

The complaint

Mr S complains that PayPal (Europe) Sarl et Cie SCA has treated him unfairly regarding a dispute about a transaction funding the purchase of a bicycle.

What happened

Mr S paid £1495 on 27 June 2023 using credit from PayPal to purchase a bicycle. Very soon after purchase Mr S discovered there were significant issues with the bicycle so he complained to the shop that supplied him the bicycle. Mr S took it to the supplier on a number of occasions to get it fixed but was unsuccessful in this. The supplier provided a second bike and gave to Mr S a refund of £300. But issues continued with the bike and having reached deadlock with the supplier he took this dispute to PayPal. PayPal considered the matter and under its own policy gave Mr S £1195 and let Mr S keep the bike. The supplier then demanded Mr S pay it the amount he had received from PayPal under threat of legal action. Mr S says he did this and was left with a bike that didn't work and having incurred further costs. So Mr S brought his complaint here.

Our Investigator looked into the matter and concluded that breach of contract had been made out and PayPal should refund Mr S for the bike (upon him producing evidence he returned the funds to the supplier) ensure Mr S is no longer responsible for the bike (either by covering any costs associated with its return to the supplier or collecting it from Mr S and notifying the

supplier he no longer has it) and reimburse Mr S £46 in relation to costs incurred. PayPal disagreed with the findings of the Investigator and said in essence by refunding the amount Mr S paid for the bike less than the refund already received it had fulfilled its obligations. So this decision came to me to decide.

On the 27 September 2024 I issued a provisional decision not upholding Mr S' complaint and giving my reasons for that provisional position. Mr S responded with some comments and the deadline for responses from the parties has been reached.

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.

Mr S has made some further observations which are unpersuasive. I shall respond to them under the heading of 'further arguments' but in summary they're significantly short of persuading me to change any of the positions set out in my provisional decision. PayPal didn't respond. Since neither party have put forward persuasive arguments I see no reason to deviate from the thinking as set out in my provisional decision. Accordingly I repeat those arguments here save for minor amendments to reflect the final nature of this final decision.

Arguments from my provisional position

Mr S accepts he made the transaction for the bike using credit from PayPal. Considering what has happened here and what the parties have said, I'm satisfied on balance that Mr S

did properly authorise the transaction at the time. And accordingly it was correctly allocated to his account by PayPal.

There is no dispute here that the original bike was faulty. Paypal has its own scheme for disputes involving purchases using credit from Paypal alongside the obligations it has under Section 75 of the Consumer Credit Act 1974 (hereon 'S75' and 'CCA' respectively). PayPal refunded the amount Mr S paid for the bike less than the refund already he'd already received. Importantly PayPal was at that point entitled to take possession of the bike as it in essence was 'standing in the shoes' of the supplier was reversing the original purchase transaction by it taking back what was now its bike and refunding Mr S the money he'd paid for it (less the refund he'd received). By PayPal not taking back the bike here Mr S had all the money he'd paid and possession of the bike (albeit faulty). So Mr S was at that point in a position of significant gain and was better off than at any point since these events began. PayPal never asked to gain possession for what was in essence its bike as it was entitled to.

So at that point whether I consider this matter under its own disputes scheme or S75 Mr S not only had been treated fairly but was actually better off than he could have fairly been because he'd not given the bike to PayPal. So it is clearly to me that PayPal had fully discharged its obligations here under S75 and didn't need to do more.

I appreciate Mr S wanted the bike fixed rather than refunded. But that doesn't mean PayPal had treated him unfairly by refunding him and letting him keep the bike. The Consumer Rights Act 2015 (hereon the 'CRA') implies a variety of contractual terms into contracts for purchases by consumers. And within this legislation it sets out remedies for issues with such purchases that can apply. And as PayPal has obligations here under S75 to the contract here for the purchase of this bike has the terms of the CRA implied into it. However the CRA simply does not give purchasers autonomy over which of those remedies must be enforced or give Mr S any power to enforce such a solution onto PayPal. And even if it did, in this situation where PayPal had put Mr S into a position of significant gain I would use my powers to disapply it because it is evident to me that the position PayPal put Mr S into by refunding him and not taking possession of the bike was fair and reasonable. And the legislation under which I have powers here (Financial Services and Markets Act 2000 and following law) are clear that although I must consider the relevant law I am not obliged to follow it in deciding what is fair and reasonable in the particular circumstances of a particular complaint.

