

The complaint

Mr S has complained that Santander UK Plc has rejected his claims against it under Section 75 of the Consumer Credit Act 1974.

What happened

Mr S bought a solar panel system including a voltage optimiser for his home in 2015. He paid for his purchase using his Santander UK Plc (Santander) credit card. Under the Consumer Credit Act 1974, this means that Santander is jointly and severally liable for certain acts and omissions of the installer/supplier.

Mr S complained to Santander in 2020, via his representatives. He said the benefits of the panels had been mis-represented to him and he would not have entered into the contract had he been made aware of the actual benefits of the system. Santander did not agree with Mr S, and so Mr S brought his complaint to this Service.

In January 2021 Mr S contacted his solar installer saying that some of his property had been damaged by a “hot spike” caused by poor installation of the voltage optimiser. He included a letter from an electrician explaining what happened, and a list of the items damaged. The installer rejected Mr S’ claim due to lack of evidence.

Mr S also contacted Santander about the damage. It rejected his claim saying that Mr S did not contact the installer until more than 5 weeks after the fault and the evidence from Mr S’ electrician did not confirm that the damage was caused by the installers. It also said that as repairs had been done before contacting the installer, they had had no opportunity to investigate the fault. Santander considered the onus was on Mr S to prove the damage was due to the actions of the installers and said that he had not done so. And by not contacting the installers in time, he had failed to mitigate his loss.

To be clear, Mr S has complained about the mis-representation of the benefits of his panels, and about the damage to his house and contents due to the heat spike as he considers this is due to poor installation of the optimiser, and as such is a breach of contract. Santander has responded to complaints on both these issues, and our investigation has considered both points of complaint.

The case was reviewed by one of our investigators. He said that he could see from the evidence supplied that there was a significant difference between the estimated performance on the MCS certificate and the actual performance of the system. So, the system could have been misrepresented. However, he’d borne in mind that in situations where we did consider the benefits had been mis-represented, we would be likely to recommend that the actual cost of the panels to a consumer should be reduced in line with the actual benefits of the panels over a reasonable period of time, effectively making them cost neutral. On the information he had, the panels would pay for themselves in around 8 years, which he thought was reasonable.

He did agree that there had been a breach of contract, as he felt the evidence that the fault was due to poor installation was credible, and that Mr S was entitled to make his claim to

Santander. He recommended that Santander arrange an inspection to ensure no further damage had occurred to Mr S' electric system and to cover the costs of repairing or replacing the damaged items.

Mr S commented that he felt the difference in estimated and actual generation was significant and submitted a letter from his electrician recommending regular inspections of Mr S' electrical system.

Santander did not agree with the view and broadly repeated its previous arguments, the hot spike could have been caused by other electrical work Mr S may have had done in his house, it didn't understand why Mr S didn't contact the installer until late in January, and he had started replacing items without giving the merchant the opportunity to put things right. It stated that only expensive items had been damaged and queried what the investigator meant by reasonable costs and concluded there was no evidence that these items had been damaged. Santander also said the damage could have been caused by Mr S' electrician and asked for confirmation that no claim had been made under Mr S' home insurance.

The investigator clarified that he agreed that the difference in generation between the estimate and actual was significant, but he wasn't recommending Santander to do anything, as he considered that the redress we would recommend would effectively leave Mr S in the same position. He did not think that Mr S was required to contact the merchant before raising a section 75 claim against the business and confirmed no insurance claim had been made. As agreement could not be reached the case has been passed to me for a 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.

Santander is familiar with all the rules, regulations, and good industry practice we consider when looking at complaints of this type. So, I don't consider it necessary to set all of that out in this decision. But I have considered Section 75 of the Consumer Credit Act 1974 and the relevant provisions of the Consumer Rights Act 2015.

