

The complaint

Mr S complains that eBay Commerce UK Ltd is holding him liable for the amount of a transaction it reversed after a buyer made a successful claim against him as a seller.

What happened

I recently issued my provisional conclusions setting out the events leading up to this complaint and what I thought would be fair and reasonable to resolve it. I've reproduced my provisional findings below (including the background to the complaint) which form part of this final decision.

My provisional decision

On 3 June 2022, Mr S sold a mobile phone through eBay – the online marketplace (referred to in this decision as 'eBay marketplace') and the payment from the buyer was processed and handled by eBay Commerce UK Ltd. On 29 July 2022, the buyer opened a return request through eBay marketplace saying that they had ordered the item accidentally. eBay marketplace allows sellers to reject a return from a buyer made for a reason like this – which Mr S did.

On 7 August 2022, eBay Commerce received an external dispute using the chargeback process that the buyer had raised through their bank, saying that the goods weren't as described. eBay Commerce asked Mr S for evidence to support his side of the dispute. Mr S provided a picture of the phone before it was sent. On 15 August 2022 this was sent to the buyer's bank but on 14 October 2022, the buyer's bank settled the complaint in favour of its customer. As a result, eBay Commerce held Mr S liable for the funds under the terms of its managed payments facility.

Mr S complained to eBay Commerce but it maintained that it had handled this correctly and fairly. It explained that its terms make clear that it won't be responsible for external disputes that are found in favour of buyers, as the dispute was here. Mr S was unhappy with this and brought his complaint to our service.

One of our investigators looked into this and found that eBay Commerce hadn't treated Mr S fairly. They said that eBay Commerce's systems only allowed Mr S to upload a single picture as a defence to the dispute – but that regardless of this, the nature of the claim here (that the phone wasn't the actual phone received) was hard to substantiate.

But they felt that eBay Commerce could and should have done more here, noting that it offers a seller protection policy to protect customers against abusive buyer behaviour and events outside of their control. They felt that while Mr S may not have directly qualified under the terms of this seller protection policy – it would nonetheless be fair for eBay Commerce to have treated him as if he did here.

Mr S agreed, but eBay Commerce didn't. While the buyer retained the phone, it said that there was no clear evidence that they didn't have a valid reason to want to return the item. It also said that the seller protection was a broader policy that applied to eBay Money Back

Guarantee claims rather than here. This protection doesn't say that it'll protect customers by refunding the seller or by initiating its protection for payment disputes.

After some back and forth between eBay Commerce and our investigator it maintained that it has no control over whether a buyer raises an external dispute or the result of said dispute. So the complaint was passed to an ombudsman to decide.

eBay Commerce's position

In reversing the payment Mr S received, eBay Commerce is relying on the following terms of its Managed Payments service, which were in force at the time eBay Commerce debited the payment from Mr S.

These terms say:

A buyer (or the owner of a payment instrument) may initiate a chargeback, direct debit reversal, or PayPal buyer protection claim, or otherwise asks their financial institution to open a payment dispute (all referred to solely within this Part I as “Dispute”) in connection with a Managed Payments transaction. The final outcome of the Dispute will be decided by the buyer’s financial institution.

We will manage Disputes, as follows: When a Dispute is opened, we will notify you and ask you whether you choose to accept or challenge the Dispute. If you accept the Dispute, you agree to the reversal of the payment to the buyer. If you challenge the Dispute, eBay will submit to the financial institution any relevant evidence you provide about the Dispute. You agree to provide timely information to assist in the Dispute resolution process and understand that your failure to provide requested information on the timeline we require and as specified by credit and debit card networks' and other payment service providers' rules could adversely impact the outcome of a Dispute investigation, up to complete forfeiture of the amounts in Dispute. If you accept the Dispute or if the buyer's financial institution decides in favor of the buyer, the respective amount will be refunded to the buyer's original payment method and charged to us. You must reimburse us for such charges, unless you are eligible for seller protection in which case you are not held liable for amounts refunded to the buyer. If you choose to accept the Dispute, we may still decide to challenge the Dispute in our discretion and at no additional costs to you.

