complaint

Miss P complains that Clydesdale Financial Services Limited (trading as Barclays Partner Finance) terminated her credit agreement and thereby deprived her of her rights under section 75 of the Consumer Credit Act 1974.

background

In February 2016 Miss P decided to install a new kitchen. She paid a deposit to the retailer, and entered a loan agreement with Barclays Partner Finance (BPF) to pay for the balance. The loan was to be repaid over five years, beginning one year after BPF had paid the retailer.

The kitchen was installed in May, but Miss P was not satisfied with the standard of the installation work. Also the worktops were not in the colour she had ordered. She complained to the retailer and also to BPF, and asked to reject the kitchen. Instead, the retailer carried out remedial work on two occasions (June and October 2016), but there were still a number of outstanding issues. In October BPF paid her £100, but said it regarded the remedial work as having resolved her complaint. The retailer apologised, and agreed (after some time) to replace the worktops with a more expensive alternative at no extra cost to Miss P, and to carry out further remedial work. But this did not resolve matters to Miss P's satisfaction. This meant that the kitchen was never signed off as complete, and so the retailer never asked BPF for the money due to it under the loan agreement. So after one year (when the first repayment would have been due), BPF cancelled the loan agreement, without ever having paid the retailer. Since then, the retailer has held Miss P directly liable for the cost of the kitchen, and has instructed debt collectors to pursue her for the money. Miss P wants to reject the kitchen and not have to pay anything.

In due course, the retailer referred Miss P to the Furniture Ombudsman, and BPF referred her to the Financial Ombudsman Service. She complained to our Service first. BPF co-operated with our investigation, but said that we did not have jurisdiction to consider this complaint, because it had never paid the retailer. One of our adjudicators agreed with that argument, and decided that she could not uphold this complaint. As a result of that decision, Miss P complained to the Furniture Ombudsman about the retailer.

Meanwhile, Miss P's complaint with our Service was passed to another adjudicator. He thought that our Service did have jurisdiction to consider this complaint. But he also thought that as BPF had never paid the retailer, it would not be fair to hold BPF liable for what the retailer had done, because section 75 of the Consumer Credit Act 1974 did not apply to Miss P's purchase. (Section 75 is a law which – in certain circumstances – can make the provider of credit jointly liable with a retailer for a breach of contract by the retailer in relation to the supply of goods or services paid for on credit.) That adjudicator did however recommend that BPF pay Miss P £250 for some failings of its own. BPF agreed to do that.

Shortly after that, the Furniture Ombudsman reached its decision in Miss P's other complaint. It agreed that the installation of the kitchen had not been adequate and that further remedial work was necessary, but it did not think that rejecting the kitchen would be proportionate. It said that the retailer should pay Miss P £700 compensation, which the retailer complied with by deducting that amount from the outstanding balance.

After that, the original adjudicator left our Service and this complaint was passed to a new adjudicator. After taking some advice from an ombudsman (not me), that adjudicator

concluded that section 75 did apply to Miss P's purchase after all, notwithstanding that BPF had not paid the retailer, because there had still been an agreement to pay the retailer. The new adjudicator thought that further remedial work was not a fair remedy, and that it was not unreasonable of Miss P to insist on the kitchen being removed so that she could obtain a new one from another retailer. He thought the deposit should be refunded to her, and she should be paid £250 for her trouble.

BPF did not accept that decision. It said that further remedial work – which the retailer was still willing to carry out – plus the £250 was sufficient, especially when taking into account the £700 deducted from the price, and the retailer's offer to replace the worktops with a more expensive (by £995) alternative at no additional cost to Miss P. It also said that she had impeded its efforts to help her, for example by refusing to allow the Furniture Ombudsman to inspect her kitchen in 2016 and prepare an independent report. It maintained that this complaint was out of our jurisdiction. It asked for an ombudsman's decision.

I wrote a provisional decision, which read as follows. (It did not include the footnotes.)

my provisional findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

jurisdiction

I am satisfied that I do have power to consider this complaint. I will explain why.

Our jurisdiction does not come from section 75 of the Consumer Credit Act, but from section 226 of the Financial Services and Markets Act 2000, and rules made under that section by the Financial Conduct Authority (FCA). The relevant rules are in the *Dispute Resolution: Complaints* chapter of the *FCA Handbook*, usually known as the "DISP" rules. Section 226(1) says that our Service may consider "*a complaint which relates to an act or omission of a person … in carrying on an activity to which [the DISP rules] apply*."

