

The complaint

Ms B says that PayPal (Europe) S.à.r.l et Cie S.C.A, treated her unfairly when it would not refund her for an electric scooter that she says was of unsatisfactory quality.

What happened

In October 2022 Ms B purchased an electric scooter through an online marketplace (eBay Commerce UK Ltd) from a limited company (which I'll call Firm R) using PayPal Smart Connect to fund the purchase. The total amount of credit was described on her account as being £1399.99, to be paid over 18 instalments of £85.50 with no interest to be payable. PayPal described this account to this service as a "PayPal Credit account" in its business file. By December 2022 she contacted Firm R to say that there were significant problems with the scooter – specifically, that the scooter was faulty as it would not re-charge and therefore was unusable in her opinion. To resolve the issue, Ms B requested Firm R to either replace the scooter or to provide her with a replacement battery. Ms B says that because she did not receive a response from Firm R, she opened a dispute with PayPal on 9 January 2023. The dispute was raised under PayPal's Buyer Protection program as a "*Significantly Not as Described*" claim ("SNAD").

Ms B says the Scooter failed to charge properly and she had to pay for it to be recovered. So she spoke to Firm R and Firm R attempted to repair the scooter on 16 January 2023 and subsequently returned it to Ms B. Ms B disputes that the repair was successful as she had to get the scooter recovered again the first time she used it following the repair as it had broken down. Ms B alleges that Firm R then returned to her address, after she complained to it again, and took possession of the scooter, demanding that she close her dispute with PayPal. In submitting her complaint to our service, Ms B said: "*I did not close the case because the bike had broken down for a second time and I wanted a full refund. I am having to pay £100 per month to PayPal for a bike that I don't even have, and has broken down twice, this bike is not of satisfactory standards and therefore not fit for purpose.*" Firm R has provided a differing view on events but both parties agree that the scooter remains in the possession of Firm R.

To investigate Ms B's SNAD claim, PayPal sent Ms B an email on 23 January 2023 requesting further documentation to support her claim. It said that the further documentation had to be provided within 10 days and that, if they didn't hear back from Ms B within this time frame, it might decide the case in the seller's favour. Ms B says that she experienced difficulty uploading the documents and was therefore unable to do so within the time frame permitted.

PayPal declined her SNAD claim, stating its reason for doing so being that Ms B didn't fulfil the requirements of its Buyer Protection program – namely, that she had failed to upload the requested documents within the permitted timeframe.

Ms B complained to PayPal about the fact that it had declined her claim. PayPal did not uphold Ms B's complaint, on the basis that it had followed the requirements of its Buyer Protection program. So Ms B brought her dispute with PayPal to this service.

An Investigator considered the complaint and agreed that Ms B had failed to provide the requested documents which were required for her SNAD claim to proceed. Therefore, the Investigator said that PayPal had correctly closed the SNAD claim in line with its eligibility criteria terms. However, the Investigator went on to conclude that PayPal should refund Ms B the cost of the scooter under Section 75 of the Consumer Credit Act 1974 (“S75” and “CCA” respectively), as well as reimbursing Ms B the costs she incurred in getting the scooter recovered if she provided it with sufficient supporting evidence. The Investigator also felt that PayPal should pay Ms B £100 compensation in recognition of the distress and inconvenience suffered.

In response to the Investigator's view, PayPal said that it had not investigated a s75 claim because Ms B had not expressly made a s75 claim to it. PayPal disagreed with the Investigator's view and objected to the Financial Ombudsman Service's ability to consider a s75 claim against it when no such claim had been made by Ms B.

The complaint was then referred to me to decide. On 09 September I issued a provisional decision explaining that I thought at that point that the complaint should be upheld. Both PayPal and Ms B have responded.

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.

In response to my provisional decision Ms B accepted my provisional decision and had no further significant arguments to make about the merits of the complaint and wants to move on. PayPal has said it doesn't agree with my position but as a gesture of goodwill was willing to settle the dispute in the manner I put forward in my provisional decision. As neither party has made significant arguments about the rationale set out in my provisional decision I see no persuasive reason to deviate from my provisional decision. Accordingly the complaint is upheld and I direct PayPal to settle the dispute as described. I now repeat my position (as set out in my provisional decision) save for minor adjustments to reflect the final nature of this decision.

PayPal has made fundamental arguments against our service's long-standing approach to considering cases involving the CCA. This includes saying:

“We are uncomfortable with the FOS' position on determining when PayPal should investigate a S75 claim and particularly, that FOS has decided the outcome of such an investigation itself. S75 is a remedy provided to a consumer and one which they should avail of themselves.” And: “The investigation and outcome of a S75 claim against the creditor is one that should be conducted by the creditor and not decided by a third party. In particular the determination of what constitutes a debtor-creditor-supplier relationship is something that only the courts can decide.”

I'm also aware that PayPal have made representations in response to a view issued on another complaint against it. In that case, it said, *“in summary, where a platform or online marketplace (such as eBay) has processed a PayPal Credit payment and is not the supplier of goods/services, then we are strongly of the view that the relevant transaction will not fall within the definition of 'debtor-creditor-supplier' (“DCS”) under section 12(b) CCA on the basis that the necessary link between debtor, creditor and supplier is not made.”* Essentially, PayPal argue that the elements required to establish a valid s75 claim are not present under the platform structure.

Accordingly, I set out a detailed explanation of all areas of this case.

Authorisation

Ms B accepts she made the transactions for the scooter using credit from Paypal. She doesn't dispute the amount charged or the date it was charged. And she hasn't argued that it was double charged or applied wrongly to her account. I've also seen the evidence from PayPal of the payment going to eBay. Considering what has happened here and what the parties have said, I'm satisfied on balance that Ms B did properly authorise the transaction at the time.

The SNAD claim

PayPal's Buyer Protection program (the "*Program*") aims to provide buyers with help in the case of disputes with sellers including providing full refunds in qualifying disputes. DISP 2.3.1R provided, at the time of sale,:

The Ombudsman can consider a complaint under the Compulsory Jurisdiction if it relates to an act or omission by a firm in carrying on one or more of the following activities:

(1) regulated activities (other than auction regulation bidding and administering a benchmark);

...

