

## The complaint

Mr R complains that Santander UK Plc won't refund a payment he made for goods using his credit card.

## What happened

In June 2021, Mr R purchased some machinery online using his Santander credit card. The cost of the machinery was £279.98. Around two months later the machinery stopped working and Mr R asked the seller to arrange a repair or a replacement. The seller told Mr R that the machinery had no warranty and no repair or replacement would be offered. Mr R then approached Santander for help in getting his money back.

When Santander received Mr R's refund request, it said that he was out of time for them to attempt a chargeback through the card scheme. However, it said it would consider his claim for a refund under section 75 of the Consumer Credit Act 1974 ("section 75") instead. After reviewing the claim, Santander said that the required debtor-creditor-supplier ("d-c-s") agreement wasn't in place for a section 75 claim to succeed.

I sent Santander and Mr R my provisional decision on 4 January 2023. I explained why I thought the complaint should be upheld. I said:

- The effect of section 75 of the Consumer Credit Act 1974 ("section 75") was that if Mr R had a claim for breach of contract or misrepresentation against the seller of the machinery, he could bring a like claim against Santander, provided certain conditions were met.
- One of those conditions was there needed to be a debtor-creditor-supplier ("d-c-s") agreement in place. Our investigator who initially considered the complaint had explained why they thought there was a d-c-s agreement in place and Santander hadn't contested that analysis. I also considered there to be a d-c-s agreement in place.
- I was satisfied that the machinery Mr R had purchased wasn't of satisfactory quality. This is because it had failed after a little over two months and Mr R had provided persuasive evidence to demonstrate that the cause of the failure was mechanical and premature and unlikely to have been caused by user error.
- I said that as I was satisfied there had likely been a breach of contract by the supplier for which Santander could be jointly responsible for, it had therefore acted unfairly in declining Mr R's claim and subsequent complaint. As a repair or replacement didn't appear possible, I said Santander should collect the machinery from Mr R at no cost to him and refund the amount he paid, adding 8% simple interest per year to that refund from the date of payment to the date of settlement. I also thought Santander should pay a further £100 compensation for the upset and inconvenience it caused in the poor way it dealt with Mr R's requests for a refund.

Mr R accepted that outcome, but Santander didn't. In summary, it said the platform which

Mr R used to make the purchase from the seller had specific terms and conditions around returns for items purchased and also operates a money back guarantee. It said these terms say that sellers are entitled to decline a request to return items after a certain period of time. It said Mr R hadn't demonstrated he'd requested a refund from the platform and it wasn't clear why he hadn't done that. Further, it said that Mr R hadn't shown the machinery he purchased was sold as new and not used, as this would have a material impact on whether it was reasonable to expect it to fail when it did.

### **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.

Whether or not the platform the seller used to sell the machinery had its own guarantee and terms and conditions is largely irrelevant, as is whether Mr R approached them first to request a refund. This is because section 75 doesn't require Mr R to approach the seller first, and, in any event, the platform wasn't the seller.

The platform's terms and conditions or guarantees don't impact on whether the seller itself had breached its contract with Mr R, which included implied terms about providing goods of satisfactory quality. The platform may have offered Mr R a possible alternative route to seek redress, but whether Mr R chose to utilise it or not, doesn't impact whether he could make a successful claim under section 75 against Santander.

Mr R did, however, reach out to the seller first and as Santander is aware, it declined his request for a repair, replacement or refund. The issue for me to consider therefore is whether Santander treated Mr R fairly when it declined his claim and complaint.

As I set out in my provisional decision, I'm satisfied that the machinery failed prematurely because of an inherent mechanical defect. Mr R has supplied persuasive evidence to demonstrate that the part that failed ought to have lasted many years under normal operating conditions and was housed inside a sealed unit that would have required disassembly to gain access to. It seems most likely therefore that the part that failed wasn't sufficiently durable and failed prematurely. The machinery wasn't therefore of satisfactory quality and this was a breach of contract.

Santander says that Mr R hadn't demonstrated the machinery was sold as new. Mr R has now provided evidence that it was sold as a new item and therefore I don't see any reason to reach a different conclusion as to whether there was a breach of contract. Neither party has made any specific comments in relation to the redress I proposed to put things right, including the compensation for the poor way Santander dealt with Mr R's request for a refund. I'm therefore satisfied that is a fair way to put things right.

### **My final decision**

For the reasons given above, I uphold this complaint and direct Santander UK Plc to:

- Refund £279.98 representing the cost of the machinery, adding 8% simple interest per year on that refund from the date of payment to the date of settlement.
- Collect the machinery at no cost to Mr R.
- Pay Mr R £100 compensation for the inconvenience and upset caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or

reject my decision before 23 February 2023.

Tero Hiltunen  
**Ombudsman**