

The complaint

Company H (represented by Ms C) complains Santander UK Plc (Santander) unfairly considered its claim under the chargeback scheme in relation to a car which it believes was faulty at supply.

What happened

In July 2022, Company H bought a used car from a dealer who I refer to as R. The cash price was £9,700. A deposit was paid and Company H paid the outstanding balance of £9,000 using its business debit card with Santander. Company H said it was told by R that the car would also come with a three month warranty policy.

Shortly thereafter, Company H reported a number of faults with the car including a blocked diesel particulate filter (DPF) and problems with the valve and cooler. It was returned to R for repair however issues remained. As matters weren't resolved with R, Company H turned to Santander in the attempt to recover the money it paid for the car.

Santander raised a chargeback however the claim wasn't successful. They stated R had provided evidence that the service was provided and Company H was still in possession of the car therefore there wasn't a valid claim under the chargeback rules. Company H complained and said it hadn't been treated well by Santander and their service regarding the chargeback process was poor.

Unhappy with Santander's response, Company H referred the complaint to our service. Our investigator didn't uphold the complaint. He said in light of dealer R's response to the chargeback, Santander's decision not to take matters further was appropriate.

Company H disagreed. In summary, it said:

- The car wasn't fit for purpose and third party garages have confirmed the faults;
- Dealer R was fraudulent and had provided a false advert of the car, Santander should investigate that. The advert that Company H saw made no reference to repairs needed;
- The car was sold with warranty and repaired by dealer R, those actions weren't consistent with the car being sold 'as seen' with faults;
- Santander delayed in considering the chargeback claim;
- Santander asked for the car to be inspected to see what faults were present so it's unfair to decline the chargeback on the basis the car remained in Company's H possession;
- Dealer R are not a registered nor legitimate business and it may be linked to criminal activity and that hadn't been investigated by Santander or our service.

Since the complaint has been at our service, I'm aware Ms C has taken court action against dealer R. From my understanding, a judgement has been made in her favour and it has been escalated to enforcement.

As an agreement couldn't be reached, the complaint has been referred 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.

Having done so, I've decided not to uphold Company H's complaint. I'll explain why.

I'm aware I've summarised this complaint in less detail than has been provided and I've done so using my own words. I want to assure both parties that I've reviewed everything on file and thought carefully about their submissions. If I don't comment on something, it's not because I haven't thought about it, I have. Instead, I've concentrated on what I consider to be the key issues to reach a fair outcome, our powers allow me to do this.

A chargeback claim is a way in which payment settlement disputes are resolved between a cardholder (Company H) and a merchant (dealer R). Each card scheme has its own rules about what types of disputes can be raised and under what conditions. There is no strict obligation for a card issuer (Santander) to raise a chargeback but I would consider it good practice for one to be attempted where the right exists and there is a reasonable chance of success. However it's not a guaranteed way to recover money.

I note Company H has raised a number of concerns about the legitimacy of dealer R. While I acknowledge its concerns, in this complaint I'm only considering the actions of Santander (as the financial provider and not as dealer R) and whether they acted fairly and reasonably in the way it handled Company H's request for getting its money back. Company H's concerns about dealer R are best dealt with by legal action which is beyond the scope of our service as we are an alternative to the courts.

I understand Company H has referred to section 75 of the Consumer Credit Act 1974. However I can't take this law into account as the transaction in question was paid using a debit card. Section 75 only applies to credit cards and certain types of finance agreements which wasn't the case here.

In this case, Company H maintain the car provided by R is faulty/not as described and having referred to the card scheme rules (Mastercard), a chargeback can be raised for this reason. The card scheme rules outlines the chargeback process, the conditions that need to be met and the supporting documents that need to be provided. Based on the evidence presented to me, I'm satisfied Company H provided sufficient detail to enable all the parties to understand the dispute so I find Santander acted fairly in raising the chargeback claim.