(4) lending money (excluding restricted credit where that is not a credit-related regulated activity);

...

or any ancillary activities, including advice, carried on by the firm in connection with them.

I can consider Ms B's complaint about the Program as it is an ancillary activity to the main regulated activity of issuing electronic money under the definition of "regulated activities" in DISP 2.3.1R(1) and ancillary to the activity of lending of money under DISP 2.3.1R(4).

The Program is described by PayPal as having a five-stage process, which includes opening the dispute within the applicable time frame, escalating the dispute to a claim for reimbursement responding to PayPal's information requests, complying with PayPal's shipping requests regarding returning the item (if required) and the last stage where PayPal makes a final decision on the matter.

In Ms B's case PayPal says it closed the SNAD claim because she didn't provide the information which it requested from her on the 23 January 2023. PayPal also chased Ms B for this information on 2 February 2023. The information requested by PayPal was an independent inspection of the scooter to establish that it was significantly not as described. I have been provided with what appears to be a mechanical report dated 31 January 2023 which states: "*there appears to be a problem with the battery and charging unit*" and: "*I have recovered this bike on two occasions, it appears that the bike is not holding a charge.*" In my opinion, this suggests that Ms B was trying to comply with PayPal's request. Ms B says she experienced difficulty when attempting to upload the requested document and therefore rang PayPal to explain the difficulties she was experiencing. Ms B says that she was told that her issues with uploading the report had been logged. She has also said that she was unable to pass the security checks to discuss the matter with PayPal, and then she says she couldn't speak to anyone at PayPal about her SNAD claim because it was marked as closed on the

system. PayPal's correspondence at the time says that failure to provide the information requested within ten days would result in the claim being closed which is in line with the Program requiring claimants to respond in a timely manner as described in the correspondence. As events transpired, Ms B's claim was closed on 6 February 2023. So in essence PayPal gave Ms B ten days from 23 January to source an external inspection of the scooter, for the inspection to be carried out, and for the report to be provided to it.

PayPal set out in its email to this service dated 26 February 2024 that the applicable terms of the Program in this case are that an item may be considered Significantly Not as Described if:

- *"The item is materially different from the seller's description of it.*
- *You received a completely different item.*
- *The condition of the item was misrepresented. For example, the item was described as "new" but the item was used.*
- *The item was advertised as authentic but is not authentic (i.e. counterfeit).*
- *The item is missing major parts or features and those facts were not disclosed in the description of the item when you bought it.*
- *You purchased a certain number of items but didn't receive them all.*
- *The item was damaged during shipment.*
- *The item is unusable in its received state and was not disclosed as such."*

Within the same email, PayPal also set out goods which are not covered under its Program. These include:

"vehicles, including, but not limited to, motor vehicles, motorcycles, recreational vehicles, aircraft and boats, except for personally portable light vehicles used for recreational purposes like bicycles and wheeled hoverboards."

There is no further definition within the Program of any of the vehicles above and whether it would include an electronic scooter. However, I have considered whether it was more likely than not that the scooter fell within the exemption outlined above as this would have an impact on whether Ms B's claim was valid under the program, or whether her claim needed to be raised via an alternative route such as s75 CCA. Amongst the evidence submitted by the parties to this complaint is a photograph of the electric scooter purchased by Ms B. From the photograph, it does not appear that the scooter would be considered a personally portable light vehicle. I do not consider it to be comparable to a bicycle or a wheeled hoverboard, but instead consider it to be more akin to a motor vehicle or motorcycle. Therefore, I am of the view that the electric scooter would have fallen within the scope of the exclusion set out above.

Whilst PayPal didn't notify Ms B of this exclusion during the course of the SNAD claim, I think it is likely that Ms B's scooter would not have been covered under the Program. Therefore, even if Ms B was able to provide the requested document by the specified deadline, it is likely that her claim would have been excluded. So although PayPal closed Ms B's case because she didn't provide the requested evidence quickly enough I don't think Ms B's claim under the Program had any prospect of success in any event due to the exclusion. So either way I think Ms B couldn't have been successful with her SNAD claim within the parameters of PayPal's processes and I don't think that would have been a fair and reasonable outcome to her dispute about the scooter for the reasons I'll now give. But PayPal isn't limited to considering the Program only here because I think S75 does apply and I think a S75 claim would be upheld for the following reasons.

Was it fair and reasonable for PayPal to not consider s75?

I am mindful that there was another potential avenue available by which Ms B could seek redress, namely S75 CCA which says:

“(1) If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor.”

This means that, in certain circumstances, the borrower (Ms B) under the credit agreement has a right to bring a like claim against the credit provider (PayPal) if there's either a breach of contract or misrepresentation by the supplier of goods or services (Firm R).

PayPal has said Ms B didn't raise a S75 claim with it, so it didn't consider this. However consumers aren't expected to be knowledgeable on every single aspect of consumer law and should be treated fairly irrespective of their knowledge of such matters. This service's long-established approach is that credit providers should consider all avenues of dealing with the matter such as chargeback and S75. Chargeback isn't applicable here as the payment doesn't qualify to go through the chargeback process due to the nature of the payment and that the payment didn't go through one of the card networks and thus chargeback wasn't an available option.

I think a consideration of a S75 claim is fair. This is because, in considering what is fair and reasonable in all the circumstances of the complaint, it is my position that it is unfair for businesses to not deal with some S75 claims due to consumers not being aware of the S75 provision. Nor would it be fair for other consumers to have such claims considered because they are more knowledgeable of the option of a s75 claim and, if their claim is successful, for them to be appropriately remedied. Consumers as a whole should be treated fairly not just knowledgeable ones. And it would be unfair for businesses to be advantaged by consumers not being sufficiently knowledgeable about consumer credit protections.

