

complaint

Mrs B complains that she's being pursued for repayment of the money that was lent to her under a fixed sum loan agreement with Santander UK plc, trading as Santander Cards. She also complains about the adverse information that's been recorded on her credit file. She's being helped with her complaint by her husband.

background

Mrs B used a fixed sum loan agreement with Santander Cards to pay for a sofa. She signed the agreement in March 2012 but the first repayment under the agreement wasn't due until January 2013. The sofa hadn't been installed correctly so failed in late 2012 and Mrs B complained to the supplier. She wanted the sofa to be replaced but the supplier only offered to repair the sofa. Mrs B complained under section 75 of the Consumer Credit Act 1974 – but Santander Cards had transferred its store card business to a third party – so the third party dealt with her complaint - and she says that it agreed to write off the loan. Mrs B cancelled her direct debit in November 2012 so Santander Cards didn't receive any payments from her. It then sold Mrs B's account to a debt collection agency in February 2014 and, because no payments had been made, it recorded a default on Mrs B's credit file in August 2014. Mrs B complained to Santander Cards but wasn't satisfied with its response so complained to this service. She's also made a separate complaint to this service about the debt collection agency – but that complaint wasn't upheld.

The investigator didn't recommend that this complaint should be upheld. She couldn't see that Santander Cards had acted incorrectly when dealing with Mrs B's complaint and she couldn't see any evidence to show that the debt was written off through a section 75 claim. So she didn't think that Santander Cards had been unfair to say that Mrs B owed the money that had been lent to her.

Mrs B's husband – on her behalf - has asked for this complaint to be considered by an ombudsman. He says, in summary, that:

- the sofa came with a ten year guarantee so only a replacement would've been acceptable and a repair wouldn't have sufficed;
- there was a breach of contract because the sofa had been incorrectly installed which led to it collapsing – so the sofa wasn't fit for purpose;
- Mrs B was told that the matter had been resolved – and Santander Cards hasn't provided any evidence to contradict that and has "lost" all record of the outcome of the case;
- he and Mrs B have a considerable household income and pay every other bill on time so wouldn't damage their credit reports by ignoring payments that were due;
- the only reason that the default has occurred is because Santander Cards sold the debt and provided no evidence of the debt for four years; and
- the default is grossly unfair and should be removed.

my findings

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

Mrs B bought the sofa in March 2012 – and wasn't required to start making payments until January 2013. But the sofa had been installed incorrectly so she complained to the supplier in late 2012. It offered to repair the sofa but Mrs B would only accept a replacement. So she made a claim under section 75. Santander Cards had transferred its store card business to a third party – so the third party dealt with her complaint. She says that it agreed to write-off the loan – and Mrs B cancelled

her direct debit. But she's not been able to provide any other evidence to show that the third party (or Santander Cards) agreed to write-off the loan.

I consider it to be unlikely that the third party would've said that the loan would be written-off in these circumstances. The supplier had offered to repair the sofa – which wasn't accepted by Mrs B. And I consider it to be more likely than not that further evidence, such as an independent report, about the issue with the sofa would've been required before the third party could properly respond to Mrs B's section 75 claim. But Mrs B hasn't been able to provide any such evidence. Even if it was accepted that there'd been a breach of contract, Mrs B wouldn't have had an automatic right to have the sofa replaced as a repair may have been an acceptable remedy. And although Mrs B may've understood that her loan was being written-off, I consider it to be unlikely in these circumstances that the loan would've been written off.

Santander Cards was expecting payments to start in January 2013 – but Mrs B had cancelled her direct debit. So her account went into arrears. It sold the debt to a debt collection agency in February 2014 and the debt collection agency wrote to Mrs B about the debt in March 2014. She didn't respond to that letter so it sent her a notice of default in April 2014 and it defaulted the account in August 2014.

This will have been a distressing experience for Mrs B and I sympathise with her for that. Santander Cards accepts that there was a delay in responding to her complaint. And it sent her a £25 cheque because of those delays. But Santander Cards lent money to Mrs B so that she could buy a sofa, she received that sofa and I'm not persuaded there's enough evidence to show that it was agreed that the loan would be written-off. Mrs B didn't make any loan repayments so Santander Cards sold her debt to a third party and it defaulted the account.

For these reasons, I find that it wouldn't be fair or reasonable in these circumstances for me to require Santander Cards to arrange for the debt owed by Mrs B to be written-off or to arrange for the default to be removed from her credit file. Nor do I consider that it would be fair or reasonable for me to require Santander Cards to take any other action in response to Mrs B's complaint.

my final decision

So my decision is that I don't uphold Mrs B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 3 November 2018.

Jarrold Hastings
ombudsman