

The complaint

Mr A complains that PayPal (Europe) Sarl et Cie SCA refused to re-open his claim under its Buyer Protection Policy after eBay reneged on its offer of a refund of a purchase.

What happened

In August 2022 Mr A bought a laptop computer via a third party's website ("the third party"), and paid £1,740 for it with his PayPal account. But all he received was an empty envelope addressed to "Ben Dover." He raised a claim with PayPal under its Buyer Protection Policy ("the policy"). On the same day he raised a claim with the third party too, and the third party told him it would give him a full refund, and that this refund would be processed within three to five business days.

Relying on what he'd been told, Mr A asked PayPal to close his dispute, since he was not allowed to recover a double refund under the policy. But nine days after that, the third party told him that it would not pay him a refund after all, and the original case handler had been wrong to tell him otherwise. It said this was because he had opened a claim with PayPal. It told him that he should ask PayPal to re-open his case.

Mr A followed that advice and asked PayPal to re-open his claim. He said he would not have asked PayPal to close his claim in the first place if he had known that the third party was not going to honour its offer. But PayPal said it was not possible to re-open a claim once it had been closed, regardless of the reason why. It said the third party should never have told him that could happen. Being dissatisfied with that answer, Mr A brought this complaint to our service.

PayPal insisted that once a claim has been closed it can never be reopened. It said that Mr A had not complied with its dispute resolution process, as set out in the policy, because he had closed his claim before PayPal could review it. It said he would have to pursue his dispute with the third party or with the person he had contracted with to buy the laptop from.

Our investigator was unpersuaded by PayPal's stance. He pointed out that there was nothing in the policy to say that a claim could not be re-opened, nor was there a time limit on when a PayPal account holder could ask to re-open a claim (which Mr A had done nine days after closing his claim). He upheld this complaint, and recommended that PayPal re-open Mr A's claim and investigate it (provided that Mr A could prove that the third party had declined his refund because he had also raised a claim with PayPal).

PayPal did not accept that opinion. It remains adamant that a closed claim cannot be re-opened. It asked for an ombudsman to review this complaint.

I wrote a provisional decision which read as follows.

What I've provisionally 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 asked Mr A for evidence to show why the third party had denied his refund. He provided a transcript of an online chat with one of the third party's case handlers, dated 15 September 2022, which clearly states that "Opening a case with PayPal will automatically invalidate [our] case" and that the original case handler would receive feedback to prevent them offering refunds in similar circumstances in the future. (I have arranged for this evidence to be shared with PayPal with this decision.) So I'm satisfied that the third party's offer of a refund was later withdrawn, and that Mr A is not seeking double recovery of his loss.

I have also seen a transcript of the earlier online chat in which that refund was offered. So I'm satisfied that the third party did offer Mr A a refund, and that this was his reason for closing his claim with PayPal. (PayPal's own evidence shows that Mr A told PayPal that this was his reason for closing his claim at the time.)

I have read PayPal's policy. It makes it clear that double recovery is not allowed. It does not go as far as to put the onus on the account holder to close a claim under the policy if a third party offers a refund for the same transaction, but it does say that PayPal will not uphold a claim if that happens. So I think that Mr A was doing the right thing by closing his PayPal claim. (And of course PayPal did nothing wrong by closing the claim as instructed; this complaint is about PayPal's refusal to re-open it later.)

I can find nothing in the policy to say that a closed claim cannot be re-opened. In its response to this complaint, PayPal has been consistent and adamant that that is the case nevertheless. But it does not say so in the policy, and so I find that PayPal cannot rely on an unwritten custom or practice of invariably refusing to do so in all cases.

The closest I can find to the policy touching on this subject is this paragraph:

"PayPal determines, in its sole discretion, whether your claim qualifies for PayPal Buyer Protection. PayPal's original determination is considered final, but you may be able to file an appeal of the decision with PayPal if you have new or compelling information not available at the time of the original determination or you believe there was an error in the decision-making process."

Mr A's claim was closed before PayPal could make any determination. So it could perhaps be argued that because his case falls outside the scope of the appeal process described above, no right of appeal exists. However, I don't think that assists PayPal here, because Mr A is not seeking to appeal a decision, but to have a decision made at first instance.

There would of course be no point in me directing PayPal to re-open Mr A's case if the outcome would inevitably be that PayPal would decide that his claim was ineligible under its policy. So I have gone on to consider whether he had an eligible claim. He certainly did when he first opened his claim. But that question has become less clear cut since he closed his claim, because the policy says:

"To be eligible for PayPal Buyer Protection you must meet all of the following requirements: ...

- Not have received a recovery or *agreed to an alternative resolution* related to your purchase from another source." [Emphasis added.]

Mr A has not "received a recovery," but he has apparently agreed to an alternative resolution related to his purchase from the third party. So I have considered whether this clause of the policy would now preclude Mr A from pursuing his claim with PayPal, if his claim was re-opened. After careful thought, I have provisionally come to the view that it does not, but

I have written a provisional decision to give PayPal an opportunity to comment on my reasoning, as this issue has not been discussed in detail before.

At first glance this clause would seem to be fatal to Mr A's request to re-open his claim. The third party offered him a refund and he agreed to it. The third party then told him that it had processed his refund, and that this would be with him in three to five business days. Mr A closed his PayPal claim accordingly.

However, that agreement was made with a case handler who had exceeded her authority, and the third party has disavowed it. I think that makes the agreement ineffective and void; it is in truth no agreement at all. In the context on which this clause applies, and agreement must mean an agreement between two parties – the account holder and a third party – not a unilateral agreement on the part of the account holder alone. So I am of the view that this clause does not apply to Mr A's claim, and that he has an eligible claim under the policy.

I therefore intend to uphold this complaint. I think it would be fair to require PayPal to re-open Mr A's claim and to investigate it. But just in case PayPal finds it impractical to do that (for example if its computer systems are not set up to handle that procedure), then I think it would be wrong of me to allow a "computer says no" defence to deprive Mr A of a remedy. So I will give PayPal the option of refunding him the purchase price of the laptop instead.

So I am provisionally minded to uphold this complaint. Subject to any further representations I receive from the parties by the deadline below, I will order PayPal (Europe) Sarl et Cie SCA to *either*:

- Pay Mr A £1,740; *or* (at PayPal's election)
- Re-open Mr A's claim and investigate it as if it had never been closed.

Responses to my provisional decision

Mr A accepted my provisional decision; PayPal did not. PayPal insisted that it had done nothing wrong and that Mr A's claim cannot be re-opened. It was willing to provide any further information I might ask for. But it did not address any of the findings I had made above, such as my findings that its policy does not expressly say that a closed claim cannot be re-opened. So there is no reason for me to change my mind about upholding this complaint, and I confirm my provisional findings here.

However, I will modify the redress to take PayPal's position into account. Since there is no possibility of Mr A's claim being re-opened and investigated, I will confine the redress to the first of the two options I gave in my provisional decision. I am satisfied that this is fair because Mr A has provided evidence to support his claim that the laptop he ordered was never received.

My final decision

My decision is that I uphold this complaint. I order PayPal (Europe) Sarl et Cie SCA to pay Mr A £1,740.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 2 January 2024. But apart from that, this final decision brings our service's involvement in this case to an end.

Richard Wood

Ombudsman