

The complaint

Miss S complains Santander UK Plc has declined a claim she's brought under section 75 of the Consumer Credit Act 1974 ("s.75 CCA").

What happened

In October 2020 Miss S entered a contract where she had to pay £6,550 for Timeshare Relinquishment and other services to a Timeshare Relinquishment company ('the TR company'). She used her Santander credit card to part fund this contract, paying £1,638 on 25 October 2020. Miss S says she never received any services from the TR company. So, when she didn't get anywhere with the TR company, she took her dispute to Santander.

In November 2023, Miss S made a claim to Santander under section s.75 CCA. In short, she said the TR company made misrepresentations at the time of the sale that, under s.75 CCA, Santander was jointly responsible to answer.

Santander responded to say Miss S didn't meet the criteria to make a claim under s.75 CCA. This was because although Miss S had entered a contract with the supplier, payment was made to a third party (which I'll later refer to as 'I2G'), breaking the debtor-creditor-supplier (DCS) chain needed in order for a s.75 CCA claim to be made. It said it did not need to pay anything to Miss S under s.75 CCA, but explained she could refer her complaint to our service if she disagreed.

After Miss S referred her complaint to our service, one of our investigators considered it, but did not think Santander needed to do anything further. She agreed the debtor-creditor-supplier chain had been broken. Miss S responded to our investigator to say she disagreed with the outcome and so the case has been passed to me to decide.

Since referring her complaint to the Financial Ombudsman Service, the TR company was wound-up at the High Court in the public interest after investigations by the Insolvency Service. The details are in the public domain and can be found on the Insolvency Service website.

In my provisional decision I explained that:

"S.75 CCA allows a consumer who has purchased goods or services to make a claim against their credit card provider in respect of any breach of contract or misrepresentation by the supplier of those goods or services, so long as certain conditions are met.

It doesn't appear to be contested that, in all likelihood, the TR company involved in the disputed agreement and the subject of this complaint, misrepresented its intentions to Miss S. In its recent statement about the winding-up of the TR company, the Insolvency Service observed that:

- "They [the TR company] convinced clients to pay upfront fees of typically £5,000 based on false assurances about how strong their claims were*

- *Many of the claims ultimately turned out not to be valid, despite what the company representatives said during the sales process*
- *...deceived hundreds of people who wanted to exit or claim for mis-sold timeshare agreements into paying upfront fees for what were ultimately futile cases.”*

In this case, Miss S says she has been left with the disposal of her timeshare contract unresolved, and as the TR company has ceased to trade, I think her contract with the TR company was more likely than not breached. Alternatively, the TR company didn't intend to take Miss S's case to court and this was likely misrepresented to her (or even part of a scam as is too often the case with Timeshare Relinquishment).

However, the dispute referred to the Financial Ombudsman Service has focused on the technical aspects of section 75 – namely the DCS agreement – the absence of which means Miss S cannot make a claim to be considered under s.75 CCA. I've therefore reviewed the DCS agreement here to see if Miss S' claim can be considered under s.75 CCA.

Santander has said the necessary DCS agreement isn't in place for Miss S to be able to hold it liable for what's happened under s.75 CCA. It says this is because the credit card payment didn't go directly to the TR company from Santander, and instead went via a payment facilitator I'll refer to as I2G, therefore introducing another party to the DCS chain.

For there to be a valid DCS agreement there need to be arrangements between Santander and the TR company for Santander to finance purchases made by Miss S from the TR company. The credit card scheme is there to put such arrangements in place between those participating in it.

In this case, the credit card payment went to the TR company via I2G but I think that journey of the payment was under arrangements of the required kind, so using I2G's services did not break the DCS chain.

This is because I2G is a recognised participant of the same card scheme as Santander, and this model of recruiting and paying suppliers is a common and accepted commercial practice which has evolved over time. Santander would have contemplated, when agreeing to give Miss S a credit card, that the market for payment services would develop over time and that the card would be used to pay suppliers through the card scheme via any established method which has since emerged. This is one such method and it is specifically deemed acceptable under the card scheme rules that govern Miss S' card and it means that there was a pre-existing arrangement between Santander and the TR company in order for the payment to be processed.

I'm satisfied therefore, due to the mutual participation of all parties within the card scheme, there was a valid debtor-creditor-supplier agreement. Because of this I think Miss S' claim under s.75 CCA can be considered by this service and for the reasons I've explained above, I think there was breach of contract and, more likely than not, a misrepresentation of what was being sold to Miss S. I therefore think Santander needs to put things right for Miss S.”

Responses

I asked the parties to the complaint to let me have any further representations that they wished me to consider by 27 June 2024.

Both Santander and Miss S have replied to accept my findings.

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.

As both Santander and Miss S have accepted my provisional conclusions, I see no reason to depart from them or make a further finding. I think Miss S' claim under s.75 CCA can be considered by this service and for the reasons I've given above, I think there was breach of contract and, more likely than not, a misrepresentation of what was being sold to Miss S. I therefore think Santander needs to put things right for Miss S.

Putting things right

I note from Miss S' November 2020 credit card statement that she had a direct debit instruction in place to collect the statement balance in full each month. So, Santander should refund Miss S £6,550 along with 8% interest simple from when it declined her claim until it settles the dispute.

My final decision

For the reasons I've explained, I uphold Miss S' complaint and I direct Santander UK Plc to put things right in the way I set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 26 July 2024.

Stefan Riedel
Ombudsman