DISP 2.3.1R sets out the list of specified activities which are within our jurisdiction. It begins by saying: "*The Ombudsman can consider a complaint … if it relates to an act or omission by a firm in carrying on one or more of the following activities*." DISP 2.1.4G elaborates on this sentence by saying:

> "carrying on an activity includes:
>
> > (1) offering, providing or failing to provide a service in relation to an activity;
> >
> > (2) administering or failing to administer a service in relation to an activity; and
> >
> > (3) the manner in which a respondent has administered its business, provided that the business is an activity subject to the Financial Ombudsman Service's jurisdiction."

(The use of the word "includes" suggests that this list is not exhaustive.)

The first entry on the list in DISP 2.3.1R is "regulated activities." Entering into a regulated credit agreement as a lender is a regulated activity. Another regulated activity is exercising,

or having the right to exercise, the lender's rights and duties under a regulated credit agreement. So, taking into account the broad definition of "carrying on" a regulated activity, I think that Miss P's complaint about BPF cancelling her loan agreement is clearly within our jurisdiction.

Since one of the consequences of that cancellation was that Miss P lost her rights under section 75, it follows that, in the course of considering the cancellation, I can take into account the fact that BPF deprived her of her section 75 rights.

I can also consider how BPF dealt with Miss P's section 75 claim while the loan agreement was still in force, whether section 75 applied to her purchase or not. I agree with BPF that complaint handling is not, in and of itself, a regulated activity, or any other kind of specified activity. But a claim for compensation under section 75 is not a complaint, it is a claim. And a subsequent complaint about how BPF dealt with such a claim, including its decision to decline the claim, does fall within our jurisdiction. I think that falls within carrying on one or both of the regulated activities I have already mentioned. But even if I took a different view about that, I think there is a third specified activity which covers section 75 claims.

As well as regulated activities, DISP 2.3.1 also says that "ancillary activities" carried on by a firm in connection with a regulated activity are also within our jurisdiction. "Ancillary activity" is defined in the Glossary to the *FCA Handbook* as:

> "an activity which is not a regulated activity but which is:
> (a) carried on in connection with a regulated activity; or
> (b) held out as being for the purposes of a regulated activity."

So even if handling a claim for compensation under section 75 is not carrying on a regulated activity, I still think that it is carrying on an ancillary activity.

In cases where section 75 does not apply, this does not mean that our Service does not have jurisdiction to consider a complaint about a section 75 claim. As long as the claim is based on a regulated credit agreement, then the complaint will fall within our jurisdiction. Instead, the applicability of section 75 is relevant to the merits of a complaint.

section 75

Section 75 says it only applies to a purchase if the purchaser "…*has, in relation to a transaction financed by the agreement, any claim against the supplier*…"

Section 189 of the Act says "finance" means "to finance wholly or partly," but gives no further definition of the word. So the word bears its ordinary dictionary meaning. The Cambridge Dictionary defines the verb as "*to provide the money needed for something to happen*."

The loan agreement was intended to finance the purchase of the kitchen, and it would have done so in the ordinary course of events. But in fact no money was ever provided by BPF under the agreement. So I am unable to accept that the purchase was financed by the agreement. It follows that section 75 did not apply.

In normal circumstances, I would not think it fair and reasonable to hold BPF liable for the retailer's actions in a case where section 75 did not make it liable. I would therefore normally reject such a complaint.

However, the section would have applied if BPF had paid the money instead of cancelling the agreement. So if I were to uphold Miss P's complaint about the cancellation, then I could find that section 75 would have applied but for BPF's error. Since the redress for a complaint would usually involve putting the complainant back in the position they would have been in if no error had occurred, then I think it would be fair and reasonable for me to hold BPF liable for any breach of contract by the retailer as if section 75 had applied all along.

