

The complaint

Miss M complains that PayPal (Europe) Sarl et Cie SCA ("PayPal") won't refund the full amount of money she lost after she fell victim to an 'authorised push payment' ("APP") scam.

What happened

The background to this complaint is well-known to both parties, so I won't repeat it in detail here. But in summary and based on the submissions of both parties, I understand it to be as follows.

Miss M complains that she sent a payment of £7,850 to what she thought was a legitimate builder for the deposit on a garden house.

Miss M went on to send several other payments from a third-party bank to the alleged scammer and when he didn't turn up to complete the work, she says she realised she'd been scammed.

Miss M raised a scam claim with her bank for the payment of £7,850 but didn't provide information the bank asked for in time, so her case was closed. So, she raised a claim through PayPal.

PayPal didn't think it had done anything wrong by allowing the payment to go through. PayPal also said it rejected a claim under its Buyer Protection Scheme, as it had warned Miss M previously about excessive claims. This resulted in it taking her protection away for this claim.

Our investigator looked into the complaint but didn't think it should be upheld. Our investigator didn't find the payment was large enough or significantly unusual enough to trigger any of PayPal's payment protection systems. Our investigator also didn't find PayPal had acted unfairly by declining the Buyer Protection claim, as it had sent warnings to Miss M about how she was using her account.

Miss M didn't agree with the investigator's view, so the complaint's been passed to me for 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 come to the same outcome as the investigator for largely the same reasons. I'll explain why.

I'm very aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here. If there's something I've not mentioned, it isn't

because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

Prevention

PayPal would generally be expected to process payments a customer authorises it to make. And under The Payment Services Regulations and the terms and conditions of the account, Miss M is presumed liable for the loss in the first instance, in circumstances where he authorised the payment. That said, as a matter of good industry practice PayPal should have taken proactive steps to identify and help prevent transactions – particularly sufficiently unusual or uncharacteristic transactions – that could involve fraud or be the result of a scam. However, there are many payments made by customers each day and it's not realistic or reasonable to expect a payment processor to stop and check every payment instruction. There's a balance to be struck between identifying payments that could potentially be fraudulent, and minimising disruption to legitimate payments.

Having considered the amount of money sent to the scammer, I agree with the investigator when she said that the payment doesn't look unusual or large enough to concern PayPal or the systems it has in place to check the payments. Having looked at Miss M's account activity, she was making large payments, and these were often higher than the amount in question here. So, I'm satisfied that a payment of this size wouldn't look sufficiently out of character for this account and wouldn't have triggered PayPal's payment checking process.

I understand Miss M has said the other large payments have got to legitimate recipients and this one has gone to a scammer, but PayPal wouldn't have been aware of the fact it may have ended up being part of a scam when the payment was sent. Miss M was also not aware, otherwise she wouldn't have sent the payment in the first place.

I'm therefore satisfied that I can't fairly say that PayPal unreasonably missed an opportunity to prevent the payments (nor therefore Miss M's loss) before it was sent.

I've also gone on to think about what I think would've most likely happened if PayPal had flagged the payment and provided a scam warning. Having considered this point, I don't find it would've made any difference to Miss M sending the payment. I say this as Miss M only raised, she had been scammed when the person didn't turn up to complete the work sometime later. Up to that point she had had regular contact, had been provided an invoice for the work and had done several bits of research into the builder she was using. So, she had no reason to think the work wouldn't be completed and would've told PayPal this.

So, I don't think any proportionate warning or intervention PayPal could've provided would've uncovered the fact this was going to happen. All things considered, in the individual circumstances of this case, I'm satisfied that any proportionate intervention most likely wouldn't have made a difference to Miss M ultimately sending and losing this money.

Miss M raised a claim through PayPal's Buyer Protection Scheme, but this was declined. PayPal said it sent several warnings to Miss M about how she was using her account. I've seen these warnings and it does indicate that Miss M had been raising a high number of claims and PayPal may decide to decline offering cover for future payments. So, I don't find it has acted unfairly in doing so in these circumstances.

I've also checked the User Agreement Miss M signed up to when she opened her PayPal account. It says:

“PayPal determines, in its sole discretion, whether your claim is eligible for the Buyer Protection program based on the eligibility requirements set out in the User Agreement and any information or documentation provided during the resolution process, or any other information PayPal deems relevant and appropriate under the circumstances.”

“In connection with your use of our websites, your PayPal account, the PayPal services, or in the course of your interactions with PayPal, other PayPal customers, or third parties, you must not:

- Abuse our online dispute resolution process and/or PayPal’s Buyer Protection program...”*

And:

“If we believe that you’ve engaged in any of these activities, we may...”

- Give you notice that we are aware that you have engaged in a Restricted Activity where reasonable possible...*
- Refuse to provide the PayPal services to you in the future*
- Suspend your eligibility for PayPal’s Buyer Protection program...(including in retrospect)”*

Miss M has gone on to say that she was told in an earlier call with a PayPal advisor that she would have protection for making the payment. Although PayPal have been unable to send the call, I have considered it’s comments when it’s said that it could never guarantee a claim would be successful before the event. Although it would’ve been good customer service to remind Miss M that she has been warned over her account conduct, she had already received this in several messages, so I don’t think it would’ve changed the course of events in these circumstances or prevented Miss M from making the payment she did.

Recovery

I’ve also looked at whether PayPal took the steps it should have once Miss M contacted them to dispute the payments.

After the payments were made, I couldn’t reasonably expect PayPal to have done anything further until Miss M told PayPal that she had been scammed.

I haven’t seen any evidence that PayPal attempted to recover the funds for Miss M, but I’m not persuaded it would’ve made a difference in this case. I say this because it’s more likely than not that the scammer removed the funds from their account as soon as they were received, given the time between Miss M being scammed and reporting it to PayPal.

I realise this means Miss M is out of pocket and I’m really sorry she’s lost this money. However, for the reasons I’ve explained, I don’t think I can reasonably uphold this complaint.

My final decision

My final decision is that I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Miss M to accept

or reject my decision before 22 August 2024.

Tom Wagstaff
Ombudsman