

## **The complaint**

Mr C complains about how Santander UK Plc (“Santander”) handled a claim he made in relation to a transaction on his credit card.

## **What happened**

Mr C purchased a carpet restoration and authentication service, from a company I’ll refer to as “S”, through his Santander credit card in April 2022. The cost of the service was £3,546.56.

In October 2022, Mr C contacted Santander and said he had three Persian carpets which he purchased in 2004. He said in March 2022, he saw an auction house advert in an overseas newspaper. Mr C visited S’s shop with the carpets and says he was told the collective minimum value of the three carpets was 44,000 Euros. Mr C says S told him the auction house was based overseas, Mr C would receive the sale proceeds once they were sold and S would receive 10% commission of the sales carpet value. However, Mr C says he was told the carpets could only be put up for auction once they had been cleaned, restored, treated and repaired to a high standard. Mr C said he thought the price was high so, he went home and carried out some research.

After carrying out this research, Mr C says he went back to the shop with one of his carpets. S carried out the restoration of the carpet and happy with the results, Mr C paid 10% of the value of the carpet. Mr C also took his other two carpets to S and asked S to restore these too. Again, he paid 10% of the value of the carpets to S. Following this, Mr C says S told him the carpets would be transported overseas and they would appear on S’s website. Mr C says he checked the website and carpets had been put up for sale. Mr C says he continued to check in with S but in August 2022, he visited S’s shop but the shutters were closed and the shop was bare. Mr C said he notified the Police overseas and provided a copy of its report to Santander.

In December 2022, Santander considered Mr C’s claim and said Mr C hadn’t provided any receipts or invoices to show the breakdown of the costs. It also said Mr C had said the fees were for the cleaning, repair and authentication, which had been completed by S. Mr C sent a copy of the contracts and said the only receipts or invoices he received were through his MasterCard payment slips. Mr C said he had no further paperwork.

Santander reviewed this documentation and issued its response to Mr C’s complaint. It said the sale of the carpets didn’t form part of Mr C’s contract with S. Instead the contracts Mr C had entered into only covered the restoration and authentication of the carpets. It said whilst Mr C had provided sale auction contracts, these were signed after the restoration and the authentication had taken place. As a result of this, the sale of the carpets wasn’t part of the contracts Mr C initially entered into which were paid for using his Santander credit card. It said it correctly declined Mr C’s claim under section 75 of the Consumer Credit Act 1974 (“s75”), as there had been no breach of contract or misrepresentation. It also noted that the transactions wouldn’t be considered as fraudulent, as Mr C voluntarily provided his card details and transacted with the merchant.

Unhappy with this, Mr C referred his complaint to this service. Mr C reiterated his complaint and said S had taken his carpets and hadn’t returned them. He said whilst Santander had said there were two separate contracts, one for the cleaning and restoration and one for the

sale of the carpets, this wasn't apparent in the advert S had. Mr C said to put things right, he wanted Santander to refund the £3,546.56 he had paid on his Santander credit card.

Our investigator looked into the complaint but didn't think Santander had acted unfairly. She said Mr C had said the payments he made using his Santander credit card were made for the restoration, repairs, cleaning and authentication of the carpets. She said Mr C had confirmed he had received this service and the certificates of authentication. She said the sale of the carpets were separate contracts and as this is the service Mr C didn't receive, this wasn't covered under s75.

Mr C disagreed. He said the sole purpose of him contacting S was to sell his carpets. He didn't visit S's shop to get his carpets cleaned or repaired etc. He said this was a condition placed upon him to enable S to sell the carpets. He said the service he paid for included the auction of the carpet and he said this is mentioned in his receipt. He also said he was unhappy Santander didn't tell him about his rights under the MasterCard chargeback scheme until he was out of time.

Our investigator responded and said she was satisfied that Mr C had entered into two separate contracts. She said additional fees would have become payable by Mr C to S upon the completion of each sale. She said the payments Mr C had already paid were for services Mr C had already received. So she said Mr C's claim wasn't covered by s75.

Mr C disagreed and said at the least, S should have auctioned the carpets or returned them to him. He said he was told it would be impossible to auction the carpets without him paying for the cleaning, restoration or authentication first.

Our investigator reviewed the complaint and said upon review, she could see the last of the three payments Mr C made for the cleaning and restoration of the carpets had been paid to a different company. She said as a result of this, there was no valid claim under s75 for the last payment made on 13 April 2022 because there was no valid debtor-creditor-supplier agreement between Mr C, Santander and S.

Mr C reiterated that if he had only agreed to the cleaning and restoration, he would have received his carpets back from S. He said the payments he made only benefitted S. He said if the carpets had been sold by S, he would have received value for the payments he made to S. But this didn't happen and so, the only party that benefitted was S.

As Mr C remains in disagreement, the complaint has been passed to me to decide.

### **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.

I've read and considered the whole file and acknowledge that Mr C has raised a number of different complaint points. I've concentrated on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it – but because I don't think I need to comment on it in order to reach what I think is the right outcome. The rules of this service allow me to do this.

To make it clear, this complaint is about Santander, as Mr C's credit card account provider. It's not about S who is the supplier.

