

The complaint

Mrs B complains about a roof coating product she purchased using her Santander UK Plc credit card. Mrs B believes she was misled about the product and is unhappy that Santander has not upheld her claim under Section 75 (S75) of the Consumer Credit Act.

Mrs B is represented in her complaint by a third party, but for ease I shall refer to all submissions from Mrs B and her representative as if made by Mrs B.

What happened

Around September 2011 Mrs B purchased a roof coating product from a company that I'll refer to as T. The cost of supplying and applying the coating was £2,520 and Mrs B made three payments on her Santander credit card to cover the full amount.

Mrs B says that she was told the coating had various benefits, including insulating the house in the winter and keeping it cool in the summer. The product was to prevent the growth of moss and was to improve the appearance of the roof. Mrs B believes she was misled about the benefits of the coating product, as it does not provide the benefits that were claimed, and the coating is also peeling or flaking. The coating also came with a 10 year guarantee, which cannot now be fulfilled as T is no longer trading.

Mrs B believes there is clear evidence of a breach of contract and misrepresentation by T and that Santander is responsible under S75. Mrs B would like the cost of the product refunded to her, along with interest. Santander considered Mrs B's claim but did not uphold it. It explained that as the product was purchased in 2011 but Mrs B's claim was not made until more than 6 years after this point, it had no liability under S75. Despite further correspondence, Santander did not change its position and Mrs B then referred her complaint to our service.

The complaint was considered by one of our investigators, who amongst other things referred to S75 and the Limitation Act 1980. They explained that when considering how Santander had dealt with Mrs B's S75 claim, the Limitation Act 1980 was relevant and any like claim that Mrs B had under S75 against Santander had been brought too late. This is because there is a period of 6 years from the time of the sale for Mrs B to bring her claim and as she had not done this, the claim had been made too late. It was not therefore unreasonable for Santander to decline Mrs B's S75 claim.

Mrs B did not accept the investigator's findings and explained that in relation to the guarantee, which is no longer available, the limitations time period would start from when the guarantee ceased to be available, rather than the time of the original sale.

The investigator reconsidered this and accepted that the limitations time period in relation to the guarantee would start when the guarantee was no longer available and Mrs B was unable to claim on it. As this was within 6 years of Mrs B making her S75 claim, this part of the complaint was therefore made in time.

The investigator then went on to explain that despite the claim being made within time, they did not consider there were sufficient grounds for it to succeed. They noted that although the guarantee would cover the coating if it was peeling or flaking, the remedy would be to reapply the coating. But as it has been accepted the coating had no benefit it would not be reasonable to reapply the coating. The investigator explained that a successful claim under the guarantee would not have provided Mrs B with a refund of the product costs but they did consider whether there were any alternative remedies that would be appropriate in this instance.

They considered whether it would be appropriate for Santander to cover the cost of a replacement roof, but felt this was a disproportionate remedy in the circumstances. While accepting there had been a breach of contract, they did not consider Santander should be required to do anything more. Mrs B believes Santander would be liable under the guarantee for the costs of repainting the roof, albeit not with the same coating. The investigator did not however consider Santander was responsible for painting the roof under the terms of the failed guarantee, as the guarantee only provides for the coating product to be reapplied. As the complaint could not be resolved informally, it was referred to me for consideration.

After considering the complaint I issued a provisional decision setting my initial thoughts on the complaint and what I considered to be a fair and reasonable outcome. In that decision I stated:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

First, I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome. Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

I think it's important to set out my role here. In considering a complaint about a financial services provider, I'm not determining the outcome of a claim that a party might have under S75. Rather, in deciding what's a fair way to resolve Mrs B's complaint, I've taken S75 into account. But that doesn't mean I'm obliged to reach the same outcome as, for example, a court might reach if Mrs B pursued a claim for misrepresentation and or breach of contract. This service is not a court but an alternative to the courts.

Mrs B's complaint is essentially that Santander hasn't properly exercised its duties under the finance agreement it had with her. Specifically, its duties under S75, which says:

"If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor."

