

The complaint

Mr W complains that Santander UK Plc, treated him unfairly regarding a dispute about transactions to get him out of a timeshare.

What happened

In February 2019 Mr W entered a contract where he had to pay £3524.69 for Timeshare Relinquishment and other services to a Timeshare Relinquishment company ('TR1' for short). He used his Santander Credit Card to pay this across two payments. Very quickly afterward he says he decided he didn't need these services. So the TR Company wrote to him and said it would put on hold working on getting him out of the timeshare and would hold his money for two years so that if he changed his mind again it could use its services.

He later changed his mind and decided he wanted out of his timeshare. In January 2020 he was approached by a different Timeshare Company ('TR2' for short) offering similar circumstances to that of TR1. Mr W says he met with TR2 and recognised one its employees as someone he'd met with when he met TR1. Mr W says during this meeting he was told that the money he had paid TR1 could go towards the costs of the services provided by TR2. So he signed a new contract and did a bank transfer to TR2 for £6300.

In March 2021 Mr W asked Santander to intervene and help him with his dispute with TR1 and TR2. Santander considered the matter but didn't refund him having considered both Chargeback and Section 75 of the Consumer Credit Act 1974. So he brought his complaint to this service.

Our Investigator looked into the matter and concluded Santander should refund Mr W £3524.69 along with 8% interest simple from when it declined Mr W's claim to it until when it settled the dispute. However our Investigator also concluded that Santander didn't have to refund the transfer of £6300 in relation to TR2 because, in essence it was to a different company in regard to a separate contract.

Santander agreed with this position and said it would pay the redress the Investigator set out in relation to TR1. Mr W disagreed with the Investigator position and believed all payments to TR1 and TR2 should be refunded to him plus interest. So this complaint comes to me to decide.

What I've decided – and why

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

This complaint comes to me with the Investigator, Santander and Mr W agreeing that Santander should pay Mr W £3524.69 along with 8% interest simple from when it declined Mr W's claim to it until when it settled the dispute. As all parties agree with this position I see nothing to be gained by repeating all that's happened here or rehashing the arguments made. But for the sake of clarity I also agree with this position re the payments to TR1 and so I direct Santander to pay it.

For clarity's S75(1) of the Consumer Credit Act 1974 states:

"If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor."

So s75 only applies if:

- i) There is a debtor-creditor-supplier agreement (or "DCS" agreement, for short) of the type that falls within s12(b) or (c);
- ii) That agreement finances the transaction between the debtor and the supplier; and,
- iii) If, relating to that transaction, the debtor has a claim against the supplier in respect of a misrepresentation or breach of contract. If so, then the creditor is jointly and severally liable to the debtor.

So it is clear from the above that the bank transfer that Mr W paid to TR2 doesn't, in itself, qualify for S75 protection claim as a 'like claim'. And it is also clear that 'finances' isn't defined other than it is clear the whole amount due under a contract doesn't have to be paid under s75 for the whole of the contract to come under S75. For instance if a purchaser part pays for a contract with their credit card and pays the rest with cash the creditor is liable for the whole contract due to the wording of Section 75.

But that isn't what happened here. Mr W signed a new contract with TR2, which is clearly a different legal entity than TR1. So it is clear that the "supplier" (TR1) Mr W paid in February 2019 isn't the same supplier as TR2 as they are different entities and different contracts. So although Mr W had protection under S75 for his payments made to TR1 the contract he had with TR2 was a different contract and a different supplier. And as a bank transfer doesn't benefit from S75 protection I see no persuasive reason why Santander should cover the amount of the bank transfer.

Mr W's representatives say that money from the first transaction part financed the second contract. This appears to be the case. But it doesn't mean that TR1 and TR2 are one and the same nor does it mean that the second contract wasn't in existence. And for similar reasons Mr W's representatives' arguments about TR2 being a 'phoenix' company from TR1 doesn't make a difference. S75 works on the basis of a 'like claim' between creditor and supplier. Were Mr W to take legal proceedings against TR1 for the money he paid TR2 under the contract with TR2, TR1 would simply point to that contract and say that's not the contract we agreed with Mr W in February 2019.

And for similar reasons Mr W's arguments about the paperwork being of similar format and their being a staff member who appears to have worked for TR1 and then TR2 similarly don't detract from the suppliers and contracts being different.

It is also of note that Mr W's representatives haven't argued why Santander isn't entitled to treat the 'like claim' against TR1 as exactly that. Nor have the representatives made any persuasive arguments as to why the Investigator's rationale was flawed. It has simply stated obvious arguments about similarities between the firms. It hasn't addressed the point that the contract with TR1 doesn't have any terms with regard to money being held on account as happened here. Nor have these representatives made any persuasive arguments as to what Santander did wrong which meant it should cover the cost of Mr W's decision to pay TR2.

Ultimately under Section 75 Santander is entitled to the same defences that TR1 would be entitled to rely on had Mr W made a claim against it in Court. And clearly there are different

parties involved in the bank transfer and a different contract to that which was paid for and entered into in February 2019. And Santander is only potentially liable due to this part of this legislation. It wasn't present at the time and didn't have a say in the contracts or decisions to pay. It simply lent Mr W money via his credit card. And as explained it is entitled to the same defences as TR1 would have. Mr W's representatives' arguments fall a distance short of being persuasive to my mind.

Putting things right

I direct Santander to refund Mr W £3524.69 along with 8% interest simple from when it declined Mr W's claim to it until when it settles the dispute.

My final decision

I uphold this complaint against Santander UK Plc as set out above. Once that amount has been paid to Mr W it has nothing further to do on this matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 22 February 2024.

Rod Glyn-Thomas
Ombudsman