Some payment institutions offer an optional arbitration process to contest the results of an individual Dispute. We may ask for your consent to participate in such arbitration process. If you consent to chargeback arbitration, you authorize us to represent and defend you throughout the arbitration. You will be responsible for all costs and expenses (including reasonable legal fees and any arbitration fees assessed by third parties, arising from such arbitration proceedings), as agreed between you and us in each case, and you authorize us to pay these amounts on your behalf while the arbitration is pending.

You will not contest the resolution of any Dispute that we investigate and/or represent, nor will you re-open resolved Dispute investigations. If you are a consumer in the EU, UK or Australia, or a Small Business within the definition of Small Business Contract (as defined in s23 of Schedule 2 – Australian Consumer Law of the Competition and Consumer Act 2010 (Cth)) (“Australian Small Business”) in Australia, your rights to file a complaint or to take legal action in court remain unaffected.

The sections of the Managed Payment terms quoted above set out the position that a customer will be liable to eBay Commerce for the full amount of a payment, as well as any charges and amounts, if an external dispute is raised and is found in favour of a buyer by an external financial institution.

So, under these terms, eBay Commerce can debit its account holder for that amount, as well as any fees. However, as referenced above, under eBay Commerce's terms, certain payments which are the subject of a reimbursement like this may be covered under its 'Seller Protection' policy. Clicking the link given on the terms highlighted above, a consumer is provided with a page which explains the following:

When you sell on eBay, we protect you from abusive buying behaviour and from events outside your control.

There is then an explanation of 'protections for all sellers' but none of the criteria appear relevant here. But there is then the following section, which could be relevant here:

Protections for payment disputes

If a buyer files a payment dispute and the transaction is eligible for protection under our Payment dispute seller protections, we'll cover the amount of the dispute, waive the dispute fee, and remove negative and neutral Feedback related to the transaction.

If a consumer clicks the link underlined above then eBay Commerce explains the eligibility requirements for this protection it provides:

Protections, eligibility requirements and exclusions

Payment dispute seller protections may apply when the buyer opens a payment dispute for one of the following reasons:

- *They didn't receive the item*
- *They don't recognize the transaction or have an issue with the transaction*
- *The item they received doesn't match the listing*

For a seller to be eligible for payment dispute seller protections:

- *The transaction must meet the requirements specified in this policy*
- *The seller must respond to the payment dispute and take action within the required time frames*
- *If challenging the payment dispute, the seller must provide the required evidence*
- *The seller may not be in violation of the User Agreement*

eBay may automatically apply seller protections to a dispute without requiring the seller to respond or take action on the dispute. If we apply the protections automatically, we won't charge a dispute fee or seek reimbursement from the seller if the dispute is resolved with a full refund to the buyer.

Eligible scenarios and excluded transactions

<i>Eligible scenarios and excluded transactions</i>	
<i>Eligible scenarios</i>	<ul style="list-style-type: none"> • <i>The transaction was for physical goods and there is evidence of a successful delivery or pickup</i> • <i>The seller issued a full refund to the buyer through eBay</i> • <i>The seller issued a refund to the buyer through eBay, but deducted an amount from the refund because the item was returned used or damaged (in accordance with our guidelines)</i> • <i>The payment dispute relates to an eBay Money Back Guarantee case that was already resolved with:</i> <ul style="list-style-type: none"> ○ <i>eBay determining that the seller met their obligations to the buyer, or</i> ○ <i>eBay issuing a full refund to the buyer</i>
<i>Excluded transactions</i>	<ul style="list-style-type: none"> • <i>Items that don't comply with eBay's prohibited and restricted item policies</i> • <i>Items not covered by eBay Money Back Guarantee</i> • <i>Click & Collect items collected from the retailer where the seller provided an exchange or gave store credit on a return</i> • <i>Transactions where the seller issued a refund outside of eBay</i>

But eBay Commerce says that the 'seller protection' only refers to certain circumstances when the marketplace has stepped in to mediate a case between a buyer and seller. eBay Commerce says the buyer's actions in claiming a refund wasn't a relevant dispute but a "remorse return", which was automatically closed by eBay's systems when Mr S elected to reject the buyer's claim. So eBay Commerce says it has never reviewed the dispute here and had no part in the ultimate decision that was made in the buyer's favour.

