

The complaint

Mr J is unhappy that Santander UK Plc (Santander) did not refund a payment he made using his credit card.

What happened

In June 2023, Mr J made a purchase at one of the UK County Courts (a supplier/merchant) – who I will refer to as the Court – using his Santander credit card. The total cost charged to Mr J's credit card was approximately £355. This was for an application to the Court.

Mr J said that he entered information correctly into the online Court system, but after the payment went thru the system displayed a summary of the information for the claim and this was incorrect. Mr J said that it transpired that the system failed to capture the information correctly. So, he said, he withdrew his claim using the court website and completed another court application for which he paid another £355 fee with a card from another institution. Mr J said that again the system failed to capture the proper information, so he complained to the Court, but as the Court would not provide him with a refund, he contacted Santander.

In July 2023, Santander wrote to Mr J and said that his claim was initially considered under the chargeback scheme on the basis that a service was not provided. In this correspondence they said that they are sorry that they could not agree on a resolution. They said this was because Mr J forwarded an email to them from the Court, which confirmed that the court had provided him a service; stating that the claim was processed, issued, and served.

Santander sent another correspondence to Mr J, also in July 2023. In that correspondence they said that are unable to uphold his claim under Section 75 of the Consumer Credit Act 1974 (Section 75). They said that they could not conclude that a misrepresentation or a breach of contract had occurred. This is because no false statement was made by the Court to encourage Mr J to enter into the contract and, they said, that no evidence has been provided to conclude that the Court application was completed correctly, as Mr J claimed. They went on to say that the Court also has confirmed to Mr J that they have carried out the process and served the claim correctly, so no refunds are due when cancelling the service.

Mr J was not happy that Santander would not refund him the money he paid to the Court, so he referred his complaint to our service.

Our investigator was of the opinion that the complaint should not be upheld. The investigator did not think Santander acted unfairly by not raising a chargeback and she did not think there was a successful claim under Section 75, as there was no breach or misrepresentation of the contract.

Mr J disagreed with the investigator. So, 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.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – which is to say, what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

This decision is not about the Court, who is not a financial service provider for the transaction in question, and so does not fall within this service's remit. So, in this decision I'm only considering the question of whether Santander have treated Mr J fairly when considering his claim.

As Mr J used his credit card to pay for the application at the Court, Santander had two options to pursue a refund for this – chargeback and Section 75. It is normal practice to try a chargeback first.

Chargeback

In some cases, a bank may be able to request a refund from the supplier through the chargeback scheme. The chargeback is a voluntary scheme which looks to resolve payment disputes between cardholders and suppliers/merchants. These disputes are dealt with under the relevant card scheme rules. There is no obligation for a card issuer to raise a chargeback when a consumer asks for one, but I would consider it good practice for Santander to pursue a chargeback, as long as it was possible to do so (within the scheme rules and criteria), and provided there is a reasonable prospect of success. This would include circumstances where goods or services are not supplied.

A chargeback does not guarantee a refund as the supplier/merchant can put forward a defence to the chargeback claim. If the chargeback is defended, Santander could pursue the chargeback further and ultimately ask the card scheme provider to arbitrate on the outcome. My role in such cases is not to second-guess the card scheme's arbitration decision or the scheme's rules, but to determine whether the card issuer (in this case Santander) acted fairly and reasonably when presenting, or choosing not to present, and when choosing whether to continue with the chargeback process, on behalf of their cardholder (in this case Mr J).

Santander did not raise a chargeback, so I've taken this into consideration when looking at whether they acted fairly by not pursuing this option. I've also taken a note of what both parties have told us.

As I said, I would consider it good practice for Santander to pursue a chargeback, bearing in mind scheme rules and criteria, and when there is a reasonable prospect of success. Santander did not raise a chargeback. But I'm satisfied that they did not act unfairly or unreasonably by not raising it. I do not think there was a reasonable prospect of success, considering that the Court responded to Mr J and said that they only refund fees where they have made a processing error, and that they do not make refunds for any duplicate application or claim that is received at court due to it being sent via multiple channels (such as by post and by email) or being made multiple times. They also said that as the administrative work had been carried out by the Court, Mr J was not entitled to a refund. I know that Mr J has said that he has not received the service in question, but he has not provided any evidence showing this to be the case. So, I'm satisfied that Santander acted fairly and reasonably by not pursuing the chargeback request, as there was no reasonable prospect of success.

Section 75 claim

Section 75 sets out that in certain circumstances Mr J can bring a claim against Santander for any breach of contract or misrepresentation by the Court. This is because, as the credit provider, Santander is jointly liable for any breach of contract or misrepresentation by the Court. Mr J knew what service he was requesting thru the Court and there is no suggestion of a misrepresentation here, as there was no statement made by the Court that induced Mr J to enter into the contract. So, I've thought about whether Mr J has demonstrated that there has been a breach of contract.

From the evidence available, it seems that when Mr J was purchasing the court application, he completed all the information himself. I know that he said that he entered the information correctly into the online Court system, but after the payment went thru, the system displayed a summary of the information for the claim, and this was incorrect. But there is nothing in the available evidence to show that this is something that was the Court's mistake or fault with their system. And the Court said that they still provided the services that Mr J had requested, as I can see that they wrote to him saying that the administrative work had been carried out by them. Once again, I know that Mr J said that he never received this service, but I've not seen enough evidence to say that, most likely, he was not provided this service. Also, I'm satisfied that he has not demonstrated that there was a breach of contract and as such, I'm satisfied that Santander has not acted unfairly or unreasonably by not giving Mr J a refund for the service in question.

I sympathise with Mr J for the difficulties that he is experiencing but, taking all the circumstances of the complaint into account, I think Santander has acted fairly and reasonably when dealing with his chargeback and his Section 75 claim. So, it is not fair or reasonable for me to require Santander to take any action in response to Mr J's complaint.

My final decision

For the reasons given above I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 15 April 2024.

Mike Kozbial
Ombudsman