

complaint

Mr W complains that Santander UK Plc rejected his claim under section 75.

background

In April 2018 Mr W entered into an agreement with a third party for works to be carried out on his home. He paid £500 using his credit card and £19,500 using his current account by way of staged payment/deposit.

The supplier didn't carry out the work. In June 2018 Mr W asked Santander to recover the payments.

Santander responded to Mr W and said he didn't have a valid claim under Section 75 because the price of the goods or services was more than £30,000. It said it would try to recover the £500 via chargeback and said it had raised a claim with the fraud department in relation to the £19,500 paid from Mr W's account.

The chargeback claim was successful and £500 was returned to Mr W. The fraud department attempted to recall the £19,500 but the supplier's bank responded that no funds remained.

Mr W remained unhappy and complained to this service.

Our investigator didn't uphold the complaint. He said the total cost of the building project under the agreement was £141,750 which exceeded the limit of £30,000 applicable to Section 75 claims. He said that because of this, Santander had no obligation to meet the claim.

Mr W didn't agree. He said the £20,000 he'd paid related only to stage one of the project and was therefore for goods and services less than £30,000. He felt that Santander's response had been contradictory because it had refunded the £500 he had paid by credit card. Mr W was also unhappy at how long it had taken Santander to deal with the claim. He said he'd initially contacted Santander when the supplier was active (it having since gone into liquidation) but by the time Santander responded the money had been withdrawn.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In certain circumstances Section 75 gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there's been a breach of contract or a misrepresentation by the supplier. In order to uphold Mr W's complaint I would need to be satisfied that the provisions of Section 75 apply and that Santander's response wasn't fair and reasonable.

There are limitations to when a provider of credit is liable along with the supplier. For Section 75 to apply, the goods or services must have cost over £100 and not more than £30,000.

In order to claim under Section 75, a consumer doesn't need to have paid more than £100 (or the full amount) on a credit card. The provider of credit is liable even if the consumer only made part of the payment on a card. I've clarified this because Mr W paid £500 of the £20,000 on his credit card.

I've looked at the available documents in relation to the agreement to demolish and rebuild the house. The contract price is £141,750. I can see that Mr W paid £20,000 which he has said was for stage one of the works.

I understand the point which Mr W makes when he says that the payment of £20,000 was for goods and services less than £30,000, rather than a partial payment of the total cost. However, I disagree with him. It's clear from the documents that the contract price is £141,750. It's not unusual for payments in building contracts to be made in stages, but each stage is a part of the whole contract. I think it's an artificial distinction to say that a stage payment isn't a part payment of the total cost.

Based on what I've seen, I'm satisfied that the cost of goods and services was more than £30,000. This means that Section 75 doesn't apply because the criteria aren't met. I'm unable to say that Santander has made an error in declining the claim.

I can see that Santander made an attempt to recover the funds from the supplier's bank account, which is what I'd expect it to do in cases like this.

I appreciate that Mr W is disappointed that the money had already been withdrawn but I don't think this was due to unreasonable delay on Santander's part. It's not unusual for monies to be withdrawn immediately in circumstances like this for the very reason that the recipient doesn't want the monies to be successfully recalled by the innocent party.

Mr W has said that Santander has responded in a contradictory way because it refunded the £500 payment. I can see that £500 was refunded under the chargeback rules. Chargeback is a transaction reversal to dispute a card transaction. Although it is similar to Section 75, it is a different remedy with different criteria. I think Santander acted fairly in attempting to recover Mr W's payment using all available methods and I don't think there's anything contradictory about this. It's simply that Mr W's payment of £500 met the criteria for chargeback but the payment didn't meet the criteria for Section 75.

I have sympathy for Mr W as he's lost money through no fault of his own. But I'm satisfied that Santander has responded fairly to the complaint and because I'm satisfied that Section 75 doesn't apply, I won't be asking it to do anything.

my final decision

My final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 12 July 2020.

Emma Davy
ombudsman