Whether or not I do that, I think it would also be fair and reasonable of me to consider the fact that BPF initially dealt with Miss P's section 75 claim as if the section did apply, when it did not. As the first adjudicator pointed out, this wasted Miss P's time. (£100 of the compensation recommended by the adjudicators was for that issue, and I think that is a fair amount.)

the Furniture Ombudsman

Before I go on to consider the cancellation of the loan agreement, I will deal with another preliminary matter. Under DISP 3.3.4AR(2), I may dismiss a complaint without considering its merits if its subject matter has already been dealt with by a comparable ombudsman service. I think that the Furniture Ombudsman is a comparable service. Although the two complaints were against different respondents, they both dealt with the quality of the installation of Miss P's kitchen and whether there has been a breach of contract by the retailer, so I find that they deal with the same subject matter. I therefore think that this is a complaint I could dismiss, and although the power to dismiss is discretionary, I think that I should take dismissal as my starting point.

However, the Furniture Ombudsman's decision is extremely brief, and it does not address the fact that remedial work has already been carried out before – twice – and yet more remedial work is *still* necessary. So I do not think that the question of whether it would be reasonable or disproportionate to allow Miss P to reject the kitchen and have it removed has been fully addressed. For that reason, I decline to dismiss this complaint.

the cancellation of the loan agreement

I have read the loan agreement and the attached terms and conditions, and they do not explicitly say that the agreement will be cancelled by BPF if the retailer does not claim the money. What the loan agreement does say is this:

> "We will pay [the loan amount] directly to the retailer once we have approved the loan or on a later date requested by the retailer."

That does at least imply that the loan amount may never be paid if it is never requested by the retailer (assuming that BPF does not pay the loan amount once it approves the loan). The terms and conditions go on to say on the first page:

> "After we have accepted and signed this agreement *and you have received the goods or services,* we will pay the loan amount to the retailer." [Emphasis added.]

This appears to rule out BPF paying the retailer once the loan has been approved. So if the goods and services are never received, then the loan amount will never be paid.

If the money is never paid, then that would defeat the object of the loan agreement, and so I can see the argument that BPF should then be entitled to cancel the agreement. However, I do not think that this is fair, for the following reasons.

Firstly, I think that such an important term should not be left to implication, but should be expressly, clearly and prominently set out. Something so important should not be left to a consumer to work out and infer; it should be made obvious.

Secondly, it has left Miss P in a position where she now owes the retailer the entire purchase price herself (minus the £700 deduction awarded by the Furniture Ombudsman), instead of having a loan she can repay over a term of five years. She could afford the monthly loan repayments, but no assessment has been carried out of whether she could afford to pay the retailer herself. She might be able to agree an arrangement with the retailer, but that will look worse on her credit file than the loan would have, and she might still have to make larger monthly repayments than she was obliged to under the loan agreement. Also, there is no guarantee that the retailer will agree to this.

Thirdly, it leaves the consumer high and dry in the event that anything goes wrong. If the consumer never receives the goods or services – and in practice, BPF and the retailer have treated this clause as including a situation where the goods and services are received but are not satisfactory – then the loan agreement is cancelled, and the consumer is thereby deprived of her section 75 protection just when she needs it most. Conversely, the money is paid, and the consumer's section 75 rights are preserved, just when section 75 rights are no longer needed.

It seems to me that that cannot be justified. Principle 6 of the Principles of Business in the *FCA Handbook* requires a firm to "*pay due regard to the interests of its customers and treat them fairly*." An arrangement under which the above three problems arise, or may arise, does not appear to comply with that principle.

Also, a loan agreement under which the borrower may be deprived of section 75 protection as a direct result of a breach of contract by the supplier amounts, in my view, to contracting out (or attempting to contract out) of section 75. This is forbidden by section 173 of the Consumer Credit Act. It is not my place to say whether a term of an agreement is void, as that is a matter for the courts. But having regard to what section 173 says, I am reinforced in my opinion that it would be fair and reasonable of me to conclude that BPF was wrong to cancel Miss P's loan agreement.

Had BPF not cancelled the loan agreement, and had paid the retailer instead, Miss P would still have been able to pursue her claim against BPF under section 75.

I will therefore consider the merits of Miss P's section 75 claim.

