The complaint

Mr K complains PayPal Europe Sarl & Cie, SCA ("PayPal") allowed a payment to be taken by a third party without his input and approval.

What happened

On 28 March 2020 Mr K entered a contract with a third party and paid for this using his PayPal account. He raised an unauthorised activity dispute with PayPal after the third party took a second payment from his bank account, via his PayPal, in April 2021. PayPal denied the claim as they said there was no evidence of unauthorised activity on the account. Mr K brought his complaint to us.

Our investigator didn't uphold the complaint. She thought PayPal acted in line with the user agreement. She said when Mr K entered into a bill payment agreement, he made the recipient third party a "trusted beneficiary" of all payments, so PayPal wouldn't ask him to login - with a password pin or similar - to approve subsequent payments when they were made. So, she couldn't ask PayPal to do anymore.

Mr K didn't agree. He asked for the matter to be escalated to an ombudsman. He said the agreement didn't take place, there were no records conversations or emails showing this happening. He said his contract was with the third party and he paid an agreed price to them using his PayPal account but there were no conditions or commitments attached. He thought PayPal should police how their contract of use was being used. Mr K accepted there were pathways to set billing agreements on his payments which were in his control but there were not being policed by PayPal in line with the requirements of their contract of use.

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.

Having done so I've come to the same outcome as our investigator. I'll explain why.

I realise that Mr K was unhappy with the third party who took the funds from his account. And I understand, although he's now been refunded in full, he wants to hold PayPal to account for what he considers to be their wrongdoing.

As our investigator has already explained what I look at is the dispute between Mr K and PayPal, not that third Party. And, I'm afraid, I don't think PayPal have acted unfairly or made any errors here.

Where facts have been in dispute, incomplete or inconclusive and I can't know exactly what's happened, I've decided what's more likely to have happened, at the time, on a balance of probabilities.

The records from PayPal satisfy me that a billing arrangement was set up here on 28 March 2020. So, the third party, was a trusted beneficiary. And when the third party requested

funds in April 2021 PayPal did nothing wrong when it made that payment.

The issue here is *who* set that billing arrangement up. Mr K is adamant, he didn't give authority for any future payments to be taken. But PayPal is a user initiated service, they can't create a billing agreement on behalf of a customer or change the payment method.

That means whatever billing agreement was in place between Mr K and the third party was one the user would have set up at the checkout. And the records show that Mr K's PayPal account was accessed on 28 March 2020 using his username and password to make the payment. So, on balance, I'm satisfied this arrangement was set up by him.

Mr K would have been reminded of this - or alerted to a problem if he didn't think a recurring payment had been authorised - when the third party wrote to him on 19 March 2021. That was before the second payment was taken and it explained Mr K's purchase would automatically renew. And that - unless he contacted them - payment would *"be taken from your … PayPal account used last year"*.

I understand this is not the answer Mr K was hoping for but I hope I've been able to explain my reasons for coming to this view.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 3 August 2023.

Annabel O'Sullivan
Ombudsman