

The complaint

Mrs C complains about Santander UK Plc's ("Santander's") decision to reject a claim she made to them under section 75 of the Consumer Credit Act 1974 ("section 75").

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead I'll focus on giving my reasons for my decision.

Mrs C has, at times, been represented by her husband but for ease, and because Mrs C made the payment on her credit card that qualified her to make this section 75 claim, I'll refer only to Mrs C in this decision.

What I've decided – and why

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

I know it will disappoint Mrs C, but I agree with the investigator's view of this complaint.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

When something goes wrong and the payment was made, in part or in whole, with a credit card, as is the case here, it might be possible to make a section 75 claim. This section of the Consumer Credit Act (1974) says that in certain circumstances, the borrower under a credit agreement has a like right to claim against the credit provider as against the supplier if there's either a breach of contract or misrepresentation by the supplier.

I'm not determining the outcome of a claim that a party might have under section 75. I take section 75 into account when I think about what's a fair way to resolve the complaint, but I don't have to reach the same view as, for example, a court might reach when considering breach of contract or misrepresentation.

From what I can see, all the necessary criteria for a claim to be made under section 75 have been met.

Was there a breach of contract?

The Consumer Rights Act (2015) is the relevant legislation. It says, that the goods should have been of satisfactory quality when supplied and that the quality of goods is satisfactory if

they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances.

The evidence suggests there was a leak on the conservatory roof. I say that because the supplier's insurer accepted that was the case and provided £2,000 in settlement of the claim. The independent report also suggests there were faults with the construction of the roof as the inspector explained, amongst other points, that the muntin bars were ill fitting, flashing wasn't adequately fitted, and there was a need for a reinforcement bar. It also suggested there was an unacceptable gap between the bifold door and its frame.

So, I think there was a breach of contract as the goods were not of satisfactory quality when supplied.

In those circumstances the relevant legislation allows the business an opportunity to repair the goods. I can see that there was an agreement to do so in the spring of 2021.

But those repairs haven't taken place as Mrs C has explained they have sold adjacent land for development and that meant modifications were necessary to the conservatory. She's explained that those modifications "*...effectively mean the conservatory has been replaced and all issues are fixed.*"

Mrs C asserts that the price she obtained for the adjacent land has been impacted by the cost of work necessary to rectify the conservatory. But she's not provided any evidence to support that assertion such as an invoice or written evidence of how the deal to sell land for construction has been put together. It wouldn't therefore be fair to suggest Santander need to compensate Mrs C for any loss as I can't see sufficient evidence a loss has been incurred.

Mrs C has explained that all the issues are now fixed so I don't think Santander have a responsibility to complete any repairs as they're clearly no longer necessary.

Mrs C says the £2,000 insurance pay-out wasn't enough to cover the costs she incurred due to the leaking roof. She's suggested there were additional costs but hasn't been able to provide evidence of that. I think it's likely the insurance pay-out was in full and final settlement and that in those circumstances it wouldn't be fair to suggest Santander were unreasonable when refusing to compensate Mrs C further. But, even if I'm wrong about that, I'm not persuaded by the evidence Mrs C has provided that she has had to pay more to replace goods as a result of the water damage she says was incurred. I say that because the evidence of cash withdrawal she has provided isn't evidence that the cash was used to fund replacement items as I've not seen receipts for those items. I'm also not persuaded that evidence of cheque payments is evidence of cheque payment to resolve issues caused by the leak. The cheques referred to are for the same value as payments that were made to the supplier to fund the conservatory, they were also raised on, or around the time, I would expect payments to be made towards the conservatory. I think it's likely that the cheques were therefore for the initial funding of the project and that they do not relate to subsequent purchases for replacement of water damaged items.

It is clear, however, that Mrs C had to pay for an independent inspection to support her argument there were faults with the conservatory. I don't think she would have needed to do that if the conservatory had been of satisfactory quality and Santander should therefore refund the £480 (inclusive of VAT) the report cost her. They'll need to add 8% simple interest to that refund as Mrs C has been deprived of the money.

Putting things right

Santander should refund the cost of the independent inspection.

My final decision

For the reasons I've given above I uphold this complaint in part and tell Santander UK Plc to refund the £480 (inclusive of VAT) that Mrs C paid for her independent inspection. They should add 8% simple interest per year to that refund from the date of payment (29 March 2021) until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 20 December 2022.

Phillip McMahon
Ombudsman