

The complaint

Mr M complains about the outcome of a claim he made to Santander UK Plc (“Santander”) in respect of a kitchen he purchased using his Santander credit card.

What happened

Mr M previously brought a complaint to our service about incomplete works on an extension to his property, and Santander’s decision not to consider his claim under section 75 of the Consumer Credit Act 1974 (s.75). This was considered separately by our service and our investigator said that Santander hadn’t acted unfairly in declining the claim as it exceeded the relevant financial limits applicable to s.75.

Mr M brought a further complaint to our service about Santander’s decision to decline his s.75 claim about the supply and installation of a kitchen in his property. He told Santander that the kitchen works were incomplete and had been poorly installed.

Santander said to Mr M that the works to the kitchen were part of the overall contract he’d entered into with the building contractors (who I’ll call ‘H’), and the total price of that contract exceeded the financial limits for making a s.75 claim. Mr M didn’t agree. He said the contract to supply and fit the kitchen was separate to the other contract he had with H to build the extension.

Mr M referred his complaint to us. Our investigator recommended that it should be upheld. He felt the kitchen contract was separate to the contract to build the extension, and that it fit the criteria for a s.75 claim. He felt there had been a breach of contract by H as he had seen an independent report which set out that the works were incomplete and had been poorly carried out. Our investigator recommended that Santander arranged for the faults highlighted in the report to be remedied at no cost to Mr M. He also recommended that Santander credit Mr M’s account with the cost of a tap that he hadn’t received as part of the kitchen contract and that Santander refund Mr M the cost of the independent report.

Mr M accepted our investigator’s recommendation. Santander didn’t accept this and said, in summary, that there was insufficient evidence to show that the kitchen contract was a separate contract and that, essentially, Mr M had only entered into one contract with H. And this exceeded the financial limits applicable to s.75.

As the matter remains unresolved, the complaint has been passed 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.

I want to acknowledge that I’ve summarised the event of the complaint. I don’t intend any discourtesy by this – it just reflects the informal nature of our service. I want to assure Mr M and Santander that I’ve reviewed everything on file. And if I don’t comment on something, it’s not because I haven’t considered it. It’s because I’ve concentrated on what I think are the

key issues. Our powers allow me to do this.

If there is a dispute about what happened, I must decide on a balance of probabilities – what I think most likely happened, given the evidence that is available and the wider surrounding circumstances.

The contractual position

The dispute between the parties is centred on different opinions on the contractual position. Santander feels the kitchen works formed part of the overall, and sole, contract between H and Mr M. And because the price of that contract exceeded the financial limits for a s.75 claim, Mr M wasn't able to make a valid claim.

Mr M feels differently. He says it's clear there was a separate contract between himself and H to supply and fit the kitchen.

The above has relevance in the context of the s.75 claim Mr M has sought to make. In summary, and subject to other criteria being met, a debtor won't have a 'like claim' against the creditor as they would against a supplier for a misrepresentation or a breach of contract, if *'the claim relates to any single item to which the supplier has attached a cash price not exceeding £100 or more than £30,000'*.

There are several pieces of documentation on file that shows that Mr M and H agreed that works would be carried out on Mr M's property. I've looked at these and it doesn't paint as clear a picture as I would like, to help me determine the contractual position or, perhaps more accurately, to determine whether it was reasonable for Santander to decline Mr M's s.75 claim.

I say this noting the following:

- There is a provisional quote from H to Mr M dated 11 November 2020 for them to 'construct extension' and to also supply and fit a kitchen. The provisional total of the quote was £79,800 and the provisional cost to supply and fit the kitchen was £7,000 and £3,000 respectively.
- The subsequent confirmed quotation dated 4 January 2021 was for £54,000 and didn't include the supply and fitting of a kitchen.
- There is a purchase order from H to Mr M dated 4 January 2021 setting out agreed works at a cost of £54,004.08 (which was the extension works plus other items such as bi-folds). This didn't include the supply and fitting of a kitchen.
- There is an invoice from H to Mr M dated 25 January 2021 which sets out that H will *'supply kitchen as per...quotation reference...and as per corresponded amendments dated 25.1.21. Also include flooring agreed in same correspondence'*. The cost of the invoice was £20,774.15.

