

The complaint

Mr P complains Santander UK Plc (Santander) unfairly rejected his claim under section 75 of The Consumer Credit Act 1974 in respect of a garden canopy. He believes it wasn't of satisfactory quality and it wasn't installed adequately.

What happened

In August 2020, Mr P purchased a garden canopy from a company who I will refer to as T. It was also agreed they would install it. The total cost was £3,900 of which Mr P paid £3,000 on his Santander credit card.

Shortly afterwards, he complained about a number of issues with the canopy. This included:

- The roof panels were installed upside down;
- The guttering drains into the garden rather than the drain, flooding the lawn;
- The canopy leaks on the inside when it rains and condensation gathers inside;
- The aluminium coating is scratched so the rainwater is getting underneath it;
- The end panels have been bent into position and they don't sit flush.

In September 2020, Mr P spoke with T to discuss the above issues and a number of fixes were agreed. In October 2020, T said they would arrange for a fitter for the drains. They also said Mr P still owed £900. This information was repeated again in March 2021 and T confirmed they had the required parts. Around May 2021, T arranged for repairs to be carried out. Despite this, Mr P said many issues remained including the issue with the drainage.

Mr P made a chargeback claim but it was unsuccessful. He later raised a section 75 claim stating there had been a breach of contract. Santander declined the claim stating that, as there were no invoice or terms and conditions, they couldn't consider the claim.

Unhappy with Santander's response, Mr P referred the complaint to our Service. The investigator recommended the complaint wasn't upheld. He said based on the evidence, the canopy wasn't of satisfactory quality meaning there was a breach of contract. However he said following the repair in May 2021, there was insufficient evidence the faults remained. Mr P disagreed and maintained his position.

Since then, in February 2023 Mr P arranged for an independent company to look at the canopy and provide quotes about replacing it. I will refer to them as R. They said the material of the roof is starting to discolour which would normally be present after five to seven years of use. They recommended a full structural check as they were concerned about its stability and safety, commenting it may not be fitted to the required safety standard. They said there were clear gaps between the canopy and the house. They provided a number of quotes such as replacing the roof only (around £1,900) or providing and installing a new canopy (£5,900 to £7,500).

A copy of the same was provided to Santander for their consideration. They responded to say that they didn't think R was impartial as it's likely they were upselling. They also said Mr

P hadn't paid the remaining £900 and by not doing so, he was in breach of contract. They commented, had he paid this outstanding sum, repairs would have been carried out.

In April 2023, I issued my provisional decision outlining my intentions to uphold the complaint. I said:

In certain circumstances, section 75 gives a consumer a right to claim against a supplier of goods (T) or the provider of credit (Santander) if there's been a breach of contract or a misrepresentation. I'm satisfied the requirement for a debtor-creditor-supplier agreement is present and Mr P paid £3,000 for the canopy via his credit card. As the relevant circumstances are met, I find Mr P was able to make a section 75 claim.

However, I must stress in order to uphold Mr P's complaint, I would need to be satisfied that there's been a breach of contract or a misrepresentation and that Santander's response to the section 75 claim wasn't fair nor reasonable.

I'm aware Santander declined the section 75 claim stating there was no evidence of an invoice or contract so they were unable to determine the exact terms. While I agree there is no invoice or formal written contract, I can consider what's likely to have been agreed. The absence of such documents doesn't mean there can't be a breach of contract. I've been provided with a chain of emails between Mr P and T. Having reviewed them, I can see Mr P made an enquiry, a quote was provided by T for the supply and installation of the canopy, Mr P confirmed he wished to go ahead and T later confirmed it had been installed. Based on this, it's clear there was a contract between Mr P and T for the supply of goods and services. I find Mr P provided enough information for Santander to investigate a section 75 claim and it was unfair for them to reject it on the basis that a written contract/invoice wasn't provided.

In this case, the relevant law that applies is The Consumer Rights Act 2015 (CRA). It implies a term that the goods T supplied should be of satisfactory quality. This is taken to mean the standard that a reasonable person would consider satisfactory, taking account of the description, the price paid, the state, condition, fitness for purpose and durability. There is also an implied term that the service delivered must be carried out with reasonable care and skill. That is, the standard one would expect of a reasonably competent person in that trade or profession.

