

## **complaint**

Mrs K complains that Santander UK plc won't refund to her the deposit that she paid for a car. Her complaint is made against Santander under section 75 of the Consumer Credit Act 1974.

## **background**

Mrs K used her Santander credit card in November 2014 to pay a £5,000 deposit for a car. She says that the car was being bought by her and her brothers. There was a delay in the car being supplied so the order was cancelled and Mrs K asked Santander to refund her deposit under section 75. It said that the order form for the car was only in the name of Mrs K's younger brother – so it said that Mrs K wasn't a party to the contract and that the debtor-creditor-supplier link required for a claim under section 75 had been broken. Mrs K wasn't satisfied with its response so she complained to this service.

The investigator didn't recommend that this complaint should be upheld. He said that the only evidence linking the recipient to the supplier and the purchase was the order form which was in the name of Mrs K's younger brother. So he said that there wasn't enough evidence to suggest that Mrs K was the intended recipient of the car.

Mrs K has asked for her complaint to be considered by an ombudsman. She says, amongst other things, that:

- she spoke to the supplier and paid the deposit;
- she had a contractual expectation to receive something for her payment of £5,000;
- she wouldn't have bought a car for her younger brother;
- Santander's terms and conditions don't make it clear that a contract with her name on it was required; and
- she has legal advice which says that the credit card company has joint and several liability under section 75 for any breach of contract or misrepresentation by the supplier.

## **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 misrepresentation by the supplier. One of those circumstances is that there must be a direct relationship between the debtor, the creditor and the supplier.

In this case Santander is the debtor because it has provided credit to Mrs K in the form of a credit card account, she is the creditor because she's used that credit card to pay the deposit for the car and the supplier is the supplier of the car.

The main documentary evidence for the purchase is the order form. It shows that the order was made by Mrs K's younger brother – and it doesn't refer to Mrs K. The e-mails relating to the order are between the supplier and Mrs K's younger brother (and I've seen no evidence to show that Mrs K has been involved in e-mail correspondence with the supplier). And the supplier says that the car was commissioned by Mrs K's younger brother, that it hasn't dealt with Mrs K and that it doesn't have a contract with her.

So I'm not persuaded that there's enough evidence to show that there's a direct relationship between Mrs K and the supplier of the car. I consider it to be more likely than not that the supplier agreed to supply a car to Mrs K's younger brother – and not to Mrs K. So I find that the debtor-creditor-supplier relationship required for a claim under section 75 isn't present in these circumstances. I can understand Mrs K's frustration about these events, but I find that it wouldn't be fair or reasonable for me to require Santander to refund to Mrs K under section 75 the £5,000 deposit that she paid for the car – or to take any other action in response to her complaint.

**my final decision**

For these reasons, my decision is that I don't uphold Mrs K's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 20 July 2017.

Jarrold Hastings  
**ombudsman**