

The complaint

Mr S complains about the way Santander UK Plc dealt with his claim for a refund of £1,636 he paid using his credit card to fund a contract with a third party ("A").

What happened

Mr S had a dispute with A arising from a contract he entered into that was funded with his Santander credit card. The contract in question provided for A to apply charges in relation to the release of a motorhome that was the subject of a chattel mortgage under an agreement between Mr S and another company ("B"). A had acquired B's rights and interest under that agreement following B's entry into administration.

Mr S says he felt he had no option other than to pay the charges imposed by A, as he needed the motorhome to be released. But he didn't agree with them and subsequently contacted Santander to seek recovery of the money he'd paid.

Santander declined to reimburse Mr S. It said it wasn't liable to him, on the basis that the way the transaction with A was constructed fell outside the requirements for a claim under section 75 of the Consumer Credit Act 1974 ("CCA"). The payment hadn't been made directly to A – instead, it had gone via a different company ("C"). Mr S was unhappy with Santander's response, but the bank wasn't prepared to change its position so he brought his complaint to us.

Our investigator was satisfied, based on further investigation, that there was an association between A and C sufficient to establish the existence of a debtor-creditor-supplier relationship necessary to proceed with a section 75 claim. But she wasn't persuaded that A had made a misrepresentation or breached its contract with Mr S such that his claim might be successful.

The investigator noted that Mr S had expressed concern that the original contract with B hadn't permitted the imposition of charges in the event the motorhome needed to be returned to him. But she felt this was outside the arrangements funded by the credit card payment, and that this formed a separate agreement that A hadn't breached. So she didn't think Santander needed to reimburse Mr S.

Mr S didn't agree with the complaint outcome and asked for this review. In doing so, he's referenced a number of other assessments and decisions we've issued with similar circumstances, which he believes support his position.

My provisional decision

I recently issued my provisional conclusions setting out the events leading up to this complaint, and how I thought matters best resolved. I said:

"The CCA makes provision for connected lender liability in specific circumstances, set out in section 75. As Santander explained to Mr S in its correspondence with him, section 75 doesn't provide an automatic right to receive a refund. There are several

criteria that must be met for a successful claim against the creditor (or lender), which include that:

- the agreement with the lender is a debtor-creditor-supplier agreement falling within section 12(b) or (c) of the CCA*
- the agreement with the lender is not a non-commercial agreement*
- the debtor has, in relation to a transaction financed by the agreement, a claim against the supplier in respect of a misrepresentation or breach of contract*
- that claim relates to any single item to which the supplier has attached a cash price of more than £100 but not more than £30,000*

Here, there's no question that the financial limits apply to the transaction. Mr S paid a total of £1,636, but no individual item within that total was £100 or less. And Mr S's credit agreement with Santander is not a non-commercial agreement; that is, it's not a consumer credit agreement not made by Santander in the course of its business.

The key questions here are a) whether the agreement with Santander meets the definition of a debtor-creditor-supplier agreement falling within section 12(b) or (c) of the CCA, and b) whether Mr S has, in relation to the arrangements with A, a claim against A in respect of a misrepresentation or breach of contract.

does the agreement with Santander meet the definition of a debtor-creditor-supplier agreement?

Section 12(b) of the CCA says that a debtor-creditor-supplier agreement is a regulated consumer credit agreement being "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". And section 11(1)(b) says that "a restricted-use credit agreement is a regulated consumer credit agreement to finance a transaction between the debtor and a person (the "supplier") other than the creditor".

Mr S's agreement with Santander is a regulated consumer credit agreement. It was used to finance the transaction he was undertaking with A. But the payment was made to C. Santander has used this as the basis of its decision to decline Mr S's claim, saying it was unable to find a link between A and C. Our investigator did find such a link via Companies House records. She noted that A and C ultimately had controlling directors that appeared to meet the definition of "associates" as defined in section 184 of the CCA, which also created an association between the corporate bodies A and C.