Mr S's position

The buyer initially raised a claim that they ordered the item accidentally and that it wasn't what they ordered because the phone wasn't in the correct box. It's difficult to see that both would or could be true – which casts doubt over the legitimacy of the claim. The buyer raised this initial dispute with eBay marketplace and Mr S declined the claim for the refund because he was satisfied that the phone was as described. It was after this that the buyer then raised an external dispute with their bank.

In any case, the dispute here is not about the truthfulness of the other account holder's claim. Nor is it entirely about what Mr S's position under the terms of the Managed Payment Terms (as written) would be, but rather what is fair and reasonable in all the circumstances of this case, taking into account, amongst other matters, the content of eBay Commerce's terms.

In taking the position it has, Mr S is left without the goods he sold and without the money from the sale of them. I can see why Mr S feels that this is an unfair position to be in – and I imagine that any reasonable consumer would feel the same in that position, especially when they have advertised, sold and received payment for a sale that they have made.

External disputes such as the one the buyer raised against Mr S here are raised through schemes such as the chargeback process and are intended to deal with sale of goods disputes in a quick and broadly fair way. The fact that eBay Commerce deals with claims of this nature is a feature which can have benefits to both buyers and sellers alike, but will often result in one side being unhappy with the outcome, as Mr S was here. So I've considered how eBay Commerce has dealt with the claim in question.

Has eBay Commerce dealt with this claim correctly and in line with its terms?

Firstly I've looked at whether eBay Commerce has dealt with the chargeback raised against it correctly and in line with the operation of that scheme and its own protection policies. eBay Commerce received the claim, asked Mr S to provide information and then forwarded this information onto the financial institution which raised the claim. That is, very broadly, in line with how this scheme operates.

In responding to this claim though, eBay Commerce knew a fair amount about the claim and Mr S's position beyond what it provided and told the financial institution that raised it. Mr S sold a phone which was received by the buyer and has been clear and consistent with his testimony and evidence. eBay Marketplace received a request for a refund from the buyer because the phone had been purchased accidentally and (also) wasn't as described. Mr S turned down the request for a refund but then the buyer raised a further external dispute solely on the basis that the phone wasn't as described. Such a claim being made does raise doubts about the validity of the dispute that was raised through the chargeback process.

Neither Mr S nor this service have been provided with a clear and full explanation for why the chargeback here was successful. eBay Commerce hasn't provided any details of why they may have been told that the buyer's financial institute found in the buyer's favour and so the reasons for the success of the chargeback remain obscure. Instead, eBay Commerce has only confirmed that it provided details of the listing to the other bank and a picture that Mr S sent it, but says that bank found in its customer's favour.

eBay Commerce didn't, from what I can see, tell the other bank about the claim that had been rejected on eBay marketplace, nor did it provide any commentary around his compelling testimony that he acted in good faith and never received the item back. That's important because under the relevant dispute schemes here – there is often an expectation for the buyer to have returned the goods in order to qualify for a refund under the scheme. I can't see that eBay Commerce brought this to the attention of the buyer's financial institution. When the financial institution found in the buyer's favour, eBay Commerce has then relied on its terms to debit Mr S's account without providing him with any protection against this claim.

So while eBay Commerce could very broadly be said to have followed what its own terms say about how it will deal with claims like this one – I think there is more that it could have done here to represent and help Mr S as its customer.

However, it's very hard to know what the outcome of the chargeback would have been if eBay Commerce had taken the extra steps I think it should have. Ultimately, the outcome of any dispute like this won't be made by eBay Commerce. So, I've also considered whether it was reasonably foreseeable to Mr S, as a customer of eBay Commerce, that he might end up in a situation like this, where he had parted with an item of property in return for a payment which was subsequently reversed for reasons that are obscure and without him receiving the return of his property.

Has eBay Commerce made clear that Mr S could be placed in this position when he signed up to its Managed Payments service?

