

The complaint

Miss D complains about PayPal (Europe) Sarl et Cie SCA and their decision to decline the dispute she raised under their Buyer Protection Policy (BPP).

What happened

In November 2021, Miss D made an online purchase worth \$895 from Retailer B. The items Miss D purchased were due to be posted to her address.

But Miss D says she didn't receive these items, despite being told by the delivery service that the items had been received and signed for on 7 December. Miss D contacted Retailer B to arrange a refund. But a refund wasn't provided. And the delivery service explained Retailer B would need to raise a claim regarding the delivery of the items. Miss D requested Retailer B do this, but says this claim was never made. So, on 10 December, Miss D raised a dispute through PayPal's BPP, stating the items she'd paid for hadn't been received.

On 28 December, PayPal declined Miss D's dispute as they felt Retailer B had provided evidence to show the items had been delivered. Miss D appealed this decision, but PayPal declined the dispute again on 17 January 2022. Miss D was unhappy about this, so she raised a complaint.

Miss D didn't think PayPal's decision to decline her claim was fair. She explained the items hadn't been delivered to her home as she'd been in the entire day the items were said to have been delivered. And she felt she had an e-mail from the delivery service which agreed the parcel had been lost. So, she wanted PayPal to refund her the \$895 she paid to Retailer B, as the items she intended to purchase were needed to set up her own business and without these, and the money she paid, she was unable to do so.

PayPal responded to Miss D's complaint and didn't agree. They thought they had declined Miss D's dispute fairly, in line with the terms of their BPP, as Retailer B had provided evidence to show the items had been delivered. So, they didn't think they needed to do anything more. Miss D remained unhappy with this response, so she referred her complaint to us.

Our investigator looked into the complaint and upheld it. She didn't think the evidence supplied by Retailer B showed the items had been delivered to Miss D. And she thought the e-mail Miss D provided from the delivery service suggested the parcel had been lost, which supported Miss D's testimony that the items hadn't been received. So, while our investigator recognised Retailer B had provided information that may satisfy the terms of the BPP, she didn't think PayPal had acted fairly when relying on this in this situation. So, our investigator recommended that PayPal refund Miss D \$895 (£692.51).

Miss D accepted this recommendation. But PayPal didn't. PayPal reiterated their stance that they'd declined the dispute fairly, in line with the terms of the BPP. And they didn't think the e-mail Miss D provided from the delivery service was evidence that the items hadn't been delivered, referring to the tracking number which they felt showed the item had been delivered on the delivery service's website.

Our investigator responded to PayPal explaining why their view remained unchanged. PayPal didn't agree, so the complaint has been passed to me for a decision.

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'm upholding the complaint for broadly the same reasons as the investigator. I've focused my comments on what I think is relevant. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

Before I explain why I've reached my decision, I think it would be useful for me to explain how I've considered the complaint. My role is to consider the individual circumstances of this complaint and to decide on whether I think PayPal have acted fairly and reasonably when declining Miss D's dispute. As part of this, I have considered the terms of the BPP Miss D raised her dispute within and thought about whether PayPal acted within these. But crucially, for me to decide that PayPal don't need to take any further action, as well as being satisfied they acted in line with the BPP, I also need to be satisfied that it was fair for them to do so. And in this situation, I don't think that's the case.

I think it's clear there is a very clear dispute between Miss D and PayPal regarding the delivery of the items and whether they were received. And I'm unable to say for certain what did happen with the parcel containing the items as I wasn't involved in the delivery process. So, I've instead thought about what I think was most likely to have happened, based on the evidence and information available to me. This included the testimony and actions of both Miss D.

I've seen a significant amount of correspondence between Miss D and Retailer B, where Miss D has explained on several occasions the items weren't delivered. I can see Miss D has also contacted the delivery service directly, as well as requesting Retailer B raised a disputed with the delivery service directly on their request. I don't think Miss D would've gone to these lengths had she received the items, so I think the actions she took supports her testimony that they weren't received.

I've also seen an email from the delivery service to Miss D, which states "*Unfortunately, the driver hasn't been able to provide any further details on where he delivered your package, so I regret to inform you it has been lost. Please inform the sender of this, and they can work on either a refund or replacement whichever you prefer, then they can raise a claim through our Customer Service team*". I think this e-mail supports Miss D's testimony as it represents the delivery service agreeing that the package hadn't been delivered.

I recognise PayPal doesn't think this e-mail is valid, stating it doesn't contain a reference number to confirm which package it relates to. But in the subject line, the number provided correlates directly with the package number the delivery service confirmed as the disputed parcel in a previous e-mail. The e-mail also confirms it is in response to the package that was listed as delivered in 7 December 2021, which is the same day that the disputed items were said to have been delivered. So, I'm satisfied this e-mail refers directly to the items included within Miss D's dispute.

And I think this also addresses PayPal's point regarding the fact the delivery service's system shows the package as delivered. This has never been in dispute by the service, or Miss D. What is in dispute is where the package was delivered to. So, I would expect the tracking number to show that the parcel has been delivered and I don't think this in itself is

enough to show that PayPal acted fairly when disputing the claim.

The tracking number shows the parcel was delivered to a generic area, rather than a specific address. And Miss D has disputed the signature used to sign for the parcel. The delivery service have confirmed the delivery driver couldn't confirm the parcel was delivered directly to Miss D, or her address, and agreed it had been lost because of this. So, based on the evidence and information available to me, I think it's more reasonable than not that the package was indeed lost, and not delivered to Miss D.

Because of this, I don't think I'm able to say that PayPal acted fairly when declining the claim.

I recognise any claims made through the BPP aren't guaranteed to be upheld. And I appreciate PayPal believe Retailer B provided evidence that met the criteria for a decline, citing the specific term which explains a claim will not qualify under the BPP if "*The seller has provided proof of delivery*". So, I understand why PayPal say they've acted within the terms of the BPP, which is what they are required to do. But as I explained earlier within my decision, I also need to be satisfied PayPal acted fairly when relying on the terms within the BPP. And so, I'd expect them to consider all the evidence provided to them and reach a reasonable conclusion. I don't think they have in this situation. So, as I don't think PayPal have acted fairly, I've then thought about what I think they should do to put things right.

Putting things right

Any award or direction I make is intended to place Miss D back in the position she would've been, had PayPal acted fairly in the first instance. In this situation, had PayPal acted fairly, I think they would've upheld Miss D's dispute and refunded her the amount she paid to Retailer B. So, I think they should now refund Miss D this amount to ensure she isn't at a financial loss.

My final decision

For the reasons outlined above, I uphold Miss D's complaint about PayPal (Europe) Sarl et Cie SCA and direct them to take the following action:

- Refund Miss D the £692.51 she paid to Retailer B for the items she didn't receive.

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Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 5 July 2022.

Josh Haskey
Ombudsman