

The complaint

Mr H complains that Santander UK Plc won't refund a payment he made using his credit card.

What happened

In 2019, Mr H purchased a three-year repair plan from a company I'll refer to as "S". He paid £1,188 for the plan using his Santander credit card. The plan was to cover 11 household electrical items that Mr H owned and in the event of them becoming faulty the plan would arrange a repair, replacement or cash settlement.

After the three-year plan had ended, Mr H made a claim to Santander for a refund under section 75 of the Consumer Credit Act 1974 ("section 75"). He said that S had breached the contract it had with him because it had not provided 'like for like' replacements for his appliances as promised when repairs were not possible. He said that where cash settlements were offered instead, these were not sufficient to replace the faulty items with like for like products.

Santander didn't uphold Mr H's claim and subsequent complaint. It didn't agree there had been a breach of contract for which it could be held jointly liable for under section 75. However, it said that as a gesture of goodwill it would pay him £80 to cover the repair costs of his microwave which S had most recently declined to cover.

Our investigator didn't recommend the complaint be upheld. She wasn't persuaded there had been a breach of contract by S. She considered that Mr H had made a number of claims which had been settled and accepted by him during the three-year period and it appeared these claims had been settled in line with the agreed terms of the plan. She thought Santander's offer of £80 to cover the repair cost of the microwave was fair and reasonable.

Mr H didn't agree. In summary, he said that replacement items were not like for like. As an example, he said oven replacements were basic and missing some features his original ovens had, the same with his dishwasher. He said that a hob replacement was the wrong size and could not be fitted. He said cash settlements didn't come close to the original cash price of the appliances that had failed. Mr H said all of these (as well as other claims under the plan) showed there had been a breach of contract by S.

The complaint has been passed to me for 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.

The general effect of section 75 is that if Mr H has a claim for breach of contract or misrepresentation against S, he can bring a like claim against Santander (as the credit provider), so long as certain conditions are met. For completeness, I'm satisfied those conditions are met here.

Mr H says that S is in breach of contract because it has not settled numerous claims in line with the agreed terms of the repair plan. While I can appreciate Mr H's strength of feeling, I've not seen anything to persuade me that there has been a breach of contract that Santander might be jointly liable for. I'll explain why.

The relevant terms of the repair plan set out that S:

"will repair or replace any domestic appliances in the event of a mechanical or electrical breakdown."

And that if:

"we are unable to repair your appliance or it is deemed uneconomical to repair, we may replace the appliance with a like for like specification, new for old"

It also sets out that in the event a replacement appliance or replacement parts are not available, S will:

"offer a settlement payment if you are unhappy with the replace offer."

Mr H has made a number of claims during the three-year period of having the repair plan. He has made claims on the majority of the items covered by the plan. He's received a mixture of repairs, replacements and cash settlements. However, he feels the replacements were inferior and not like for like, and the cash settlements were too low compared to the original cash price of the items they were replacing.

The appliances that Mr H covered under the repair plan were all already nine years old at the point the plan was incepted. At the point of claiming due to mechanical faults, most of the appliances were already in excess of ten years old and in some instances, approaching twelve years old.

While I accept that the appliances Mr H purchased appear to have been 'top of the range' at the time he bought them in 2010, they would not have retained that same value more than a decade later. Further, technology advancements will also have meant that specifications that were considered 'top of the range' a decade ago, are unlikely to have been so at the point at which the appliances failed.

Mr H hasn't provided any persuasive evidence to demonstrate that the replacement items S offered (with the exception of the replacement vacuum cleaner and incorrectly sized hob) were not a like for like specification match. While I accept he's told us certain functions weren't available on some items, he's provided nothing persuasive to demonstrate this.

Further, he has also not provided persuasive evidence to demonstrate the cash settlements S provided for each claim were not sufficient to acquire a like for like specification replacement.

I agree the brand of appliance was different compared to the original item each time a replacement was offered. I appreciate Mr H feels these brands were inferior to the ones he had originally purchased, but the terms of the plan clearly set out it would be a like for like specification replacement – not like for like with brand and model.

In relation to the vacuum cleaner and hob, Mr H says he returned those items to S because they were not suitable and it appears S must have accepted that as Mr H received cash settlements instead. He says he used those cash settlements to repair each item and obtain separate manufacturer warranties as well. While S didn't complete the repairs, its cash

settlement did therefore remedy those problems for Mr H as he was able to get the items repaired at no cost to him. So, while I can appreciate S ought to have been able to do that too, I can't see that Mr H has lost out financially as a result.

I note also that Mr H had issues with a replacement dishwasher which caused damage to his home. However, as he's said he received compensation for that, as well as a further replacement dishwasher, I consider any breach of contract that might have occurred in relation to that has already been remedied.

I can see from Mr H's complaint letter and other correspondence to S that he feels he has received poor value and service from the plan over the three years. Taking what he has said in those communications at face value, I can see why he feels aggrieved about the level of service he says he's received. However, in deciding whether Santander has acted fairly and reasonably towards him, I need to consider whether he has done enough to demonstrate there has been a breach of contract or misrepresentation by S.

I consider the terms of the plan to be clear as to what will be offered in the event an appliance becomes faulty and I've seen no persuasive evidence that those terms haven't been adhered to by S. I accept that remedies might not have always been suitable initially (such as with the vacuum cleaner and hob), but the claims appear to have been eventually settled in line with the terms of the plan. While Mr H disagrees about the value of the cash settlements and the replacement appliances he's received, he's provided no persuasive evidence to show the terms of the plan he agreed to weren't adhered to i.e. that like for like specification appliances weren't provided or that the cash settlements were not reflective of like for like specification replacements.

It's possible that one of the more recent repairs for Mr H's microwave ought to have been covered by S when it refused to do so. However, Santander has already agreed to cover the repair cost Mr H incurred in sorting that out himself, so I don't consider Santander needs to do anything further in relation to that issue.

I'm also mindful that even if I were to agree with Mr H that there had been a breach of contract by S, he has accepted a number of replacement items and cash settlements for his appliances during the three-year period. So, I can't reasonably say that S has not provided him with any services under the plan or that he has not benefitted in any way. A refund of everything Mr H paid for the plan or a price reduction would therefore place him in a far better position than he would have been in had he not entered into the contract.

Mr H says that isn't the case because his losses far exceed the cost of the repair plan because he has had to pay out to reinstate his kitchen to the original standard. While Mr H might have chosen to since replace some of the appliances S supplied him with as part of the plan, I can't agree that means those losses flow from any breach of contract by S. This is because as I've set out above, S appears to have settled the claims in line with the terms of the plan, and even where it hasn't (i.e. the vacuum, hob and microwave) Mr H has suffered no financial loss in repairing the items.

For these reasons, I don't think Santander has acted unfairly or unreasonably in declining Mr H's section 75 claim and complaint. I consider its offer to pay £80 to be fair and reasonable in the circumstances.

My final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or

reject my decision before 25 April 2024.

Tero Hiltunen
Ombudsman