

complaint

Mr B complains that Santander UK Plc rejected his claim for compensation under section 75 of the Consumer Credit Act 1974 in relation to credit card payments he made to an investment website he says was a scam.

background

In September 2017 Mr B made a number of payments to what he believed was an investment company, only to discover later that it was a scam. Most of the payments were made by bank transfer, but two were made using his Santander credit card. These added up to £2,250. When he realised he would never get his money back, he complained to Santander and asked for the credit card payments to be returned to him under section 75. Santander refused, on the basis that section 75 does not apply to deposits made to “online gambling accounts.” Being dissatisfied with that answer, Mr B brought this complaint to our Service. (He also contacted the police and the Financial Conduct Authority.)

Our adjudicator did not uphold this complaint. She agreed that section 75 did not apply to Mr B’s predicament, because his credit card payments had only been deposits into an account, not purchases of goods or services.

Mr B did not accept that decision. In summary, he said:

- He had been paying the investment company for a service, namely financial investment;
- Santander had given an entirely different reason for rejecting his claim (that he had paid a gambling website);
- His daughter had made a similar credit card payment (not with Santander) and had obtained a refund.

This complaint was therefore referred to me for an ombudsman’s decision.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I regret to say that I am unable to uphold it. I will explain why, but first I would like to express my sympathy to Mr B, who has lost a great deal of money in spite of having carefully researched the company before he made any payments. I hope he is able to recover his losses through another route.

Section 75 of the Consumer Credit Act, where it applies, makes the provider of credit liable for a breach of contract or a misrepresentation by a third party in relation to goods or services which were paid for with the credit card. In other words, Santander may be jointly liable for services which Mr B paid for with one of its credit cards but which were not provided.

Section 75 only applies “in relation to a transaction financed by the agreement” (meaning the credit card agreement). In this context, “a transaction” means not the credit card payment itself, but the provision of an investment service to Mr B by the investment company. That transaction has to have been financed by Santander for section 75 to apply, but that was not what the credit card payments were for. They were just to deposit money into an account.

This was not intended to be Mr B's payment for the service. It was the money he was seeking to invest.

The same logic applies to gambling transactions, which are also not covered by section 75 either. So I think this is what Santander was trying to explain in its letters to Mr B when it referred to gambling, although of course that is clearly not what Mr B was doing and it is not the service the investment company was offering to provide. It was an analogy. It was poorly expressed, but I note that Santander has already paid Mr B £50 for the way in which one of its letters was written, and I think that is enough to resolve that issue (even though the £50 was only for one of the two letters).

I don't know why Mr B's daughter was paid a refund by another credit card provider, but that does not mean that Santander was wrong not to do so. There may have been some subtle but important difference between that card payment and these ones, or perhaps the other credit card provider refunded it as a gesture of good will and not because it was obliged to, or perhaps it mistakenly thought that section 75 applied when it did not. I can't say. But I'm afraid that this does not change my mind about this complaint.

my final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 17 September 2018.

Richard Wood
ombudsman