

The complaint

Mr B complains about Santander UK Plc's response to a claim he sought to make against it through the connected lender liability provisions of section 75 of the Consumer Credit Act 1974 ("section 75").

What happened

Mr B used his Santander credit card to pay a third party "S" for legal services in relation to a claim brought against him. Following the court judgment Mr B expressed dissatisfaction with the services S and the appointed advocates provided. He made a section 75 claim against Santander seeking recovery of the fees he'd paid.

Santander declined to meet Mr B's claim. It said there was insufficient evidence that S had breached its contract with Mr B in relation to the services it had provided to him. Santander also said Mr S hadn't sought to mitigate any loss by exhausting S's complaint process, which included escalating his complaint to the Legal Ombudsman. Mr B was unhappy with Santander's response and referred his concerns to us.

Our investigator felt Santander had responded appropriately to Mr B's complaint. She didn't think it was unreasonable for Santander to have asked Mr B to provide independent verification in support of his claim, given the assertion he'd made, which related to whether S had provided its services with reasonable care and skill. She considered the bank to have taken a reasonable stance in saying it would reconsider its position if Mr B were to provide any such independent evidence.

Mr B didn't agree and asked for this review.

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'm conscious that Mr B's requirement for legal services, and the payment he made to S to secure those services, arose in connection with a claim he was facing (and a counter-claim he sought to make) in a business capacity. The court papers confirm this. Mr B's credit card was provided to him in a personal capacity, and this could be relevant to Santander's liability. However, that isn't the basis on which Santander has declined to meet Mr B's claim, which is the focus of his current complaint.

It is important, though, that I consider the capacity in which Mr B is acting in bringing his complaint to us. Our rules require that a complaint is brought by or on behalf of an eligible complainant. There are several ways in which someone might meet the definition of an eligible complainant, which are set out in DISP 2.7 of the Financial Conduct Authority ("FCA") Handbook. The FCA Handbook can be found on its website.

The key definitions relevant to Mr B's complaint are those of consumer, micro-enterprise and small business. A consumer is defined as "*an individual acting for purposes which are wholly*

or mainly outside that individual's trade, business, craft, or profession." The circumstances of Mr B's claim, and the services he obtained from S using his credit card are directly connected with his business. I don't think the fact Mr B held his card in a personal capacity means he can properly be considered to be a consumer for the purposes of the complaint he's brought.

I've no reason to think, though, that Mr B fails to meet either the definition of a micro-enterprise or of a small business. For example, I've seen nothing that suggests he employed 10 or more persons, let alone the upper limit of 50 persons mentioned in the small business definition. Similarly, I've not seen any evidence that Mr B's turnover or his annual balance sheet exceeded the relevant financial limits when he referred his complaint to Santander. And Mr B appears to have been operating as a sole trader, rather than running a limited company that might exist separately from him as a legal entity.

With this in mind, I'm satisfied Mr B meets the definition of an eligible complainant in our rules.

I've highlighted my consideration of this aspect, however, as it has some bearing on the claim Mr B sought to bring against Santander. The effect of section 75 is that if Mr B has a claim against S either in misrepresentation or in breach of contract, he has a like claim against Santander. Mr B hasn't argued misrepresentation; his claim is that S failed to provide its services with reasonable care and skill.

As I understand it, this would amount to a claim in breach of contract as a term implied into his contract with S under section 13 of the Supply of Goods and Services Act 1982. Although a similar provision exists within the Consumer Rights Act 2015, for reasons I've already gone into, I can't see that Mr B would meet the definition of a consumer as set out in that Act¹.

I'm conscious Mr B has highlighted in his correspondence various aspects of S's activity with which he is unhappy. Santander hasn't sought to dispute this. Rather, it doesn't consider what Mr B has provided meets the threshold of demonstrating a breach of contract. The bank's response demonstrates it considered Mr B's claim and gave reasons for rejecting it.

Generally, relevant to whether a person has met the standard of reasonable care and skill are things like industry standards or codes of practice. In relation to S, the provision of legal services is regulated by the Solicitors Regulation Authority ("SRA").

I don't think it's unreasonable for Santander to decline to meet Mr B's claim, given that he'd merely set out the reasons he was dissatisfied with S's services. The question of whether that dissatisfaction meets the significantly higher bar of being a breach of contract is one that is properly determined by reference to objective standards such as those set out by the SRA.

I've not seen anything in Mr B's submissions that suggests he has applied those standards to the service he received from S. Nor does he appear to have sought or provided opinion from a suitably qualified independent source to demonstrate his claim. Santander has said it is willing to reconsider its position in the event Mr B does provide such evidence, which I think is fair.

I don't share Santander's view that Mr B is obliged to pursue his claim against S and mitigate any loss through its complaint process. Under section 75 Mr B's claim exists against S and Santander jointly and severally. He can pursue either, or both, in relation to his claim. However, I do take on board that such action might help to clarify the strength of Mr B's claim. I can't advise him in this respect. I can only leave it to Mr B to decide what, if any, further action he takes to progress his claim.

My final decision

Overall, I'm satisfied with the steps Santander UK Plc has taken thus far in dealing with Mr B's

¹ See Chapter 1, Section 2(3) of the Consumer Rights Act 2015

section 75 claim. Because of this, I'm not upholding his complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 14 December 2023.

Niall Taylor
Ombudsman