DRN-5501536

## The complaint

Mr J complains that Santander UK Plc rejected his claim under Section 75 of the Consumer Credit Act 1974 ('CCA'). Mr J made the purchases along with his wife. But as the payments were made using a credit card in his sole name, he is the only eligible complainant here.

## What happened

In September 2014, September 2016 and September 2017 (the 'Time of each Sale'), Mr J agreed to enter into three sperate purchase agreements with a business, who I'll refer to as 'GGH'. The contracts state they were 'For Purchase of Rights on Properties by period for Tourism Purposes'.

The purchase prices agreed under the purchase agreements (after deductions granted) were:

- 'Purchase Agreement 1' - September 2014 - €218,902.16
- 'Purchase Agreement 2' - September 2016 - €108,227.98
- 'Purchase Agreement 3' - September 2017 - €185,472.00

In addition, Mr J also entered into two separate Management Mandate Agreements ('MMAs') with another business who I'll refer to as 'GEC'. The dates and purchase prices agreed under the MMA's were:

- 15 September 2016 – 'MMA1' - €5,995
- 12 September 2017 – 'MMA2' - €3,995

Mr J made three payments under the various agreements using his Santander Credit Card as follows:

- 24 September 2014, €4,080 (£3,187.49) to GGH
- 16 September 2016, €5,995 (£5,093.50) to GEC
- 12 September 2017, €3,995 (3,627.28) to GEC

Mr J hasn't provided details of any other payments made under the purchase agreements.

Mr J says that in early 2024, he discovered that an online investigation business (the 'OIB') had been looking into the agreements and products sold by GGH and GEC and concluded that they were part of *"a scam".* Furthermore, despite attempts by Mr J to contact GGH for an update and / or comment, he was unsuccessful.

On 24 March 2024, Mr J submitted a claim to Santander under section 75 of the CCA ('s.75') referencing the findings of the OIB. He thought GGH and GEC had misrepresented the products purchased and wanted Santander to reimburse the amounts he'd paid using his credit card.

Having considered Mr J's claim, Santander initially rejected it and then again for a second time on appeal. Santander said that the purchase prices (within the purchase agreements) exceeded the permissible limits for a claim to be considered under s.75.

Mr J referred matters to the Financial Ombudsman Service, whereupon he then submitted a complaint to Santander about their rejection of his claim under s.75. Having considered his complaint, Santander issued its final response in a letter dated 28 November 2024. They didn't think they'd done anything wrong in rejecting Mr J's s.75 claim for the reasons previously stated.

One of this service's investigators considered all the evidence and information provided. And having done so, didn't think Mr J's complaint should be upheld. In particular because:

- Two of the three payments made were not to GGH, so it didn't appear there was the necessary debtor-creditor-supplier ('DCS') agreement in place to enable a successful claim under s.75 for those associated payments.
- The total item price under each contract exceeded the monetary limits for s.75 to apply.
- The claim appears to have been submitted too late under the provisions of the Limitation Act 1980 ('LA'), and the investigator could find no persuasive reason why that limitation should be extended.

Mr J didn't accept the investigator's findings on the basis he was aware that other financial businesses had previously upheld similar claims. He asked that his complaint be referred to an ombudsman for a final decision, which is why it was passed to me.

Having considered the relevant information about this complaint, I was inclined to reach the same conclusion as our investigator. However, in some parts that was for slightly different reasons, and in other's I wanted to expand upon the reasoning. Because of that, I issued a provisional decision ('PD') on 10 April 2025 giving Mr J and Santander UK Plc the opportunity to respond to my findings before I reach a final decision.

