

The complaint

Mr R complains about the way Santander UK Plc handled his claim in respect of items he paid for using his Santander credit card which he said either did not arrive or were defective.

What happened

Mr R said he bought 18 items from a supplier I'll call C across 2019 and 2020 using his Santander credit card.

The items, which comprised largely of chess sets, were purchased across several separate transactions.

- 22 October 2019 - £1780.80 (referred to as "order one")
- 9 January 2020 - £718.29 (referred to as "order two")
- 9 January 2020 - £981.67 (referred to as "order three")
- 12 March 2020 - £110.91 (referred to as "order four")
- 21 September 2020 - £119.80 (referred to as "order five")

Mr R said order one consisted of nine items, order two consisted of five items, order three consisted of three items, order four was a payment he made to C to swap one item from order two that hadn't yet been delivered for another more expensive one, and order five was for one item.

Mr R said the items within each separate order did not all arrive at the same time but rather in batches. He said he often bought from C and it usually did this to avoid large import costs.

Mr R said the items from order one arrived across three dates in December 2019 and the items from orders two, three and five arrived on different dates across March 2020. He said order four was delivered in May 2020.

Mr R said as the orders were arriving it became apparent that six of the items were not delivered and 11 contained damaged pieces. He said one item was received undamaged.

Mr R made C aware that two items were missing from order one in January 2020. In March 2020 he told C there were problems with some of the items he'd received and in May 2020 he confirmed there were problems with 10 items. In August 2020 he reminded C of another four sets he hadn't received – identifying each set by its product code.

Mr R said C promised to look into what happened with the missing items and send replacements for the damaged pieces. He said this didn't happen and then C stopped responding to his emails in October 2020.

Mr R emailed C on 29 October 2020. He said he was rejecting all of the goods he'd ordered because he hadn't received everything and because there were damaged/missing pieces amongst what he had received.

Mr R contacted Santander in November 2020 and asked it to step in and help him get a refund.

Santander said it was too late under the relevant card scheme rules to attempt a chargeback (the mechanism for a bank to recover money paid to a supplier in certain situations) on most of the transactions with C. It did however consider order five to be in time and raised a chargeback – which was ultimately successful.

Santander also looked at Mr R's claim under Section 75 Consumer Credit Act 1974 ("section 75"). However, it declined to meet the claim as it didn't think the necessary criteria had been met. It said this was because it had funded a transaction between Mr R and a third-party payment processor that wasn't C so there was no debtor-creditor-supplier ("DCS") agreement.

Our investigator thought Mr R's complaint should be upheld. He said Santander should have raised a chargeback for Mr R on the four transactions it had said were out of time. He also thought Santander should have met Mr R's claim under section 75. He didn't think the involvement of the payment processor meant there was no DCS agreement. And he thought C had breached its contract with Mr R by failing to provide all of the items and by supplying items that were damaged. He asked Santander to refund the cost of orders one to four to Mr R – a total £3,591.67.

Santander didn't agree with the investigator. It said Mr R had received some of the items without damage so it wouldn't be fair for him to keep these and receive a refund. It proposed what it considered to be a fairer way of calculating appropriate compensation. In summary it said:

- In the absence of an itemized invoice from Mr R, it had identified the cost of most of the sets he ordered on C's website and it had estimated the cost of those that weren't.
- It was prepared to pay these sums to him in respect of the items he said he didn't receive.
- Based also on those costs, it estimated the cost of replacing the damaged parts and offered to pay this also.
- It's total offer to Mr R was £2,155 plus interest of 8% simple per annum.

Mr R did not accept Santander's offer. He said in summary:

- Santander had used the lowest possible estimate of the two sets he never received that weren't now on C's website.
- Santander's estimates for some of the damaged pieces, particularly the knights were too low. These pieces formed a large part of the value of the whole set.
- In any event, the damaged pieces are not available individually so he cannot source them elsewhere. The sets are effectively worthless in a damaged condition so only receiving the cost of the damaged pieces is not fair compensation.
- The offer fails to account for import tax of 20% that he had to pay on all orders.
- Estimating the loss as Santander has attempted, fails to acknowledge he rejected the goods in October 2020.

As no agreement could be reached, the matter was referred to an ombudsman for further review.

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.

There are two main ways a bank can help a customer to recover money paid to a supplier who hasn't provided what was promised. It can try to recover the money from the supplier through a process known as chargeback. Or it can assess whether its customer has a valid claim under section 75.

Chargeback

In certain circumstances the chargeback process provides a way for a bank to ask for a payment Mr R made to be refunded. While it is good practice for a bank to attempt a chargeback where the right exists and there is some prospect of success, the circumstances of a dispute means it won't always be appropriate for the bank to raise a chargeback. There are grounds or dispute conditions set by the relevant card scheme and if these are not met a chargeback is unlikely to succeed.

