

The complaint

Mr S complains that PayPal (Europe) Sarl et Cie SCA has treated him unfairly regarding a dispute about a transaction funding the purchase of some additional lighting for a car.

What happened

In December 2021 Mr S used PayPal Credit to pay for the supply of a 'Light Bar' lighting fixture costing £557.94 to be attached to his car. He bought it from a supplier (hereafter the 'Supplier') who he was introduced to by way of an introducer website which describes itself as a wholesale trade platform (hereafter the 'Website'). Once it was delivered Mr S organised a third party installer to install it on his car. Mr S says that three months after installation the Light Bar stopped working properly. So he contacted the Website but was unable to get a refund. So he took this dispute to PayPal.

PayPal considered the matter and declined to help Mr S further. In essence it was satisfied that the Light Bar had been delivered and as it had been installed it said there was insufficient evidence to show there was anything wrong with the Light Bar delivered. So Mr S brought his complaint here.

Our Investigator looked into the matter and concluded that breach of contract had been made out and PayPal should refund the disputed transaction amount (£557.94) and award £150 in compensation for distress and inconvenience.

PayPal disagreed with the finding of the Investigator that PayPal could be held liable here for technical reasons regarding the application of the Consumer Credit Act 1974 to the facts here. So this decision came to me to decide.

On 27 September 2024 I issued a provisional decision not upholding Mr S' complaint. Mr S has provided some comments in response and the deadline for responses has passed.

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.

Mr S has made some further observations which I find unpersuasive. I shall respond to them under the heading of 'further arguments' but in summary they're significantly short of persuading me to change any of the positions set out in my provisional decision. PayPal didn't respond. Since neither party have put forward persuasive arguments I see no reason to deviate from the thinking as set out in my provisional decision. Accordingly I repeat those arguments here save for minor amendments to reflect the final nature of this final decision.

Arguments from my provisional position

Mr S accepts he made the transaction for the Light Bar through the Website. He doesn't dispute the amount charged on his statement or the date it was charged. And it hasn't been argued that it was double charged or applied to the wrong account. Considering what has

happened here and what the parties have said, I'm satisfied on balance that Mr S did properly authorise the transaction at the time. And accordingly it was correctly allocated to his account by PayPal.

PayPal declined Mr S' claim to it because it said the Light Bar was '*altered/repaired in buyer's possession.*' It also said it doesn't cover warranty issues under its Buyer Protection scheme.

Mr S has provided some emails and screenshots of conversations he had with the parties involved. One text conversation says "*you won the chargeback, the bank should have sent the refund to you*" in response Mr S says that's not true and demands his refund. Mr S has also provided emails including from April 2022 when the website says "*I am sorry to hear that the item cannot work well. I have contact seller for you and asked him to send you the replacement as soon as possible. He admitted that there may have some delay for the production of the new batch and will respond you the exact resend time soon. Kindly keep in touch with seller.*" In May 2022, the website emails Mr S again and says "*I am sorry to hear that seller failed to send replacement for you. I have contacted seller for you and he is really sorry that the cooperated factory are not able to produce new item in time due to technical problem. Seller suggested you return the defective item for refund if you no longer want to wait. And he explained the reason why they hope you can return the item is because they need the defective item to claim from the factory.*"

It is clear from Mr S' arguments on the matter that he doesn't think what the Website told him was reliable. I note regular references to chargeback which is a dispute resolution service provided by card networks such as Mastercard or Visa. Here Mr S used PayPal Credit to fund the purchase. I can see from the Website's pages it accepts such payments from PayPal and has integrated PayPal as an option for use to fund purchases by PayPal account holders into the purchasing journey on the website. It is my understanding such a payment would not go through a card network here and accordingly Chargeback wouldn't be available to Mr S. So I can well understand why Mr S doesn't believe what the website was telling him.

PayPal has made significant arguments here about whether S75 of the Consumer Credit Act 1974 can be applied here for such a purchase. I don't agree with its position or its arguments on this matter. However this is a moot point in this particular case because I don't think Mr S has shown that PayPal treated him unfairly by declining this matter whichever way we consider the matter whether it be chargeback, PayPal's Buyer Protection Scheme or even under S75. I say this for the following reasons.

Mr S accepts he purchased the item and that the service he paid the supplier for was the supply of the Light Bar. He didn't pay the supplier for it to be installed, he paid an unrelated third party installer. Mr S accepts he received the Light Bar and that it was installed by the third party and that it worked for some months. So clearly it worked for some time after purchase. In Mr S' submission to PayPal the only evidence he's provided about the quality of the Light Bar is a picture of it apparently only operating across what appears to be somewhere between half of the Light Bar and two thirds of the Light Bar. That is, it was emitting light only across roughly half to two thirds of its span. So it clearly works to a significant degree. Mr S has provided no supporting evidence to the workings of the Light Bar such as an independent report on it or other supporting evidence.