In my PD, I said:

> Whilst I understand and have every sympathy with Mr J's experience, I do not think this complaint should be upheld. But before I explain why, I want to make it clear that my role as an Ombudsman is not to address every single point that has been made to date. Instead, it is to decide what is fair and reasonable to all parties in the circumstances of this complaint. So, if I have not commented on, or referred to, something that either party has said, that does not mean I have not considered it.
>
> What is more, I have made my decision on the balance of probabilities – which means I have based it on what I think is more likely than not to have happened given the available evidence and the wider circumstances.
>
> When deciding complaints, I am required by DISP[1] 3.6.4 R of the FCA[2] Handbook to take into account:
>
> > *"(1) relevant:*
> >
> > *(a) Law and regulations;*
> >
> > *(b) Regulators' rule, guidance and standards;*
> >
> > *(c) Codes of practice; and*
> >
> > *(2) (where appropriate) what* [the ombudsman] *considers to have been good industry practice at the relevant time."*
>
> The claim under s.75 CCA
>
> Liability under s.75 isn't based on anything the lender does wrong, but on any proven misrepresentation and/or breach of contract by the supplier. S.75 imposes on the

[1] Dispute Resolution: Complaints Sourcebook
[2] Financial Conduct Authority

lender a “like claim” to that which the borrower enjoys against the supplier. If the lender is notified of a valid s.75 claim, it should pay its liability. And if it fails or refuses to do so, that failure or refusal can give rise to a complaint to the Financial Ombudsman Service.

So, when a complaint is referred to the Financial Ombudsman Service on the back of an unsuccessful s.75 claim, the act or omission that engages this service’s jurisdiction is the creditor’s (here that’s Santander’s) refusal to accept and pay the debtor’s (Mr J’s) claim – rather than anything that occurs before the claim was put to the creditor, such as the supplier’s alleged misrepresentation(s) or breach(es) of contract.

In Mr J’s case, as Santander refused to accept and pay his claim in March 2024, it is Santander’s handling of that claim that this service is investigating – not the alleged actions or failings of the supplier or its associates. So, in considering Mr J’s complaint, it is my role to decide whether Santander acted fairly and reasonably when considering and responding to Mr J’s claim.

In submitting his claim to Santander, Mr J has not specifically detailed his own concerns other than referring to the findings of the OIB. In referring his complaint to this service, he suggests *“we were sold a product which was a scam”.* Further, that he’d paid money to a company (using his credit card) *“as a deposit for a holiday product that we have now found out wasn’t real”.*

I have read and considered the reports and commentary Mr J has provided (as prepared by the OIB). I don’t propose to include all of the contents in my decision as the parties to this complaint are familiar with them. However, they do include various allegations of misrepresentation, breach of contract and unlawful contracts in relation to the purchase agreements with GGH and the MMAs with GEC. I’ve also considered the various contract documentation provided (both with GGH and GEC).

Was Mr J’s claim under s.75 made in time?

As a general rule, creditors (like Santander) can reasonably reject s.75 claims that they are first informed about after the claim has become time-barred under the LA as it wouldn’t be fair to expect creditors to look into such claims so long after the liability arose and after a limitation defence would be available in court. So, it is relevant to consider whether Mr J’s s.75 claim was time-barred under the LA before he put it to Santander.

A claim under s.75 is a “like” claim against the creditor. It essentially mirrors the claim the consumer could make against the Supplier. A claim for misrepresentation again the Supplier would ordinarily be made under s.2(1) of the Misrepresentation Act 1967. And the limitation period to make such a claim expires six years from the date on which the cause of action accrues (see s.2 LA).

But a claim under s.75, like the one in question here, is also *“an action to recover any sum by virtue of an enactment”* under s.9 LA. And the limitation period under that provision is also six years from the date on which the cause of action accrued.

The date on which the cause of action accrued was the Time of each Sale. I say this because Mr J entered into the purchase agreement with GGH and the MMAs with GEC at those times based upon the alleged misrepresentations – which he says he relied upon. And Mr J made the payments using his credit card with Santander when he entered into those agreements.

Mr J first notified Santander of his s.75 claim in March 2024. And as more than six years had passed between the Time of each Sale and when he first put his claim to Santander, I don’t ultimately think it was unfair or unreasonable of Santander to reject Mr J’s concerns about the supplier’s alleged misrepresentations.

