

complaint

Mr G complains PayPal Europe Sarl & Cie, SCA has not dealt with his s75 claim, made under the Consumer Credit Act 1974 (the Act), fairly.

background

Mr G has PayPal Credit through Paypal. This is a revolving credit facility that gives Mr G access to £5,000 of credit. On the 10 June 2018 he was successful in an on-line auction for a car body shell that he was going to use to restore his own car.

But when the body shell was collected and subsequently inspected, it was found to be significantly not as described. Mr G raised this with the seller, who also inspected the shell and agreed it wasn't as described, but he wasn't willing to refund Mr G the full amount only £750. Not happy with that Mr G raised a s75 dispute with PayPal for the cost of the shell and his consequential losses – the storage of the shell, and the inspection and collection of it. But PayPal declined the claim as it said it hadn't been provided with sufficient documentation to support it. Mr G complained but PayPal stood by its decision.

Mr G asked us to investigate. He provided us with the same information he provided to PayPal: the online listing for the shell and its description, the order confirmation showing the £4,000 payment made for the shell, invoices for the collection, inspection and storage and evidence that the seller agreed the goods weren't as described.

Our investigator concluded the complaint should be upheld. He was satisfied the transaction was covered by s75 of the Act and that there had been a misrepresentation. He therefore asked for Mr G to be placed in the position he would have been had the transaction not taken place, which included refunding the storage fees and other costs he had incurred plus 8% interest.

PayPal didn't agree with the outcome. In summary, it has argued:

- Mr G paid for the item using PayPal credit.
- Mr G admitted to having repairs carried out, so the item isn't in the same state it was sold in.
- How has 8% interest been calculated?
- The request to reimburse Mr G his consequential losses is unreasonable and outside of its remit.
- The user agreement shows the onus is on the buyer to return the item.
- Our outcome is unfair and breaches its terms of use.
- The sale was between two individuals and so the protections under the Consumer Rights Act 2015 don't apply
- Mr G didn't inspect the shell before agreeing to buy it and so it doesn't agree Mr G has a claim for breach of contract either with the seller or through it.

PayPal did however, note the seller had agreed there was an element of mis-representation on his part and so it was willing to pay £1,500. Mr G wasn't happy with the offer and so the matter has been referred to me for review and determination.

my findings

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 have decided to uphold this complaint. I explain why below.

I would firstly like to point out that this office is not bound by PayPal's terms of use when reaching outcomes. We are required, under the Financial Services and Markets Act 2000, to reach fair and reasonable decisions. Whilst we will take into account a firm's term and conditions, we will also consider whether such terms have been applied fairly. PayPal is fully aware of our approach and it's disappointing to see it making such arguments.

Mr G has a credit facility through PayPal. It's a revolving credit facility that PayPal has agreed Mr G has up to £5,000 of credit. Having read the terms and conditions it operates in a very similar way to a credit card account, albeit without a physical card.

The agreement itself sets out that Mr G has the protection of s75 of the Act under certain circumstances. The Act, under s75 says:

If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor.

There is no dispute that the agreement Mr G has with PayPal is a debtor-creditor-supplier relationship. And although PayPal has referred to the transaction being between two individuals (and so the provisions of the Consumer Rights Act 2015 don't apply) there is nothing within s75 that indicates the transaction needs to be for trade or business purposes. And under section 12 of the Act, a supplier is defined as someone other than the debtor, which the seller was.

PayPal has made much of there being no breach of contract either against the supplier or it. I don't necessarily agree with that. But in any event, that isn't the only head of claim open to Mr G under s75, he also has a like claim against PayPal for any misrepresentation.

Mr G has provided a copy of the online advert which induced him into bidding for, and subsequently buying, the car shell. This described the shell as:

...new front wings, new rear wings, new floors, new sills, new rear bulkhead, new rear panel, new front panel, new bonnet, new jacking points and resprayed in black. This it is as near to a new shell as can be. This was some 3 years ago and has sat in my garage since. There is absolutely no rust to be seen anywhere.....

Having bought the shell, Mr G arranged for the collection of the car by a garage that carries out restoration work (and has had 28 years experience in this area). A report was provided which described the shell as:

- The front wings aren't new and have rust and filler around the headlamps.
- The rear wings aren't new and repair work was unfinished.

- The floors aren't new and are in poor condition with previous poor repairs and rust holes filled with filler. The original yellow paint colour was also present.
- Only one of the sills was new, others were either partly replaced or poorly repaired. They still have the original yellow paint and significant areas of rust.
- Although a rear panel has been replaced there were still large areas of rust.

I'm satisfied the report is from a business with sufficient experience in this area such that I can fairly rely on it, and PayPal ought to have done. I'm satisfied, given the findings of the engineer, that there is clear evidence that the condition of the shell was misrepresented in the original advert and it was those misrepresentations of the condition of the shell that induced Mr G into buying it.

PayPal has, on more than one occasion, referred to Mr G not carrying out an inspection of the shell before he bought it. But there is no requirement for him to do so. And this wouldn't mean a claim under s75 wasn't valid.

Overall, I'm satisfied Mr G has provided sufficient and persuasive evidence that he has a valid claim for misrepresentation under s75 of the Act. I therefore don't find that PayPal has dealt with his s75 claim fairly or reasonably.

PayPal has argued that any consequential losses Mr G has incurred are outside of its remit; it argues the most it is liable for is the £4,000 Mr G paid for the shell. I disagree. As set out above, s75 gives Mr G a like claim for breach of contract and misrepresentation against PayPal. As Mr G would have a claim against the seller for his consequential losses, under those heads of claim, it follows that he has a like claim against PayPal.

PayPal has also argued that its user agreement says the buyer is responsible for returning the goods. But this claim has been brought under s75 of the Act, not PayPal's user agreement. In any event, as I'm requiring the transaction to be treated as if it never existed, PayPal effectively becomes the owner of the goods and so it doesn't fall to Mr G to return them.

putting matters right

As I'm satisfied PayPal should have settled Mr G's claim, I require it to:

- Treat the £4,000 transaction as if it never happened – this means removing the debit balance, and any associated interest and charges from Mr G's credit facility.
- Refund any repayments Mr G has made to credit facility along with 8% simple interest on each of those payments from the date they were made until the date of settlement. 8% is awarded as Mr G had lost the use of those funds and is made in accordance with our approach in such circumstances.
- If Mr G has paid the consequential costs – collection, inspection and storage – PayPal needs to reimburse these costs along with 8% simple interest from the date of payment to the date of settlement on provision of evidence from Mr G the costs have been paid. If Mr G hasn't paid the consequential costs then PayPal should meet them.
- PayPal should arrange for collection of the shell at no cost to Mr G.

Mr G has also been put to some inconvenience in dealing with this matter. I understand he provided the same evidence to PayPal that he did to us, when making his claim. And he was continually asked for evidence that he'd already provided. If that evidence didn't arrive as it

should have (if it came through blank) then that should have been explained more clearly. In recognition of the effort Mr G has had to go through in order to have his claim met, and which I think should have been met far sooner, I award £75 for the inconvenience caused.

my final decision

For the reasons given above, I uphold this complaint against PayPal Europe Sarl & Cie, SCA and require it to redress Mr G in accordance with what I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 19 November 2018.

Claire Hopkins
ombudsman