DRN-4154804

The complaint

Mr R complains Santander UK Plc has failed to honour a claim he brought under section 75 of the Consumer Credit Act 1974 ("CCA"). Mr R is represented in his complaint by a claims management company. When I refer to things said or done by Mr R, this should be taken to include things said or done by his claims management company.

What happened

Mr R had, in the past, purchased a property in Turkey from a well-known timeshare and holiday club membership seller. He says he had a conversation with a company, "TSL", on 20 June 2019, who persuaded him to pay £5,140 on his Santander credit card. Mr R says TSL subjected him to a high-pressure sales pitch during which a number of representations were made. These included that TSL would introduce him to another company, "OA", who would prepare and manage a legal claim for the mis-selling of the Turkish property, which would take around six months and be covered by an after the event insurance policy arranged by OA.

Mr R says he received a contract a month after making his payment, and this appeared to support the representations which had been made to him verbally by TSL. However, Mr R says TSL failed to do anything at all. No claim of any kind was undertaken and Mr R says OA informed him the claim could not be litigated nor could the relevant insurance be put in place. Mr R says TSL effectively did nothing at all for the money he paid.

In March 2022, Mr R approached Santander via his current claims management company, to make a claim under section 75 of the CCA in respect of the payment made to TSL. He made the claim on the grounds of TSL's breach of contract in failing to carry out any work as agreed, and misrepresentation by TSL.

Santander took a long time to respond to Mr R's representatives and, losing patience, he contacted the Financial Ombudsman Service. Because no complaint had been made to the bank at this point, we contacted Santander to ask them to look into the matter further. This resulted in the bank sending a response to the section 75 claim on 29 June 2022. It rejected the claim, reasoning that there was no evidence OA had failed to take forward a claim for Mr R, and that the paperwork provided didn't show any breach of contract or misrepresentation had occurred. A complaint was made about this decision, but the bank stood by it in a letter of 24 August 2022.

Dissatisfied with this response, Mr R got back in touch with the Financial Ombudsman Service to ask for it to provide an independent assessment. One of our investigators began looking into the case in March 2023. In April 2023 he sent an initial assessment of the complaint, in which he explained that he wouldn't be asking Santander to take any further action. His reasoning could be summarised as follows:

- It had been too late, by the time Mr R contacted Santander, to reclaim any funds via the "chargeback" scheme.

- Mr R hadn't provided evidence that the services he'd paid for under the contract with

TSL hadn't been provided, despite being asked for this. While there was some testimony that nothing had been done by TSL, this wasn't persuasive.

Mr R disagreed with our investigator. He questioned how it was possible for him to prove that TSL had failed to carry out the work it had promised. He said it was like asking him to prove he hadn't received a parcel in the post. He reiterated that he'd received no communication regarding a compensation claim in the almost four years since he paid TSL.

Our investigator reviewed Mr R's comments but remained of the same view, reasoning:

- He couldn't be sure what TSL had told Mr R verbally, but Mr R had signed a document in July 2019 which outlined the services TSL would provide. It appeared from this document that TSL's primary service was to dispose of Mr R's "timeshare and fractional membership" – and this is what the fee he had paid was described as being for.

- The contract also said TSL would be compiling a file for Mr R to pass on to OA, if it was believed that Mr R's timeshare was mis-sold. It stood to reason that if they didn't believe the timeshare was mis-sold then no claim would end up proceeding.

- Mr R would need to show that TSL had failed to extract him from his timeshare membership in order to show there had been a breach of contract. Evidence of this could include recent payment demands from the resort. No such evidence had been forthcoming.

Mr R asked that his case be considered by an ombudsman, so the matter has been passed to me to decide. Mr R's claims management company made the following arguments when responding to our investigator:

- He wanted to make it clear he had no timeshare to be released from. He had purchased a property, not a timeshare. He believed, because this is what he had been told, that TSL would be pursuing, or arranging to be pursued, a compensation claim in respect of the mis-sale of this property.

- There would be little financial sense in him being released from his property purchase or related maintenance contracts as he would be surrendering a property he'd paid £120,000 for. It wasn't even possible to do this. This wasn't what he'd asked TSL to do.

- TSL's contract was poorly worded and didn't reflect the agreement he'd made with the company. This was a classic example of a "bait and drop" scam which was common in the industry. Despite making representations about a compensation claim, TSL had no intention of following through with this and the contract didn't reflect the verbal discussions which had taken place.

