

## **The complaint**

Mr P is unhappy that following a chargeback filed against him his account with PayPal (Europe) Sarl et Cie SCA ('PayPal') has been left with a negative balance.

## **What happened**

Mr P says that he sold a watch via an online forum to a buyer in the US. The buyer and Mr P exchanged messages and the buyer then paid £5,995.88 via PayPal for the watch on 27 November 2021. Once he received the funds Mr P shipped the watch. In December 2021 the owner of the card used to make the transaction raised a chargeback with their card issuer saying the transaction wasn't authorised.

PayPal contacted Mr P to gather information to dispute the chargeback, but ultimately the card issuer decided in the card owner's favour and the payment was reversed, and a processing fee of £14 was also applied to Mr P's account. As Mr P had removed the funds for the watch, this left his PayPal account with a negative balance.

PayPal noted that the card issuer decides the outcome of a chargeback claim, but that if a seller is protected under its seller protection scheme it would not normally hold the seller responsible. But as the payment was sent as a personal payment, seller protection doesn't apply. PayPal also confirmed that it had initiated an internal review and limited the buyer's account.

Mr P was unhappy with PayPal's response. He said he is being held responsible for a debt that was incurred as a result of a scam and that the same individual has raised other disputes, but PayPal hasn't taken action.

## *Our investigation so far*

When the complaint came to this service PayPal made a goodwill offer of a £500 credit to create a better customer experience. The offer was made without any admission of liability.

The investigator who considered this complaint didn't recommend that it be upheld. She said it was the cardholder's bank that authorised the chargeback – not PayPal. When the dispute was raised PayPal asked Mr P to provide evidence to dispute it and then forwarded this evidence as it should have. Ultimately the decision didn't go in Mr P's favour, but PayPal wasn't responsible for this decision. And PayPal acted reasonably and in accordance with its terms and conditions in not applying seller protection, as Mr P accepted the payment as a personal payment making it ineligible for this protection. Overall, the investigator felt that PayPal's goodwill offer was more than reasonable.

Mr P didn't agree with the investigator's findings. In summary, he said:

- He is an innocent party who sent the item in good faith and in the belief the buyer was the genuine cardholder.
- Normally if a person receives a payment that has been made mistakenly and for

example hands over goods in reliance on that payment common law gives a defence to a claim for restitution of the payment.

- Under the Payment Services Regulations 2017 in certain circumstances the paying bank is responsible for unauthorised transactions. So in a case like this it is reasonable to think the loss should be borne by the payee bank that made the mistake.
- PayPal didn't act correctly in the way it defended the dispute. As the payment was made on a friends and family basis the buyer had essentially used PayPal as a money transfer service which would make PayPal the merchant in the transaction rather than him. Mr P says this means the chargeback claim against him shouldn't have been successful.
- PayPal had a list of victims scammed by the same buyer so if it had provided this as part of its response to the dispute it would likely have been successfully defended.
- PayPal hasn't handled complaints from others consistently and neither has this service.

### **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.

My role is to consider the individual circumstances of Mr P's case, so I won't comment in this decision on what PayPal or this service have done in any other case. I won't consider wider issues like the use of PayPal accounts by fraudsters or the actions of the payee bank.

I appreciate that Mr P has lost funds in what he describes as a scam and am sorry to hear of his loss. But that doesn't mean PayPal are responsible and should reimburse him. My role is to consider whether PayPal acted fairly and reasonably and in accordance with its user agreement.

Whilst I understand Mr P's strength of feeling, I consider the offer made by PayPal exceeds any award I would make and will explain why.

The cardholder contacted their own bank to raise the chargeback claim. In situations like this the buyer's bank contacts PayPal's bank and asks whether it wishes to defend the chargeback. PayPal's bank will ask PayPal as the payment processor to send it any evidence to use as a defence, and it will then send this onto the cardholder's bank. PayPal's role is to provide evidence from its customer (Mr P) so it can put forward a defence. I'm satisfied PayPal did this and that PayPal provided the evidence supplied by Mr P.

PayPal didn't authorise the chargeback of funds, the buyer's bank did. As the claim was upheld in the buyer's favour by the bank, I'm satisfied PayPal can't be held responsible. I also note that PayPal's user agreement covers the situation Mr P finds himself in in the 'Reversals' section:

*"If you receive a payment in your account and a reversal takes place, you owe us the full amount of the payment and our losses arising from processing the payment (including any Chargeback fee..."*

The agreement goes on to say that a reversal can happen when there is a claim for unauthorised or incorrect payments made to a customer's account and specifically mentions chargeback as an example.

I've gone on to consider whether Mr P was covered by PayPal's seller protection policy. I'm satisfied that Mr P hasn't met the requirements set out in PayPal's user agreement to be eligible for seller protection. The agreement says that the payment must be marked as eligible, and the goods must be shipped to the recipient's address on the transaction details page in the sender's account (amongst other things). This isn't what happened here. The payment was personal, and PayPal's terms are clear that seller protection doesn't apply:

*Ineligible items and transactions*

- *Personal payments including a payment sent using PayPal's friend and family functionality.*

I'm satisfied that Mr P was aware of the difference between goods and services and personal payments as a few months before the sale of the watch he received a goods and services payment. The payment was subject to a hold by PayPal and Mr P was asked to provide shipping details. Mr P refunded the buyer and later accepted a payment from the same person as a personal payment.

The fees that apply to goods and services payments are in place so that protection can be provided but no such fees were paid, and Mr P didn't follow the correct process.

Overall, I'm satisfied PayPal treated Mr P fairly in applying the terms of its user agreement and don't consider it is responsible for his loss.

If Mr P now wishes to accept PayPal's offer, he should contact PayPal directly. As PayPal has already made the offer, I consider it ought to stand by that offer – which was made as a gesture of goodwill in any event.

**My final decision**

For the reasons stated, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 4 January 2024.

Jay Hadfield  
**Ombudsman**