X, I'm not going to ask PayPal to reimburse them the additional costs they had incurred, as set out above, I can't reasonably say the mobile phone had an inherent fault.

For the reasons given I'm partially upholding X's complaint.

Putting things right

For the reasons given above I'm asking PayPal to reimburse X the amount of £113.27 in respect of the mobile phone.

My final decision

As set out above, I'm partially upholding X's complaint. I'm asking PayPal (Europe) Sarl et Cie SCA to reimburse X the amount of £113.27 in respect of the mobile phone which they had returned to the merchant.

Under the rules of the Financial Ombudsman Service, I'm required to ask X to accept or reject my decision before 6 December 2023.

Jocelyn Griffith
Ombudsman