I've considered whether I think it was fair and reasonable for Santander to decline Mr C's s75 claim.

Under s75, Santander are jointly liable for any breaches of contract or misrepresentations made by the supplier of goods or services – which is S in this case.

In order for there to be a valid claim under s75, there needed to be a debtor-creditor-supplier ('DCS') agreement in place. Mr C made the purchases on his credit card which was supplied

by Santander. I can see the invoice from S is in Mr C's name. Santander have shown that two of the credit card transactions were in Mr C's name to S. So, I'm satisfied overall that a valid DCS agreement exists here for the first two payments.

The last credit card transaction seems to have been from Mr S to a company based overseas, which is where the auction house was located. However, this isn't S and neither is it linked to S in the way that s75 requires it to be. So, for the last payment, I'm not satisfied that a valid DCS agreement exists as there is no direct agreement between Mr C, Santander and S. This means that I can only consider the first two payments Mr S made, as these are the only two payments where a valid DCS agreement exists.

I've then considered the financial limits that apply to a valid s75 claim. Mr C needed to have purchased a single item with a cash price of over £100, but no more than £30,000. I can see from the invoice that the amount is within the financial limits. So, it follows that I'm satisfied the financial limits have been met for a valid claim concerning the carpets.

Overall, I'm satisfied Mr C has a like claim against Santander, as he does against S. And that S were acting as an agent of Santander. What I now need to consider is whether there was a breach of contract or misrepresentation that took place. I've considered this based on all the information provided by Mr C and Santander.

I've looked at the advert for S that Mr C says was in the newspaper. The advert states there is "*Persian-style carpet washing*". Underneath this, it states, "*Carpet cleaning according to Persian tradition including free pick-up & elimination of moths, mites and other pests*". It also says, "*We appraise & sell your old carpets at top prices!*".

The invoice for the payments Mr C made lists three carpets. Each has a price listed next to it which correlates to the price Mr C paid on his credit card and states the carpet will be washed and the fringe and edges will be repaired. The invoice states, "*When the carpet are finished they will be auctioned off*".

From the invoice and the advert, it seems that the initial service S was offering was for the repair and restoration of the carpet. Mr C made three payments for this for all three of his carpets. Mr C also confirmed that the carpets were repaired and they were restored. So in this respect, it doesn't appear that a breach of contract or a misrepresentation has taken place because S has done what it agreed to do under the contract.

However, I've gone on to consider whether I think the sale or auction of the carpets was also included in the payments Mr S made for the restoration and repair of the carpet.

Mr C has provided separate documentation for the sale of the carpets. The documentation he has provided is titled, "*Commission contract/sales commission*". Each carpet has a separate contract. And the contract says the commission agent or S, takes on the task of selling the carpet on behalf of Mr C. It says the contract is for an indefinite period but it can be exercised by either Mr C or S with a notice period of three months. It says at the end of the contract, S must hand over the carpet with any documentation to Mr C. It also says that the carpet is the property of Mr C, until it is sold and it says S can only acquire the carpet with consent of Mr C. And it goes on to say, S will receive 10% of the respective net sales price for the sale, but it won't receive any commission for transactions that aren't executed. Both Mr C and S signed each of the contracts in April 2022.

I've thought carefully about this separate documentation. Having done so, I'm sorry to disappoint Mr C, but unfortunately he has entered into two separate contracts, each with different obligations upon him and S. I'll explain why.

Whilst I don't doubt Mr C's intentions of only initially contracting with S in order to facilitate the auction or sale of his carpets, it seems the commission contracts are the ones whereby this agreement was reached. For these contracts, Mr C handed over his carpets to S, S agreed to sell the carpets and Mr C was due to pay S a 10% commission fee, upon the

successful sale of the carpets. However, S appears to have disappeared and from Mr C's testimony, they are in possession of Mr C's carpets.

I can see why Mr C relates both contracts as being one and the same. But the second contracts were separate to the first invoice and the payments Mr C made on his Santander credit card were unrelated to the secondary contracts for the sale of the carpets. If S has disappeared with Mr C's carpets, then this is a breach of the second contracts he entered into. This is because S hasn't done what it was due to under the secondary commission contract.

However, S has done what it was due to under the initial contracts for which Mr C made payments on his credit card and so, no breach of contract has occurred for the first contracts. These are the only contracts we can consider as Mr C used his Santander credit card to pay for the services under the first contract. Mr C's Santander credit card wasn't part of the second contracts he entered into in April 2022. And so, these can't be considered under s75. It is for broadly the same reasons, I consider chargeback and any other claims against Santander in relation to these contracts would have also likely failed.

In light of this, I don't think there has been a breach of contract. Nor have I seen anything to suggest the initial contract was misrepresented. Given that I can only consider the actions of Santander and not S, I think Santander has acted fairly when investigating Mr C's claim. I appreciate Mr C will be disappointed about this, but I can only recommend he takes independent legal advice to pursue his complaint.

### **My final decision**

My final decision is that I do not uphold Mr C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 12 March 2024.

Sonia Ahmed  
**Ombudsman**