In submitting his claim to Santander, the reports from the OIB (which Mr J relies upon) suggests that GEC failed to fulfil its responsibilities under the MMAs, which could amount to a breach of contract. It is argued that GEC didn't fulfil its obligations under the MMA by providing assistance with the acquisition of the real estate / tourism product. And further to ensure the correct execution of the administrative and legal processes necessary for the full registration of the real estate assets for tourism use.

I understand that GGH ceased trading in 2023. And based upon advice and guidance provided by the OIB, in particular about the lawfulness or otherwise of the contracts he entered into with GGH, it was those findings that made Mr J aware of the alleged breach by GEC and the alleged misrepresentations and contract concerns relating to GGH. In essence, the OIB's report argues that GEC should have identified that the contract with GGH was illegal and acted in Mr J's interests.

Much of the information that Mr J relies upon suggests that the whole scheme was fraudulent and / or a scam. So, I have considered whether the provisions of Section 32 LA ('s.32') apply here insofar as the limitation period may be postponed in instances of fraudulent misrepresentation and / or deliberate concealment. Having done that, I don't think this is something this service is ultimately able to decide. But I have to consider if it is something upon which Mr J could rely on in pursuing his claim with Santander. So, for the purposes of this decision, I think it's worth considering Mr J's complaint further on the presumption his claim was made in time.

The purchase agreements and payments made.

In considering Mr J's complaint, I think it's important to first establish which credit card payment related to which purchase agreement / contract.

- Purchase Agreement 1 – I've seen a document bearing the name GGH headed 'Clauses of the Contract' albeit I haven't seen a copy of the main contract to which this applies. It shows a total purchase price of €263,702.16 with a deduction granted of €44,800. It then shows an amount of €10,080 with a payment date of 24 September 2014 and the method of payment stated as 'credit card'. Finally, it shows an amount of €208,822.16 with a payment date of 18 November 2014 and the method of payment as 'bank transfer'.

  Santander's records confirm that Mr J made a payment of €4,080 on 24 September 2014 to GGH using his credit card. So, whilst the amount differs to that on the document above, I'm persuaded that this credit card payment did relate to Purchase Agreement 1

- Purchase Agreement 2 – There is a document bearing the name GGH headed 'For Purchase of Rights on Properties by period for Tourism Purposes' which includes a page headed 'Clauses of the Contract'. This shows a total purchase price of €149,879.98 with a deduction granted of €41,652. It then shows an amount of €5,995 with a payment date of 15 September 2016 and the method of payment stated as 'credit card'. Finally, it shows an amount of €102,232.98 with a payment date of 27 October 2016 and the method of payment as 'bank transfer'.

  Santander's records do not show any payment having been paid to GGH in September 2016. So, on the face of it, I can't reasonably conclude that Mr J used his Santander credit card to make the payment under Purchase Agreement 2.

- MMA1 – This document bears the name GEC and is dated 15 September 2016. Note 3 of the document states that *"the fee received by the Agent shall amount to €5,995.00* […] *which shall be payable hereupon by Credit Card.*

*This document serves as full acknowledgement of receipt thereof".*

Santander's records confirm that Mr J made a payment of €5,995 on 16 September 2016 to GEC using his credit card. So, I'm persuaded that this credit card payment did relate to MMA1.

- Purchase Agreement 3 - There is a document bearing the name GGH headed 'For Purchase of Rights on Properties by period for Tourism Purposes' which includes a page headed 'Clauses of the Contract'. This shows a total purchase price of €249,472 with a deduction granted of €64,000. It then shows an amount of €3,995 with a payment date of 12 September 2017 and the method of payment stated as 'credit card'. It then shows an amount of €33,300 with a payment date of 27 September 2017 and the method of payment as 'bank transfer'. Finally, it shows an amount of €148,177 with a payment date of 27 October 2016 and the method of payment as 'bank transfer'.

  Santander's records do not show any payment having been paid to GGH in September 2017. So, on the face of it, I can't reasonably conclude that Mr J used his Santander credit card to make the payment under Purchase Agreement 3.