- He had since engaged a UK law firm who were in fact progressing a claim for him in respect of the property purchase, so it wasn't the case that he didn't have a valid claim for TSL to have progressed for him. The company had also effectively ceased to trade.

- It had come to light that a company with common directors/shareholders to TSL had been put on the Financial Conduct Authority's Warning List and was acting in breach of the law. This meant TSL's contract with him had been illegal and voidable.

After reviewing Mr R's case I arranged for some further questions to be put to his claims

management company. I asked if OA could be contacted to see if they had ever been passed a file by TSL for Mr R. I also noted that, in my experience, contracts between consumers and TSL tended to include more paperwork than had been provided to date. I asked that an effort be made to check if there were any further documents relating to Mr R's contract with TSL. Finally, I asked that Mr R provide any records of contact, such as emails, he'd had with TSL before, during and after the process of entering a contract with them. This would include any complaints he'd made to TSL.

Mr R's claims management company replied that OA refused to speak to them or respond to written requests so they couldn't determine if they'd been passed funds or a file for Mr R. In any event they said OA was not a law firm and Mr R had paid for his claim to be passed to a law firm. It said Mr R had no other documents relating to the agreement with TSL, and that he had never communicated with TSL in writing, it had all been over the phone.

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.

When someone pays for goods or services using a credit card, and something goes wrong with their purchase, their credit card provider may be able to help them obtain a refund via the dispute resolution scheme commonly known as "chargeback", or they may have an obligation to honour a claim brought under section 75 of the CCA. I'll consider these avenues in turn.

Chargeback

Our investigator considered it had been too late, by the time Mr R contacted Santander, for a chargeback to be attempted. These findings don't appear to have been challenged and so I don't propose to go into great detail on the matter of chargeback, but in short chargeback is a means of claiming back payments made by plastic card (e.g. debit or credit card).

Chargebacks are subject to rules set by the card scheme whose logo appears on the card which was used to make the payment (most commonly Visa or Mastercard). The rules cover various areas, including what kinds of disputes can be pursued, the evidence required and the window of time in which a chargeback can be attempted.

It's unclear which of the card scheme's Mr R's card belonged to. However, having considered the rules of both the Visa and Mastercard schemes, I agree with our investigator that it was too late, by the time Mr R contacted Santander, for a chargeback to be attempted.

Section 75 of the CCA

Section 75 of the CCA allows a person who has paid for goods with a credit card, so long as certain technical conditions are met, to claim against their credit card provider in respect of any breach of contract or misrepresentation by the supplier of the goods or services.

It's not been disputed that the technical conditions for a section 75 claim to be made have been met, so on this point I'll say only that, having reviewed the evidence, I am satisfied that the conditions have indeed been met. Where there has been a dispute is over whether there has been a breach of contract or misrepresentation by TSL in respect of which Mr R has a claim he can bring against Santander.

I will say that there is a real lack of evidence in Mr R's case. We have no direct testimony from Mr R, and the only relevant documentary evidence which has been provided to support

his case is a one-page document signed by him on 21 July 2019 (a month after he paid TSL) bearing TSL's letterhead and titled "Confirmation of Services Provided". This document outlined various services TSL, OA or an untitled law firm would be carrying out for Mr R.

The document explains the purpose of the money Mr R has paid in the following way:

"The Initial Fee charged by TSL is for us to take on your matter generally as your mediator between the parties. We shall act with the sole purpose of cancelling any related services (including but not limited to Maintenance Fees, Perpetuity clauses and Testamentary matters) regarding the mis-selling of your UK/Overseas Freehold Property/Timeshare related product. The Fee charged to you is not a referral fee to OA or the [law firm]."

The document also explained that TSL would be passing on Mr R's file to OA, who would:

"…finalise your claim matter preparation and where appropriate arrange for ATE insurance and/or funding before they pass the matter forward to their Panel Law Firm (PLF) for them to take on your matter".

