

The complaint

Mr S complains about the way Santander UK Plc handled a dispute he brought to it.

What happened

The parties are both aware of the background of this complaint – so I will simply summarise this in brief here.

Mr S bought a high value watch for around £20,000 using his Santander credit card. He says he returned it to the supplier but it failed to refund him.

Mr S raised a dispute with Santander for a full refund. It says it raised a chargeback but was unable to recover the funds this way. It later considered a Section 75 claim – but it did not uphold this – concluding there was insufficient evidence of a breach of contract.

Santander has provided evidence from the supplier alleging that Mr S sent back a book instead of the watch. The supplier enclosed shots from its CCTV system to support this.

Our investigator considered Santander's actions. She wasn't persuaded that it should have refunded Mr S in the circumstances.

Mr S disagrees. In summary, he says that he notified the supplier that he was going to return the watch and did so by tracked delivery. He says that the supplier's photographic evidence does not show the parcel it opened was the one with his tracking reference. Mr S has recently pointed to correspondence he has had with the postal service which he says shows he returned the watch and not a book.

As Mr S has not agreed with the investigator the matter has come to me for a final decision.

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 have read and considered the evidence submitted by the parties – but I will only comment on what I think is key. This reflects the informal nature of this service.

It is important to note here that Santander is not the supplier of goods. Therefore, when I consider if it has acted fairly I am looking at its role as a provider of financial services only. In that regard, the chargeback scheme and Section 75 of the Consumer Credit Act 1974 ('Section 75') are particularly relevant here.

Chargeback

This is a means by which Santander can attempt to get Mr S's money back. It is run by the strict rules of the card scheme (in this case I understand that is Mastercard).

While chargeback is not guaranteed to succeed it will often be fair to attempt one where

there is a reasonable prospect of success.

From what I understand Santander did attempt a chargeback here. I have considered the chargeback reason Santander used isn't clear here – but it appears likely that in respect of a merchant failure to issue a credit following cancellation/return of goods in accordance with its return policy. Either way I don't think the specific chargeback reason here makes a difference to the outcome for reasons I go on to explain.

Following raising the chargeback the supplier issued a defence. Santander then chose to not take the chargeback further. Although Santander could have taken the chargeback further, looking at the circumstances here I don't think it was acting unfairly. I conclude this because in response to the chargeback the supplier provided a highly defensive testimony with CCTV footage to corroborate. It outright refused to issue a refund on this basis. Considering the nature of the dispute and the allegations being made in the defence Santander's decision to discontinue the chargeback is not clearly unreasonable.

However, even it could be argued that Santander should have pushed things further I don't think this would likely have made a difference here. From the evidence I have seen I conclude it is likely the supplier would have continued to defend the chargeback which leaves the card scheme to arbitrate on the matter. And I don't think this is a case where it is clear that the card scheme is more likely than not to have upheld the claim.

I say this because:

- this is a complex dispute with the supplier strongly contesting Mr S's account and vice versa;
- there is a lack of compelling evidence at this stage to show the supplier received the watch back (giving Mr S a right to a refund); and
- the supplier has provided CCTV photographic evidence and made particular allegations suggesting this dispute would be more suited to a court of law.

Due to the nature of the dispute I think there are doubts as to how the card scheme would approach the matter and how it would be able to make a decision here (considering it likely unable to compel evidence or cross examine witnesses in a similar way to a court). But in any event – I don't think there is a clear cut case of Mr S being more likely to succeed than the supplier at arbitration. So, even if I considered that Santander should have pushed the chargeback to arbitration (which I don't), in any event, I don't think it should refund Mr S as if he had won the chargeback.

Section 75

Under Section 75 Mr S can hold Santander liable for a '*like claim*' that he would have against the supplier in court for breach of contract or misrepresentation.

There are certain requirements for a valid Section 75 claim to be in place, such as those relating to the cost of goods or the relationship of the parties to the agreement. In this case I am satisfied those requirements are met. So in order to decide if Santander acted fairly in declining the claim I need to consider if there is persuasive evidence of a breach of contract or misrepresentation by the supplier here.

I don't consider Mr S's claim is in respect of misrepresentation so I have moved on to consider breach of contract.

Essentially I consider this is a claim about alleged breach of the terms of the supplier's refund policy when goods are returned. I note that it will issue a refund if goods are returned within a certain time period – so a failure to do so would be a breach of contract which Santander are potentially liable for.

The issue here is not straightforward as it involves high value goods effectively going missing with countered allegations on both sides. In coming to my findings I have to keep in mind that I am unable to compel witnesses or investigate in the manner a court or other authorities might.

There appears to be no dispute that Mr S did send a parcel to the supplier. He has a tracking number to show that. However, the underlying dispute is over what was in the package. Although I fully take into account what Mr S has said there is testimony and photographic information which allegedly shows another item being received instead of the watch.

Rather than definitively deciding if the supplier received the watch my decision is about whether Santander acted fairly in not refunding Mr S based on the evidence it had available to it. And I don't think it acted unfairly declining the claim when it did, considering:

- the nature of the dispute, the value of the goods, and the defence and serious allegations made by the supplier;
- the lack of compelling evidence to show the supplier received the watch back; and
- its inability to compel witnesses or other evidence in a way a court might be able to.

It is important to note that I am not saying definitely what happened here or indicating that Mr S did something wrong. There are of course several possibilities including third party interference with the package. However, fundamentally I don't think Santander was presented with evidence that would have reasonably meant it should have concluded a breach had taken place and refunded Mr S in full here.

I also note that Mr S does not appear to have insured the package for its value – which would have acted as reasonable mitigation here when posting back goods. I don't see anything in the supplier's contract that indicates it takes responsibility for returned goods or provides the returns service itself.

Mr S has since provided further information from the postal service in support of his claim. I note that this information does not appear to have been provided to Santander at the time it considered his claim. And it is the consideration of the claim which forms the subject matter of this complaint. But in any event, I don't think this information persuasively shows that the supplier received the watch in the circumstances here (and in light of the other information that has been put forward). I think there are too many questions and insufficient evidence to say the supplier has likely breached its contract with Mr S by not issuing a refund in the circumstances.

I know this will come as a disappointment to Mr S and I am sorry to hear about the financial difficulties this situation has caused him. However, as I have indicated, my role here is limited to informal dispute resolution looking at Santander's handling of the claim only.

It is worth underlining that Santander, nor this service has the investigative powers of other agencies. And my decision does not prevent Mr S from taking the supplier to court or reporting the matter to other authorities if he wishes to do so.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 5 February 2024.

Mark Lancod
Ombudsman