

The complaint

Miss F complains about the decision taken by PayPal (Europe) Sarl et Cie SCA trading as PayPal ('PayPal') to decline her claims made under its Buyer Protection Policy and section 75.

What happened

Miss F used her revolving credit account provided by PayPal to purchase remote hypnotherapy sessions in April 2023 from a practitioner I'll refer to as 'H'. Miss F paid \$1,350 AUD for three sessions and I believe she did so having read a book she understood to have been written by H.

Miss F subsequently read another book by H. She says that she had cause to question whether they were written by the same person, and after seeking clarification from H, Miss F was told that H had co-authored the first book Miss F read.

I've seen that Miss F subsequently told H she'd presumed that it had written the book solely and that knowing whether or not that was the case would've made a difference to her decision to enter into the agreement. She asked for a full refund on the basis that there had been a misrepresentation and a breach of contract as the services offered were not as described.

H told Miss F that under her agreement it was entitled to apply a 50% surcharge in the event of her cancelling the service. It refunded 50% of the cost.

Miss F subsequently raised a claim with PayPal on 11 May 2023. She said that the service she'd paid for had been misrepresented.

PayPal refused Miss F's claim on 16 May 2023, having considered its Buyer Protection Policy. It didn't think the service offered by H had been misrepresented.

On 17 May 2023 Miss F asked to raise a section 75 claim with PayPal, maintaining the service offered by H had been misrepresented. The same day PayPal responded to say that it didn't consider the evidence Miss F had provided substantiated a claim of misrepresentation.

Miss F asked this service to consider a complaint about what had happened on 1 August 2023. PayPal provided a submission defending how it had handled Miss F's claims on 14 August 2023.

Our investigator didn't agree that the evidence Miss F had presented showed that there had been a breach of her agreement, or that it had been misrepresented. They therefore concluded that PayPal had handled Miss F's claims fairly.

PayPal didn't respond. Miss F disagreed with our investigator's findings. She said that H had misrepresented their skillset and purported to have been the sole author of the books she'd read, which is also a misrepresentation. Miss F said she entered into an agreement with H in

reliance on its “...published/ advertised skillset”.

The case has been passed to me to make a decision on it.

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.

Miss F made a number of detailed submissions to this service regarding her complaint. She might find that I've presented events in far less detail than in her submissions. That's simply because I don't find it necessary to mirror that level of detail in explaining what I think a fair and reasonable outcome is. So, if I don't mention something that Miss F did, it's not because I've not considered it – I can assure Miss F that I've carefully considered all of her submissions in detail. My decision will focus on what I consider to be the central issues.

In considering what I believe to be fair and reasonable in all the circumstances, I'm required to take into account relevant law, rules, guidance, codes of practice as well as what I consider to have been good industry practice at the time.

When the evidence is incomplete, inconclusive or contradictory, I've made my decision on the balance of probabilities – that is, what I think is most likely to have happened given the available evidence and the wider circumstances.

Miss F's complaint is about whether PayPal fairly handled her claims regarding the misrepresentation of an agreement she entered into with H. I haven't seen evidence from either party that PayPal actually considered a complaint about the outcome of Miss F's claims. However, this service made PayPal aware of Miss F's request to raise a complaint in August of this year, and it hasn't – to date – said that it's been deprived of the opportunity to respond. Rather, it provided a submission file explaining why it believed it had handled the claims fairly. So, I think it's fair to say that PayPal has had sufficient opportunity to consider a complaint about the outcome of the claims if it had wished to do so.

PayPal initially considered Miss F's allegations under its Buyer Protection Program, specifically a 'Significantly Not as Described' ('SND') claim. PayPal has provided its criteria for SND claims. They say (amongst other things) that an item may be considered SND if it is materially different from the seller's description of it.

By Miss F's own account she made contact with H and entered into an agreement with it to provide hypnotherapy session on the presumption that H was the sole author of a book she'd read. I've not seen any evidence from Miss F – either provided to this service or as part of her claim with PayPal, that the service H intended to provide would be materially different from the service she entered into an agreement for. So I don't think PayPal unfairly declined this part of Miss F's claim.

Miss F also raised a section 75 claim with PayPal. Section 75 of the Consumer Credit Act 1974 protects consumers who buy goods and services on credit. It says, in certain circumstances, the finance provider is legally answerable for any misrepresentation or breach of contract by the supplier. In practice that means that if Miss F has a claim against the supplier for misrepresentation or breach of contract, then she also has a 'like claim' against the finance provider.

A misrepresentation is a statement of fact by one party to a contract, which isn't true, and which persuades the other party to enter into the contract.

Based on all of the evidence Miss F has provided to both this service, as well as to PayPal at the time of the claim, I don't think there's sufficient evidence to say that PayPal ought to have upheld Miss F's claim on the basis that a misrepresentation had been made.

I say this because Miss F accepts that she sought the services of H having made a presumption that it had written a book she read. She hasn't provided any evidence to show, for example, that H represented to her that it was the sole author of that particular book as part of the negotiations for the treatment she agreed to. And significantly, I've not seen that Miss F demonstrated that to PayPal.

I've also not seen any other evidence which persuades me that H made a false statement of fact about the service it had entered into an agreement with Miss F for. So I don't think PayPal unfairly declined Miss F's section 75 claim on this basis.

The Consumer Rights Act 2015 ('CRA') is also relevant here. It implies terms into Miss F's agreement which says any service provided must be performed with 'reasonable care and skill'. Reasonable care and skill isn't defined in the CRA, but I think an appropriate interpretation is the degree of care and skill to be expected of someone who provides those services of ordinary competence and experience.

I've also carefully considered Miss F's assertion that her claim ought to have been upheld because it wouldn't have been possible for H to have carried out the treatment with reasonable skill and care, as it would've been required to. So, I've also considered whether there's been a breach of contract.

It's difficult to say whether or not that would've been the case, because Miss F ultimately chose to cancel the treatment. But in any event, in my view I've not been provided with evidence from Miss F which persuades me that H wouldn't have been able to carry out the treatment specified in her agreement with it, with reasonable skill and care. And for that reason, I don't think PayPal acted unfairly in declining her claim on that basis either.

Overall, I don't find that PayPal handled Miss F's claims unfairly because I don't think it ought to have found that there had been a misrepresentation or breach of contract, based on the evidence available to it at the time.

My final decision

For the reasons explained above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss F to accept or reject my decision before 17 January 2024.

Stephen Trapp
Ombudsman