Santander's stance is that any claim Mrs B had against T is now time barred due to the Limitation Act 1980. Specifically, it relies on those provisions that say a cause of action, of

the types complained about here, shall not be brought after the expiration of six years from the date on which the cause of action accrued. Mrs B's issues relate to an alleged breach of contract and misrepresentation by T. The misrepresentation relates to what Mrs B was told about the benefits of the product at the time she agreed to proceed with the work. In summary, that the roof coating would provide thermal benefits and help the house retain heat in the winter and help reflect the heat in the summer, keeping the house cool. The coating would also prevent the growth of moss and lichen and improve the aesthetic appearance of the roof.

Mrs B met with a representative of T and was told about the product around September 2011, just before it was applied. I'm satisfied that the cause of action, in relation to the alleged misrepresentation, relates to those events in 2011 and that for Mrs B to be able to claim under S75 any claim would need to be made within 6 years. I've not been presented with any evidence to show that Mrs B did actually bring a claim within 6 years of 2011 and it appears the earliest any claim was raised was in June 2018, which is more than 6 years later.

When considering whether Mrs B has a valid claim under S75, I'm satisfied it was reasonable for Santander to also consider the Limitations Act 1980 to decide whether the claim was raised in time. And having considered the implications of the Limitations Act 1980 I don't consider Santander acted unreasonably when deciding Mrs B's claim for misrepresentation had been raised too late. It is likely that any 'like claim' in court would also be considered to have been made out of time, in relation to the misrepresentation.

Mrs B also considers there to have been a breach of contract on the part of T as it has been dissolved and is no longer in a position to honour the 10 year guarantee that was provided with the roof coating. The guarantee certificate for Mrs B's property refers to an installation date of September 2011 and 'All coating is guaranteed for a period of 10 years from date of installation'. The product brochure also refers to the product being covered by a 10 year guarantee. The terms and conditions refer to:

'On receipt of full payment for the work contracted, all protective coating applied by the company are guaranteed for a period of 10 years for the following:

- Coating flaking or peeling.*
- Coating discoloration...'*

Having reviewed the product literature I'm satisfied that in addition to supplying and applying the roof coating, it was provided with a 10 year guarantee that would cover the coating flaking, peeling or discolouring. Should Mrs B's product therefore show signs of flaking, peeling or discolouration, the guarantee should address this and rectify any issues. Mrs B has provided photos of what I understand to be her roof and that show signs of the coating flaking and peeling. The photos do not show the whole roof area, but I don't believe this is necessary as it is clear that some parts of the roof are affected by the peeling and flaking. Having considered the terms of the guarantee and the condition of Mrs B's roof I am satisfied that Mrs B would have reasonable grounds to claim on the guarantee to address the flaking and peeling. T was however dissolved in September 2020 and I understand it had stopped trading some time prior to that. Mrs B's S75 claim against Santander was initially raised in June 2018 and I understand by that time T was no longer trading or willing/able to fulfil its obligations under the guarantee. As the guarantee cannot be fulfilled I'm satisfied that there has been a breach of contract on the part of T. And that consequently, Mrs B has a like claim for that breach of contract against Santander through S75.

I have therefore considered what, if any, redress would be appropriate in the specific circumstances of this case. I would again remind the parties that any redress would be solely in relation to the breach of contract through not being able to fulfil the requirements of the

guarantee and not for the alleged misrepresentation which I have not considered. Typical redress in the case of a breach of contract would be to remedy the breach that has occurred. In this instance however, I don't believe it would be possible to reapply the roof coating in the same colour as the exact product that was applied is unlikely to be available.

While I understand it is accepted by all parties, it is again worth stating that applying the same coating to achieve the claimed benefits is unlikely to be worthwhile, as it is generally accepted the product does not provide the insulating or cooling benefits originally claimed. But I do consider Mrs B has lost out and I have considered what alternative remedies would be reasonable and proportionate in the specific circumstances of her case. Replacing the entire roof tiles would ensure that the aesthetic appearance of the roof was restored, and all tiles would be of similar appearance. This would however be at considerable cost and would not be a proportionate remedy for the specific circumstances of this case in my view.