Misrepresentation

I agree with the investigator's points about the misrepresentation of the panels. In the event that we find a solar panel system to have been misrepresented, we ask the business to calculate the likely benefits of the panels over a reasonable period of time, using evidence of the actual benefits and making assumptions around likely future benefits, and to ensure the consumer doesn't pay any more than that amount. In this case, taking into account Mr S' specific circumstances, carrying out this calculation would effectively not change his financial position, so I don't think it's necessary to ask Santander to do anything further here.

Breach of contract

The Consumer Rights Act says that a consumer can expect a service (such as installation of solar panels and associated items) to be carried out with reasonable care and skill. I think it is reasonable to expect the panels and the associated purchases are installed correctly and safely. So, if in this case the installation wasn't carried out correctly, the installer/supplier or Santander would be responsible for repairs or replacement of damaged items.

Mr S has supplied a letter from his electrician dated 16 December 2020 which explains what happened. In summary the electrician was upgrading the overall power supply to the house, turned off the power to the voltage optimiser, which led to a hot spike, increasing the voltage

dramatically. This sent up to 400v around the circuit damaging various items. The electrician found that the voltage optimiser had been wired in incorrectly, meaning that when the power was turned off, the neutral conductor was lost. He also stated that he had confirmed his assessment with Napit Technical (a government approved accreditation service for various building services)

In its rejection of the investigator's view Santander contended that the heat spike could have been caused by something other than the faulty wiring and the optimiser could have been damaged by someone else since the installation in 2015. The investigator has confirmed with Mr S that this was the first time he has any such significant work on his house that would require the power to be turned off in this way, and no-one had touched the optimizer before this. I see no reason to disbelieve Mr S' testimony, and while I accept there are many scenarios that could have caused the spike in power, and consequent damage, I find Mr S' testimony and that of his electrician to be credible. So, I consider that on balance of probabilities the damage did occur as the electrician has said.

Mr S has supplied a list of the items damaged, together with invoices for repairs or like for like replacements as applicable.

Santander raised concerns about the damaged items, saying only expensive items have been claimed for, and items it would expect to see damaged, such as a kettle or toaster were not claimed for. However, I disagree - the items claimed for range from light bulbs to televisions, and Mr S' explanation that it was items plugged into the circuit at the time that were damaged is reasonable, as is his explanation that he has a AGA style range and doesn't have a kettle or toaster.

Santander has also commented that around a month passed before Mr S contacted the installer about the damage, and that he started carrying out repairs/replacements before they had had the chance to carry out inspection. Again, I don't think Mr S' actions were unreasonable here. Given the time of year and risks around the actual and potential damage, I can understand why Mr S's first actions were to remedy the issues rather than seek redress.

In summary, based on the evidence I've seen, I consider it more likely that not that the damage to Mr S' house and items was caused by a heat spike caused by poor installation of the optimizer. It was reasonable for Mr S to expect the installation to be done to a safe standard and the failure to carry out the work with due care and skill represents a breach of contract. So, I think it would be fair for Santander to put things right.

Putting things right

Santander has queried what reasonable redress would be. As I consider the damage to the circuit and Mr S's items was due to breach of contract I consider it liable for the costs of the repairs or replacement of the damaged items as claimed by Mr S and as evidenced by the invoices he has shared. It should also arrange for a further inspection to Mr S' property to ensure there is no longer term damage to the circuits.

My final decision

My final decision is that Mr S' complaint should be upheld. In full and final settlement of it, I require Santander UK Plc to:

- Reimburse Mr S the amounts he has paid for the replacement items or repairs he has claimed for, plus 8 % interest* from the date he paid until the date of settlement.

- Arrange for an inspection of Mr S' system to check for any long terms damage to his property, and address any issue related to the hot spike that this identifies.

*If Santander UK Plc considers it's required by HM Revenue & Customs to take income tax from that interest, it should tell Mr S how much it's taken off. It should also give him a certificate showing this if he asks for one so he can claim the tax from HM Revenue & Customs.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 28 April 2023.

Sarah Holmes
Ombudsman