

complaint

Mr L complains that Santander UK Plc won't refund to him the money that he paid for a car to be released from a compound. His complaint is made against Santander under the chargeback rules and section 75 of the Consumer Credit Act 1974.

background

Mr L says that his car was illegally impounded and that he had to pay £563 in November 2017 for the car to be released. He made that payment using his Santander credit card. He claimed a refund of the £563 from Santander under the chargeback rules and section 75. He wasn't satisfied with its response so complained to this service. Santander says that the car is owned by Mr L's father so the debtor-creditor-supplier relationship required for a claim under section 75 isn't present.

The investigator didn't recommend that this complaint should be upheld. She believed that, subject to Mr L providing a copy of his insurance documents, he did own the car at the relevant time. But she said that there was no evidence that there'd been a breach of contract or misrepresentation. And she said that Santander was entitled to require Mr L to pay the credit balance and to charge any applicable interest and fees.

Mr L hasn't provided a copy of his insurance document but has asked for his complaint to be considered by an ombudsman. He says that insurance has no legal bearing on ownership of a car and nor does the V5 document which shows the car's registered keeper.

my findings

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

There's no right for a consumer to require that a chargeback claim be made. But if the right to make a chargeback claim exists under the applicable scheme rules – and if there's a reasonable prospect of success – I consider it to be good practice for a chargeback claim to be made. But I'm not persuaded that there was any reasonable prospect of a chargeback claim being successful in these circumstances. Any such claim by Santander would've been defended by the company running the compound. So I don't consider that Santander acted incorrectly by not making a chargeback claim.

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 relevant relationship between the debtor, the creditor and the supplier. And to be able to uphold Mr L's complaint about Santander, I must be satisfied that there's been a breach of contract or misrepresentation by the company running the compound and that Santander's response to his claim under section 75 wasn't fair or reasonable. I'm not determining the outcome of Mr L's claim under section 75 as only a court would be able to do that.

Mr L says that the car was sold to him by his father in October 2017. And he's provided a bill of sale for that transaction. But I've also been provided with an incomplete V5 registration certificate for the car and Mr L hasn't provided the insurance documents to show that he's insured to drive the car. I'm not persuaded that there's enough evidence to show whether or

not the car is owned by Mr L. So it's not clear whether or not there's a relevant relationship between the debtor, the creditor and the supplier in these circumstances.

But even if there is a relevant debtor-creditor-supplier relationship, I'm not persuaded that Mr L has provided enough evidence to show that the company running the compound has committed a breach of contract or misrepresentation. Mr L paid £563 for the car to be released from the compound – and that's what happened.

So I find that it wouldn't be fair or reasonable in these circumstances for me to require Santander to refund the £563 payment to Mr L – or to take any other action in response to his complaint.

my final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 3 January 2019.

Jarrold Hastings
ombudsman