Financial Ombudsman Service

The complaint

Miss S complains about the outcome of a claim she made to Santander UK Plc (Santander) in respect of goods purchased not having been delivered.

What happened

On 27 July 2024, Miss S paid £1,335.95 to a merchant who I'll call B. The payment was made to purchase a designer baby changing bag and Miss S made payment using her Santander credit card.

B utilised a well-known courier service to deliver a parcel to Miss S on 29 July 2024. Miss S contacted B soon after delivery to let it know that when she opened the box, the baby changing bag was missing and the box only contained a dust bag and a baby changing mat. She claimed the bottom of the box had been tampered with. As far as I understand it, B said she would be refunded the cost of the bag if she returned the dust bag and changing mat. At this time, Miss S said she did not receive the changing mat, and B then rescinded its offer of a refund.

On 6 August 2024, Miss S approached Santander to raise a payment dispute. Santander gathered further information from Miss S before raising a chargeback dispute on 23 September 2024. B defended the dispute and Santander asked Miss S for her comments in relation to the evidence and comments received from B. On receipt of Miss S's response, Santander determined it would not have reasonable prospects of success if it continued and decided not to continue with the chargeback dispute.

On 20 January 2025 Santander commenced a review of the claim under Section 75 of the Consumer Credit Act 1974 (Section 75). On 26 March 2025, the claim was declined on the basis that there was insufficient evidence to determine a breach of contract or misrepresentation.

Miss S raised two complaints during the course of her claim. The first was for the charges made to her credit account and Santander paid Miss S £75 for errors in messaging for this issue. With regard to the outcome of her claim. Santander said it had handled her dispute fairly.

Miss S then brought her complaint to our service. She said the changing bag had not been delivered to her and both the retailer and Santander have failed to aid her. She asked for a refund of £1,330 as a resolution to her complaint as the £5.95 delivery charge had already been refunded by B. Miss S provided information about how advanced her pregnancy was when all this occurred, and described the impact that the stress had on her and on her delivery of her child.

Our investigator reviewed the complaint and found that Santander did not handle the claim fairly. He said the chargeback was raised for the right reasons and did not have reasonable prospects of success following Miss S's response to B's defence, so it was reasonable for Santander to focus on Section 75 following this. With regard to Section 75, our investigator said the box was tampered with and as this happened whilst in the courier's possession, the responsibility lay with B. Our investigator said Santander could be held liable for this breach of contract and asked Santander to refund the £1,300 paid for the changing bag if Miss S showed an attempt to return the changing mat and dust bag. Our investigator also asked Santander to pay £100 for the distress and inconvenience caused to Miss S.

Miss S agreed to the outcome. Santander did not agree and asked for an Ombudsman to consider the complaint. Santander said checks had been done by B and the courier company and both reviews showed no evidence of tampering. Santander thought the issue here is theft of the item and that would not be covered by Section 75. Santander further said in any event, there is not enough evidence to support a breach of contract or misrepresentation. I issued a provisional decision in which I said the following:

"I would like to start by saying that I have provided a brief summary of the events that occurred above. I intend no discourtesy by this and can assure both parties that I have taken all the information provided into consideration when reaching a decision on this complaint.

In this decision, I'll concentrate my comments on what I think is relevant. If I don't comment on a specific point, it's not because I've failed to consider it, but because I don't think I need to comment in order to reach a fair and reasonable outcome. Our rules allow me to do this, and this reflects the nature of our service as a free and informal alternative to the courts.

I also think it's worth clarifying that I'm deciding whether Santander acted fairly in assisting Miss S with her dispute against B. I'm not making a finding on the underlying dispute Miss S has with B. When considering what's fair and reasonable, I'm only considering whether Santander acted in line with its obligations as a provider of financial services.

<u>Chargeback</u>

Chargeback is a voluntary scheme under which settlement disputes are resolved between card issuers and merchants, under the relevant card scheme. A card issuer will review the claim against the possible reasons for a chargeback and look at whether it would be able to make a successful claim for the customer. Card issuers do not have to submit claims and usually will only do so, if it is likely to be successful. We don't expect them to raise a claim if there is little prospect of success.

After gathering further evidence from Miss S, Santander raised a chargeback under the most appropriate reason code in the circumstances. Having reviewed B's defence and Miss S's response to the defence documentation, I agree the chargeback dispute had low prospects of success. B provided information supporting the appropriate packaging of the item purchased and dispatch of the item to the courier service. The courier service provided evidence the parcel was delivered to the intended address and was received by Miss S. B also provided its thoughts on the use of clear tape at the bottom of the box. Miss S had little to say in response to this that would help Santander mount a tenable argument against this evidence if the matter was taken to pre-arbitration. So, as far as a chargeback dispute is concerned, I find it unlikely the dispute would have succeeded if taken further. I therefore am minded to find that Santander treated Miss S fairly with regard to the chargeback dispute.

<u>Section 75</u>

Section 75 of the CCA allows – in certain circumstances - for a creditor (Santander) to be jointly and severally liable for any claim by the debtor (Miss S) of breach of contract or misrepresentation made by a supplier of goods and/or services (B).