Furthermore I do not consider it fair for this dispute to now be put back to PayPal for it to consider a S75 claim. I say this because when PayPal received Ms B's dispute it should have recognised that the dispute could potentially be excluded under its terms of the Program and should therefore have thought about other means by which Ms B could seek redress. PayPal did not previously take the opportunity to consider s75; and to refer the matter back to PayPal now would further delay matters which would be unfair on Ms B. Ms B's complaint is that overall PayPal considered her dispute with the scooter supplier unfairly. I consider that in order to treat Ms B fairly PayPal should have explored s75 as an alternative route for potential redress. And I say this because S75 does apply and the type of claim Ms B was making would likely be excluded under the Program thereby meaning Ms B couldn't be successful but under a S75 those exclusions wouldn't apply.

I shall now address PayPal's key arguments. PayPal has said *“a claim made under section 75 is distinct from a claim made under PayPal's Buyer Protection Scheme with different evidential processes and thresholds – this is why we have requested information from Ms B, and FOS are wrong to state that he (sic) is not obliged to respond to these requests.”*

The investigator in this case didn't argue that consumers aren't obliged to respond to such requests. They argued that had Paypal considered S75 (as is our approach) they believed it likely that Paypal would have come to a different position and Ms B would have likely been successful.

If PayPal chooses to offer a separate scheme to its obligations under S75 of the CCA then that is a commendable position. Nevertheless it also has responsibilities under S75 and should consider this dispute fairly under s75 and under its own scheme if it chooses to. And the provision of its own scheme doesn't discharge it of its obligations under S75.

PayPal appears to take the position that not only does Ms B have to raise a dispute with PayPal but if she wants a S75 claim to be considered she needed to bring such a claim explicitly. I do not consider this to be a fair approach because by treating this as a SNAD claim only Ms B's dispute would likely have been excluded whereas it is possible that a S75 claim may have been successful. It would therefore not be fair and reasonable for PayPal to potentially benefit and for Ms B to potentially lose out simply because Ms B may not have been aware of the ability to make a claim under s75.

PayPal's position on where section 75 CCA applies in this case

PayPal has also said the following:

"We are uncomfortable with the FOS' position on determining when PayPal should investigate a S75 claim and particularly, that FOS has decided the outcome of such an investigation itself. S75 is a remedy provided to a consumer and one which they should avail of themselves." And:

"The investigation and outcome of a S75 claim against the creditor is one that should be conducted by the creditor and not decided by a third party. In particular the determination of what constitutes a debtor-creditor-supplier relationship is something that only the courts can decide."

Addressing each of PayPal's concerns in turn, I think it would be appropriate to explain why I think the Financial Ombudsman Service can consider complaints concerning s75 claims, even where a respondent business has not considered s75 itself. To determine a complaint, the Financial Ombudsman Service must be satisfied that the complaint is within its jurisdiction – which includes being satisfied that the activity complained about is an act or omission by a firm in carrying on one of the activities to which the compulsory jurisdiction applies. DISP 2.3.1(1)R confirms that one of those activities are: *"regulated activities (other than auction regulation bidding and administering a benchmark)"*. Where PayPal is exercising its rights and duties as a creditor under a credit agreement it is carrying on a regulated activity within the scope of the definition of "regulated activities" in the glossary to the FCA Handbook and under Article 60B (2) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (the 'RAO'). Article 60B (2) RAO says:

60B. (2) *It is a specified kind of activity for the lender or another person to exercise, or to have the right to exercise, the lender's rights and duties under a regulated credit agreement.*

The part of those rights and duties to which the present complaint relates is the lender's duty to give Ms B credit for a liability allegedly owed to her as borrower. So, the events complained of are not the alleged misrepresentation or breach of contract by Firm R but PayPal's alleged failure to treat Ms B fairly and reasonably when she sought a refund for the cost of the electronic scooter which PayPal did not provide. Therefore, I am satisfied that the Ombudsman Service has jurisdiction to consider this complaint, and I hope the above clarifies this matter.

To deal with PayPal's point that only a court can decide what constitutes a debtor-creditor-supplier agreement I should say that as I am satisfied that this complaint is within the Financial Ombudsman Service's jurisdiction, I am required to determine a complaint by

reference to what is, in my opinion, fair and reasonable in all the circumstances of the case (DISP 3.6.1R). DISP 3.6.4R provides:

“In considering what is fair and reasonable in all the circumstances of the case, the Ombudsman will take into account:

(1) relevant:

- (a) law and regulations;*
- (b) regulators' rules, guidance and standards;*
- (c) codes of practice; and*

(2) (where appropriate) what he considers to have been good industry practice at the relevant time.”

As will be noted from above, one of the factors which I am required to take into account when considering what is fair and reasonable in all the circumstances of the case is relevant law. I should also note the obvious issue with PayPal's argument here that if it was only a court who could decide whether a debtor-creditor-supplier agreement exists on the facts of the case, then creditors such as PayPal would have to apply to the court every time they get a s75 claim. This would presumably include every time creditors such as PayPal tried to enforce remedies it has been held liable for against the relevant Supplier as S75 entitles creditors to do. This would mean that Creditors such as PayPal would have to apply to the courts to be reimbursed by Suppliers for the failings of the supplier in the provision of the goods or services it sold to debtors. This would seem unfairly costly to all parties and of considerable inconvenience to all parties and the courts.

Furthermore The Ombudsman Service was established pursuant to Part XVI FSMA 2000. It provides an independent and informal complaint resolution procedure for the financial services industry without the need for complainants to resort to the courts. This is articulated in s225(1) FSMA 2000 which provides *“this Part provides for a scheme under which certain disputes may be resolved quickly and with minimum formality by an independent person.”* Therefore, requiring s75 disputes to be dealt with solely by the court, even where we are satisfied the complaint is within our jurisdiction, would seem to contradict the statutory objective of FOS. So I'm not persuaded by PayPal's argument on this point.

The application of section 75 CCA to this case

For clarity's sake I shall explain the underpinning legislation concerning S75 of the CCA before explaining my thinking on this case. S75 CCA provides:

“(1) if the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor.”