Mrs B initially argued that she should be entitled to a full refund of the £2,520 she paid for the coating, but this was in relation to both the breach of contract and misrepresentation. Refunding the entire sum would be disproportionate in my view, as Mrs B has benefitted from some years of a more aesthetically pleasing roof. Subsequent discussions relating to redress in relation to the breach of contract only resulted in Mrs B arguing that she should be entitled to the equivalent costs of repainting the entire roof. This would ensure that the roof would be evenly painted and avoid patchy areas of discolouration caused by touching up the flaking or peeling areas.

The guarantee provided with the product essentially gave Mrs B an assurance that she would have an aesthetically pleasing roof for a minimum of 10 years. I have not seen any evidence to indicate that Mrs B was unhappy with the appearance of the roof immediately after the application of the coating. It is also not entirely clear when Mrs B's roof initially started to peel or flake. In the absence of any supporting evidence to show exactly when Mrs B's roof started to peel and flake, or that she had previous engagement with T in an attempt to claim under the guarantee, I think it is reasonable to take the date that Mrs B appointed her representative as an indication of any claim that would be submitted.

Mrs B's husband signed an authority for the representative to act on their behalf on 4 April 2018 and it is likely that some discussions took place prior to that date. It is therefore reasonable in my view to assume the 21 March 2018 was around when Mrs B would have initially tried to claim under the guarantee because of the flaking or peeling coating. Mrs B has therefore arguably had approximately 6¾ years from the application date of September 2011 where the appearance of the roof was as expected and in an aesthetically pleasing state.

I do not consider a fair and proportionate remedy in this instance would be to repaint the entire roof. Scaffolding would need to be installed to safely work on the roof, the tiles would need to be prepared and then at least two coats of paint would need to be applied to ensure a reasonable job was done. Although no quotes for the cost of the work have been presented, I think it's reasonable to assume that the costs would not be too dissimilar to the £2,520 Mrs B initially paid.

Although I do not consider repainting the roof would be reasonable, I do consider it fair for Mrs B to be compensated for the premature deterioration of the product and the reduced period that the roof was looking aesthetically pleasing. As referred to above, Mrs B should have been provided with an attractive and well-presented roof that was free from peeling, flaking and discolouration for at least a period of 10 years. That has not happened and at most, Mrs B has had approximately 6¾ years of the product improving the appearance of her roof. I appreciate not all of the roof is necessarily showing signs of flaking and peeling but the appearance of the roof will none the less be compromised and reduced, even with

the patchy areas of flaking and peeling. And this is why I consider it reasonable to compensate Mrs B for the overall appearance of the roof, rather than for the proportion of the roof that is flaking or peeling.

Having considered the specific circumstances here I consider that fair compensation would be for Mrs B to receive a refund of the product cost proportionate to the length of time the roof appearance had deteriorated during the guaranteed 10 year period. That amounts to 3 ¼ years (39 months) in this instance and Mrs B should therefore receive an amount equivalent to 33% of the product cost. That amounts to £840. As Mrs B has been deprived of this money, interest at 8% simple per year should be added to this amount. Had Santander fairly dealt with Mrs B's claim and awarded the £840 Mrs B would have received the £840 at the time Santander responded to Mrs B's claim on 17 July 2018. As Mrs B has been deprived of the £840 since 17 July 2018, interest should be calculated from this date until the date of settlement.

I invited further comments from both parties. Both responded and said that they had nothing further to add.

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.

Having done so and in the absence of any new submissions from the parties, I have come to the same conclusions as set out in my provisional decision. As the guarantee cannot be fulfilled, I'm satisfied that there has been a breach of contract on the part of T. And that consequently, Mrs B has a like claim for that breach of contract against Santander through S75. By not upholding the claim, Santander has not treated Mrs B fairly or reasonably.

Putting things right

As previously set out above, Santander should now pay Mrs B £840 plus interest at 8% simple per year from 17 July 2018 to the date of settlement.

My final decision

My final decision is that I uphold Mrs B's complaint and direct Santander UK Plc to pay redress as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 19 July 2023.

Mark Hollands
Ombudsman