Here as PayPal has pointed to, Mr S used a third party to install the Light Bar. PayPal couldn't and cannot be responsible for the actions of the third party installer because PayPal wasn't party to the contract for installation. It's quite possible that the issues with the Light Bar are due to its installation rather than the goods being of unsatisfactory quality at the point of sale as PayPal suggests. In fact there is no evidence put to PayPal that shows it was not an installation issue. And the fact that the Light Bar works partially, and that Mr S

says it worked fully for months, doesn't demonstrate it was of unsatisfactory quality at the point of sale rather the opposite. It could well be argued these factors show that it's more likely to be an installation issue here due the Light Bar working partially.

I should also add here that the relevant legislation here is the Consumer Rights Act 2015 which sets out that when goods are purchased by consumers that there is implied into the contract of purchase that goods must be of a 'satisfactory quality'. But this website is a trade website for wholesale trade buyers and sellers to be introduced to each other. I note on the order document both the seller (the Supplier) and the Buyer (Mr S) have to provide their company details. So it would appear that it's likely the Consumer Rights Act 2015 either doesn't apply or that it would be unfair to apply it if Mr S were holding himself out to be wholesale purchaser rather than an individual consumer.

So setting aside PayPal's arguments about whether S75 can apply or not, for any S75 claim to be successful Mr S has to set out his claim as he would have to in a dispute or litigation against the supplier and he has to show that there has been a breach of contract (or misrepresentation where relevant). I don't think the evidence here shows that such a breach of contract has been made out by Mr S. This is because it simply hasn't been shown that the reason the Light Bar isn't working as it should is due to the item being defective at the point of supply. Other reasons such as either improper installation or other factors such as damage or usage could easily be the cause. And these reasons are predicated on the assumption that the Consumer Rights Act does apply. And for the reasons explained about the wholesale nature of the website, I'm not necessarily persuaded it does apply. And if the Consumer Rights Act doesn't apply then such implied terms as the Consumer Rights Act sets out cannot be applied/implied into this contract.

I note the investigator here relied upon the discussion between the Website and Mr S about there being apparently a refund potentially (whether it was as a result of the supposed chargeback or agreed between Mr S and the supplier or the Website directly). As I've described I'm not persuaded the conversations Mr S was in with the website are wholly reliable in terms of what the website were saying actually amounted to an acceptance by the Supplier that the goods were defective and a refund was contractually due. And in any event the end position on the matter was that Mr S was told he could have a refund if he returned the Light Bar to the Supplier. As Mr S hasn't returned it I'm not persuaded this talk of refund is reliable. And I should add that even if Mr S did or has return it, considering what is said by the Website throughout, and the terms and conditions I've seen, I'm not persuaded that he was entitled to a refund. I note that the website provides a 30 or 60 day refund policy. As Mr S says the issues didn't become apparent until around three months after purchase it would appear clear that he wouldn't have received a refund under these terms that he and the supplier were bound by under the Website's terms.

Overall I'm not persuaded that these comments are sufficient to demonstrate that the supplier had accepted that the Light Bar was of unsatisfactory quality or that any refund was actually due to Mr S. I'm not persuaded it was made out to PayPal that the Light Bar was of unsatisfactory quality at point of sale. So I'm not persuaded that PayPal has treated Mr S unfairly by not refunding him.

Although PayPal declined the matter under its Buyer Protection scheme its fundamental reason for doing so (that Mr S couldn't show the items were defective at the point of delivery) is a key consideration under S75 as well, and as such I'm not persuaded PayPal would have fairly found a breach of contract if it had considered the matter more broadly for the reasons given.

Further arguments

Mr S says the Light Bar was installed professionally. This doesn't mean that there is no other possibility than it must be of unsatisfactory quality at the point of sale nor does it show PayPal has treated him unfairly by not refunding him. That simply does not follow as I have described earlier.

Mr S says the Light Bar had a warranty and it stopped working within that time. But the sheer nature of the situation here doesn't mean that this or his other arguments demonstrate on balance of probabilities that it was of unsatisfactory quality at the point of sale nor does it show PayPal has treated him unfairly by not refunding him.

Mr S says my provisional position contained speculation. I included speculation as to possible causes of the issues Mr S claims to have with the Light Bar to illustrate the fundamental lack of evidence and causation in Mr S' position. That is, he's not provided any persuasive evidence that the Light Bar was of unsatisfactory quality at the point of purchase, which he has to do to be successful. This is the fundamental failing in Mr S' complaint about PayPal because he's not shown how it has treated him unfairly which he has to do to be successful.

I've considered everything else Mr S has said but he's fallen substantially short of being persuasive on the matter. It seems clear that Mr S hasn't got to grips with the onus being upon him to show PayPal had treated him unfairly in order for him to have his complaint upheld. I also note that he's not answered a number of the key issues within this matter but rather made undetailed broad arguments which don't address the crux of these issues. Ultimately there is no persuasive evidence that the issues Mr S says he has with the Light Bar is because it is of unsatisfactory quality at the point of sale. Thus he's fallen a long way short of showing PayPal treated him unfairly when it didn't agree to his claim. Accordingly his complaint is unsuccessful.

My final decision

It is my decision that Mr S' complaint about PayPal (Europe) Sarl et Cie SCA is not upheld. It has nothing further to do on the matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 11 November 2024.

Rod Glyn-Thomas
Ombudsman