

complaint

Miss G complains that she was chased by a collection agency for PayPal Europe Sarl & Cie, SCA, for a debt, of about £180, which was not hers.

background

In February 2018, Miss G received a letter from a debt collection agency, requesting a payment to clear a debt she owed to PayPal.

Miss G called the agency to explain she knew nothing about the debt. The agency provided her with some details. Miss G believed that her ex-husband had opened the account using some of her details and then run up the debt himself. She believed that because he had done that before with other companies. The agency could confirm that other details used on the account were that of her ex-husband, so they said they would refer back to PayPal to investigate the matter and put collection on hold.

PayPal informed the agency that as Miss G had advised the account was opened as a result of family fraud, it was not covered by PayPal's policy. Instead, advising her to report it to the police.

More communication followed and the agency again confirmed that PayPal said there was nothing they could do to help.

Miss G took matters into her own hands and, with the help of a friend, was able to contact her ex-husband who took responsibility for paying the debt. The same was confirmed by the agency; that was in May 2018.

Although the debt was paid, Miss G complained to PayPal, not least because she was concerned adverse information was held about her – either with PayPal or other agencies – and she had been chased for something which was not her fault.

PayPal explained that whilst they took the matter seriously, it was not their responsibility if someone's details were used; saying that was outside of their control. They also said they would and could only divulge information as a result of a police investigation and court order.

Miss G reported the matter to Action Fraud, but PayPal said that was insufficient for their purposes and only a full police investigation would permit them to reveal any information about the account or remove any information about her.

The complaint was referred to this Service. The investigator looking into matters, recognised the impasse; PayPal wanted to hold Miss G liable and did so, but would not reveal any information to justify their action on the basis that Miss G said she was not the account holder. It was either her account or wasn't but in either case PayPal would not provide the information. They felt very strongly that to provide any information to her or to this Service would breach data protection regulations.

In the investigator's view, that was neither fair nor reasonable and advised that PayPal should pay Miss G £200 for the distress caused and remove the record of the debt.

PayPal said that was unfair. They said that they did not accept that she had not opened the account but that it was a matter for the police, especially as she had raised identity theft. Given that, they could not provide the evidence to this Service.

Miss G was disappointed as this meant the complaint still was not resolved and felt that the award of £200 was not really reflective of the distress she had experienced.

As a result, I have been asked to review this complaint.

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 too think that PayPal have not treated Miss G fairly.

Under the jurisdiction of this Service, complaints may be brought here where an individual is pursued for a debt, even if the complaint is that they are not the person who should be pursued.

It follows that this Service may examine material to decide whether pursuing the complainant for the debt is fair or not. An examination can only be made of the actual material, documents and testimony submitted by the business and the complainant or any other party who can provide relevant information.

If a party chooses not to provide any information then a decision may only be made on what has been submitted.

Here, PayPal say they are prevented in law from providing the material and to uphold the complaint would be unfair in those circumstances.

I'm sorry that PayPal feel that way, but I do not agree.

PayPal feel inhibited in providing the information. They have interpreted the data protection regulations in such a way. My reading of the regulations do not lead me to consider that PayPal are prevented from defending themselves. It would be perverse if that were the case. However, if that is their understanding and how they have chosen to interpret and apply the regulations, then that is a matter for them. They may wish to refer to the Information Commissioner's Office for clarity.

I also think the only condition under which they would provide the information was unreasonable. I agree that identity theft is a serious matter, but I do not accept that the only recourse an individual has to rectify the wrong is to insist the police launch a full investigation. In any event, the complainant has no control of the decisions the police can or will make.

Miss G did what was asked of her. She did report the matter to the police. She could do no more than that but, in any event, that was insufficient for PayPal. It was clear she could never satisfy the condition PayPal had stipulated.

So in considering the merits of this case I can only consider what I have.

PayPal feel vindicated that they made the right decision to pursue Miss G. They have provided nothing for me to examine in deciding whether I think this is correct or not.

On the other hand, Miss G has provided evidence her ex-husband used her and his details on the PayPal account, evidence of another debt he ran up, and that he paid the PayPal debt in May 2018. These are strong indicators that he did indeed open the PayPal account and the person whose debt it was.

I appreciate that it may be the case that Miss G's ex-husband duped PayPal into thinking the account was Miss G's, but without seeing the documents, the checks they made upon account opening and how it operated I am unable to make such a finding, but I'm also satisfied such a finding is not necessary to deciding this complaint.

The fact is, I am satisfied on the material I do have that Miss G did not open the account and the debt was not hers: PayPal, whether they knew it or not, were wrong to pursue her for it.

I also think that because PayPal must have realised Miss G could not meet the condition they stipulated (the full police investigation) and that they were never going to supply evidence to this Service, this complaint could reasonably have been settled before now.

Based on this, I do not think that PayPal have treated Miss G fairly.

Resolution

What PayPal should know by reference to the regulations is that it is incumbent upon them to hold and process data accurately. If it is incorrect then they must take steps to rectify or erase the information.

It is my decision that Miss G did not open the account, the debt was not hers and, therefore, no information should be held to indicate that it was. PayPal will need to amend their records accordingly. In addition if any information has been reported to external bodies (companies or agencies for example) then that too is to be amended.

I have considered the amount of £200 as a 'distress and inconvenience' payment. Having done so, I think it is insufficient.

I bear in mind that, unfortunately, Miss G has suffered distress at the hands of her ex-husband and she has had resolution from other financial providers, so I cannot conclude that all distress Miss G has felt is because of PayPal and nor would be right that they pay for all the distress. To be fair, Miss G is not saying that is the case, but I agree they have contributed to her distress and largely it has been avoidable. I also bear in mind the value of the debt (around £180) so I think that a proportionate, fair and reasonable sum is £300.

my final decision

To resolve this complaint, I require PayPal Europe Sarl & Cie, SCA , within 4 weeks of the receipt of any settlement confirmation by Miss G to:

- 1) Pay Miss G £300;

- 2) Amend internal records to reflect that an account was wrongly taken out in Miss G's name and the debt was not hers;
- 3) Amend any externally recorded data, with any company or agency or other body, to reflect that an account was wrongly taken out in Miss G's name and the debt was not hers;
- 4) In the event of any doubt as to the amendment, the records should instead be erased;
- 5) Provide confirmation to Miss G within 2 weeks of having made the amendments that a) said amendments have been made and b) confirmation of the external bodies, if any, whose records required amending.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 13 January 2020.

Anna Keighley
ombudsman