It's important here to consider whether Mr S knew that he was opening himself up to the risks involved in situations like this one here in becoming a Managed Payments customer. If he did – it could be fair that he is now in the situation he is in relation to this claim, to the extent that the risk may have represented an acceptable price for having access to the payment service. If not, he may have chosen to do things differently here. So, I've considered whether a reasonable consumer would knowingly accept the risk the terms for Managed Payments impose. That is, would the average consumer, behaving reasonably when becoming a Managed Payments customer, expect to be potentially liable to eBay Commerce for all of its losses if a buyer raises a dispute such as this with a third party business? As I've set out, eBay Commerce's contractual terms pass that loss onto the recipient even where, as in this case, they have acted in good faith, successfully rebuffed a claim from the buyer on eBay's marketplace, and not had the goods returned to them.

I think it's fair to say that consumers who sell personal possessions using eBay's marketplace can't reasonably be expected to have any prior understanding of the dispute resolution systems (such as chargeback) operated by certain payment networks. The average consumer may be aware of chargeback and similar systems – but likely only in the context of raising a claim as a buyer. They wouldn't have any knowledge of the particulars or details of such systems in respect of dealing with a claim against them as a seller. Systems like the chargeback process were designed to deal with claims against commercial retailers, whose ability to absorb potential losses from such claims and understand the systems used are quite different to the average consumer selling personal possessions.

These systems have complicated and extensive rules that are aimed at providing quick adjudications on disputes based on limited evidence. Retailers and payment intermediaries will generally be aware of this and will often take a pragmatic approach to claims, in view of the benefits afforded by being able to process a large number of payments through the relevant network. For a consumer who is selling personal possessions from time to time (as Mr S was here) very different considerations arise.

In this case, I haven't seen that any warnings were given to Mr S as to the nature and features of chargeback/dispute systems as described above. I can't see that Mr S would (or could) have been aware of the terms that he would end up in the position that he finds himself in now – that is, without the goods he sold and the money from the sale. This is an unfair position for a consumer and I can't see that eBay Commerce's terms alert Mr S, or other consumers, to the risks inherent in its Managed Payments service in how it deals with external disputes of this nature.

eBay Commerce's terms do offer 'Seller Protection' in certain circumstances where an external dispute is raised against a seller. Those terms, as set out elsewhere in this decision, state that a seller won't be held liable if this protection applies. I think the average consumer (like Mr S) would likely be reassured by the 'seller protection' offered under the Managed Payments terms.

eBay Commerce seems to be saying that this policy and procedure isn't something it is responsible for and is something that's set by and for the marketplace. But it is clearly mentioned as a part of eBay Commerce's terms and is linked to as a part of eBay Commerce's managed payment terms on which it has relied to debit Mr S for its losses.

The Seller Protection policy is described as protecting a customer "*...from events outside of their control*" and the information about this goes on to explain how and when a customer would be covered by this policy.

Based on the wording as it was at the time, I can see why a consumer like Mr S would have thought that he would qualify for Seller Protection here. The buyer raised a claim which had two elements to it – that the purchase was accidental and that the goods supplied were wrongly packaged. The second part of this claim is essentially that the item supplied didn't match the listing on eBay's marketplace. Circumstances like this are given as one reason where Seller Protection may apply. Following on from this, one of the eligible scenarios given is:

- *The transaction was for physical goods and there is evidence of a successful delivery or pickup*

That accurately describes the circumstances in this case. This being the situation, I think that the terms are reasonably capable of being read as covering the dispute here (although I'm not going to decide that question).

Going on to consider the remaining requirements for this protection to apply – they seem quite onerous on a consumer who has sold an item in good faith. On the one hand, eBay Commerce offers sellers 'protection' against claims against them - which would be an attractive and appealing part of the services that it provides. But based on the circumstances here, the policy doesn't seem to go as far as affording Mr S protection in the way that eBay Commerce/eBay's description suggests ("*...from events outside of [a seller's] control*").

The fact that eBay Commerce says the Seller Protection policy doesn't apply here suggests that it can fail to rectify unfair results produced by chargeback schemes too – which leaves a customer without any real protection against finding themselves in such an unfair position – even if they have shown they are acting in good faith in respect of the sale and dispute at hand.

I think the terms, as drafted, would be difficult for the average consumer to fully understand in relation to the protection available in circumstances like this. The situations where it does and doesn't apply are unclear and aren't explained in a level of detail that the average consumer would understand. Nor are these sections adequately drawn to a customer's attention in a way that could highlight the limitations of the protection on offer. It seems like a consumer has to just confirm their acceptance of the entire agreement and are strongly advised to read its provisions. eBay Commerce doesn't seem to have done anything to specifically bring the limited protection it offers to Mr S's attention here.