Santander didn't raise chargebacks in respect of orders one to four because it said it was too late under the relevant card scheme rules.

It was a condition under the relevant scheme rules for when goods were defective, that a claim had to be raised within 120 days of the transaction, or, within 120 days of 'the delivery date'. And it was a condition under the relevant scheme rules for where goods were not provided that the claim had to be made within 120 days of the transaction date if a delivery date was not specified, or within 120 days of the delivery date if it was specified.

C didn't defend the one chargeback Santander did raise. So, it's possible it might not have defended chargebacks on orders one to four. But I can't be sure of that. So, I still need to think about what might have happened if the chargeback was defended and the card scheme was asked to decide who got to keep the money.

It's not clear from what I've seen whether a delivery date was specified to Mr R in respect of each order. Or if it was, when that might have been. It's also possible the card scheme might have viewed the last date Mr R received items from each order as the 'delivery date'. And, I don't think it's clear enough from the rules that the card scheme would view a failure to deliver goods as a perpetual extension of this date.

So overall, I can't be sure enough from what I've seen that a chargeback would most likely have succeeded in this case. It appears it might not have satisfied the necessary conditions in respect of time limits.

Section 75

Section 75 provides that subject to certain criteria the borrower under a credit agreement has an equal right to claim against the credit provider if there's either a breach of contract or misrepresentation by the supplier of goods or services.

One of the criteria is that the claim must relate to a transaction financed by a DCS agreement. Broadly speaking given Mr R's claim in this case this means Santander must have financed a transaction between him and C.

Santander appears to have dropped its reservations about the DCS agreement since the investigator offered his view on the complaint. But for the avoidance of doubt, I've not been provided with anything in this case that makes me think the involvement of the payment processor meant Santander did not finance a transaction between Mr R and C.

Another of the criteria is that the claim must relate to a single item to which the supplier has attached a cash price between £100 and £30,000. Santander raised concerns that because Mr R didn't provide an itemised invoice, there was no way of knowing that all of the items he was claiming for were above £100.

Although Mr R paid for the items in five main transactions, as far as I can tell, each item that Mr R bought within those transactions was a 'single item' for the purposes of a claim under section 75 – for example, I've not seen anything to suggest the items were bundled up into any kind of package. So, each item needed to have been within the financial limits for Mr R to be able to claim for them.

Mr R said he was not issued with an itemised invoice by C. Santander said he should try to get one. But given C appears to have stopped responding to Mr R when he was trying to sort out the problems with his items in October 2020, it seems unlikely he'd get this now.

I don't think the lack of an itemised invoice was fatal to Mr R's claim here anyway. When Mr R raised his dispute with Santander, he provided his own list of 18 items that he bought from C. He said six of these were not delivered to him and 11 were delivered with either damaged or missing pieces. He said one item was delivered in satisfactory condition.

To help substantiate what was on his list of items Mr R has provided several emails between him and C between January 2020 and October 2020. Within these emails Mr R identified six sets that he hadn't received and 11 that had been delivered with damaged or missing pieces. C, at times, acknowledged Mr R's concerns and told him it would send replacement parts and look into what happened with the items he didn't receive.

Also within these emails, Mr R identified C's product code numbers for some of the items he had problems with. These are consistent with the items identified on the list Mr R prepared for Santander when he made his claim. I find this to be persuasive evidence that Mr R's list of items was most likely an accurate description of what Mr R bought from C.

On that basis I looked for the 18 items on Mr R's list on C's website to get an idea of what they cost. I was able to find most of them. The combined total of the cost of the items was considerably more than what Mr R paid to C with the average cost of an item around £300.

However, Mr R said that C frequently offered discounts of at least 40% on sets that cost over a certain amount and he would always use these when making a purchase. He's provided an extract he took of one such occasion on C's website – which shows 40% off items over \$299 (around £240 at the time of writing). Most of the sets Mr R purchased look to have been above this sum with a few exceptions. For those items below this amount it appears they would not have attracted a discount.

Allowing for such discounts, along with some broad estimates on the sets no longer available on C's website, and some inflation, the total cost of the sets I was able to find on C's website is broadly in keeping with what Mr R paid to C.

I accept it is more difficult to identify exactly what Mr R bought or to say exactly what each item cost without an invoice. However, from all of the above I am persuaded of two things,

firstly that Mr R most likely bought 18 items from C, and secondly, that the cost of each of those items was most likely over £100.

So, I think Mr R's claim in respect of the items he most likely bought was within the financial limits for section 75.

I've therefore considered whether there was likely a breach of contract by C in relation to those items.

In doing so I've considered the Consumer Rights Act 2015 ("CRA") which implied a term in the supply contract that any goods supplied would be of satisfactory quality. What is satisfactory depends on what a reasonable person would consider satisfactory taking into account things like the price and description of the goods. Appearance and finish are also relevant aspects when considering the quality of goods.