To summarise, for s75 to apply, the following conditions must be met:

1. The cash price of the item being supplied must be over £100 but must not exceed £30,000 (s75(3)(b) CCA)
2. The credit agreement must be regulated by the CCA.
3. The credit agreement must be a debtor-creditor-supplier (“DCS”) agreement falling within section 12(b) or (c) of the CCA.

On the facts of this complaint, the electric scooter had a monetary value of £1,399.99 and so I'm satisfied that its value falls within the requirements of the CCA. So, I'll now go on to consider the credit agreement itself.

A credit agreement is a regulated credit agreement unless it is an exempt agreement (60B RAO). I have considered whether any of the exemptions set out in Chapter 14A RAO apply and having done so I am satisfied that they do not. Therefore, I am satisfied that the credit agreement between PayPal and Ms B was a regulated credit agreement.

As set out above, the relevant regulated credit agreement must be a DCS agreement falling under section 12(b) or (c) of the CCA. These provisions read as follows:

"A debtor-creditor-supplier agreement is a regulated consumer credit agreement being –

(b) a restricted-use credit agreement which falls within section 11(1)(b) and is made by the creditor under pre-existing arrangements, or in contemplation of future arrangements, between himself and the supplier, or

(c) an unrestricted-use credit agreement which is made by the creditor under pre-existing arrangements between himself and a person (the "supplier") other than the debtor in the knowledge that the credit is to be used to finance a transaction between the debtor and the supplier."

The key distinction between restricted and unrestricted-use credit agreements is whether the purpose of the credit is prescribed and whether its use is monitored by the creditor. If the credit is provided in a way which allows the debtor to use it freely (i.e., however he or she chooses), even if using it in such a way would contravene the agreement, the agreement would be considered to be an unrestricted-use credit agreement.

The credit agreement between Ms B and PayPal describes PayPal Credit as being a "revolving credit account", with a credit limit of £2000.00 which could be used to enter into transactions using PayPal Credit. Running-account or revolving credit is defined in s10(a) CCA as being "a facility under a consumer credit agreement whereby the debtor is enabled to receive from time to time (whether in his own person, or by another person) from the creditor or a third party cash, goods and services (or any of them) to an amount or value such that, taking into account payments made by or to the credit of the debtor, the credit limit (if any) is not at any time exceeded." In PayPal's submissions on another complaint being considered by this Service, it has itself described PayPal credit as being a "restricted-use" credit agreement.

S11 CCA states:

"(1) A restricted-use credit agreement is a regulated consumer credit agreement –

(a) to finance a transaction between the debtor and the creditor, whether forming part of that agreement or not, or

(b) to finance a transaction between the debtor and a person (the "supplier") other than the creditor, or

(c) to refinance any existing indebtedness of the debtor's, whether to the creditor or another person,

and "restricted-use credit" shall be construed accordingly.

...

(3) An agreement does not fall within subsection (1) if the credit is in fact provided in

such a way as to leave the debtor free to use it as he chooses, even though certain uses would contravene that or any other agreement.

(4) An agreement may fall within subsection (1)(b) although the identity of the supplier is unknown at the time the agreement is made."

In this case, it is clear that the credit was used solely for the purpose of financing the transaction between Ms B and Firm R. The payment receipt shows that payment was made from PayPal to eBay Commerce UK Ltd (and then presumably forwarded onto Firm R), and so Ms B could not use the credit freely. Therefore, I agree with PayPal that the credit agreement was a restricted-use credit agreement falling within s.11(1)(b) CCA.

For section 75 CCA to bite, the credit agreement must have been "*made by the creditor under pre-existing arrangements, or in contemplation of future arrangements, between himself and the supplier*".

Therefore, I must now go on to consider whether the credit agreement was made by PayPal under pre-existing arrangements, or in contemplation of future arrangements, between PayPal and Firm R. The meaning of arrangements is set out in s187 of the CCA:

(1) A consumer credit agreement shall be treated as entered into under pre-existing arrangements between a creditor and a supplier if it is entered into in accordance with, or in furtherance of, arrangements previously made between persons mentioned in subsection (4)(a), (b) or (c).

(2) A consumer credit agreement shall be treated as entered into in contemplation of future arrangements between a creditor and a supplier if it is entered into in the expectation that arrangements will subsequently be made between persons mentioned in subsection (4)(a), (b) or (c) for the supply of cash, goods and services (or any of them) to be financed by the consumer credit agreement.

*(3) Arrangements shall be disregarded for the purposes of subsection (1) or (2) if –
(a) they are arrangements for the making, in specified circumstances, of payments to the supplier by the creditor, and
(b) the creditor holds himself out as willing to make, in such circumstances, payments of the kind to suppliers generally*

(3A) Arrangements shall also be disregarded for the purposes of subsections (1) and (2) if they are arrangements for the electronic transfer of funds from a current account at a bank within the meaning of the Bankers' Books Evidence Act 1879.

Persons mentioned in subsection (4)(a), (b) or (c) are: (a) the creditor and the supplier, (b) one of them and an associate of the other's; and (c) an associate of one and an associate of the others.

and s187(5) says:

(5) Where the creditor is an associate of the supplier's, the consumer credit agreement shall be treated, unless the contrary is proved, as entered into under pre-existing arrangements between the creditor and the supplier.

And s.189 says "finance" means "*to finance wholly or partly, and "financed..." shall be construed accordingly.*"

The definition of a DCS agreement and the meaning of "arrangements"

I have considered the particular facts of Ms B's case. In order for S75 to apply there has to be a DCS agreement, which in this case, requires that under s.12(b) CCA the credit agreement between Ms B and PayPal needed to be a "restricted-use credit agreement which falls within section 11(1)(b) and is made by the creditor under pre-existing arrangements, or in contemplation of future arrangements, between himself and the supplier". In short, there needed to have been 'arrangements' (whether pre-existing or contemplated in future) between PayPal and Firm R to finance transactions between PayPal Credit account holders and Firm R at the time the credit agreement between PayPal Credit and Ms B was entered into.