The position isn't particularly clear in my view as I've not seen any other documentation that matches the quotation reference from the invoice of 25 January 2021, nor the 'corresponded amendments' referred to in that invoice. And while it seems that H may have installed the kitchen, the invoice doesn't set that out nor does it set out what the cost of the installation was (if any).

I've also noted that Mr M has said he paid for the kitchen by making payments on his Santander credit card of £10,774.15 on 26 January 2021, £2,380 on 29 January 2021 and £9,000 on 2 February 2021. These payments total more than the cost of the kitchen invoice

I've referred to above. And Mr M hasn't been able to clarify why that was the case, other than saying that anything else he paid in addition would have gone towards paying the other works H carried out, which presumably means towards the £54,004.08 shown on the purchase order from 4 January 2021.

However, even though the position isn't entirely clear, I've not seen sufficient evidence that the intention of the contract between Mr M and H was for the kitchen supply and fit to have always been part of the overall agreed works. The provisional quote I've referred to above does potentially indicate that. But the confirmed quote and subsequent purchase order doesn't include the kitchen. So, it's possible, and perhaps even likely, that Mr M, after looking around at other potential options from a cost perspective, decided ultimately to use H to supply and fit the kitchen. I perhaps would have felt differently about this if I'd seen communications between Mr M and H that indicated that the kitchen works was always considered to be part of the overall, wider project that Mr M was undertaking. But I've not seen much in the way of such communications. And I note that Mr M e-mailed H at one point saying that he would 'probably consider separate additional work' to the extension that they were constructing for him.

I accept that it's possible that the kitchen works always formed part of the understanding between Mr M and H; in other words, it was always going to be part of the overall contract between them. But that isn't clear in my view. As I mentioned above, I am able to decide certain parts of the dispute on a 'balance of probabilities'. Overall, I find that there is sufficient doubt in my mind that the kitchen works formed part of one contract between Mr M and H, bearing in mind the incomplete evidence available to me on this point. As such, I find that the kitchen works likely did fall under a separate contract. And, as the cost of the kitchen works fell within the financial limits to make a s.75 claim, and as the other necessary criteria for making such a claim were met, I find that the merits of Mr M's claim was one that should have been considered by Santander.

The s.75 claim

In deciding what I think Santander should do to resolve Mr M's complaint, I take into regard the relevant law which here includes s.75 as I have mentioned. This provides that the debtor has an equal right to claim against the provider of credit (here, Santander), if there is a breach of contract or misrepresentation by the supplier of goods and/or services (here, H).

Mr M's claim was that H failed to properly install his kitchen. I note that Santander disputes that H installed this as their invoice only refers to 'supply'. However, Mr M has said that H installed the kitchen, which was also noted by a third party who inspected the installation. I've seen no evidence that Mr M or another party installed the kitchen, or that Mr M paid a separate cost for this somewhere. So, I'm satisfied that H's contract was for both the supply and the installation of the kitchen.

As Mr M bought goods and services under a sales contract, the Consumer Rights Act 2015 ("CRA") is relevant here. The CRA implies into a contract such as this a term that the contract will be performed with 'reasonable care and skill'. What is considered reasonable care and skill isn't focused on the results achieved but the manner in which the service was carried out.

Mr M commissioned an independent report on the kitchen installation, and Santander has seen the results of that report. The inspector stated that:

'I can confirm from the virtual remote inspection that there are voids around the fridge freezer, I would expect to have three décor panels fitted in this position to complete the finished look of the fridge freezer housing.'

I have a photographic record of the tap that is installed, the consumer indicated this is supplied by themselves and the original was not supplied to them or the cost refunded to them.

