

The complaint

Miss H complains that Santander UK plc won't pay to her the amounts that she's claimed from it under section 75 of the Consumer Credit Act 1974 for a garage that was supplied and installed but wasn't of satisfactory quality.

What happened

I issued a provisional decision on this complaint in June 2022 in which I described what had happened as follows:

"Miss H used her Santander credit card to pay £2,516 in August 2020 towards the cost of the supply and installation of a garage. The supplier's specification for the work said that the cost for supplying and building on the existing concrete base was £4,005 and that the cost for dismantling and removing the existing timber garage with asbestos roof and concrete bunker was £950. The total cost of the work increased to £5,032 and Miss H paid £550 in cash towards the cost of dismantling and removing the existing garage and the final invoice of £1,966 using a credit card from a different credit provider in September 2020.

Miss H had issues with the garage, including flooding, so she complained to the supplier and then to Santander under section 75. She also paid for the work to be inspected by an independent expert. She wasn't satisfied with Santander's response so complained to this service.

Our investigator recommended that Miss H's complaint should be upheld. He thought that there had been a breach of contract by the supplier but Miss H had paid £550 in cash to have the old garage torn down so that shouldn't be considered as part of her claim. He also said that the quoted cost for now replacing the garage of £13,000 was significantly disproportionate to what was originally paid so he thought that a refund of the cost of the garage would be fairer. He recommended that Santander should: refund £4,752 to Miss H (which he said was the cost price of the garage minus the £550 paid in cash); arrange for the garage to be torn down; reimburse Miss H the £540 that she paid for the independent inspection; reimburse her £132.51 for the cost of the water butt and dams that she bought to deal with the flooding; and pay her £250 for the distress and inconvenience caused.

Santander says that the contract price was £5,032, Miss H paid a 50% deposit on her Santander credit card, the actual cost of the removal of the original garage was £1,100, £550 of which Miss H paid in cash and the other £550 was included in the £1,966 that she paid on a different credit card. It says that the supplier will remove the replacement garage and will refund £3,932 to Miss H and that it will cover the other compensation of £922.51.

Miss H has asked for her complaint to be considered by an ombudsman. She says that the quote for the new replacement garage is much higher because construction costs have risen substantially and she won't be able to afford the new replacement garage so will be left with an empty garage pad and nowhere to store her

possessions. She also says that the removal of the original garage wasn't completed with due care and attention and part of the existing pad and her driveway were removed so a new base is required and new drains may need to be installed. She says that the supplier was abusive and she doesn't want it to do the work. She says that no money should be deducted as she's had to pay out hundreds of pounds and has as yet unknown losses due to electrical goods sitting in puddles".

I set out my provisional findings in that provisional decision which were as follows:

"In certain circumstances, section 75 gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there's been a breach of contract or misrepresentation by the supplier. To be able to uphold Miss H's complaint about Santander, I must be satisfied that there's been a breach of contract or misrepresentation by the supplier and that Santander's response to her claim under section 75 wasn't fair or reasonable, but I'm not determining the outcome of Miss H's claim under section 75 as only a court would be able to do that.

Miss H paid £2,516 towards the cost of the garage using her Santander credit card in August 2020, I understand that she paid £550 in cash to the supplier towards the cost of removing the original garage and she paid £1,966 to the supplier in September 2020 using a different credit card.

There were issues with the garage and Miss H paid £540 for it to be inspected by an independent expert in March 2021. The inspection report included photos of the issues with the garage and said:

"We would recommend that the garage is stripped and rebuilt, ensuring that the walls are vertical and that all concrete panels align and are connected securely and sealed. The roof timber should be reset and holding down straps installed. The roof should be reinstalled with care taken at the edge detailing. All rainwater goods should be installed securely and to a fall. Rainwater should be directed away from the garage and ideally into the rainwater drainage network within the curtilage of the site. Consideration should be given to installing a drainage channel at the front of the garage to direct water away from the door and prevent water ingress".

Santander says that that the supplier will remove the replacement garage and will refund £3,932 to Miss H and that it will cover the other compensation of £922.51. The £3,932 is the total cost of the replacement garage of £5,032 less the £1,100 that Miss H was charged for removing the original garage.