It's clear that there was no direct arrangement between Ms B and Firm R, but this isn't a requirement for the application of S75. The width of the term "arrangements" was discussed in the context of the relationship between credit card issuers and suppliers of goods and services in *Office of Fair Trading v Lloyds TSB Bank Plc* [2006] EWCA Civ 268, approving on this point Gloster J's judgment in the Court below (see [2004] EWHC 2600 (Comm)). One issue was whether "arrangements" existed between card issuers/creditors and suppliers in "four-party" situations, that is to say, where the supplier was not recruited by (and did not have a contractual relationship with) the card issuer but was recruited by another person, the "merchant acquirer", the card issuer and the merchant acquirer being members of the relevant credit card scheme (for example VISA or MasterCard). At [24] of Gloster J's judgment, she discussed how one should interpret the word arrangements and said:

"There is no definition of the word arrangements in section 189(1) of the Act. Nor do subsections 187(1) and 187(2) contain a definition of arrangements. The second half of each subsection itself uses the word arrangements as part of the explanation there set out. But, in my judgment, in its context it clearly betrays a deliberate intention on the part of the draftsman to use broad, loose language. It is to be contrasted with the far narrower word agreement. In the words of Wilmer LJ in Re British Slag Ltd's Application [1963] 1 WLR 727, at page 739, Everybody knows what is meant by an arrangement. As he also said, where the word is not defined, the draftsman intends that the word should be understood and construed in its ordinary and popular sense."

Gloster J went on to conclude at [26] of her judgment:

"In my judgment, in the natural and ordinary sense of the word, there are clearly arrangements in place made between the card issuers and the suppliers, notwithstanding the absence of any direct communication between them, or any direct contractual relationship, or even knowledge on the part of the issuer of the identity of a particular supplier... it is unrealistic to look merely at the individual links in the chain; rather one should stand back and look at the whole network of arrangements that are involved in the operation of the schemes. If one does so, one can, in my judgment, properly conclude that, by virtue of the supplier and the issuer being subject to the rules and settlement processes common to all participants in the card network, there is indeed an arrangement (albeit indirect) between them."

I think also pertinent was Gloster J's judgment here which said that one should stand back from merely considering the individual links in the chain and should look at the interrelationship of the arrangements as a whole.

The broad interpretation of 'arrangements' was affirmed by the Court of Appeal in *Office of Fair Trading v Lloyds TSB Bank Plc* [2006] EWCA Civ 268 – [64] of the Court of Appeal's judgment provides:

“The word “arrangements” is capable of carrying a broad meaning and in a statute which elsewhere displays a high degree of precision in its choice of language must have been deliberately chosen by Parliament with a view to embracing a wide range of different commercial structures having substantially the same effect... we find it difficult to accept that Parliament would have been willing to allow some consumers to be disadvantaged by the existence of indirect arrangements when other consumers were protected because the relevant arrangements were direct.”

Had this been held not to be the case, an unfortunate distinction would have arisen between “three-party” credit card situations (where the issuer also recruits, and therefore has a contractual relationship, with the supplier) and “four-party” situations.

It was also held in *Office of Fair Trading v Lloyd’s TSB Bank Plc* [2006] EWCA Civ 268 that the expression “treated as” in s.187(1) and (2) CCA was used “to extend, rather than restrict, the scope of that section ... the natural meaning of those words is to bring within the scope of s.12(b) arrangements that might otherwise fall outside it” at [65].

Clearly here, as Ms B’s representative has explained Ms B was looking to purchase a scooter, she found one she liked on eBay and decided to purchase it, the opportunity to use finance from Paypal was part of the suite of options provided to her to pay for the scooter at the point of purchase (others being other forms of credit including credit cards and debit card transactions). Clearly eBay provides such payment options on many of its sales on its website and to do so it must have agreements in place with those providing these payment choices to carry their payment options on its website. In essence it must have arrangements existing with them prior to Ms B’s decision to purchase to have those options available to her at the point of purchase.

Similarly sellers are bound by the agreement they enter into with eBay and these include around how they are to be paid for the items they sell on the website. So clearly the sellers are aware of the suite of payment options that buyers would have when making purchases prior to purchases being made such as that by Ms B.

Lastly it should be remembered that buyers such as Ms B are similarly bound by eBay’s terms and conditions for making purchases prior to Ms B making this purchase.

For these reasons I’m satisfied that at the point Ms B decided to purchase this scooter and arrived at the point of deciding how to pay, there were arrangements already in place which Firm R, PayPal and Ms B and eBay were all parties to, to facilitate the offering of credit from PayPal to Ms B, for Ms B to use to purchase this scooter from Firm R.

I’ve also considered the High Court case of *Steiner v National Westminster Bank* [2022] EWHC 2519 (“*Steiner*”). This case involved payments by Mr Steiner using his NatWest credit card to a trust for the provision of a timeshare supplied by a timeshare provider. In that case, NatWest conceded that, if the payment had been made direct to the supplier, there would have been a debtor-creditor-supplier agreement. However, because the payment was made instead to the trust company, rather than the supplier, there was no debtor-creditor-supplier agreement. The High Court dismissed the claim under s75 on the basis that the timeshare purchase was not made under a debtor-creditor-supplier agreement. This was because payment had been made in the first instance to the trust company, whereas the supplier under s.12(b) CCA was the timeshare provider. Mr Steiner’s credit card was issued under the MasterCard scheme and whilst the trust company was a member of the MasterCard network, the timeshare provider was not.

Lavender J held that the central question was not whether “arrangements” existed between the bank and the timeshare provider at the time when Mr and Mrs Steiner had

entered into their agreement with the timeshare provider and Mr Steiner had used his card to pay the trust company. Rather, the question posed by s.12(b) CCA was whether Mr Steiner's credit card agreement with the bank was made by the creditor (i.e. the bank) "*under pre-existing arrangements, or in contemplation of future arrangements, between the creditor (i.e. the bank) and the supplier...*" at [58].