Mr S points to the fact that the bike supplier threatened him with legal action so he felt forced to pay it the money he'd received. And I'm sure he'll also point to the further problems and costs he had with the supplier. I'm sorry to hear about all of this and can appreciate how distressing and time consuming these events must have been. But these events and costs are not the responsibility of PayPal because it had discharged its obligations here by what it did in refunding Mr S and allowing him to keep the bike. PayPal was not responsible for the Supplier demanding money from Mr S nor was it responsible for Mr S paying this money. And everything that happened subsequent to Mr S paying the money to the supplier stems from that and not from PayPal.

It is unclear whether Mr S used PayPal credit in the transactions that followed the Supplier's threats to Mr S. But PayPal could only consider the claim made to it at the time that it was made and I'm satisfied that it did. And it would be of note that the payment Mr S made to the supplier subsequent to its threats wasn't a purchase of goods under a new contract so S75 would not apply to that payment or contract. And it seems clear that any transactions made subsequent to that flowed from that payment Mr S made under threat of legal action which wouldn't have S75 rights and accordingly as S75 didn't apply there it would be unlikely to apply to later payments (such as any relating to the replacement bike) as they would be in essence variances of that agreement or integral to it, rather than new stand alone

contracts. And in any event this complaint is about how PayPal treated Mr S about the original transaction and I'm satisfied it did everything it should.

I note that the investigator relies on the point that PayPal could have done more in how things unfolded here. However that does not mean what PayPal did in refunding Mr S was unfair. Nor does PayPal supposedly being able to do have done more equate to a failing or an overall unfairness by it. Especially considering it didn't take the bike into its possession which it was entitled to do and thus it left Mr S in a net gain position.

Mr S may point to the fact that in PayPal reclaiming the money it paid him from the supplier he was in essence 'back to square one' (to use a colloquialism) and I can appreciate that point of view. However just because that's the case doesn't make a difference to my mind. This is because firstly Mr S wasn't party to the terms PayPal used here (probably under its own scheme but possibly under s75) to enforce the supplier to pay it this money. And secondly he was back at 'square one' due to the supplier threatening Mr S and Mr S paying it this money-neither of which PayPal was responsible for.

I appreciate this position will leave Mr S in an unenviable position particularly with the supplier. But just because Mr S says he's lost out doesn't mean it's PayPal's fault here. And the bike supplier doesn't sit directly in my remit so I cannot make findings on it. And in any event the complaint I'm deciding here is about PayPal only and I'm satisfied it treated the claim by Mr S to it fairly. And for completeness I should add that although clearly Mr S has substantial disquiet with what the supplier has done throughout this process, PayPal is only responsible under S75 for breaches of contract and misrepresentations by the supplier in relation to contracts formed under S75. PayPal is not responsible for anything else such as the threats the supplier made to Mr S.

Further arguments

Mr S makes the point that PayPal didn't refund Mr S it reversed the original transaction. I'm not clear as to how Mr S knows this rather than thinking this. But in any event it's immaterial to this matter. S75 and PayPal's own disputes scheme both have mechanisms for the recovery of such moneys by PayPal from the merchant concerned. So whether it was PayPal paying Mr S or a reversal of the original transaction doesn't make a difference as to whether PayPal fulfilled its obligation in dealing with Mr S' claim to it as it could refund itself and reclaim or reverse the transaction in any event.

Mr S says he didn't gain by keeping the bike. Clearly he did as he was better off than before the purchase as he had the money back and the bike (albeit faulty). Mr S says the retailer would obviously demand return of the bike. Firstly PayPal had discharged its obligations by that point and in any event whether PayPal took possession of the bike or the retailer did doesn't make a difference because he'd had all his money back which would be fair. And PayPal isn't responsible for the retailers demand for money or Mr S' decision to pay it.

Mr S confirms he made the second payment to the retailer via Paypal. As I said in my provisional position *"And it would be of note that the payment Mr S made to the supplier subsequent to its threats wasn't a purchase of goods under a new contract so S75 would not apply to that payment or contract."* He says this was a new contract for new services. I'm not persuaded there was necessarily a contract there but even if I was it doesn't make a difference because it wasn't the contract Mr S complained about to PayPal originally and in any event PayPal had fulfilled its obligations by fully refunding him.

It is clear to me that Mr S is conflating all of his issues with the retailer here with PayPal's obligations in relation to his original purchase here. PayPal is only responsible for the transaction and its obligations in dealing with Mr S' claim to it. This is clearly different to Mr

S' broader dispute with the retailer. If Mr S wishes to continue his dispute with the retailer that is up to him. But this decision brings to an end this service's role within Mr S' complaint about Paypal.

My final decision

It is my final decision that Mr S' complaint about PayPal (Europe) Sarl et Cie SCA is not upheld. It has nothing further to do on the matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 18 November 2024.

Rod Glyn-Thomas
Ombudsman