

The complaint

Mr V complains that PayPal (Europe) Sarl et Cie SCA (“PayPal”) won’t refund money he lost when he fell victim to a scam.

What happened

The details of this complaint are well-known to both parties, so I won’t repeat them again here. Instead, I’ll focus on giving my decisions for my reason.

The complaint concerns one transaction for £11,000 which Mr V sent through his PayPal account in July 2021 in connection with an investment opportunity. He says he was given the option to use PayPal when he was depositing funds into his investment account.

After choosing PayPal, Mr V was redirected to its website to log into his account and send the money from there. The PayPal account is linked to his bank account. To fund the transaction, PayPal collected the funds from Mr V’s bank via direct debit (and not charge it to his debit card as the investigator mistakenly wrote in their view).

Unfortunately, four weeks after he’d sent the payment, Mr V realised he’d been scammed.

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.

I’m sorry to hear that Mr V lost money as a result of a scam. But I can only hold PayPal liable if I find that its acts and omissions led to Mr V’s loss. Having looked into this carefully, I don’t think PayPal has acted unfairly here. I’ll explain why.

Under the relevant regulations, the starting position is that liability for an authorised payment rests with the payer, even where they are duped into making that payment. There’s no dispute that Mr V made the disputed payment using his security credentials, and so they it is authorised.

The investigator’s view was that PayPal’s role in the transaction was to charge the funds to Mr V’s bank and pass it on to the merchant (the scammer in this case). In other word, it was acting as a payment processor. The investigator didn’t think PayPal had the same obligations as Mr V’s bank to prevent him from falling victim to a scam. But I don’t necessarily agree that PayPal’s role here was limited to payment processing.

In Mr V’s case, he topped up his PayPal account which he then used to send the funds on to the scammer (albeit he didn’t know this at the time). I’m satisfied that PayPal was fulfilling the role of a payment service provider in Mr V’s case. While firms like PayPal operate in a slightly different regulatory framework to traditional banks, in July 2021 it was considered good industry practice – not just for banks but also other payment service providers – to intervene in unusual or out of character transactions with the aim of protecting customers from falling victims to scams.

Having reviewed the operation of Mr V's PayPal account in the year leading up to the disputed transaction, I consider the transaction amount was highly unusual for the account activity. I say this because majority of the transactions were two- or three-figure amounts. Therefore, a five-figure amount ought to have flagged as suspicious. And in my view, PayPal ought to have made further enquiries about it before executing the payment instruction. So, there was an opportunity missed here.

But that is not the end of the matter. Causation is a critical determinative factor. It isn't enough that a payment service provider failed to intervene. I also need to be satisfied that an intervention would have more likely than not made a difference to the customer's decision-making.

I can see that in their view the investigator did consider whether an intervention would have prevented Mr V's loss. And they didn't think it would have. Having reviewed the available information, I agree with the investigator on this point. Mr V has told us he knew several people personally – he's referred to them as friends – who had invested in the same opportunity and received returns which were being used to fund a certain lifestyle. He's also told us that while he wasn't friends with the scammer, they were a second- or third-degree connection.

Had PayPal questioned Mr V about the payment and warned him about the prevalence of investment scams after learning about the true purpose of the transaction, I'm not convinced that he would have stopped in his tracks and not gone ahead with the payment. PayPal wouldn't have known for certain that Mr V was being scammed. So, at most it would have provided a scam warning and asked him to carry out due diligence and satisfy himself that the opportunity was genuine. As Mr V had friends who were able to make withdrawals successfully and make use of the funds, I think it's more likely than not that he would have gone ahead with payment. Under the circumstances, I can't fairly hold PayPal liable for Mr V's loss.

I've also thought about recovery of the payment when PayPal was notified of the situation. This transaction isn't covered under PayPal's *Buyer Protection* policy, which specifically excludes investment-related transactions. I'm also mindful that when Mr V first contacted PayPal about the transaction (nearly four weeks after the transaction happened), he said it was unauthorised. PayPal's investigation concluded that the transaction was authorised by him. I don't think it was unreasonable for PayPal to have not contacted the beneficiary account provider to request a recall of funds when the allegation made was that the transaction was unauthorised, and its investigation had concluded otherwise.

A few days later, Mr V did tell PayPal he believed he had been scammed. And while a dispute was raised, I consider that PayPal could have considered contacting the beneficiary account provider. But we know that by that point, the beneficiary account had been frozen as the police had opened an investigation into the scammer. It's therefore unlikely that PayPal would have been successful in recovering any funds (if they remained) if the account had been restrained because of a police investigation.

In summary, I know that Mr V will be disappointed with this outcome. Not least because the matter has been ongoing for some time. I fully acknowledge that there's a lot of money involved here. Despite my natural sympathy for the situation in which he finds himself, for the reasons given, it wouldn't be fair of me to hold PayPal responsible for his loss.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 28 February 2024.

Gagandeep Singh
Ombudsman