When a bank made an agreement with one of its customers in relation to a card issued by the bank to the customer, then the agreement was made under the card network, which constituted "arrangements" between the bank and the other members of the network (at [60(1)]). So, if a supplier was already a member of the card network, the agreement was made "*under pre-existing arrangements ... between the bank and the supplier*" (at [60(2)]). The bank was also aware that other merchants were likely to join the card network in the future, so in that respect the agreement was made "*in contemplation of future arrangements*", between the bank and merchant who subsequently joins the card network (at [60(3)]).

However, in the absence of specific factual evidence as to the bank's state of mind, the Judge said it was difficult to envisage that a bank which issued a Mastercard to its customer and made a credit card agreement in relation to that card made that agreement under, or in contemplation of, any arrangements other than the Mastercard network. The natural and ordinary meaning of s.12(b) did not extend to saying that the bank made its agreement with Mr Steiner under both the card network and the trust deed (or under both the card network and any other arrangements which parties to the card network might have had with third parties) (at [61]). Nor could s.12(b) be interpreted as saying that the bank had made its agreement with Mr Steiner in contemplation of the trust deed (or in contemplation of any other arrangements which parties to the card scheme might have had with third parties) (at [62]). It followed that there was no debtor-creditor-supplier agreement within the meaning of s.12(b).

Here Ms B has said that at the time she purchased this scooter she "had never used PayPal Credit previously". It is not clear from the business file from PayPal when it considers that Ms B became a client (for example the credit agreement is undated). But it would seem that Ms B entered into the credit agreement and paid for the scooter using this credit pretty much simultaneously or at least within minutes, hours or probably the same day. So I'm not persuaded the comments made by Lavender J about the 'central question' are particularly material to the outcome of this case bearing in mind the time PayPal and Ms B entered into this credit agreement and when it provided the credit for Ms B to make this purchase are apparently broadly simultaneous or contemporary to each other. And in both instances it is clear that these were "under pre-existing arrangements, or in contemplation of future arrangements, between the creditor (i.e. the bank) and the supplier...".

Is there a DCS agreement here?

The question of whether Ms B's transaction took place under a DCS agreement seems to me to turn in this case on two matters: first, whether there existed arrangements between PayPal and Firm R for the financing of transactions with Firm R's customers; and second, if such arrangements existed, whether that was the case when PayPal entered a credit agreement with Ms B or, if the arrangements came into existence after that, whether PayPal contemplated that they would do so. I'll examine those questions in turn.

Were there "arrangements" between PayPal and Firm R?

Here PayPal has not pointed to the presence of the online marketplace (eBay) as the reason that the DCS agreement isn't in place, but I shall cover it in any case for completeness. Here

the payment receipt shows the payment from PayPal went to eBay Commerce UK Ltd (and then on to Firm R presumably).

I understand that PayPal has a vetting process where it considers potential merchants for its credit to be made available through the merchant's online presence for purchasers to use to fund purchases from the merchant's website. This vetting process eliminates many merchants from offering PayPal's credit including merchants whose offering isn't in line with PayPal's regulatory obligations or whose offering isn't in line with the types of parties or types of goods or services that PayPal wants to be associated with. Merchant's need to pass this vetting process in order to become 'eligible merchants' and thus to have the integrated line of credit offering available on its website from PayPal.

Ms B's representative told this service that when Ms B proceeded to purchase the item online, *"the option to pay with PayPal Credit was an automated option flagged/highlighted to her by the website... she was originally intending to purchase the item using her credit card and had never used PayPal Credit previously... she processed the payment via PayPal Credit following the automated stages via the Ebay website."* The fact that PayPal's line of credit was automatically present as an option for Ms B to fund her purchase on the online marketplace, satisfies me that eBay is one of PayPal's 'Eligible Merchants' and therefore would have been vetted. Therefore, PayPal would be aware of eBay's commercial offering and the involvement of suppliers such as Firm R. So when Ms B became aware of PayPal's credit facility by going through eBay's purchasing process I am satisfied that there were pre-existing arrangements to fund such purchases between PayPal (the Creditor) and Firm R (the Supplier) through eBay. I say this because both Ms B and Firm R were bound by agreements with eBay to use its website and make purchases/sales in accordance with those agreements. It seems clear that PayPal only extends credit to merchants (either directly or indirectly) which it has vetted and eBay would only facilitate purchases through credit providers that it was willing to work with and promote via providing access to such credit through the purchasing functionality of its website. Accordingly there were pre-existing arrangements at the point when Ms B reached the point of the website sales process of deciding how to fund the purchase of the scooter.

And even if there were not pre-existing arrangements (which I think there were) that PayPal must have contemplated funding transactions such as the purchase of this scooter from Firm R through its vetting of eBay's commercial offering before the credit was offered to Ms B as I've described. So it is clear to my mind that there existed arrangements between PayPal and Firm R for the financing of transactions with Firm R's customers and that was the case when PayPal entered this credit agreement with Ms B that satisfy the requirements in the CCA as addressed in the OFT and Steiner cases.

I've considered eBay's User Agreement (effective 01 June 2021) which requires adherence by its users whether they're purchasers or sellers. Within this it says (section 2); *"eBay does not have possession of anything listed or sold through eBay, and is not involved in the actual transaction between buyers and sellers. The contract for the sale is directly between buyer and seller. eBay is not a party to the transaction and is not a traditional auctioneer."*

I consider that I can rely on eBay's user agreement to find that the contract for *"the sale is directly between the buyer (Ms B) and the seller (Firm R)."* I also note that eBay's terms state that both its buyers and sellers are obliged to follow its rules (Section 1) but that it isn't a party to the actual contract of sale between and buyers and sellers (Section 2) - in this instance for the purchase of the scooter. eBay in essence provide Firm R with certain services including placing Firm R's goods on its platform and from what I can see from the user agreement it also provides Payment Facilitation services or as it terms them "Managed Payments" (Section 13). In essence this is where eBay manages payments on behalf of its

sellers (and is a pre-requisite of its agreement with its sellers where managed payments is available). It provides these services as part of its commercial offering to Firm R and through which both Firm R and eBay benefit.