(It follows that I do not agree with the adjudicators' opinion that BPF should pay Miss P £100 for leading her to think that she had a valid claim under section 75 when she did not.)

the retailer's breach of contract

It cannot be disputed that the kitchen, as initially supplied and installed, was not of a satisfactory standard, since remedial work had to be undertaken twice in 2016. I also take into account the fact that the Furniture Ombudsman has recommended further work. I am not bound by their decision, but they are experts on such matters, and in February 2017 BPF offered to invite them to prepare an independent report (at BPF's expense). I therefore gratefully adopt their finding that the kitchen is still not in a satisfactory condition.

It was a statutory implied term of the contract between Miss P and the retailer that the kitchen would be of satisfactory quality, and that the installation would be performed with reasonable care and skill and within a reasonable time. I find that the retailer breached these conditions.

Since I have found that Miss P would have had the right to hold BPF liable for the retailer's breach of contract under section 75 but for BPF having wrongly deprived her of her rights under that section, I think it is fair and reasonable of me to hold BPF liable for the retailer's breach of those conditions. I therefore think that BPF should have upheld her claim for compensation.

redress

I think it was reasonable to attempt to resolve the problems with the kitchen with remedial work to begin with, instead of immediately allowing Miss P to reject it. But that failed to solve all of the issues.

My starting point is that it is not reasonable to subject Miss P to remedial work three times, and that it would be better instead to allow her to reject the kitchen at no cost to herself, and to have a full refund of the deposit, with interest. However, I have to consider BPF's argument that Miss P failed to mitigate her loss – that is, that she did not co-operate with BPF's own efforts to resolve the problem.

In particular, BPF suggested that it should pay for an independent inspection of the kitchen by the Furniture Ombudsman. (This was before she brought her complaint about the retailer to that organisation.) BPF said it would then review the report and decide what to do. I think that was a reasonable proposal. But Miss P did not agree to it. She appears to have thought that the photographs she had supplied were enough, so that an independent inspection was not necessary. But I do not agree. Getting an independent report would have been a sensible step to take, and I think BPF was entitled to insist.

BPF asked her to reconsider, and warned her that if she still did not agree, then it would not be able to continue dealing with her claim.[1] In the meantime, BPF did forward her photos to the Furniture Ombudsman. Miss P did not change her mind, and so BPF took no further action. I don't know what else they could have done, but I would not expect them to uphold her claim just on the basis of the photos. (Nor did the Furniture Ombudsman do a report based on the photos.[2]) Miss P chased BPF for an answer to her complaint a few months later, but she'd already had their answer. So I don't think it is BPF's fault that this matter has dragged on for as long as it has. I will take that into account.

BPF has also argued that Miss P has had a functioning kitchen ever since 2016. I agree. There were defects with the kitchen, but I don't think it was completely unusable. So for both of these reasons, I am not minded to award Miss P a refund of her deposit.

I still think that Miss P should be allowed to reject the kitchen, and to have it removed at no cost to her. I am currently minded to order BPF to arrange with the retailer for this work to be done, and also to ensure that Miss P is not charged by the retailer for the cost of the kitchen, even if that means paying the retailer itself.

[1] Miss P says she never received any such message.
[2] Miss P disputes this; she says no inspection ever took place, and the FO relied only on the photos.

I propose to award Miss P £350 for her inconvenience.

other matters

In April 2017 BPF told Miss P it would pay her £100 for poor communication, but this was never paid. Our adjudicator recommended that BPF still pay this amount, and I agree that it should. I propose to award simple interest on that payment at eight per cent a year from 3 April 2017 to the date that it is paid.

I also agree with the adjudicator's recommendation in May 2018 that BPF pay Miss P £50 for some issues she had been experiencing with a subject access request (SAR). (I understand that some further SAR-related issues have arisen since then, but they do not form part of this complaint and are being dealt with separately.)

my provisional decision

So my provisional decision is that I am minded to uphold this complaint.

Subject to any further representations I receive from the parties … I intend to order Clydesdale Financial Services Limited (trading as Barclays Partner Finance) to:

- Allow Miss P to reject the kitchen,
- Arrange for the kitchen to be removed at no cost to Miss P,
- Arrange for Miss P's existing debt to the retailer to be discharged (if necessary by paying the retailer),
- Pay Miss P £400 (in addition to the £100 it paid her in 2016),
- Pay Miss P another £100, with simple interest on that payment at eight per cent a year from 3 April 2017 to the date of settlement.

responses to my provisional decision

BPF said that the retailer had already removed Miss P's kitchen, at no cost to her, about five weeks before I wrote my provisional decision. The retailer had also paid her £2,782.73. This included her deposit (£1,290), a payment of £700, and nearly £800 in invoices she had presented to the retailer. BPF said that since this was much more than I had proposed to award her, it would not be fair and reasonable to require BPF to pay her any more than it had already.

