

## The complaint

Mr R complains that PayPal (Europe) Sarl et Cie SCA unfairly declined a dispute he raised.

## What happened

On 2 May 2023 Mr R purchased a phone for £1,495.50 from a merchant I'll refer to as J. Mr R has explained that the phone was faulty so he contacted J and was asked to return it. Mr R used an envelope supplied by J to return the phone and was able to see it was delivered via the tracking number.

After returning the phone, J declined Mr R's request for a refund and he was asked to raise a dispute with PayPal. Mr R says J retained the phone.

On 17 June 2023 Mr R raised the dispute with PayPal and confirmed the item had already been returned. On 21 June 2023 PayPal asked Mr R for further information to get an understanding of what made the item *significantly not as described*. Mr R responded and explained the phone had already been returned to J.

On 10 July 2023 PayPal took the step of declining Mr R's dispute as he'd already returned the phone to J. PayPal says that means it was unable to verify the issues Mr R raised with the phone to show it was faulty and that it was returned without instructions from it.

Mr R complained about PayPal's decision and it issued a final response. PayPal didn't agree to refund Mr R's payment for the phone and didn't uphold his complaint.

An investigator at this service went on to look at Mr R's complaint and upheld it. They weren't persuaded PayPal had treated Mr R fairly and felt he'd followed the process of raising a claim under the Buyer Protection Policy (BPP) as closely as possible. The investigator highlighted PayPal's requirement that its customers first attempt to resolve the issue directly with the merchant, which Mr R had done. It was only after the phone had been returned and no refund made that Mr R raised the dispute. But by that point, Mr R was no longer in possession of the phone so was unable to provide evidence to verify it was faulty. The investigator asked PayPal to consider Mr R's claim under its BPP.

PayPal asked to appeal and said that Mr R's claim had been correctly declined as it hadn't asked him to return the phone and he had failed to follow the dispute process. As PayPal asked to appeal, Mr R's complaint has been passed to me to make 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.

I'm aware I've summarised the events surrounding this complaint in less detail than the parties involved. No discourtesy is intended by my approach which reflects the informal nature of this service. I want to assure all parties I've read and considered everything on file. I'm satisfied I don't need to comment on every point raised to fairly reach my decision. And if

I don't comment on something, it's not because I haven't considered it. It's because I've focused on what I think are the key issues. My approach is in line with the rules we operate under.

PayPal's said that it can't take Mr R's dispute further as he failed to follow the correct process when raising his dispute. But I think our investigator made a reasonable point when they said Mr R had followed PayPal's BPP guidance in trying to resolve the issue with the seller first. Mr R contacted J, raised his concerns and was asked to return the phone in the post. Mr R has forwarded tracking evidence that shows he returned the phone to J and has supplied further evidence to show it then asked him to raise a dispute with PayPal. The issue Mr R then faced was that PayPal said it needed to verify the item was significantly not as described when received, but at that point Mr R no longer had the phone. In addition, PayPal says that it didn't tell him to return the phone as part of the dispute process, but Mr R had already returned the phone at the seller's request. So, again, by the time Mr R raised a dispute under PayPal's BPP he was simply unable to comply with its requests.

I appreciate PayPal's view that it's fairly applied its BPP to the dispute. But I think that sticking to a rigid reading of the BPP terms has unfairly impacted Mr R. I'll explain why. Reading PayPal's BPP it says customers have 180 days from the date of payment to raise a dispute. The BPP says that if the customer is unable to resolve the issue directly with the seller, they should proceed to step 2 which is to escalate the claim to PayPal via its Resolution Centre. I note the BPP guidance says that for a buyer to be covered, they must have a PayPal account in good standing, have paid for the item via PayPal and have attempted to resolve the issue with the seller directly.

As far as I can see, Mr R followed those requirements. He first attempted to resolve the issue directly with J and it arranged for him to return the phone. Mr R followed J's direction and sent the phone back, providing tracking evidence to verify it was received. But J didn't subsequently agree to issue a refund and told Mr R to raise the dispute with PayPal instead and retained the phone. When Mr R's dispute was escalated, PayPal declined it on the basis he had sent the phone back without being instructed by it to do so. But, as noted above, by the time Mr R escalated the dispute with PayPal he was no longer in possession of the phone, so unable to comply with PayPal's requests. Ultimately, Mr R was caught in a position that was impossible for him to move forward from in terms of raising a dispute.

PayPal may argue that Mr R has been unable to respond to its requests for documentation and information as he's unable to provide evidence that the phone was not working. But, as I've noted above, by the point Mr R was able to comply with the requirements to raise a claim under the BPP he had already returned the phone. So there was no way for him to comply with its requests.

So whilst I accept PayPal may feel it's correctly applied the BPP terms, I'm satisfied the stance taken has led to an unfair position for Mr R. In my view, a fairer approach would be for PayPal to consider the dispute Mr R raised under the BPP provisions, accepting that the phone had been returned to the seller, J. I see no reason why PayPal's enquiries couldn't be directed to J which is the party that retained the phone after Mr R returned it.

I'd like to explain to Mr R that I'm not telling PayPal to issue a refund, I'm saying it needs to consider the dispute he raised that the phone received was significantly not as described as it was faulty. Ultimately, if PayPal declines Mr R's dispute after fully investigating it and he feels that decision is unfair, he will have the opportunity to complain about that issue as a separate matter.

**My final decision**

My decision is that I uphold Mr R's complaint and direct PayPal (Europe) Sarl et Cie SCA to settle by reinstating his dispute and assessing it in line with its BPP.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 15 May 2024.

Marco Manente  
**Ombudsman**