Miss S is not alleging that a misrepresentation was made which induced her to enter into the contract, so I do not need to consider this in this provisional decision. Instead, I will focus on *whether the evidence supplied supports that there was a breach of contract. On contractual rights concerning delivery of items purchased, B's terms and conditions say:*

"6.3 Your Order is subject to English law. Your Order will be complete and the Product(s) in your Order will then be owned by you (and so risk of loss or damage to such) will pass to you in the first instance of either of the below taking place:

a) the date on which we receive payment in full for the Product(s); or

b) the date and time of collection of it from a Click & Collect collection point, in a [B] store or delivery by us to your nominated address, safe place, neighbour or as specified by you to our delivery partner. The Order is your responsibility from the time the delivery is made to the address or safe place you gave to us."

It is clear therefore that B take responsibility for items purchased prior to the time delivery is made to the address given to it. Following delivery, the responsibility for the item passes to the purchaser (Miss S). Section 29 of the Consumer Rights Act 974 also supports this position. This legislation essentially states that goods remain at the trader's risk until they come into the physical possession of the consumer or a person identified by the consumer to take possession of the goods.

The question in this case therefore is whether there is enough evidence to support the position that the parcel was tampered with in such a way that Miss S did not receive the goods purchased. If this can be established then the responsibility for this failure would fall with B, and therefore Santander through the connected lender liability afforded by Section 75.

Miss S has provided a picture of the box with clear packing tape having been used to seal the bottom of the box. In comparison, B has said the following:

- *Miss S's testimony was inconsistent in that first she said she had received the changing mat and then later changed this to say she had not received the mat.*
- *B's CCTV footage shows the correct items being packed and sealed within the parcel.*
- *B has checked its stock levels, and these are consistent with the item purchased having been dispatched.*
- *The courier weighed the parcel, and this showed the parcel was 1.5kg indicating the item was within the parcel when received by the courier.*
- *The courier service also investigated and found no damage was reported to the packaging when scans of the parcel were conducted through the delivery network.*
- *Neither B nor the courier service use clear tape.*

The evidence confirms that the item was packaged and given to the courier service. The item was received by the courier service on 28 July 2024 and was delivered by 29 July 2024, and the picture on delivery does not show the bottom of the box. The parcel was in the courier service's hands for a short period of time. During that time, it was transported from one depot to another before being put on a delivery van which took the item to Miss S's delivery address. It is impossible to say what happened during that time but as per the courier service's commentary the item would have been scanned and was found to be in normal condition at close to 7.00 on 29 July when it arrived at the depot closest to Miss S's home and was delivered by 13.56 on the same day.

Having weighed up the evidence available, I do not find that there is enough for me to safely conclude that the parcel was tampered with before it reached Miss S's house. She has provided a picture of the parcel with clear tape on the bottom, which B say neither they nor the courier service use. But it is impossible to say with certainty at what point this happened. Miss S has shown some inconsistency in testimony, and I appreciate that she cannot recall much that happened at that time due to the advanced stage her pregnancy but I do not find that her testimony is enough evidence to support a breach of contract claim in the circumstances. To be clear, I am not saying that Miss S has misrepresented what happened in any way and I am very sorry for what she has experienced. However, I am minded to find that the evidence is not strong enough to persuade me that there was a breach of contract that took place. So, it follows that I am minded to find that Santander treated Miss S fairly and reasonably with regard to the claim and does not need to take any action to put things right.

I am conscious that this outcome will be met with disappointment from Miss S. I would like to acknowledge that I appreciate she has told us about the difficult circumstances concerning the birth of her child and her experiences afterwards due to the stress induced by this matter. However, I am not persuaded by the evidence available that Santander has treated her unfairly which is why I am changing the outcome at this stage."

Santander agreed with the provisional decision. Miss S disagreed and said the following:

- When she called B to let them know the parcel had been tampered with, she said she had only received the changing mat and the invoice. She later called them back and told B she was stressed. There was some miscommunication over the phone and when she offered to send the changing mat back B took no notice and disregarded what she was saying.

- The package may've been scanned correctly however when it was delivered to her it had been tampered with.

- Miss S's sister has sadly passed away, she has been made redundant from work, she suffered from postpartum depression, and she had a difficult delivery when she was giving birth to her child brought on by the stress of this matter, yet she has continued to pursue this complaint.

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 reviewed the further information provided, I am reaching the same outcome as outlined in my provisional decision and for the same reasons. I will address the points raised by Miss S below.

I understand that B was originally offering a refund to Miss S on the provision that she returns the changing mat and dustbag which she said had arrived. B informed Santander that in a phone call later on Miss S said she did not have the changing mat, and so B decided not to provide a refund. Miss S has now said that she continued to offer to return the changing mat following some miscommunication, but B wouldn't listen.

I can understand that Miss S was heavily pregnant at the time this occurred and that she was stressed about what had happened. This can cause errors in communication. However, the merchant decided that in the circumstances it would no longer be offering a refund, and this is not something that this service can comment on.

This service can only review whether Santander has treated Miss S fairly in relation to her claim and having reviewed the information provided by both parties, I hope Miss S can see how the miscommunication (as she has phrased it) might cause Santander to have some doubt as to her account of what had happened.

To be clear, I am not saying that she is lying but rather that I find it reasonable that Santander concluded there is not enough evidence to support a finding that the parcel had been tampered with prior to delivery. This is supported by the evidence supplied by B in relation to its own processes but also those of the courier service who both undertook a review of what happened following the complaint having been made by Miss S.

I appreciate that Miss S has pursued this complaint under difficult personal circumstances. However, no new information has been provided that supports a finding that there has been a breach of contract for which Santander should be held liable for her loss under Section 75.

My final decision

My final decision is that I do not uphold Miss S's complaint against Santander UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 3 October 2025.

Vanisha Patel
Ombudsman