

The complaint

Mr S complains that PayPal (Europe) Sarl et Cie SCA (PayPal) didn't treat him fairly after he reported falling victim to a scam.

What happened

Mr S needed to put insurance in place for a new car. He found what appeared to be a broker offering insurance for a good price.

Mr S decided to go ahead. He was quoted a total price of £868.16, to cover the full cost of the insurance and an administrative fee.

Mr S wanted to make the payment using PayPal. The broker told him that payment would need to be received within 24 hours to allow the cover to be implemented with immediate effect, this Mr S's requirement. But the broker warned that if Mr S sent the payment using PayPal's 'for goods and services' option it could take up to two weeks for the payment to be received.

Mr S was told because he wanted the cover sooner, he'd need to send the money using PayPal's 'for friends and family' payment option, and that this would immediately credit the broker's account.

Mr S sent the payment accordingly on 23 October 2022 at 11:16. He chose the 'for friends and family' payment option as the broker had advised.

Initially the broker said the money hadn't arrived. But when Mr S contacted PayPal, it told him the funds had been sent. Then later that day, the broker stopped responding to Mr S altogether. Despite having made the requisite payment, no policy was set up, and Mr S was unable to obtain a refund.

Concerned he'd been scammed, Mr S called PayPal to report the transaction. That second call took place at around 17:35 on the same day. PayPal told him he'd need to contact his bank and ask it to raise a chargeback. Because he'd sent the money using the friends and family option, no protection was available through PayPal's buyer protection scheme.

But when Mr S requested a chargeback with his bank, he was told there was no prospect of raising a valid chargeback in these circumstances. He was left significantly out of pocket.

Mr S complained to PayPal, but PayPal reiterated that it could not help him, and again referred him back to his bank.

Our Investigator looked into what had happened. The Investigator said the payment Mr S had sent wasn't sufficiently unusual that he thought PayPal should have blocked it at the time, or otherwise have taken steps to intervene before processing it. But he noted that PayPal's records showed that the sum of £568.16 had remained on the beneficiary PayPal account for over 24 hours after Mr S's call to PayPal in which he'd reported the scam.

The Investigator said PayPal ought to have taken steps following Mr S's report of the scam, and that the money left on the beneficiary account should therefore have been prevented from leaving the account and ultimately returned to Mr S. He said PayPal should pay the equivalent sum to Mr S together with interest at a rate of 8% simple per year.

Mr S accepted the Investigator's findings. But PayPal disagreed. It reiterated that Mr S had chosen to send the payment using its friends and family option, so he could not be refunded.

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.

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

In broad terms, the starting position in law is that a financial institution is expected to process payments and withdrawals that a customer authorises it to make without undue delay, in accordance with the terms and conditions of the customer's account. And I have taken that into account when deciding what is fair and reasonable in this case.

Both parties agree that Mr S authorised this transaction, in the belief he was making a genuine payment for car insurance. Because of this, PayPal had an obligation to follow his instruction.

The payment wasn't one I think should have caused PayPal obvious concern that Mr S might be at risk of financial harm through fraud or scam. I accept that it was simply not sufficiently unusual or remarkable in the context of a typical PayPal payment. So, I don't find PayPal at fault in not intervening before processing the instruction.

Furthermore, I accept PayPal's point that its buyer protection policy doesn't apply to personal payments (the result of choosing the 'for friends and family' option). This payment reason is designed for payments between friends and family and not to pay for goods and services.

But I have to consider whether PayPal ought fairly and reasonably to have taken steps to assist Mr S, when he first reported the scam - regardless of him selecting 'family and friends' and the regardless of the fact that PayPal's buyer protection policy doesn't apply to this type of payment.

Having thought about this carefully, I find it fair and reasonable to expect that PayPal should have taken steps beyond those it did. When Mr S raised the matter, I would have expected PayPal to have reasonably done what it could to try and help him.

Industry good practice at the time offered bank customers the ability to claim back payments where they'd been the victim of a payment scam. PayPal, as operator of its own payment scheme, is not part of that banking model. But I can consider, as I've noted above, whether those principles can (being good industry practice) be considered more widely.

I consider it fair and reasonable to have expected PayPal, where it is running both the sending and recipient accounts, to make an attempt to recover the funds, when one of its customers reports a scam to it and so try and help them recover their loss. Mr S had reported the scam and I'm satisfied that report was conveyed unambiguously to PayPal in the call at 17:35.

But, it doesn't automatically follow that where PayPal, in the circumstances of this complaint, didn't try to recover the funds, it must necessarily be required to refund Mr S. I also have to take into consideration what is more likely than not to have happened, had PayPal tried to do so.

Here, not all of the funds remained. Some had already been moved on before the scam was reported. I cannot fairly hold PayPal liable for that sum – that loss did not result from PayPal failing to act on the scam report sooner, it was unavoidable at that point.

But I do find it fair and reasonable to hold PayPal liable for the sum that did remain in the beneficiary account at that point. PayPal's own records show this sum to have been £568.16, and it remained on the account for some time after Mr S's report. I consider that had PayPal taken the steps I consider it reasonably ought to have taken, these funds would ultimately have been recovered and returned to Mr S. Because it did not do so, I find it fair and reasonable in all the circumstances that PayPal should now reimburse Mr S accordingly.

My final decision

For the reasons I've explained above, I uphold this complaint. PayPal (Europe) Sarl & Cie SCA now needs to pay Mr S:

- the sum of £568.16, that being the amount I find it ought to have recovered at the time Mr S reported the scam on 23 October 2022; and,
- interest on that amount at the rate of 8% simple interest per annum from 23 October 2022 until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 27 July 2023.

Stephen Dickie
Ombudsman