Under the PayPal User Agreement Ms B has an agreement with PayPal which includes the obligation of adhering to its User Agreement (and the Program therein) and other obligations in return for being able to use PayPal Credit to purchase items from it. PayPal's user agreement states: *"By opening and using a PayPal account, you agree to comply with all of the terms and conditions in this user agreement, which will be valid until terminated."*

Ms B's use of PayPal Credit is governed by her obligations to PayPal through her User Agreement with it, as quoted above, and by means of the credit agreement agreed for the provision of credit (which was used to fund this transaction here). Further, Ms B and Firm R are both bound to the terms and conditions of eBay in their dealings with one another and the sale contract is between Ms B and Firm R directly as eBay's User Agreement makes clear.

In essence all parties involved in the financial transactions here have different roles but are all obliged to work within the rules of the respective contracts between the parties to complete the same transaction. And PayPal and eBay were part of the same group until 2015 and PayPal services are made clearly available on the eBay platform to facilitate and or fund transactions on the eBay platform when completing a purchase as I've already described. And eBay provide the managed payments for its sellers to also facilitate such purchases. Ms B is clear in what she's said, namely that when she sought to purchase the scooter on eBay the option of using PayPal Credit to fund this transaction was one of the options available to her that she chose to utilise that option. So it is clear that when PayPal offered Ms B a credit agreement there were clear arrangements in place for customers of PayPal Credit to purchase items on eBay from Firm R (as supplier).

Fundamentally, it follows that PayPal financed the transaction between Ms B and Firm R by making credit available at the point of purchase in accordance with the credit agreement between them. The fact that it does so through the medium of eBay by means of the payment to eBay Commerce UK Ltd does not detract from that: it is PayPal's agreement to provide credit to Ms B that provides the financial basis for the transaction with Firm R. And the presence of eBay, which isn't a party to the contract of sale here and is a Payment Facilitator and marketplace, doesn't materially impact this matter at all to my mind. In 2021, eBay Commerce UK Ltd obtained FCA permission to act as an Authorised Payment Institution in which capacity it received the payment in October 2022 from PayPal Credit and facilitated its onward transmission to Firm R.

I would also note that both PayPal and Firm R undoubtedly benefit commercially from the involvement of the other, through the intermediations of eBay, in a way that makes it possible to allow the transaction to happen. By financing purchases from Firm R, PayPal is able to lend money to their customer (Ms B) and make interest and/or other charges for that service, whilst Firm R are able to obtain payments from PayPal Credit account holders and so benefit from the credit PayPal extended (albeit indirectly).

Therefore I'm satisfied at this time that there is the necessary DCS agreement and a S75 claim can be successful if the other requirements are made out.

Was there a breach of contract or misrepresentation by Firm R?

The online marketplace Ms B visited allows items to be sold by businesses and also people acting in a business capacity, or by private sellers making one-off or occasional sales. This

is potentially important in cases such as this because different legislation would apply to purchases depending on whether or not they are made from a “trader”. A trader, according to the Consumer Rights Act 2015 (“CRA”), is *“a person acting for purposes relating to that person's trade, business, craft or profession, whether acting personally or through another person acting in the trader's name or on the trader's behalf”*.

In this particular case Firm R has been shown to be a limited company. And Companies House confirms its business as being retail sales. So, I’m satisfied Firm R is a ‘trader’ and thus the Consumer Rights Act 2015 does apply here.

Liability under the Consumer Rights Act 2015

Ms B points to a mechanical report dated 31 January 2023 showing the scooter wasn’t working and that there appeared to be a problem with the battery and charging unit. She says PayPal closed her dispute due to her not being able to provide this report to them within their timescales due to the problems she was having getting in touch with PayPal.

As I’ve explained, for PayPal to be liable under S75 a breach of contract or misrepresentation by the supplier (Firm R) needs to be made out. S9 of the Consumer Rights Act 2015 (“CRA”) implies a term into the sales contract that goods must be of ‘satisfactory quality’. In terms of determining whether the quality of the goods is satisfactory s9(2) CRA provides:

“the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory, taking account of –

- (a) any description of the goods,*
- (b) the price or other consideration for the goods (if relevant), and*
- (c) all the other relevant circumstances (see subsection 5).”*

I consider one of the other relevant circumstances to note is that the scooter was described by Firm R as brand new.

s.9(3) CRA sets out what the quality of the goods includes, it says:

“The quality of goods includes their state and condition; and the following aspects (among others) are in appropriate cases aspects of the quality of goods—

- (a) fitness for all the purposes for which goods of that kind are usually supplied;*
- (b) appearance and finish;*
- (c) freedom from minor defects;*
- (d) safety;*
- (e) durability.”*

I am also mindful that s.19(14) CRA provides that:

“...goods which do not conform to the contract at any time within the period of six months beginning with the day on which the goods were delivered to the consumer must be taken not to have conformed to it on that day.”

s.19(15) CRA goes on to explain that the above does not apply if:

“(a) it is established that the goods did conform to the contract on that day, or

(b) its application is incompatible with the nature of the goods or with how they fail to conform to the contract.”

Was the Scooter of satisfactory quality under the CRA?

Ms B first contacted Firm R by email dated 27 December 2022 about her “faulty scooter”. This December date is important because if faults occurred in the first six months following delivery of the Scooter the reverse burden of proof applies and the goods are considered to have been faulty at the point of delivery unless it is established that the goods did conform to the contract that day (S19.14) by being of satisfactory quality.

Ms B describes that *“Unfortunately after 8 uses and re-charging, the bike (Scooter) is not re-charging and is therefore not usable. The Bike is completely dead but still looks in pristine condition. It is kept in a locked Garage. I therefore request a new replacement electric moped or at the very least a new replacement battery to see if this is the issue.”*

in early January 2023 Firm R collected the Scooter and then returned it to Ms B saying it had been fixed. Firm R have contested whether there was a problem with the Scooter throughout explaining that it feels it is of satisfactory quality. It is fair to say that the relationship between the parties has broken down. Ms B says it still wouldn’t charge/hold the charge in its battery and that Firm R collected it a second time. And Firm R is still in possession of the Scooter to her knowledge.