The supplier's specification said that it would dismantle and remove the existing timber garage with asbestos roof and concrete bunker – and I consider that the supplier has done that and that Miss H has received the benefit of it so I consider that it's fair and reasonable that she should pay for it. Miss H says that the removal of the original garage wasn't completed with due care and attention and part of the existing pad and her driveway were removed so a new base is required and new drains may need to be installed. The independent expert's recommendations didn't include the need for a new base or drains – and I'm not persuaded that there's enough evidence to show that the removal of the original garage wasn't completed with due care and skill or that the base or drains were damaged. I find that it's fair and reasonable in these circumstances for Miss H to be responsible for the £1,100 that she paid for the original garage to be removed.

Miss H has provided a quote for a new garage of £13,000 and says that the cost is much higher because construction costs have risen substantially and that it's not fair or reasonable that she's left with an empty garage pad and nowhere to store her possessions. I'm not persuaded that the cost of a like-for-like replacement of a garage that was to cost about £4,000 would have increased to £13,000, even though I accept that construction costs have increased substantially. I agree with our investigator that it wouldn't be fair or reasonable for Santander to be required to pay for a new garage in these circumstances and that it's fair and reasonable for it to reimburse Miss H for the amount that she paid the supplier for the replacement garage. I find that it would be fair and reasonable in these circumstances for Santander to pay £3,932 to Miss H.

Santander has said that the supplier will remove the replacement garage but Miss H says that she doesn't want it to do the work. As Miss H contracted with the supplier and it supplied and installed the garage, I'm not persuaded that it's inappropriate for it to remove the replacement garage – and I'm not persuaded that it would be fair or reasonable for me to require Santander to pay for a third party to remove the replacement garage.

Miss H paid £540 for the independent expert's report and £132.51 for the water butt and dams that she bought to deal with the flooding. Santander has agreed to reimburse her for those costs and I find that it should also pay interest on all of the above amounts that are to be reimbursed to Miss H. Miss H says that she's lost priceless mementos, memorabilia and personal items which were damaged or destroyed by the flooding but I'm not persuaded that there's enough evidence to show the value of those items or that they were damaged as a result of the issues with the garage or that it would be fair or reasonable for me to require Santander to pay her any compensation for those losses.

But these events will have caused distress and inconvenience for Miss H. Our investigator recommended that Santander should pay her £250 for the distress and inconvenience caused – and it has agreed to do so. I find that it would be fair and reasonable for Santander to pay £250 to Miss H to compensate her for the distress and inconvenience that she's been caused. I'm not persuaded that a higher award of compensation is justified in these circumstances or that it would be fair or reasonable for me to require Santander to take any action, other than as described above, in response to her complaint”.

Subject to any further representations by Miss H or Santander, my provisional decision was that I intended to uphold this complaint.

Santander has accepted my provisional decision but says that the remedy will be split between it and the supplier. Miss H says that her house is currently “under offer” and a sale would hamper the ability to remove the garage as it won't be able to be removed unless it's fully replaced.

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.

Having done so, I'm not persuaded that I should change my provisional decision. If Miss H doesn't want Santander to arrange and pay for the replacement garage to be removed, or it isn't possible for that to happen because the house has been sold, then she should inform Santander that she doesn't want it to be removed. But I'm not persuaded that her sale of the

house means that Santander should be required to replace the garage and I consider that the remedy that I set out in my provisional decision remains fair and reasonable.

Santander says that the supplier will be responsible for some parts of the remedy. That is something that's between it and the supplier. I'm unable to require the supplier to take any action and I consider that Santander is responsible for the actions required, whatever arrangement it has made with the supplier.

Putting things right

I find that it would be fair and reasonable for Santander to take the actions described in my provisional decision and as set out below.

My final decision

My decision is that I uphold Miss H's complaint and I order Santander UK plc to:

1. Arrange and pay for the replacement garage to be removed (unless Miss H tells it that she doesn't want it to be removed or it isn't possible for it to be removed because the house has been sold).
2. Pay £3,932 to Miss H to reimburse her for the cost of the replacement garage.
3. Pay £540 to Miss H to reimburse her for the cost of the independent inspection.
4. Pay £132.51 to Miss H to reimburse her for the cost of the water butt and dams.
5. Pay interest on the amounts at 2, 3 and 4 above at an annual rate of 8% simple from the date of each payment to the date of settlement.
6. Pay £250 to Miss H to compensate her for the distress and inconvenience that she's been caused.

HM Revenue & Customs requires Santander to deduct tax from the interest payment referred to at 5 above. Santander must give Miss H a certificate showing how much tax it's deducted if she asks it for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 9 August 2022.

Jarrold Hastings
Ombudsman