

The complaint

Mr J complains that PayPal (Europe) Sarl et cia SCA didn't do enough to protect him from the financial harm caused by an investment scam, or to help him to recover the money once he'd reported the scam.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

Mr J complains that PayPal won't reimburse the money he lost to an investment scam. An acquaintance recommended he should invest with a company I'll refer to as "I". The acquaintance told him they were getting good returns from the investment and introduced him to someone I'll refer to as "the scammer".

Mr J met the scammer at his workplace. The scammer said he was a director at "I" and advised him to invest in forex. The scammer said he had a good track record and assured him there were measures in place such as automatic selling to prevent big losses. He also told Mr J he could withdraw his money at any time.

On 8 July 2021 and 12 July 2021, Mr J used PayPal to process two payments of £10,000 to "I". The payments were made via an embedded PayPal link on "I's" website using money from Mr J's bank account.

Mr J realised he was the victim of a scam when he received an email from "I" to say his account was frozen. He was also contacted by the police who told him "I" was operating a scam. He contacted PayPal, but it said the payments weren't covered under the terms of its Buyer Protection Policy.

Mr J wasn't satisfied and so he complained to this service. He said PayPal had allowed "I" to use an embedded payment link without undertaking any due diligence, and that it had failed to take action or notice the hallmarks of fraudulent activity. He said "I" was being investigated by the police and PayPal should have told him "I's" website had been taken down by the Financial Conduct Authority ("FCA"). He said PayPal should have undertaken more checks to ensure his money was going to a legitimate business and that it had failed in its duty of care to protect him from fraud.

PayPal maintained the transactions couldn't be refunded as they related to 'financial products or investments', which are ineligible for PayPal Buyer Protection.

Our investigator was satisfied "I" was operating a scam. He explained it wasn't authorised by the FCA or in any other jurisdiction, indicating it was operating illegally, and that a warning was placed on the FCA website on 11 August 2021.

He said that although Mr J authorised the transactions, PayPal should have had systems in place to look out for unusual transactions or other signs that might indicate its customers were at risk of fraud. He noted there was a pattern of activity to compare the transactions

with and the first transaction was nearly ten times larger than the highest deposit of £1,129 in September 2020. So, he thought PayPal should have blocked the payment.

He said PayPal should have contacted Mr J to ask some questions, in response to which he was satisfied he would have explained the circumstances of the payment. PayPal could then have invited Mr J to check whether “I” was authorised by the FCA. He also said PayPal ought to have known about the risks associated with forex investments and that its failure to provide Mr J with any meaningful warnings represented a missed opportunity to intervene.

He was satisfied that PayPal should have provided a scam warning to Mr J about the risks associated with the investment and that if it had done so, he would have paused and looked more closely into “I” and discovered it wasn’t authorised to provide financial services in the UK. So, he thought PayPal should refund the money Mr J had lost.

PayPal has asked for the complaint to be reviewed by an Ombudsman, asking for more information concerning its duties to protect its customers from the risk of financial harm due to fraud. It has also referred to the provisions of the Second Payment Services Directive (implemented in the UK through the Payment Services Regulations 2017), which it argues gives it a clear legal obligation to execute payment orders where the conditions in the framework contract are met – being the PayPal User Agreement – unless prohibited by law.

It has argued Mr J’s transaction history over the 12-month period preceding the two disputed transactions shows approximately £35,000 in commercial payments, seven of which were over £1,000. It has stated that both payments were funded by a bank account and not by Mr J’s PayPal balance, so the payments should have been blocked by the other bank. And it has questioned why the payments were suspicious, considering Mr J had used the funding source for a number of years.

PayPal has also questioned what it could have done to prevent Mr J from going ahead with the investment, arguing it couldn’t have told him not to make the investment or warn him about its other customer’s experiences due to bank secrecy.

Finally, it has said there was no legal obligation on it to block the payments or for it to issue warnings and that even if it had advised Mr J to research “I” further, he wouldn’t have uncovered anything because the FCA warning was issued after he made the payments.

My provisional findings

I carefully considered the circumstances and I thought, on balance, “I” was operating a scam. Forex trading is a regulated activity and there’s no evidence that “I” was ever authorised here or in any other jurisdiction. This indicates it was operating illegally, probably with dishonest intentions as legitimate firms tend to comply with regulatory requirements. This is supported by the existence of the police investigation into “I”, and the FCA warning dated 11 August 2021.

Prevention

I was also satisfied Mr J ‘authorised’ the payments, so he’s presumed liable for the loss in the first instance. And, although he didn’t intend his money to go to scammers, PayPal is expected to process payments and withdrawals that a customer authorises it to make.

PayPal has stated that the payments aren’t covered under its Buyer Protection Scheme. However, where the customer has been the victim of a scam, it may sometimes be fair and reasonable for the Electronic Money Institute (“EMI”) to reimburse them even though they authorised the payment.

The payments didn't flag as suspicious on PayPal's systems and it has stated that Mr J's transaction history in the 12-months before the disputed transactions shows approximately £35,000 in commercial payments, seven of which were over £1,000. It has also stated that the payments came from Mr J's own bank account, so the source of the money wasn't suspicious. It has argued there was no legal obligation on it to have blocked the payments and/or intervened and it has questioned what it could have done to stop Mr J from going ahead with the investment.

In the case of these two transactions, there was no interaction between Mr J and PayPal before they were made. There was also nothing to suggest PayPal knew or ought reasonably to have known the account which received the funds was involved in fraud or that it was on notice in some other way that Mr J was at risk of financial harm. But there was historic account activity to compare the transactions with and so I considered the nature of the transactions in the context of whether they were unusual or uncharacteristic of how Mr J normally ran his account. Significantly, the highest deposit in the previous 12 months was £1,129 in September 2020, so I was satisfied £10,000 was unusual. Further, Mr J was making payments to a new payee and it would have been obvious he was making the payments for an investment.

