

complaint

Mr M complains that Santander UK Plc ("Santander") have not upheld a claim he made to them under section 75 of the Consumer Credit Act 1974 ("section 75").

background

Mr M signed a contract to secure blood chord storage in 2017. He paid over the phone with his Santander credit card and believes the supplier used a terminal provided by a payment processing company I'll call "P".

In the summer of 2018 he discovered that the supplier had been liquidated. He was unable to discover the location of the stem cells he'd paid to store.

He therefore made a section 75 claim to Santander as he said section 75 allowed him a like claim against them, as the provider of credit, as he would have against the supplier.

Santander rejected his claim as they said the required debtor-creditor-supplier link had been broken They said the money hadn't been paid to the supplier but had been paid to P.

So Mr M referred his complaint to this service and our adjudicator provided his view on the matter. He reviewed Mr M's credit card statement and noted that the narrative suggested the payment had gone to the supplier but that the supplier's name on the statement was prefixed with "Pp". So he called P and asked them about this. They told him the money would have been transferred from Mr M to the supplier's account with P from where they would be able to transfer it into their own account. So he didn't think the debtor-creditor-supplier link had been broken. He thought the payment had been made to the supplier, albeit that it was stored in an account for them to access.

So he considered Mr M's claim. He noted that the contract allowed for the cells to be accessed by Mr M or his partner over a twenty five year period and he didn't think that access had been possible since the supplier had gone into liquidation. So he thought Santander should refund the £1,900 Mr M had paid the supplier as the service had not been provided and the contract had been breached.

As there was no agreement Mr M's complaint was referred for a final decision by an ombudsman.

my findings

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

I know it will disappoint Santander but I agree with the adjudicator's view of this complaint. Please let me explain why.

Where the information I've got is incomplete, unclear or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on

board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

When considering a complaint about a financial services provider, I'm not determining the outcome of a claim that a party might have under section 75. I take section 75 into account when I think about what's a fair way to resolve the complaint but I don't have to reach the same view as, for example, a court might reach if Mr M made a claim through them for breach of contract or misrepresentation.

When something goes wrong and the payment was made, in part or whole, with a credit card, as is the case here, it might be possible to recover the money paid through a section 75 claim. This section of the Consumer Credit Act (1974) says that in certain circumstances, the borrower under a credit agreement has a like right to claim against the credit provider as against the supplier if there's either a breach of contract or misrepresentation by the supplier.

One of those circumstances is that there must be a valid debtor, creditor, supplier relationship. So if I was satisfied that Mr M did not get the service he'd paid the supplier for I'd think it fair and reasonable that Santander refund him.

But for the creditor, Santander in this case, to have that liability it needs to have a relevant relationship with the supplier of the goods and here Santander argues that it hasn't, as the payment was made to P and not the supplier.

But Mr M has explained he made the payment on the phone to the supplier and I think it's therefore likely that the supplier had a commercial entity agreement with P. I think it's unlikely P will be able to confirm the nature of the agreement it had with the supplier as it hasn't got their permission to do so and that won't change now that the supplier has been liquidated. But I think it's most likely, in all the circumstances, that P did have a commercial entity agreement with the supplier to process payments. I say that because:

- P explained the nature of the transaction and that the payment would be made to the supplier's account with them;
- Mr M called the supplier to make the payment and not P.

So I'm persuaded that the nature of the arrangement between the supplier and P does not stop there being a valid debtor, creditor, supplier relationship.

Mr M's contract with the supplier said the cells should be available to be accessed for twenty five years. It explained that if the volume of chord blood was inadequate, for them to provide the service, they would contact Mr M. The agreement went on to explain that if they didn't make contact Mr M could assume the sample was adequate. The supplier didn't make contact with Mr M so I think it's therefore likely the blood sample was adequate and the stem cells could be stored. I'm persuaded from Mr M's testimony that he doesn't know of the whereabouts of the cells in question and I therefore think there has been a breach of the terms of the contract Mr M entered into with the supplier. In those circumstances I think the fairest resolution would be for Santander to refund the money Mr M paid for the service.

my final decision

For the reasons I've explained above I uphold this complaint and tell Santander UK Plc to refund the £1,900 Mr M has paid the supplier for the service he hasn't received.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 28 May 2020.

Phil McMahon
ombudsman