Conclusion

When considering a complaint like this one, brought by an individual consumer selling their goods in good faith – these terms do run the risk of creating an unfair outcome in certain circumstances and one which the consumer couldn't reasonably be expected to foresee. And here, I think that's the case. Mr S sold an item in good faith, received payment for it and then believed the matter was concluded.

He then found out that a claim had been raised against him again and finds himself without the goods he sold, the money from the sale and with no protection from eBay Commerce, despite it offering a Seller Protection policy. This outcome is unfair to Mr S and I consider that a reasonable consumer in his position wouldn't have appreciated the risk under eBay Commerce's terms that he could suffer such an outcome. I consider that eBay Commerce should have done more to warn consumers of the risk they would run if they used its services (and which materialised in Mr S's case).

What does this mean for Mr S?

I accept that even if eBay Commerce did everything it could in defending the chargeback, there is a chance that this might not have changed the outcome on the external dispute. But in any event, even if that had been the case, I think it isn't fair or reasonable for eBay Commerce to rely on the terms against Mr S in all the circumstances of this particular case. He is left without the goods he sold and without the money from them.

In my view eBay Commerce should have given more thought to the protection it was offering him and the way it explained and presented this to its consumer customers. Had it done so, Mr S would either have had the benefit of protection in this case, or he would have been warned much more effectively of the risk of using eBay Commerce's service that he might, even if he sold and delivered goods quite properly, have the price re-debited to his account without the goods being returned to him. That is not a risk I think he, as a consumer, is likely to have accepted and, given the absence of proper warnings and explanations, it is not a risk to which eBay Commerce fairly exposed him.

With this in mind, I'm satisfied that a fair and reasonable resolution to this matter would be that eBay Commerce doesn't hold him liable for the losses it incurred as a result of the buyer's claim against it.

As I am satisfied that eBay Commerce failed to act fairly and reasonably when it debited Mr S's account, I intend to instruct it to refund Mr S the payment, along with 8% interest calculated from the date the money debited his account to the date the payment is made to him.

Responses to my provisional decision

Mr S didn't respond to my decision with anything further, but eBay Commerce did, saying that it didn't agree because (in summary):

- it remains impartial in disputes such as this and questions whether Mr S could have provided any additional evidence that would have influenced the financial institution's decision
- a defence to the dispute would have been provided based on the circumstances
- the outcome of the dispute isn't as a result of its policies or procedures, but the protection provided to the buyer
- it questioned what more it could have been expected to do in the circumstances
- the terms of the seller protection policy have been set as a legitimate business decision by eBay Commerce.

So I now have 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 reached the same outcome as in my provisional decision. I'll address eBay Commerce's response to explain why what it's said hasn't changed my mind on what's fair and reasonable here.

eBay Commerce has questioned what more it could have done in relation to its handling of the dispute. I've considered what it says it 'would have' done in responding to the dispute, although it remains unclear as to what it actually did. As an illustrative example, I think it's reasonable to expect that eBay Commerce may have ascertained and communicated that the goods had not been returned to Mr S and that the Buyer had been inconsistent in their reasons for disputing the purchase. I still haven't seen exactly what it did provide in defence to the dispute – so it's not clear whether it did this.

eBay Commerce also asked whether Mr S could have provided information that would have influenced the decision of the financial institution raising the claim. In my provisional decision I acknowledged that it's very hard to know what the outcome of the chargeback would have been, even had it taken extra steps. The reasons I reached the outcome in my provisional decision weren't primarily focused on whether eBay Commerce handled the chargeback correctly and in line with its terms. This was only one element of what I considered.

Instead, my reasons for upholding the complaint were because I found that eBay Commerce was offering a payment service with a substantial risk for a consumer like Mr S, who could not reasonably be expected to understand the operation of the chargeback system that led to the claim here. Nor did I think Mr S could have reasonably understood what eBay Commerce contends is a relevant limitation to its Seller Protection. I decided that it wouldn't be foreseeable for Mr S that he would end up in the position he finds himself in. While I've considered what eBay Commerce says in response to my provisional decision - I remain of the opinion that this is unfair for Mr S for the reasons I've already given.