Based on the chain of emails between both parties and how quickly Mr P reported the problems (within 30 days), I find there were issues with the canopy and its installation. Having reviewed the photos, I can see evidence of water stains/damage inside the canopy which supports Mr P's claims that it leaks. I can also see some panels are misaligned and not sitting level with others. Equally, in one picture, there appears to be a large gap between the panels and the coating appears to be wearing away. These pictures are dated within weeks of the installation.

I don't purport to be an expert in installations of such structures but for the above reasons, I'm not persuaded a reasonable person looking at these pictures and emails would conclude this canopy had been installed with reasonable skill and care and it was fit for purpose. Especially if it's leaking from the inside as presumably one of the main purposes of the canopy is to keep rainwater out.

It's clear there was communication between the two parties about the above as Mr P confirms in writing the agreed remedial actions. Thereafter, T says repairs would be carried out and the required parts had been delivered. In light of this evidence, I consider it reasonable to say the canopy wasn't fitted with reasonable care and skill meaning it wasn't fit for purpose.

I've carefully considered the comments made by company R who recently looked at the

canopy. Although I note Santander's comments about their impartiality, I consider them to be independent and they've provided commentary about the stability and safety of the canopy in addition to providing quotes for a replacement. I find R's findings are consistent with Mr P's communication with T about the issues. In the absence of any other evidence to contradict it, I consider it fair to rely on their comments.

R comments the roof is showing signs of discolouration which in their opinion would normally happen after five to seven years. Here, the canopy has been installed for less than three years and there's no evidence to indicate there is any other reason for this premature deterioration. I'm not persuaded a reasonable person would expect a brand new canopy to show signs of such wear after such a period of time. For that reason, I'm also not convinced the goods were of satisfactory quality meaning there was a further breach of contract. R's comments about the stability and safety of the canopy further supports my belief it wasn't installed with reasonable skill.

Taking everything into account, I'm not persuaded the canopy was of satisfactory quality, nor was it installed with reasonable care and skill meaning there was a breach of contract. Where this happens, the CRA allows Mr P to ask for a 'repeat performance' to put the problems right which is what happened. A repair was carried out in May 2021 (although what exactly was fixed is unclear) and based on R's comments, it's clear issues remain.

Mr P says he has lost confidence in T and doesn't want a further repair. Given what has happened, T no longer trading and the significance of the issues, I can understand why he feels that way. Based on R's concerns about the stability and safety, I don't consider a further repair to be a reasonable remedy. Equally, in light of the quotes for a new canopy (between £5,900 to £7,500), I don't consider replacement to be a fair remedy. I say this because it exceeds what Mr P contracted to pay (£3,900) meaning he would be put in a better position had this situation not occurred".

I concluded by saying, I consider the most fair way to put things right is for Santander to allow Mr P one of the following remedies which are permitted under the CRA.

1. Price reduction of £900 – meaning Mr P would keep the canopy but he wouldn't be required to pay the outstanding amount of £900, which is the amount he still owes to fulfil the contract;

2. Rejection of the goods – Santander to refund the £3,000 Mr P paid for the canopy plus pay 8% simple interest per year from the date of payment to the date of settlement. In addition, Santander to cover the costs of its removal and disposal and pay for any reasonable remedial works on Mr P's house as a result of its installation.

In response to the provisional decision, Santander said they had no further comments to make. Mr P confirmed he wished to reject the goods.

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.

On the basis I haven't been provided with any further information to change my decision I still consider my findings to be fair and reasonable in the circumstances.

I'm not satisfied Santander acted fairly when considering the section 75 claim. I find there was a breach of contract by T as the canopy wasn't of satisfactory quality nor was it fitted with reasonable skill and care. So to put things right, Santander must allow Mr P

to reject the goods as outlined above.

Therefore, my final decision is the same for the reasons as set out in my provisional decision.

My final decision

For the reasons set out above, I've decided to uphold Mr P's complaint.

To put things right, Santander UK Plc must:

- Allow Mr P to reject the goods;
- Refund the £3,000 Mr P paid for the canopy plus pay 8% simple interest per year from the date of payment to the date of settlement*;
- Pay the cost of the canopy's removal and disposal and pay for any reasonable remedial works on Mr P's house as a result of its installation.

* If Santander UK Plc considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr P how much it's taken off. It should also give Mr P a tax deduction certificate if he asks 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 P to accept or reject my decision before 18 May 2023.

Simona Reese
Ombudsman