

## **complaint**

Mr F complains that a car he purchased for his son using his credit card was not of satisfactory quality. He says that because of this he has spent money on repairs and sold the car at a significant loss. He brings his complaint against Santander UK Plc under section 75 of the Consumer Credit Act 1974.

## **background**

Mr F says he initially tried to resolve the matter with the seller without success. Therefore, he brought his complaint to Santander.

Santander would not uphold Mr F's complaint. In summary, it said that as the car was for Mr F's son there was not the correct 'debtor-creditor-supplier' relationship for a valid complaint under section 75.

Our adjudicator recommended this complaint be upheld in part. She was satisfied that there was the correct relationship between the parties for Mr F to have a valid complaint under section 75. She noted that soon after purchase a fault was diagnosed with the car which was causing it to lose power and cut out. She was satisfied this was consistent with Mr F's claim that he experienced problems with loss of power soon after purchase. And she noted that Mr F had made reasonable attempts to resolve the issue with the dealer.

She concluded that the car was not of satisfactory quality at the time of sale and that Mr F was entitled to reimbursement for the repairs. She was not satisfied that it was fair and reasonable to compensate Mr F for selling the car at a loss as he had not substantiated this with any paperwork. However, she was satisfied that Santander had delayed in handling his section 75 complaint and recommended it pay Mr F £50 compensation for this.

Santander agreed to pay the £50 compensation as a goodwill gesture. However, it maintains that there is not the correct 'debtor-creditor-supplier' relationship for Mr F to have a valid complaint under section 75. It notes that the sales invoice is in the name of his son.

Mr F says he is out of pocket by £1,600 because he sold the car for £400 for spares or repair. He maintains that he should be reimbursed this amount.

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

*does Mr F have a claim under section 75?*

Section 75 makes the provider of credit (Santander in this case) equally liable where there is a case of misrepresentation or breach of contract by the supplier of goods or services financed by the credit. However, it will only apply when there is a direct relationship between the debtor, creditor and supplier.

Although Mr F is the cardholder it is his son whose name appears on the invoice.

Santander has indicated that this shows it is he who has the direct relationship with the supplier and not Mr F. However, when considering who is a contracting party, this service takes into account not just the paperwork but all of the surrounding circumstances.

Mr F has maintained that although the car was bought for his son to use he is the contracting party in this instance, and overall I find his submissions to be highly persuasive and credible.

From his account and subsequent actions I am satisfied that Mr F was the key decision maker in choosing and purchasing the car, and that he is ultimately responsible for incurring the total cost of that purchase (as was his intention from the outset). Furthermore, Mr F's subsequent actions in dealing with the problems with the car post sale (as shown by persuasive correspondence with the dealer) and taking responsibility for handling and paying for the repairs support the fact that he intended to make a contract directly with the dealer in his own right.

Overall, in these particular circumstances, I am satisfied that Mr F directly contracted with the supplier for the car. Therefore, taking into account my reasoning above, I consider that the necessary 'debtor-creditor-supplier' relationship exists for him to make a valid claim against Santander under section 75. As a result, I am able to consider Mr F's complaint about the breach of contract by the supplier of the car.

#### *breach of contract*

I have seen an independent report which satisfies me that the car had faults which caused a loss of power within the first month of ownership. Mr F says these problems started almost immediately after purchase but he tried to contact the dealer numerous times to resolve the issue before paying for the repairs himself. Based on the compelling correspondence which Mr F sent to the dealer I am satisfied this was the case.

I do not consider the problems experienced with the car are likely to have been caused by reasonable wear and tear. And on balance I am satisfied that they were present at the time of purchase. Therefore, I conclude that the dealer is in breach of contract and Mr F has a right to a remedy under section 75.

I consider that Mr F allowed the dealer reasonable opportunity to remedy these issues before seeking a repair himself. Therefore, I find it fair and reasonable that Mr F is reimbursed for the repairs he paid for (these were paid for on his credit card).

Mr F wants further compensation as he says he sold the car for roughly £1,600 less than he paid for it. However, he has not been able to provide any compelling evidence to show this was the case. And, in any event, although he has submitted some information to indicate that there were other issues with the car, I am not sufficiently persuaded that these meant Mr F had to dispose of the car at a significant loss at that time. Therefore, I cannot fairly conclude that Santander should be held liable for these claimed losses under section 75.

I accept that Santander has delayed in its handling of Mr F's complaint. Therefore, I agree that it should pay £50 compensation for the distress and inconvenience this has caused him.

#### **my final decision**

My final decision is to direct Santander UK Plc to:

- rework Mr F's credit card account as if the payment of £438.72 for repairs was never made, refunding any associated interest and charges – if this results in a credit balance Mr F should receive a refund plus interest at 8% simple from the date of that credit balance to the date of settlement; and
- pay Mr F £50 for the distress and inconvenience it has caused him.

Santander should deduct basic rate tax from any interest element of its award and provide Mr F with a certificate of tax deduction so he may claim a refund, if appropriate.

Mark Lancod  
**ombudsman**