

## **The complaint**

Mr B complains about how Santander UK Plc handled a claim he made to it.

## **What happened**

The parties are familiar with the background details of this complaint so I will simply summarise them here.

Mr B paid for a delivery of some stone chippings with his Santander credit card. However, he says the supplier dropped these on his driveway and damaged it. He says the supplier did not deliver the goods in a safe manner and this means he will need a new drive costing in excess of £4,000.

Mr B was not able to resolve matters with the supplier so he approached Santander to raise a claim. It considered matters under Section 75 of the Consumer Credit Act 1974 ('Section 75') but did not agree there was persuasive evidence to establish its liability for the costs Mr B was claiming.

Our investigator did not uphold the complaint so the matter has come to me to make a final decision.

## **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.

While I might not comment on everything (only what I consider key) this is not meant as a discourtesy to either party – it reflects my role resolving disputes informally.

I note Santander initially dealt with a separate complaint about actioning Mr B's Section 75 claim. It paid him £50 as an apology for delays in sending some information over to the relevant team. However, Mr B's complaint here is about the outcome of his Section 75 claim so it is that I will be dealing with.

I am sorry to hear about the issues with the dispute over the delivery of goods. However, it is important to note that Santander is not the supplier. So when deciding what is fair and reasonable I can only consider its role as a provider of financial services, and how it fairly could have assisted Mr B based on the information reasonably available to it at the time. And noting that it doesn't have the power of a court to compel experts and cross examine witnesses.

Mr B's claim centres around consequential losses – so I don't think chargeback is relevant here as it doesn't allow claims for anything other than what was paid on the card. So I don't think Santander was wrong for not looking into chargeback.

I can see Santander did consider a Section 75 claim based on the evidence Mr B presented to it. Which seemed like a fair approach to take. Under Section 75, Santander can in certain

circumstances be liable for a '*like claim*' in respect of a breach of contract or misrepresentation by a supplier of goods or services under an agreement funded by the credit card.

There are certain technical requirements for Section 75 to apply relating to matters such as the price of the item and the parties to the agreement. I am broadly satisfied the criteria is met here so I have gone on to consider whether there was sufficient evidence for Santander to have concluded there was a breach of contract in respect of the agreement for stone chippings and that this breach has led to the loss Mr B is claiming.

In considering breach of contract I have in mind the Consumer Rights Act 2015 which says that services should be carried out with reasonable '*care and skill*'.

Santander has noted the evidential difficulties in showing that the delivery of chippings caused the damage to the driveway being claimed. Particularly when other deliveries were made around the same time and there was a previous accident involving cement.

I note Mr B does not dispute there was an initial accident involving a delivery of cement by the same supplier which he says spilled on the drive and allegedly caused longstanding damage. I understand the cement was purchased by Mr B's own tradesperson working on the property.

The fact Mr B is also making more than one allegation against the same supplier in respect of driveway damage at different times makes it more difficult to establish liability in regard to the order of stone chippings. And this only goes to complicate matters as Mr B has no claim against Santander for the alleged previous damage by the cement – as this wasn't funded by his Santander credit card.

I note that in places it isn't clear what evidence is in respect of the cement allegation and what is in respect of the second stone chippings allegation or both (for example letters from the supplier and photos). However, despite Mr B saying to Santander that the supplier has admitted liability for the damage it has caused I don't see any clear admission in respect of this.

A letter from the supplier to Mr B in November 2022 mentions 'alleged' damage and says:

- Mr B has not allowed them reasonable opportunity to fully inspect the damage to establish liability/costs to put right;
- Mr B did not raise the issue straight away with them.

I appreciate that Mr B refutes these allegations and told Santander that he raised matters straight away and that the supplier had visited already and allegedly threatened him (so he didn't want it to come back). However, this all builds up a picture of conflicting testimony which means the nature of any alleged breach in respect of the chippings isn't clear and if Santander is liable for any loss. It suggests this matter would be better suited to a court.

Expert evidence can assist in circumstances like this. But what Mr B provided Santander from a landscaper at the time he raised a claim with it is not persuasive in establishing losses arising out of a breach in respect of the order of stone chippings. I say this because:

- The information appears to be a quote for the expert to supply a new drive rather than a detailed impartial report - it lacks photos and a clear rationale for the conclusions including the credentials of the assessor;

- the information does not specifically refer to stone chipping damage but cement and 'heavy goods' damage; and
- the quote is dated 11 August 2023 and relates to alleged events that occurred over a year prior.

So, in the particular circumstances here, despite this information from Mr B to support his case (and the photos he sent) I think there are questions around the nature of and the causation of any drive damage. Considering its role, I don't think there was persuasive enough evidence for Santander to have fairly accepted liability and upheld Mr B's claim.

I note that after our investigator issued their view Mr B requested another report done by the landscaper who quoted for a new drive. This is more detailed and refers to damage caused by cement being spilt and now specifically by stone chippings. It says both of these events mean the drive would need to be completely re-done. However, my role is to assess Santander's response to the claim put to it at the time and Mr B did not provide this report when he made his claim.

Santander has seen the report and not changed its position. Nor has it objected to me commenting on the report. So in the interest of completeness and resolving matters, I will say that in any event I am not persuaded the report changes things. There are still issues over its independence, when it was carried out and a question around Santander's liability for loss in light of the fact the expert has identified that the driveway was effectively ruined (requiring full replacement) because of the proceeding events involving a cement spillage. So it is arguable from a causation perspective, Santander is not liable for the loss claimed by Mr B as it occurred prior to and regardless of the supplier's alleged later conduct in respect of the stone chippings.

I appreciate my decision is likely to disappoint Mr B. However, I don't think Santander is fairly required to do more here. I remind Mr B that I am only looking at the case from an informal perspective and in respect of the actions of Santander, so he does not have to accept my decision and may wish to take the matter to court (seeking relevant legal advice in the process)

### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 8 June 2024.

Mark Lancod  
**Ombudsman**