In line with the process of such a claim, dealer R was given the opportunity to respond to Company H's dispute. I can see it provided an invoice, what appears to be the advert of the

car, a partial report of the MOT test along with some commentary. The advert for the car shows a picture of it, the listed sale price as £10,000 and it says "*Part EX to clear requires work*". I note the invoice also says "Trade Sale Commercial – requires work" followed by a discount of £300, bringing the total cost of the car to £9,700.

Dealer R maintains this evidence shows Company H bought the car as a trade sale and it knew the car had faults and needed to be repaired. Company H vehemently denies this was the advert it saw online and it wasn't brought to its attention that immediate repairs were needed. It maintains these documents were falsified by dealer R. It would've been beneficial to have seen the copy of the advert Company H said it saw however due to the time that's past, the car's advert online link is no longer available. In its absence and without any other persuasive and compelling evidence the advert provided by R wasn't the one that Company H saw, I find it was reasonable for Santander to rely on the advert provided by R.

Company H argues that the car being sold as needing repairs isn't consistent with the actions by R. Namely, the sale of the warranty, taking the car back for repair, applying a £300 discount for cosmetic imperfections, etc. I can understand Company H's strength of feeling about this. However the card scheme rules clearly sets out what is required and what would be looked at. Company H has raised concerns and allegations of a serious and complex nature including fraud. However the chargeback process doesn't provide the opportunity to test evidence in the same way a court would such as calling witnesses, cross examination, etc. The scheme isn't necessarily set up to deal with such complex issues. That may be better off dealt with at court.

Having read the card scheme rules, it says "*chargeback is not available when proper disclosure of the conditions of the goods is made at the time of the sale, such as when goods are sold in "as is" condition*". So it's clear a chargeback doesn't have to be raised if the condition of the goods is made clear before sale.

It could be argued such terms that limit liability could be unfair given its impact on the consumer protection laws therefore it wasn't reasonable for dealer R to rely on such a term in its advert. However I wish to emphasise in this decision I'm considering the actions of Santander, not dealer R and it's not for our service to say how the card scheme should be ran.

Based on dealer R's submission, it has provided evidence the car's condition was clearly advertised and it's evident Santander didn't believe there was sufficient evidence to contest that. In light of the same, Santander decided not to pursue the chargeback claim any further. Given the above, I find that was a reasonable course of action as I don't believe there was reasonable prospect of the claim succeeding if it went as far as the card scheme's arbitration stage. Therefore I won't be saying Santander need to give back the money Company H paid for the car.

Other

Company H also complains about Santander's level of service when raising the chargeback, it complains they delayed in considering it and provided mis-leading information. I acknowledge this process has caused frustration to Company H as it's made effort to resolve this matter.

Given the nature of the dispute, I believe Santander acted fairly in asking for evidence of the car's faults. I note that was asked for before dealer R provided their defence so I can't say it was an unnecessary information request. Based on the timeline of events and how long Santander said it would take to investigate the chargeback, I don't find there was a significant delay in considering the claim.

However I do believe at times Santander should've been clearer in its communication. For example, in my opinion declining the claim on the basis the service was provided wasn't the most appropriate response to the denied claim. This is because the dispute concerned a defective product/goods not as described, it wasn't in dispute the car had been provided to Company H. Equally I believe Santander should've been clear that the card scheme rules required evidence that the car had been returned or made available for return to dealer R.

While I accept at times the level of service could've been better and this undoubtedly caused Company H frustration, I don't find it made a material difference to the overall outcome of the chargeback claim. Even if Santander had been clearer in its communications, for the reasons already explained above, I'm not persuaded the chargeback claim would've succeeded.

Overall, while I sympathise with the position Company H finds itself in, I'm satisfied Santander fairly considered the chargeback claim.

My final decision

For the reasons set out above, I've decided not to uphold Company H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask G to accept or reject my decision before 1 July 2024.

Simona Reese
Ombudsman