Prior to Firm R taking possession of the Scooter for the second time Ms B organised an independent review of the Scooter. She has provided a document dated 31 January 2023 titled *“Condition and mechanical report on electric scooter purchased new in October 2023”*. I would note that I wouldn’t class this as a full inspection of every component of the Scooter like some inspection companies provide. Nevertheless, it does have two important factors to it. Firstly, it is an independent consideration of the Scooter and secondly, it does point to issues with the bike’s battery regarding it holding charge.

So although Firm R contests that there is a problem with the Scooter I think considering the document I’ve referred to above and Ms B’s comments on the matter I’m satisfied on balance that there was a problem with the Scooter within the first six months from purchase as new. It is important to note that as the faults clearly were present within the first six months then the reverse burden of proof means they are considered to have been present at the point of sale of the scooter. Considering that the Scooter broke down on several occasions within six months of its purchase despite it being sold as brand new by Firm R, I cannot conclude that the scooter was sufficiently durable as a reasonable person would not expect a brand-new scooter to have broken down so easily and so soon after purchase. Further, Ms B has said that she purchased the scooter with the intended purpose of her disabled son using it to get to the shop that he volunteers at. Unfortunately, he was unable to do so as the scooter appears to have mechanical faults meaning that it does not hold a charge. Electronic scooters are typically supplied for transportation or recreational use but here, its mechanical faults prevented it from working as an electric Scooter should. To my mind, this means that the scooter was not fit for purpose and therefore I’m satisfied that it wasn’t of satisfactory quality at the time of purchase.

Remedies under the CRA

I am aware that s.24(5) CRA provides that:

“A consumer who has the right to a price reduction and the final right to reject may only exercise one (not both), and may only do so in one of these situations—

(a) after one repair or one replacement, the goods do not conform to the contract;..."

In this case Ms B is seeking to reject the goods. It is evident from what Firm R says that it took in the scooter and tried to remedy the issues Ms B pointed to. And it is also clear that after this attempted repair Ms B continued to have issues with the Scooter as she has described as it again failed and she had to pay to have it recovered for the second time as she has described in her complaint form submitted to this service.

When Firm R worked on the scooter its actions there failed to remedy the issue. In such a scenario the CRA allows for Ms B to reject the scooter. Which I think is fair, particularly considering that Firm R took the scooter away. And bearing in mind the very limited usage of the scooter (approximately 112 miles) that Ms B had I don't think a deduction for usage is fair bearing in mind the substantially larger amount of usage you'd expect from such a scooter across its normal lifetime.

Conclusion

On balance I'm satisfied that the scooter wasn't of satisfactory quality at the point of purchase and therefore there is a breach of contract between Firm R and Ms B. Hence PayPal is liable under S 75 to a 'like' claim to that which Ms B has against Firm R for the unsatisfactory scooter.

PayPal accepts that it hasn't considered S75. It has been this service's long-standing approach that firms should consider S 75 claims made to them fairly and reasonably.

Here PayPal has closed Ms B's SNAD claim due to her not providing the information which it required to consider her SNAD claim further within the permitted timeframe. But, bearing in mind the exclusions in the Program, I'm satisfied Ms B's claim would not have been successful anyway as it seems likely that the scooter would have been excluded from cover under the Program.

From Ms B's complaint to PayPal, it is evident that she was seeking a full refund of the Scooter and compensation of the costs she incurred in getting the scooter recovered. She said: *"I would like a full refund of the £311.00 that I have made in payments alongside the £150 x 2 recovery costs = £300.00, plus 4 hours of telephone calls £8.00 made to PayPal to try and resolve this dispute. I have been to Citizens Advice and they state that I am entitled to a full refund plus compensation for the inconvenience."* To my mind, this should have alerted PayPal to explore all avenues available to Ms B in seeking a resolution – including s75. As PayPal hasn't done so I'm satisfied it has treated Ms B unfairly. And accordingly, under a like claim, PayPal should refund the cost of the scooter by unwinding the credit agreement it used to lend her the money to purchase the scooter and refunding the payments she made to the agreement. It should also refund the £300 in recovery costs once Ms B evidences these costs because these are consequential losses flowing from the scooter being of unsatisfactory quality. As for the calls Ms B is claiming for I'm not persuaded PayPal should cover these costs as they have been incurred in the normal process of making a complaint and Ms B could have contacted PayPal in other manners which are free such as by email. had PayPal considered her dispute as a S75 claim from the start it would have upheld her claim when it issued its rejection of her SNAD claim to her. Thus, by not doing so she has been deprived of the refund PayPal would have issued at that point. So, it should also pay 8% simple on the refund from that point. And as the credit agreement should be unwound as I've found that the Scooter was of unsatisfactory quality at the point of purchase the, credit reporting PayPal has made on Ms B's credit file should be removed in relation to this credit facility. I say this because had PayPal dealt with the matter fairly when Ms B brought her dispute to it the issues around her credit file wouldn't have arisen. In summary it is my decision that this complaint should succeed.

Therefore, for the reasons set out above, it is my decision to uphold this complaint.

Putting things right

Ms B has requested a full refund for the scooter through unwinding this credit agreement. Considering all of the circumstances I think this is a fair remedy. I say this because it is evident from the dates of events here and Ms B's comments about usage that she'd had little use of the scooter before problems occurred and thus it is unfair for any deduction for usage to be made. PayPal should also pay 8% interest on this amount from when it rejected Ms B's dispute with it until it settles this matter. It should also pay Ms B £300 on her submission of evidence to PayPal of the recovery costs in this matter.

My final decision

It is my decision that this complaint should be upheld and PayPal (Europe) S.ár.l et Cie S.C.A remedy the matter as I've described.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 21 October 2024.

Rod Glyn-Thomas
Ombudsman