- MMA2 – This document bears the name GEC and is dated 12 September 2017. Note 3 of the document states that *"the fee received by the Agent shall amount to €3,995.00* […] *which shall be payable hereupon by Credit Card. This document serves as full acknowledgement of receipt thereof".*

  Santander's records confirm that Mr J made a payment of €3,995 on 12 September 2017 to GEC using his credit card. So, I'm persuaded that this credit card payment did relate to MMA2.

In summary:

- The credit card payment of €4,080 on 24 September 2014 appears to relate to Purchase Agreement 1.
- The credit card payment of €5,995 on 16 September 2016 appears to relate to MMA1.
- The credit card payment of €3,995 on 12 September 2017 appears to relate to MMA2.

In his submissions to this service, Mr J said, *"…a credit card payment we made to a company who we paid money to as a deposit for a holiday product…".* Based upon my findings above I agree that it seems Mr J's credit card payment in September 2014 was likely to have been a deposit under Purchase Agreement 1. However, as far as the next two credit card payments are concerned, I haven't seen any evidence to suggest those payments constituted a deposit under Purchase Agreements 2 and 3. Rather, they appear to be payments made under MMA1 and 2.

So, I've gone on to consider how that impacts Mr J's claim in relation to Purchase Agreements 2 and 3.

Was there the necessary Debtor-Creditor-Supplier ('DCS') Agreement

I think it is helpful to set out the relevant legal provisions.

S75(1) CCA states:

*"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".*

S12(b) CCA states that a debtor-creditor-supplier ('DCS') agreement is a regulated consumer credit agreement being:

*"a restricted-use credit agreement which falls within section 11(1)(b) and is made by the creditor under pre-existing arrangements, or in contemplation of future arrangements, between himself and the supplier".*

An agreement is a S11(1)(b) restricted-use credit agreement if it is a regulated CCA agreement used to *"finance a transaction between the debtor and a person (the "supplier") other than the creditor"* […].

The upshot of this is that for a claim under s.75 to be successful, there needs to be a DCS agreement in place for the Lender to be liable to the borrower (here that's Mr J) for the misrepresentations or contract breaches of the supplier. But, on the face of it, it appears there was no such arrangement in place at the relevant time (in relation to Purchase Agreements 2 and 3) as GGH (as the supplier under the Purchase Agreements 2 and 3) wasn't paid directly using Mr J's credit card. Instead, Mr J's credit card statement clearly shows that the payments were made to GEC.

Having carefully considered the entirety of the purchase agreements, I can find no reference to GEC being a party to them. Or that GEC had any contractual obligations under them.

With that being the case, I can't reasonably conclude that there was the required DCS in place such that it might lead to a valid claim being made under s.75. And with that being the case, I can't say that Santander's decision to reject Mr J's claim relating to Purchase Agreements 2 and 3 was unfair or unreasonable.

Does Mr J have a valid claim under s.75 in relation to Purchase Agreement 1?

Having established that Mr J used his credit card to fund Purchase Agreement 1, I've considered what S75 says. In particular, under S75(1), it 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".*

However, S75(3) then goes on to say:

*"Subsection (1) does not apply to a claim—*

*(b) so far as the claim relates to any single item to which the supplier has attached a cash price not exceeding £100 or more than £30,000 […]"*

So, based upon Purchase Agreement 1, it appears the purchase price (detailed above) was for more than £30,000. And with that being the case, I can't reasonably say that Santander's rejection of Mr J's claim on that basis was unfair or unreasonable.

For completeness, I would add that S75a does allow claims for breach of contract relating to purchases up to £60,260. But that particular provision only applies to 'Linked Credit Agreements'. S75a (5) says,

*"In this section "linked credit agreement" means a regulated consumer credit agreement which serves exclusively to finance an agreement for the supply of specific goods or the provision of a specific service* […]*"* (emphasis added).

