

Complaint

Mr M is unhappy that PayPal UK Ltd didn't refund his losses after he fell victim to a scam.

Background

In August 2023, Mr M fell victim to a scam. He has a medical condition that includes symptoms of major delusions, often characterised by grandiosity. During one such episode, Mr M believed he was communicating with a well-known public figure and that he would be working with this individual. As part of this belief, he thought he needed to pay fees to receive extremely valuable items allegedly sent by this person.

M made a series of payments through his PayPal account, detailed below:

1	31 August 2023	£415.80
2	6 September 2023	£420.28
3	6 September 2023	£253.36
4	7 September 2023	£4,593.20
5	7 September 2023	£3,400
6	7 September 2023	£7,000
7	7 September 2023	£7,000
8	7 September 2023	£5,846.07
9	7 September 2023	£1,254.86
10	16 September 2023	£1,000

After realising he had been scammed, Mr M contacted PayPal. He asked it to refund his losses. Initially, he reported the transactions as unauthorised, but PayPal's investigation found no evidence of third-party access to his account. PayPal declined to refund the payments. It said:

- The payments were made using the "friends and family" function, which is not covered by its buyer protection policy.
- PayPal had acted on Mr M's instructions, fulfilling its role as a payment service provider.

Mr M wasn't happy with the response from PayPal and so he brought his complaint to this service.

An Investigator reviewed the case and concluded that PayPal ought to have identified potential fraud by the time of the fifth payment (£3,400 on 7 September 2023). He thought it should've queried that payment with Mr M and, if it had done so, he was persuaded it

would've prevented his subsequent losses. The Investigator recommended that PayPal refund Mr M's losses from this payment onward, with 8% simple interest per annum applied.

PayPal disagreed with the Investigator's findings, and so the complaint was referred to me for a final decision.

Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. However, that isn't the end of the story. Good industry practice required that PayPal be on the lookout for account activity or payments that were unusual or out of character to the extent that they might indicate a fraud risk. On spotting such a payment, I'd expect it to make enquiries with the customer to satisfy itself that they weren't at risk of financial harm due to fraud.

I am persuaded that PayPal should have been concerned by the payments made on 7 September 2023. Specifically, I believe the fifth payment in the table above raised sufficient red flags to justify an intervention on PayPal's part. By the time of this payment, Mr M had already made four payments related to the scam. While the first three were smaller amounts and might not have appeared unusual, the fourth payment was a significant £4,593.20.

The fifth payment (£3,400) followed shortly after the £4,593.20 transaction, bringing Mr M's total spend for the day to £7,893.20. This was a substantial amount going to a relatively new recipient, which should've been cause for concern from PayPal's perspective. These amounts were out of keeping with Mr M's usual account activity and, in my view, warranted closer scrutiny.

I can see that, at one point, PayPal temporarily suspended his account and asked that Mr M provide identity documents before any further transactions would be allowed. He provided those documents the same day and the restrictions on his account were lifted. I don't think this was a proportionate intervention in the circumstances. I think PayPal needed to query the payment with Mr P to satisfy itself that he wasn't at risk of financial harm due to fraud.

However, just because I've identified a shortcoming on the firm's part, that doesn't mean it needs to refund his losses. I can't ask that it refund Mr M unless I can reasonably conclude that its error was the cause of his loss. To reach a conclusion on this point, I need to consider what would have happened if PayPal had handled things differently. It ought to have contacted Mr M and asked him about the payment. It should also have given him general guidance about the prevalence and risk of fraud and scams.

I think it's more likely than not that Mr M would've answered PayPal's queries honestly. Mr M selected the "friends and family" payment option because he believed he was paying someone he trusted. However, if PayPal had asked him about the nature of his relationship with the recipient, it would likely have revealed the delusional nature of that belief. I have seen no evidence to suggest that Mr M would have misled PayPal if questioned. On the contrary, I think he would have explained his belief in the situation, which would have led PayPal to identify that he was falling victim to a scam.

I have also considered whether Mr M should bear some responsibility for his losses. The legal test for contributory negligence is objective, but I can take into account wider circumstances and customer characteristics to reach a fair and reasonable outcome. In this

case, Mr M was highly vulnerable at the time of the scam, due to his medical condition. His delusional thinking was compelling and entirely beyond his control. Given the severity of his vulnerability, I do not think it would be fair or reasonable to hold him partly responsible for his losses.

PayPal has pointed out that it wasn't the only regulated business involved here. Mr M moved his money from his bank account. PayPal has said it's not fair and reasonable to expect it to compensate Mr M and he should be directed to complain against the bank too. I have taken that into account. It is possible Mr M's bank might have missed an opportunity to intervene here and Mr M could instead, or in addition, have sought to complain against it. But he's not chosen to do that and ultimately, I cannot compel him to. I have to consider the complaint that has been referred to me (not those which haven't been) and for the reasons I have set out above, I am satisfied that it would be fair to hold PayPal responsible for Mr M's loss.

Final decision

For the reasons I've explained above, I uphold this complaint in part.

If Mr M accepts my final decision, PayPal should refund the payments he made in connection with the scam from payment 5 onwards. It should also add 8% simple interest per annum calculated to run from the date the funds left his account until the date any settlement is paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 3 January 2025.

James Kimmitt
Ombudsman