Miss P disputed some of the findings I had made in my provisional decision. She said she hadn't refused to co-operate with BPF's investigation, she was just waiting to see whether the Furniture Ombudsman could make an assessment based her photos, and was awaiting instructions. She denied that BPF had ever told her that it would not proceed further with its investigation unless an inspection was done. She also said that there was no evidence that BPF had ever forwarded her photos to the Furniture Ombudsman, and that BPF had ignored her emails between 9 November 2016 and 12 January 2017. She added that the Furniture Ombudsman had never carried out an inspection, and it had based its decision about her later complaint entirely on the photos she had provided to it.

Miss P also said that I had withheld the deposit from her as a penalty for refusing to co-operate with BPF's investigation, and that this was not fair. After the second repair had failed, she had sought to exercise her right to reject the kitchen. The retailer had instead insisted on a third repair attempt, and that by itself should have been sufficient evidence that

the second attempt had failed, without any need for a report or an inspection by the Furniture Ombudsman. Her choice to reject the kitchen should have been respected, and then there would have been no question about whether she had mitigated her loss, or about whether she should lose her deposit because she'd had some limited use of the kitchen for the next two years. Although the deposit had been refunded by the retailer, she argued that I should still order BPF to pay interest on the refund, because that's what I would have done if I had ordered BPF to refund the deposit.

Miss P said the payment she had received from the retailer consisted of a refund of the deposit and some other payments she had made to the retailer (for kitchen accessories not covered by the original contract), totalling £1,832.73; a goodwill payment of £700; and a £250 refund of the fee for disconnecting the electricity supply during the removal work. She later said that while removing the kitchen, the retailer had damaged a wall in the hallway. She said that the retailer had paid her the £700 "*in lieu of any claims for damage upon removal and pre-existing damage repair. The cost to put me in the position should this have never happened will far exceed this payment.*" She also referred to some other deficiencies in the installation of the kitchen which had only become apparent once the kitchen was removed.

(Miss P also said that the retailer had offered her another £1,000 if she removed from social media her criticisms of the retailer and made no further public comments about this matter, but she had declined. I hope she won't mind if I make no comment about this. It's not really relevant to BPF.)

my findings

I have reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Miss P has made numerous points in support of her complaint, but my decision focuses on what I consider are the central issues.

My decision not to tell BPF to refund Miss P's deposit was not a penalty for not agreeing to an inspection. It is not within my remit to penalise either party. But it is true that one of the two reasons I decided that the deposit did not have to be refunded was that I thought she had failed to mitigate her loss, by not agreeing to the inspection. I also said this:

> "BPF has also argued that Miss P has had a functioning kitchen ever since 2016. I agree. There were defects with the kitchen, but I don't think it was completely unusable. So for both of these reasons, I am not minded to award Miss P a refund of her deposit."

I haven't changed my mind about the second reason. But Miss P feels that her character has been impugned by the allegation that she did not co-operate with BPF's request to allow an inspection of the kitchen, so I will deal with that matter straight away. Neither my provisional decision, nor any of BPF's submissions to our Service were intended to suggest that Miss P had done anything discreditable. If I wrote anything which gave her the contrary impression, then I did not mean to. My sole purpose in writing about that was to explain three things: why I was not upholding her complaint about BPF taking too long to deal with her section 75 claim, why BPF did not uphold her claim at the time, and why I thought she had not mitigated her loss.

Miss P says she never received any message from BPF to the effect that it would not consider her claim any further unless she agreed to an inspection. However, I have seen the email, which is dated 14 March 2017 and timed at 15:05. I don't know why she didn't see it

at the time. Perhaps it went to her junk folder. There could be any number of reasons. But I'm satisfied that it was sent.

The same email said that BPF had sent her photos to the Furniture Ombudsman. I haven't seen direct evidence that it did send the photos, but I think a contemporaneous email saying that it had just done so is enough evidence on which to fairly conclude that it's more likely than not that it did send them.