Mr J's credit card doesn't constitute a 'linked credit agreement' as it pre-existed the purchase and was available for use against any other purchases Mr J chose to make. Furthermore, as the purchase price also exceeds this limit, I still don't believe Santander's rejection of Mr J's claim in relation to the payment made towards Purchase Agreement 1 was unfair or unreasonable.

The MMAs

Having established that two of the payments Mr J made appear to relate directly to MMA1 and MMA2, I've gone on to consider whether it would have been reasonable for Santander to have upheld a claim for breaches of those contract based upon the documentary evidence I've seen.

The MMAs appear to be documents between Mr J and GEC which set out across various clauses the parties' contractual obligations under them. The documents appear to have been signed by the parties to them and list a number of services GEC will provide in very general terms. These include:

- the co-ordination and intermediation of the internal and external procedures;
- settlement of administration and registration costs;
- to ensure correct identification of the customer; and
- that the products allocated to the customer are available for registration.

In reference to the findings and advice provided by the OIB, Mr J suggests that the transactions were a scam and the GGH contract was unlawful. In particular, as the purchase agreement with GGH breaches the regulations that apply. Therefore, the suggestion is that GEC did not fulfil the contracted service (under the MMAs).

Having considered the MMAs in some detail, I'm not persuaded that Mr J has demonstrated that GEC failed to deliver under them in such a way as to amount to a breach of contract. The services to be provided by GEC are vaguely worded, and it would be extremely difficult to establish that the contracts had been breached. Nor does any of the documentation indicate that GEC was acting as an agent for GGH. It was providing services to Mr J and not to GGH.

To take one example; of all the services GEC agreed to supply, I think the one which offers the greatest support to Mr J's claim is:

> *"Check with the development company that the products allocated to the customer are available for acquisition under the legislation in force".*

This wording is typical of the documents generally in that it is imprecise. It does not specify which company is the development company, but it is reasonable to presume that could be GGH. While I can see that Mr J may have taken that to read that GEC should check that the product is legally available for him, it does not say that. It simply says it will check with the development company. So, in order to satisfy any obligation under that clause, it simply had to ask the development company whether the products were legally available. I can't see that it offered to do any more than that. And it certainly didn't offer to ensure any answer from GGH was accurate.

I appreciate Mr J takes it as implicit in the MMAs that GEC would ensure everything was in order with the GGH contract. Whilst I can understand why he may think that I can't reasonably conclude that it offered such a service. So, even if the purchase agreements with GGH were found to be illegal and / or fraudulent – and I make no such finding – I can't reasonably say that GEC failed to deliver what was promised under the MMA.

Mr J may well be able to pursue his claim through other avenues however, I can't say that Santander rejection of his claim was ultimately unfair or unreasonable.

Other matters

In response to the investigator's findings, Mr J suggested he was aware of other financial businesses that had upheld s.75 claims where a GEC contract has been provided such as the ones in his case.

In reaching my decision, my findings are based upon the individual facts and circumstances as they relate to Mr J's specific claim and Santander's treatment of it. Whilst I understand and appreciate his frustrations, It would not be appropriate for me to base my decision upon claims made to other financial businesses by other (unrelated) consumers. Not least, as I'm not privy to the individual circumstances of such claims and the basis upon which those businesses allegedly upheld them.

Summary

I want to acknowledge that because Mr J's complaint relates to a claim involving multiple payments and contracts, I appreciate my reasoning may appear complex and lengthy. However, I think it is important that I explain fully how I have considered his complaint and consequently, how I've arrived at my decision.

I realise that Mr J will be very disappointed but hope my decision and the rationale above helps Mr J understand why I don't currently think I can ask Santander to do anything more than it has already.

If there is any further information on this complaint that Mr J wishes to provide, I would invite him to do so in response to this provisional decision.

Santander have acknowledged receipt of my PD and confirmed it has nothing further to add.