Cupboard fittings incomplete, there are several internal back panels that have been poorly drilled or are missing, these are relatively low-cost items but still relevant to the issues.

The worktop to the island, main kitchen and two tops in the utility are different heights, this is not a consistent approach as per NHBC guidelines and should be corrected by the builder or at the builder's expense. This is a major rework to the kitchen that is now completed and tiled.

The kitchen sink run or the island will have to be adjusted and also the utility both runs. This would require some planning to cost out but would be several days' work for two operatives and cost into the £1000's to complete, as a ballpark circa £1500 - £4000 (very much depending if the tiles and tops have to be removed – I recommend dropping the island to suit which would be easier and far more cost effective).

Worktop marked, there is a large mark on the main area of the sink run. These marks in the worktop, which is a very tough material of compressed laminate.....is consistent with damage from poor handling possibly during transport or installation. It would be incredibly difficult to replicate these marks due to normal domestic use.

There are multiple alignment issues to be attended to, these are minor and would require a suitably skilled operative to attend for approximately one day to adjust and align doors and fittings'.

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'There are substantial items clearly missing from the finished kitchen, the three décor panels would normally be installed around the fridge freezer.

There are issues with the level of the worktops – they are not consistent and this would not be accepted as a consistent or professional by a reasonable person and would not be acceptable to industry standards. Rectification will take a little planning and could be several days work and involve multiple trades persons depending which method is used to action this rectification as the level is often set by appliances - then all are set at that level'.

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'There are three panels missing from around the fridge freezer.

There are missing and poorly fitted back panels.

The worktops are not installed at the same level in each area – this is the most substantial issue from a rectification perspective.

There are fittings and doors that require minor surface repairs and or adjustment to realign them.

Also, the worktop has a large mark consistent with transport or installation which I do not believe could be repaired and would require replacing and this is the sink run so removal of the sink is required to achieve this'.

I think the independent report is sufficiently detailed to show that the installation of the kitchen wasn't completed with 'reasonable care and skill'. So, I'm satisfied that there was a

breach of contract on the part of H, for which Santander is equally liable under s.75, and that Santander should therefore take action to put things right as set out within the report. I also think it fair that Santander refunds Mr M the cost of the independent report, providing he sends them proof of this and evidence that he paid that cost.

I note also that Mr M has said he should be refunded for the cost of a tap he purchased. This was referred to in the independent report. I've seen a copy of an e-mail Mr M sent to H where he asks for the tap to be removed from the order. I've not though evidence that the contract price was adjusted accordingly. So, it seems that Mr M has paid for something he didn't need bearing in mind he paid for a tap elsewhere. I've not seen details of the refund policy of H to determine how refunds for cancelled items should be treated. But I've not seen anything from H that says that Mr M wasn't entitled to a refund. On balance, I think it fair that Mr M receives the cost of the tap back, which was £168, although I think simply refunding him this amount is reasonable (rather than adding interest to this as our investigator proposed).

Finally, I note that Mr M originally included the cost of bi-fold doors in his claim. However, it seems he accepted our investigator's view that this did form part of the contract of works in respect of the extension, the cost of which exceeded the financial limit for making a s.75 claim. As this point no longer remains in dispute, I haven't considered this in my decision.

Putting things right

Santander should do the following:

- Arrange for the faults and issues highlighted in the independent report to be remedied at no cost to Mr M.
- Refund Mr M with £168 for the non-receipt of the tap.
- Reimburse Mr M for the cost of the independent report upon receipt of the paid invoice for this, adding 8% simple interest from the date of payment to the date of settlement.

If Santander considers it necessary to deduct tax from the interest award, they should provide Mr M with a certificate of tax deduction so he may claim a refund from HMRC, if appropriate.

My final decision

I uphold the complaint and direct Santander UK Plc to take the action I've set out above in the 'putting things right' section of my decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 1 August 2024.

Daniel Picken
Ombudsman