But I said that even if I concluded that PayPal should have intervened and asked questions when Mr J made the first payment, I didn't think it would have made a difference to the outcome. I explained I had no reason to doubt that Mr J would have answered any questions truthfully and that he would have told PayPal that he was being assisted by someone who worked for "I" who had advised him to invest in forex. PayPal could then have established that "I" wasn't authorised by the FCA, which would have been a strong indicator that it was operating a scam. I agreed it couldn't have told him not to make the investment or told him about the experience of its other customers, but it could reasonably have warned Mr J about the risks associated with the investment, specifically, the fact "I" wasn't authorised by the FCA suggested it was operating illegally. It could also have discussed with him the nature of the checks he'd undertaken and given some advice on additional due diligence.

However, the scammer had been recommended to Mr J by an acquaintance who he believed had made returns from their investment, so I was satisfied he believed this was a genuine opportunity to the extent that he would likely have ignored a scam warning from PayPal. He may already have known "I" wasn't authorised as he'd checked it was registered on Companies House. But even if it was new information, this was the only reason for concern and the scammer could have told Mr J its FCA application was outstanding. So, while I accepted the fact "I" wasn't authorised by the FCA was a red flag, I wasn't persuaded this alone would have dissuaded Mr J from going ahead with the investment.

This was a sophisticated scam, Mr J had met the scammer, he believed his acquaintance had made returns from their investment, and there were no other obvious red flags. Further there were no negative reviews and the FCA warning wasn't published until 11 August 2021, so even if Mr J had done more checks before making the payments, there would have been nothing to confirm the suggestion that "I" was operating a scam. Mr J didn't discover he'd been scammed until his account was frozen and he was contacted by the police, so even though I hadn't seen any evidence that he was keen to take risks and he didn't have a history of high-risk investing, in the circumstances, I didn't think an intervention from PayPal on 8 July 2021 would have made a difference to his decision to go ahead with the payments.

Developments

Mr J doesn't agree with my provisional findings. I've summarised his main comments as follows:

- He has clarified that the person who recommended the investment wasn't a colleague but merely an acquaintance, and he has questioned my description of the person as a 'colleague who he trusted', stating those weren't his words.
- He doesn't accept PayPal took reasonable steps to stop him being a victim of fraud and he has suggested it should have stopped the payments rather than just giving a warning. He has argued there were many red flags and that it would have been clear from the company name that he was paying an investment company with a high risk of fraud and that further checks might be required including checking the FCA register.
- He accepts he should have done more due diligence, but he's explained that the embedded PayPal payment option gave the investment a sense of authenticity because of PayPal's promotion of itself as a safe payment method.
- He has argued that if PayPal had warned him that "I" wasn't FCA regulated and that this was good evidence it was probably a scam, he wouldn't have gone ahead with the payments. He has suggested I've made an assumption about his level of risk and explained that he was wary about the investment because it was such a lot of money.

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've carefully considered the further comments Mr J has made in response to my provisional decision. He has said there was a lack of support from PayPal when he reported the scam, but I haven't seen any evidence that the service he received fell below a reasonable standard and I'm afraid the findings in my final decision will be the same as the findings in my provisional decision.

Mr J has clarified that the investment was recommended by an acquaintance rather than a colleague and he has questioned why I have stated that he trusted this person. I note the person was an acquaintance and I've amended this accordingly. But I maintain the fact Mr J was introduced to the investment by someone he knew and that he met the scammer in person means there was nothing suspicious about the way he learned about the investment.

Mr J has suggested that a warning from PayPal wouldn't have been sufficient but based on the nature of the payment and the fact there was nothing to confirm the investment was a scam at the time he made the payments, I'm satisfied probing questions and a scam warning would have been proportionate to the risk.

Mr J has also argued that there were red flags present which ought to have alerted PayPal to the need for further checks and I don't dispute that it would have been clear from the name of the payee that Mr J was making a payment for an investment. But I maintain that even if I concluded that PayPal should have intervened and asked questions when Mr J made the first payment, I don't think it would have made a difference to the outcome.

I accept the use of the embedded payment link would have reassured Mr J that the investment was genuine. I also accept that the outcome of this decision is based on what I think is most likely to have happened if PayPal had intervened as I concluded it should have done. However, as I've previously explained, the fact "I" wasn't regulated by the FCA was the only indication that the investment was a scam and I think the circumstances were such that Mr J would have chosen to go ahead with the payments if PayPal had intervened. This was a sophisticated scam, Mr J had met the scammer, he believed the person who'd introduced him had made returns from his investments, he was told he could withdraw his

money at any time, he was reassured by the use of the embedded payment link and there were no negative reviews or warnings or anything else to confirm the suggestion that “I” was operating a scam.

I understand Mr J was wary about the investment and he didn't have a history of high-risk investing, but this tells me he wouldn't have gone ahead in the first place if he wasn't convinced the investment was genuine. Consequently, I maintain my view that I don't think an intervention from PayPal would have made a difference to the outcome.

Finally, Mr J has raised several queries which I can't comment on for the purpose of this complaint other than to say I'm satisfied that when he reported the scam to PayPal, the terms of the Buyer Protection Policy meant the transactions couldn't be refunded. I'm sorry he has lost money and the effect this has had on him. But for the reasons I've explained, I don't think PayPal is to blame for this and so I can't fairly tell it to do anything further to resolve 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 Mr J to accept or reject my decision before 16 April 2024.

Carolyn Bonnell
Ombudsman