Section 187 of the CCA covers arrangements between creditor and supplier. It says:

"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)."

Subsection (4) says the persons referred to in subsection (1) are:

- "(a) the creditor and the supplier;*
- (b) one of them and an associate of the other's;*
- (c) an associate of one and an associate of the other's."*

Given the associate connection established between A and C via the Companies House information, I'm satisfied that the way section 187 operates preserves the pre-existing arrangements link between Mr S, Santander and A, notwithstanding the involvement of C as the person to whom payment was made. As such, I find that this aspect of the section 75 requirement is met.

does Mr S have, in relation to the transaction financed by the agreement, a claim against A in respect of a misrepresentation or breach of contract?

Because Santander reached a different conclusion in respect of the debtor-creditor-supplier arrangements, this aspect didn't form part of its reasons for declining Mr S's claim. Our investigator did express a view on this point, but concluded that the claim would not be successful.

It's not necessary, for the operation of section 75, that a claim must be successful. It simply has to exist, either in misrepresentation or in breach of contract. Mr S undoubtedly has a claim. He argues that the rights acquired by A when it purchased them from B were no greater than the rights B itself held. He says A sought to impose a further condition on the release of the motorhome that was not afforded it by the original agreement, but that A held itself out as having the right to do so. That, claims Mr S, amounts to a misrepresentation by A that induced him to enter into the agreement with A and make the payment that he did. So I find that this aspect of the section 75 criteria is also met.

With this in mind, I have to conclude that Santander did not act fairly towards Mr S in respect of the reasons it gave for declining his claim. All the necessary aspects for a claim were met. So I've gone on to consider how Santander's response affected Mr S's position.

what was the impact of Santander's actions on Mr S?

It's apparent that Mr S was inconvenienced by the way Santander declined to look at his underlying claim, beyond its conclusion that section 75 didn't apply. In light of the trouble he's been put to in this respect, I'm minded to award compensation, which I assess at £100. I'm further inclined to say that Mr S has presented what appears to be a compelling claim in terms of misrepresentation by A. His submissions include a letter from B's administrators, which includes the following:

"Under the terms of the sale agreement

- the purchaser is obliged to seek the consent of the CM ("chattel mortgage") Holders to keep CM Vehicles in their possession*
- If the CM Holder does not wish to sell the CM Vehicle or otherwise make it available to the purchaser, then the purchaser is obliged to forthwith deliver the CM Vehicle up to them for no charge, save in circumstances where it does not have control of the CM motorhome"*

The administrators' letter indicates that the agreements A purchased from B provided that the mortgaged property (as I understand it, the motorhome and among other things, any fixed additions or accessories) should be delivered up to Mr S without at least some of the charges A held out as having the right to collect. I can see that A's assertion that having acquired B's rights from the original agreement it was able to make such charges could well amount to a misrepresentation on A's part that led Mr S to make payment.

In light of this, I'm minded to find that if Santander had received and properly considered Mr S's claim in misrepresentation, there was a reasonable prospect that it would have agreed to meet his claim. So I consider it appropriate to require Santander to reimburse the £1,636 he paid A, with suitable interest to reflect the time he's been without the use of his funds."

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 invited both parties to let me have any further comments they wished to make in response. Neither Mr S nor Santander has responded within the timescale I gave, or sought to question the events as I described them. So I don't have any persuasive reason to reach a different conclusion from the one I proposed in my provisional decision.

My final decision

For the reasons I set out in my provisional decision, which forms part of this determination, my final decision is that I uphold Mr S's complaint. To resolve it I require Santander UK Plc to take the following steps within 28 days of Mr S's acceptance:

1. Pay Mr S £1,636, together with annual interest at 8% simple from the date Mr S repaid the credit card transaction on his account to the date Santander settles the claim. If Santander deducts tax from the interest element of my award, it should confirm to Mr S that it has done so and provide him with the relevant tax deduction certificate
2. Pay Mr S £100 for his distress and inconvenience

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 1 August 2022.

Niall Taylor
Ombudsman