

## The complaint

Ms E complains about the way Santander UK Plc dealt with her claim for a refund of money she paid to a third party ("A") using her credit card.

## What happened

Ms E entered into a contract with A relating to release of a motorhome that was the subject of a chattel mortgage under an agreement between Ms E and another company ("B"). A acquired B's rights and interests under that agreement after B went into administration.

Ms E says A imposed charges totalling £1,228 to release the motorhome. She paid A as she was told that otherwise the motorhome would not be released. But she didn't think A was entitled to apply the charges and later contacted Santander to recover the money she'd paid. Ms E cited section 75 of the Consumer Credit Act 1974 ("CCA") in support of her claim.

Santander said it wasn't liable reimburse Ms E, on the basis that there was no breach of contract and that the way the transaction with A was constructed fell outside the requirements for a section 75 claim. The payment hadn't been made directly to A – instead, it had gone via a different company ("C"). Ms E complained to Santander about its response, but the bank maintained its position. So she brought her complaint to us.

Our investigator found 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 he wasn't persuaded that A had breached its contract with Ms E. He felt A had misled Ms E in respect of its right to impose the charges, but wasn't persuaded that was sufficient to amount to a successful claim in misrepresentation. Ms E didn't accept the investigator's conclusion, so the matter was passed to me for review.

## My provisional decision

I recently issued a provisional decision setting out my thoughts on the key complaint points and how I thought matters might best be resolved. I said:

*"Santander's original position that prompted Ms E to complain was that section 75 didn't apply to the transaction, due to a break in the debtor-creditor-supplier chain. The bank hasn't commented on the investigator's conclusions in this respect, so it isn't clear whether it now accepts that section 75 does apply. It therefore falls to me to make a finding on this key point.*

*The CCA makes provision for connected lender liability in specific circumstances, set out in section 75. 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. Ms E paid a total of £1,228, but no individual item within that total was £100 or less. And Ms E'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.*

*So the remaining 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 Ms E has, in relation to the arrangements with A, a claim against A in respect of a misrepresentation or breach of contract.*

*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"*

*Ms E's agreement with Santander is a regulated consumer credit agreement. It was used to finance the transaction she was undertaking with A. But the payment was made to C. Santander said that broke the necessary chain. Our investigator found a link via Companies House records. He 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 Ms E, 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.*

*Although Santander reached a different conclusion in respect of the debtor-creditor-supplier arrangements, it went on to set out its view on whether there had been a breach of contract anyway. This conclusion forms part of its reasons for declining Ms E's claim. Our investigator did express a view on this point, but concluded that a breach of contract claim would not be successful. I've no persuasive reason to reach a different conclusion from Santander or our investigator in relation to whether A breached its agreement with Ms E.*

*However, that isn't the only grounds under which Ms E might claim against*

*Santander under section 75. She can also seek to claim in misrepresentation, which is really the basis in which her main arguments are founded. Ms E argues that the rights acquired by A when it purchased them from B were no greater than the rights B itself held. She 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 Ms E, amounts to a misrepresentation by A that induced her to enter into the agreement with A and make the payment that she did. I find that this aspect of the section 75 criteria is also met.*

*Santander hasn't set out its position in terms of a defence to a misrepresentation claim. It might not have contemplated this given its stated position in terms of the debtor-creditor- supplier agreement. But given that it did offer a view on whether there had been a breach of contract, I'm satisfied the misrepresentation claim was within the ambit of the bank's reasonable considerations.*

*I have to conclude that in reaching the conclusion it did in respect of the debtor-creditor- supplier arrangements and failing to address this key aspect of Ms E's claim, Santander did not act fairly towards her.*

*I've gone on to consider how Santander's response affected Ms E's position. It's apparent that Ms E was inconvenienced by the way Santander declined to look at her underlying claim, beyond its initial conclusions that there was no breach of contract and that section 75 didn't apply. In light of the trouble she's been put to in this respect, I'm minded to award compensation, which I assess at £150.*

*I'm further inclined to say that Ms E presented to Santander a reasonable set of arguments in terms of misrepresentation by A. Her 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 Ms E without at least some of the charges A held out as having the right to collect.*

*I'm conscious our investigator didn't think what A had said amounted to misrepresentation, notwithstanding his finding that A had undoubtedly misled Ms E. That isn't an argument Santander has put forward, and based on the evidence I've seen, it's by no means certain that such a distinction ought to apply in Ms E's case. While she might have doubted A's right to charge the fees, I think that falls rather short of my being able to say that she wasn't induced to enter into the contract on this basis, or indeed other representations by A, such as the suggestion it held power not to release the motorhome unless she paid.*

*With this in mind, I am inclined to decide that if Santander had received and properly considered Ms E's claim in misrepresentation, there was a reasonable prospect that it would have agreed to meet her claim. So I consider it appropriate to require Santander to reimburse the £1,228 she paid A, with suitable interest to reflect the time she's been without the use of her funds."*

I invited both parties to let me have any further comments they wished to make in response

to my provisional conclusions.

### **Response to my provisional decision**

Both Santander and Ms E responded seeking clarification of the proposed redress, which I provided to them. Neither party has raised any additional points or query my findings.

### **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.

In light of the fact that neither Ms E nor Santander had anything to add to the findings set out in my provisional decision (which I've reproduced here and which forms part of this final decision), I'm satisfied it represents an appropriate way to resolve the dispute. For the reasons I've set out above, I'm upholding Ms E's complaint.

### **My final decision**

My final decision is that to settle this complaint, Santander UK Plc must take the following steps, no more than 28 days after it receives Ms E's acceptance of this decision:

1. pay Ms E £1,228, together with annual interest at 8% simple from 19 March 2020 (being the date Ms E repaid the credit card transaction on her account) to the date Santander settles the claim. If Santander deducts tax from the interest element of my award, it should confirm to Ms E that it has done so and provide her with the relevant tax deduction certificate
2. pay Ms E £150 for her distress and inconvenience

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms E to accept or reject my decision before 12 December 2022.

Niall Taylor  
**Ombudsman**