It seems that eBay Commerce has taken from the wording of my provisional decision that Mr S may have agreed to its terms without potentially reviewing or understanding the terms of the contract he has with it. For clarity, my findings were that on fully reviewing the agreement for eBay Commerce's Managed Payments service, Mr S (as a reasonable consumer) wouldn't have been able to fully understand the risks he was agreeing to, or the limited protection on offer from those terms as drafted.

eBay Commerce appears to suggest that the effect of my provisional decision is that Mr S (and all private individuals) would be exempted from the requirements outlined in its terms. It says this is something that could have a significant impact on it as a business. I understand these concerns, but my decision is made on the merits of Mr S's individual dispute. Considering everything here, I remain of the opinion that a reasonable consumer like Mr S – selling privately and individually - would be unlikely to understand these requirements as drafted and so it is unfair on eBay Commerce to rely on them here.

I understand the point that eBay Commerce makes when it says it is the responsibility of persons entering into a business agreement to understand what they are agreeing to and the responsibility of that agreement. The issue is that the specific terms eBay Commerce is seeking to rely on don't help a consumer in Mr S's position understand the extent of what he is agreeing to, or the risks he is accepting by using eBay Commerce's Managed Payments service. I don't think any amount of reading of the terms here would have told an average

consumer like Mr S of the risks that have - on eBay Commerce's interpretation of the terms - now materialised for him. And on this basis, I think it's unfair for it to rely on those terms as the basis on which it has debited Mr S's account.

eBay Commerce has also said that sellers who choose to operate on the eBay marketplace platform must be held accountable to the industry standard rules that apply to chargebacks. So it seems like it expects consumers to indemnify it against losses that arise from external disputes such as the one in Mr S's case. But I think it's important to bear in mind that the outcomes of these disputes arise from schemes that are generally designed for (and used by) commercial entities. In the circumstances, I don't think this is a fair or reasonable position for eBay Commerce to take in relation to Mr S's circumstances as a private individual.

I say this because I don't think eBay Commerce can reasonably expect a consumer in Mr S's position to understand how these schemes operate, their limitations and disadvantages for sellers and the financial implications these present. Nor have I seen that eBay Commerce has adequately explained these, or brought them to Mr S's attention itself.

This is compounded by the obscurity of its terms as to when Seller Protection may apply and the reassuring tone it is described with. eBay Commerce has said in response to my provisional decision that the setting of its terms for the Seller Protection policy is a legitimate commercial decision which shouldn't be challenged by this service.

eBay Commerce is free to set its policies and procedures as a commercial entity. But it is this service's role to decide a complaint with reference to what is, in our opinion, fair and reasonable in all the circumstances. I have carefully considered eBay Commerce's terms, including the Seller Protection policy and decided that, in the circumstances of Mr S's individual complaint, eBay Commerce's application of these has led to an unfair outcome for him.

So in summary, I've considered all that eBay Commerce has said in response to my provisional decision – but my final decision remains the same. Ultimately the terms on which it has relied on to debit Mr S's account, together with the obscurely drafted limits to its Seller Protection, placed upon him a significant risk if he chose to use its payment service. That's a risk that a consumer privately selling their personal goods couldn't reasonably be expected to understand, or foresee.

As I explained in my provisional decision, had eBay Commerce given more thought to the protection it was offering Mr S and the way this was explained and presented to him then he would either have had the benefit of this, or he would have been warned much more effectively of the risk of using eBay Commerce's service. That is not a risk I think he, as a consumer, is likely to have accepted and, given the absence of proper warnings and explanations, it is not a risk to which eBay Commerce fairly exposed him.

So my final decision is in line with my provisional one - eBay Commerce should return the payment it debited from him, along with compensating him with interest to reflect the time he has been without this money.

My final decision

eBay Commerce UK Ltd should refund Mr S the payment in question here, along with interest at a rate of 8% per year on this calculated from the date the money was debited to the date the payment is made to him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or

reject my decision before 27 November 2024.

James Staples
Ombudsman