In response, Mr J provides further clarification of the claim he believes was submitted to Santander. In particular he says:

- *"We have not submitted a S75 claim for the larger sums of money paid to GGH…"*
- *"What we are claiming against is the GEC amounts we paid* […] *where we signed a Management Mandate Agreement and paid an amount for a service for them to ensure all the contracts were legal".*
- *"Our claim for £3,187.49* (€4,080) *wasn't upheld as we didn't have a signed agreement with GEC and we paid money to GGH which we accepted the findings on this* […]*".*
- *"…we believe the other 2 payments* […] *for £5,093.50* (€5,995) *and £3,627.28* (€3,995) *are valid* […]*"*

Having received responses from both parties, Mr J's complaint was passed back to me.

**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.

I would like to thank Mr J for providing further clarity about the claim he believes he submitted to Santander. I appreciate that he thinks there were elements addressed, both in Santander's response and also within my PD that didn't form part of his claim. However, for completeness, I thought it was important to consider all potential aspects of Mr J's claim based upon the information and evidence provided. In particular because:

- in an email to Santander on 12 April 2024 Mr J said, *"**We paid GGH*** […] *on 3 occasions on our Santander Credit Card* […]*".*
- upon referring his complain to this service Mr J said, *"we are trying to claim back under S75 claim **the deposits we paid** on credit card* […]*"* .

- in an email to this service Mr J said, *"we believe **we paid these** to GEC* […] ***for GGH*** […] *on my Santander Credit card"*.

(My emphasis Added)

In summary, these statements suggest that Mr J initially saw the payments he made using his Santander credit card as deposits for the products he bought from GGH. However, Mr J's response to my PD suggests that isn't the case. Rather, he now accepts that the payments made in September 2016 and 2017 relate to the MMAs he entered into with GEC rather than for the products purchased from GGH. And Mr J remains of the view that he has a valid claim for those two payments.

In support of his complaint, Mr J refers to statements produced by the OIB in which it is alleged *"The service was generally described as a 'Management Mandate Agreement', and purportedly included 'assistance with real estate purchase'*. The wording in the MMAs says, *"…to be assisted in the acquisition of a real estate/tourism product…".*

It's further alleged, *"The business* (GEC) *charged substantial sums to people that were in the process of purchasing a purported 'real estate investment' and 'holiday club'…,* [and] *The details allude to what are inferred to be checks and legal processes to ensure that the registration and processing of the so-called 'real estate assets' are appropriately completed".* The suggestion by the OIB is that GEC misrepresented its services under the MMAs and failed in its duties to ensure that the products purchased from GGH were lawful.

In my PD, I explained my thoughts and findings about the MMAs Mr J entered into. For me to conclude there were misrepresentations made by GEC in the ways that have been alleged, generally speaking, I would need to be satisfied, based on the available evidence, that GEC made false statements of fact when selling the MMAs to him. In other words, that they told Mr J something that wasn't true in relation to one or more of the points raised. I would also need to be satisfied that the misrepresentations were material in inducing Mr J to enter the contract. This means I would need to be persuaded that he reasonably relied on those alleged false statements when deciding to enter into the MMAs.

From the information available, I can't be certain about what Mr J was specifically told (or not told) about the services to be provided under the MMAs. As explained in my PD, I've considered what was included within the documentation provided to Mr J at the Time of each Sale. Having done that, I haven't found anything to suggest that GEC made any firm commitment other than to *"Check with the development company…".* I addressed this within my PD. So, whilst I do understand that Mr J may have thought GEC would provide a more comprehensive legal service, I can't say that it was contractually obliged to do so. And because of that, I can't reasonably conclude there was an actionable misrepresentation that the Lender should ultimately be held liable for under S75.

For similar reasons, I also remain of the view that there's no clear evidence that GEC breached the terms included within the MMAs. So, I also can't reasonably conclude there was a breach of the MMA's such that Santander should be held liable under S75.

Whilst I completely understand Mr J's frustration, I can't see that I've been provided with any new evidence to change my view here. Because of that, I've no reason to vary from the findings in my PD, so I won't be asking Santander to do anything more.

**My final decision**

For the reasons set out above, I don't uphold Mr J's complaint about Santander UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 22 May 2025.

Dave Morgan

**Ombudsman**