Somewhat confusingly, the document listed a number of other things TSL would provide, some of which appeared to overlap with or be in addition to what the "Initial Fee" was purportedly for:

"

a. *Assess claim potential and identify appropriate route for exit strategy or financial recovery*

b. *Relinquishment service (disposal of Timeshare or Fractional membership)*

c. *Financial recovery service (where Timeshare and Fractional memberships are believed to have been mis-sold)*

d. *As above for related Freehold purchases (where appropriate)*

e. *Provide advice, guidance, or cancellation services for Testamentary, Maintenance, Community & Perpetuity obligations*

f. *Prepare and submit claims to 3rd party (where appropriate)*

g. *After a successful claim matters, TSL will dispose and/or terminate property/ownership directly or via a PLF (in appropriate jurisdiction)*

"

I would agree with the remarks of Mr R's claims management company that this document is poorly worded. It's not entirely clear from it what TSL committed to do for Mr R. However, I suspect this was not the only paperwork produced during the course of Mr R's dealings with TSL, in part due to the fact that other contracts I have seen involving TSL have consisted of a larger set of documents, and also because some of the terms have been capitalised and appear to be "defined terms" which would have been defined elsewhere in the paperwork. Mr R says he has nothing else however, so it has been necessary to proceed on the basis of this single document.

It appears Mr R signed it despite it not reflecting what he says were the verbal conversations he'd had with TSL and month earlier. It hasn't been said that Mr R challenged this, so it

would appear he was content at the time with what the document said about the services TSL would provide.

Overall, I think it is difficult to come to any firm conclusions as to what TSL had agreed, contractually, to do for Mr R. On balance, however, I think TSL had at least agreed to arrange for him no longer to be liable for maintenance fees on his Turkish property[1], and to prepare a file for a potential mis-selling claim in relation to that property, and pass it on to OA. It had also agreed to carry out a vaguely defined intermediation role. Contrary to the position of Mr R's representatives, I do not think TSL agreed to conduct the claim itself or ensure that OA or the untitled law firm progressed the claim. I do however, conclude that TSL would have been expected to carry out its services with reasonable care and skill[2], and that if a claim did not progress owing to TSL's failure to exercise reasonable care and skill, this would be a breach of contract by TSL for which Mr R could hold Santander liable under section 75 of the CCA.

Both our investigator and I have asked Mr R's claims management company for evidence which might help to show failings on TSL's part in carrying out the services it appeared to have committed to. We identified specific types of evidence which would be of interest, including evidence from OA as to what information, if any, they received from TSL in respect of Mr R, and evidence relevant to Mr R's Turkish property. This could have included, for example, evidence that the property was not a timeshare or similar product, and therefore that TSL could not have carried out the service contracted. Or, if the property had regular maintenance fees, an example of requests for such fees significantly post-dating the agreement with TSL, to show that Mr R had not been released from liability for them. We also requested evidence of any contemporaneous written correspondence between Mr R and TSL, as this could have helped establish what had been agreed between them and what had subsequently happened.

However, no evidence of this type has been put forward, and based on the very limited evidence available, I've been unable to conclude TSL breached its contractual obligations to Mr R.

Mr R's representatives have also asserted that the whole scenario is simply a scam through which Mr R was persuaded to part with a significant sum of money as a result of misrepresentations by the payee in relation to services the payee never intended to provide. I'm aware that scams do exist in this area which target owners of timeshares and similar products, but I do not think there is sufficient evidence to allow me reasonably to conclude that TSL induced Mr R to enter a contract and pay money to it as a result of misrepresentations it made to him.

As I've been unable to conclude Mr R would have a claim against TSL in respect of a breach of contract or misrepresentation, it follows that I conclude he would not have had a claim against Santander under section 75 of the CCA either.

Mr R has referred to the contract with TSL potentially being void or voidable due to it having been an illegal contract. I make no finding on whether or not the contract was illegal, but I note section 75 of the CCA is very specific in covering only claims relating to breaches of contract and misrepresentations. It would not cover claims relating to contract being void or voidable as a result of alleged illegality, so Mr R's representations on this point do not change my overall conclusions relating to section 75 and Santander's potential liability.

---

[1] Or, alternatively, TSL believed Mr R's Turkish property was a timeshare or similar product, and had agreed to release him from his obligations in respect of this.

[2] In line with the Consumer Rights Act 2015, which implies a term into consumer contracts for services that any services will be performed with reasonable care and skill.

My final decision

For the reasons explained above, I do not uphold Mr R's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 16 February 2024.

Will Culley
Ombudsman