I hadn't realised that the Furniture Ombudsman hadn't inspected the kitchen before it wrote its report. I apologise to Miss P for assuming that it had. However, Miss P has told us that when the kitchen was removed, more problems were discovered which had not been apparent in the photos. So I can understand why BPF thought that photos alone were not enough evidence from which to draw conclusions about the state of the kitchen.

However, BPF emailed Miss P on 9 November 2016 to confirm that the retailer was going to attempt a third installation. I agree with her that this fact, without more, should have been enough evidence to prove to BPF that the second installation had not resolved the issues. So the only purpose which could be served by having an inspection of the kitchen would have been to establish what remedial work needed to be done if there was indeed to be a third installation attempt. It was not necessary to inspect the kitchen if the purpose was only to decide whether Miss P was entitled to exercise her right to reject the kitchen.

I have therefore reconsidered my provisional decision about whether Miss P was entitled to a refund of the deposit, in order to decide whether BPF should pay her interest on the refund.

If Miss P had wanted to replace the kitchen at the time, and BPF had refused to let her, then I would have upheld this aspect of her complaint. But I have seen two emails from Miss P, dated 6 December 2016 (to the retailer) and 13 March 2017 (to BPF), in which she said that she was willing to allow the retailer a third and final attempt to reinstall the kitchen. In the March 2017 email she specifically mentioned her legal right to reject the kitchen, so I'm satisfied that she was making an informed decision not to exercise that right yet, rather than just acquiescing in a third installation attempt because she didn't know she had an alternative. (This email was followed the next day by BPF's response in which it asked for an inspection.)

These emails are important, so I will quote from them:

> "I hereby request a plan for full completion of the ordered kitchen as per contract - including worktops - to be fully completed and ready for my sign off by 31st December 2016. My priority remains to have a fully functional kitchen provided by [the retailer]." [6 December 2016.]
>
> "Without prejudice I am willing to allow [the retailer] one further attempt at reinstalling my kitchen in a safe and professional manner… This is a more than reasonable request as under the Consumer Credit Act I raised my concerns in a timely manner, these have not been resolved and I am within my rights to reject this kitchen and null the contract." [13 March 2017.]

So I do not think it would be fair and reasonable of me to say that BPF should have overruled Miss P and insisted on the kitchen being removed instead. Since Miss P had consented to one more installation attempt, I remain of the opinion that it was reasonable of

BPF to find out what work needed to be done. That is why it wanted an inspection – it was not to verify that she was entitled to reject the kitchen.

I therefore will not require BPF to pay interest on the refund of the deposit, because I would not have ordered it to refund the deposit if the retailer had not already done so.

In my provisional decision, I proposed to order BPF to pay Miss P £350 for her inconvenience arising from issues with the kitchen. The retailer has paid her double that amount, as well as refunding the deposit. So since Miss P has already been paid more than I thought was necessary, I agree with BPF's argument that it should not have to pay her any more than it already has for her section 75 claim. In coming to that conclusion, I have considered what she has told me about damage caused by the retailer, but since she accepted its £700 payment in full and final settlement of that, I don't think it would be fair to order BPF to pay more for it.

However, I don't think the compensation the retailer has paid for the kitchen has anything to do with the £100 BPF promised to pay in April 2017 for poor communication, or the £50 for the SAR issues. So I don't think it would be fair to off-set the retailer's compensation against BPF's compensation for those two matters. They are separate issues, and BPF should still pay for them.

my final decision

So my decision is that I uphold this complaint in part. I order Clydesdale Financial Services Limited (trading as Barclays Partner Finance) to:

- Pay Miss P £50 (in addition to the £100 it paid her in 2016),
- Pay Miss P another £100, with simple interest on that payment at eight per cent a year from 3 April 2017 to the date of settlement.

If Clydesdale Financial Services Limited considers that it is required by HM Revenue & Customs to withhold income tax from that interest, it should tell Miss P how much it's taken off. It should also give her a tax deduction certificate if she asks for one, so she can reclaim the tax from HMRC if appropriate. (Miss P should refer back to BPF if she is unsure of the approach it has taken, and both parties should contact HMRC if they want to know more about the tax treatment of this portion of the compensation.)

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 29 June 2019.

Richard Wood
ombudsman