The full cost of order five (the eleventh item referred to above as damaged) was successfully charged back so I won't address that order any further in this decision.

Mr R provided photographs of the items he said arrived with defects. I've studied these and I think they show most of the defects Mr R described to Santander when he made his claim. Given how plausible and consistent I've found Mr R's testimony to be in this case, and given how his actions also support that testimony, I've also found the emails he sent to C in 2020 to be persuasive evidence that there were defects with 10 items from orders one to four.

Given the cost of the items and given they were brand new, I think a reasonable person would have expected them to be free from defects such as broken and missing pieces. From what I've seen it appears on balance that 10 of the items C supplied to Mr R in orders one to four were not of satisfactory quality. So, it appears there was a breach contract in respect of these items.

I also find on balance that Mr R didn't receive the six items he said were missing. He's shown us evidence of one package that was signed for by someone he didn't recognise – which he said contained two items from order one – whereas other packages he received were clearly signed by him. And he emailed C about these items in January 2020 to ask where they were, which seemingly was never resolved. I'm also persuaded from the emails Mr R sent to C in August 2020 that there were four other items he never received. It seems unlikely to me that he'd have sent these emails if he'd received the items. Particularly as it seems he had, at least up until then, a reasonable and long-established customer relationship with C.

Failing to supply the items Mr R ordered was also very likely a breach of contract.

Given when the orders were placed, I'm conscious that it may on the face of it appear like Mr R left it a long time before he told C about these issues. Mr R has said he often bought items from C over the years and sometimes parts would arrive damaged and C would replace them. He said this wasn't always a straightforward process and could sometimes take a long time due to processing requirements at C's end and customs/tax issues. Mr R said additionally, he left things longer because of the Covid-19 pandemic – which had hit India hard in 2020 – and C's website said there could be long delays in receiving items.

I've thought about all of this. I can perhaps understand why Mr R waited until he'd a) received everything that C said it had delivered to him and b) waited to see if the items he was missing were going to be delivered before raising the full extent of his problems with the orders with C. It made sense for Mr R to try and resolve issues all at once given the items were being shipped from abroad and the problems he said he'd encountered with C on

previous occasions when things needed to be returned or replaced. And I can see why Covid-19 related delays may have caused Mr R to wait longer than he might ordinarily have. So, all in all I don't think the time it took Mr R to report the issues to C would likely have compromised his claim in this case.

Mr R said one of the items he ordered was received in satisfactory condition. On that basis I've seen no reason why Santander should be liable to him for the cost of this item as it appears there was no breach of contract. Mr R ordered individual items from C. So just because the rest of the items were damaged does not mean Mr R was entitled to reject an item that was satisfactory. I think it's fair to deduct the cost of this item from the total Mr R was claiming from Santander. It appears the item cost around £350 on C's website. With the 40% discount Mr R said he usually secured on items of such cost, that's around £210.

Overall, I think it's likely C breached its contract with Mr R in respect of the 16 items that I've found on balance were either not supplied or arrived with defects/missing pieces.

Santander thought that a fair way to redress this was to pay Mr R the likely cost of the items that were not delivered along with a proportionate sum that reflected the likely cost of the damaged pieces on each set.

I don't think this is a fair way to put things right in this case. As Mr R has identified, he cannot source one off replacement parts as they are not widely available. And I think Mr R makes fair points that as a collector, the sets were bought for their aesthetic value and that as a result of the damage the items are of diminished value as heirlooms. So, paying Mr R the estimated cost of the damaged pieces is not a reasonable alternative to providing replacement pieces in this case.

I take note also that Mr R, having already asked C to put things right, and C having not done this within a reasonable period of time, was likely entitled to reject the defective items he was supplied with in any event under the relevant provisions within the CRA.

I think therefore that the fairest way of sorting things out here is for Santander to pay Mr R the full cost of the missing items and the items that arrived with defects/missing pieces. For the reasons I've explained above these are the sums Mr R paid to C for orders one to four, less £210 – a total of £3,381.67. Santander should pay interest on this amount from the date it declined to meet Mr R's claim in February 2021.

Mr R has said he would be happy for the items to be collected from him. I find it fair and reasonable that Santander make appropriate arrangements with him for the collection or disposal of them. This can include paying his reasonable costs of disposing of the items subject to proof of payment.

My final decision

My final decision is that I uphold Mr R's complaint. To put things right Santander UK Plc must:

- Make arrangements with Mr R for the collection or disposal of the 10 defective items from orders one to four at no cost to him.
- Pay Mr R £3,381.67 plus interest at 8% simple per annum from 19 February 2021 until the date of settlement*.

*If Santander UK Plc considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr R how much it's taken off. It should also

give Mr R a tax deduction certificate if he asks/ask for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

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

Michael Ball
Ombudsman