

The complaint

Mr B complains that Santander UK plc won't refund to him the money that he paid for a holiday product. His wife is also involved in his complaint and he's being represented by a claims management company.

What happened

Mr B entered into a purchase agreement in October 2005 to buy a holiday product from a holiday company. The total sales price was US\$22,400 and Mr B says that he paid some of that amount using his Santander credit card.

Mr B's representative, on behalf of Mr B, made claims to Santander in January 2021 under section 75 of the Consumer Credit Act 1974. It said that the holiday company had represented to Mr B that: any unused weeks could be sold back to the holiday company and the amount that he recouped would be used to cover the maintenance fees; flights could be arranged more cheaply by the holiday company than would be available privately; and the product could be sold back to the holiday company at any time – but those representations were false. It also said that Mr B's wife had been diagnosed with a medical issue in 2006 – and the holiday company was advised of it - but her condition worsened, to the extent that she required the constant use of a wheelchair from 2019. It said that the holiday company was advised but hasn't responded and hasn't made adequate provision to enable Mr B and his wife to continue their use of the product. It says that the holiday company committed a repudiatory breach of contract which is capable of remedy, but it hasn't remedied the same within a reasonable period of time.

Santander said that it was unable to proceed with Mr B's claim as it was statute barred under the Limitation Act 1980. It said that any claim would need to have been brought by 6 years from the date of the triggering event, which was the holiday company being made aware of Mr B's wife's medical issues in 2006. Mr B wasn't satisfied with its response so a complaint was made to this service.

Our investigator didn't recommend that Mr B's complaint should be upheld. He thought that Santander was entitled to rely on the timing of Mr B's misrepresentation claim to turn it down. He said that Mr B hadn't pointed towards any specific term of the contract which had been breached so he'd not been able to assess whether a breach of contract had occurred or whether such a claim had been made within the relevant time limit. He said that he was unable to suggest that it was unfair or unreasonable for Santander to turn down Mr B's claim about a breach of contract.

Mr B's representative, on behalf of Mr B, has asked for this complaint to be considered by an ombudsman. It has provided further information about the misrepresentations that it says were made to Mr B and it says that he didn't realise the extent of the fraudulent claims of the holiday company until he attempted to sell the holiday product and he then found a legal representative to assist with his complaint. It also says that the purchase agreement was a deed so the limitation period would be twelve years from accrual of the cause of action.

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.

Having done so, I agree with our investigator that Mr B's complaint shouldn't be upheld for these reasons:

- we don't have a free hand to consider every complaint that's referred to us and our rules, which we're required by law to follow, say – amongst other things – that we can't normally deal with a complaint if it's referred to us more than six years after the event complained of; or (if later) more than three years from the date on which the complainant became aware (or ought reasonably to have become aware) that they had cause for complaint;
- Mr B's complaint is that Santander turned down the claims that he'd made to it and I accept that he referred his complaint to this service within six years of that happening - but I need to consider whether the Limitation Act applies to his claims;
- Mr B's claims were made under sections 75 but I'm not determining the outcome of those claims in this decision as only a court would be able to do that - I'm considering whether or not Santander's response to those claims was fair and reasonable in the circumstances;
- section 75 gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there's been a breach of contract or misrepresentation by the supplier (provided that certain criteria set out in that section are met);
- Mr B's claim under section 75 is that the holiday product was misrepresented to him and that he wouldn't have bought it if it hadn't been misrepresented to him and that the holiday company has breached the contract - if the criteria for claims under section 75 were met, Santander would be expected to consider those claims unless the claims were brought outside of the time limits set out in the Limitation Act in which case it would be entitled to rely on the Limitation Act and to not consider the claims;
- the time limit for a misrepresentation claim (whether under section 2 or 9 of the Limitation Act) is six years from the date on which the cause of action accrued (which is when everything needed to make a claim had occurred) – I'm not persuaded that the purchase agreement was a deed, but even if it was, I consider that the time limit for a misrepresentation claim would be six years from the date on which the cause of action accrued;
- I consider that Mr B could have made a claim to the holiday company or Santander about the misrepresentations that he says induced him into buying the holiday product in October 2005 as that was the latest time that any misrepresentations would have been made and any loss would have been incurred as that was when he agreed to pay US\$22,400 for the holiday product;
- I consider that his cause of action accrued at that time, so he would have had six years from then to bring a misrepresentation claim against either the holiday company or Santander – but a misrepresentation claim wasn't made under section 75 until January 2021, more than fifteen years later which was outside of the time limits set out in the Limitation Act so I consider that Santander has a defence to Mr B's misrepresentation claim and I find that it wouldn't have been unreasonable for it to have rejected that claim;

- Mr B's representative says that Mr B only became aware that he could make a misrepresentation claim to Santander after he attempted to sell the holiday product and he then found a legal representative to assist with his complaint – but when he had the knowledge to bring a claim doesn't assist him for the purposes of the Limitation Act – the time limits for a claim under some sections of that Act are extended where a claimant doesn't have knowledge at the time when the cause of action accrued, but I don't consider that those sections are applicable to Mr B's claims;
- Mr B's representative has referred to fraudulent claims of the holiday company - section 32(1)(b) of the Limitation Act says that, if any fact relevant to the debtor's right of action has been deliberately concealed from them, the period of limitation doesn't begin until the debtor has discovered the concealment or it could with reasonable diligence have been discovered by them and section 32(2) says that deliberate commission of a breach of duty which is unlikely to be discovered for some time amounts to deliberate concealment of the facts involved in the breach;
- I don't consider that Mr B's representative has provided enough evidence to show that the holiday company fraudulently misrepresented the holiday product to Mr B and I'm not persuaded that there's enough evidence to show that there's been a deliberate concealment of any relevant information - so I don't consider that section 32 is applicable in these circumstances;
- the time limit for a breach of contract claim is also six years from the date on which the cause of action accrued;
- Mr B's representative says that the holiday company was advised of Mr B's wife medical issue in 2006 but Mr B and his wife were able to continue to use the holiday product – it says that her condition worsened, to the extent that she required the constant use of a wheelchair from 2019, and the holiday company was contacted but hasn't responded and hasn't made adequate provision to enable Mr B and his wife to continue their use of the holiday product;
- Santander says that the triggering event was Mr B's wife's diagnosis in 2006 – but Mr B's representative says that Mr B and his wife were able to continue to use the holiday product after 2006 and I consider it to be more likely than not that any cause of action that Mr B might have would have accrued in 2019 when the holiday company didn't make adequate provision to enable Mr B and his wife to continue their use of the holiday product – and, as that was less than six years before his breach of contract claim was made, I don't consider that any breach of contract claim would be time-barred;
- our investigator said that Mr B hadn't pointed towards any specific term of the contract which had been breached so he'd not been able to assess whether a breach of contract had occurred or whether such a claim had been made within the relevant time limit – and he said that he was unable to suggest that it was unfair or unreasonable for Santander to turn down Mr B's breach of contract claim;
- Mr B's representative responded to our investigator's recommendation but didn't provide any further information about the terms of the contract which Mr B claimed to have been breached;
- Mr B had entered into the purchase agreement to buy a holiday product that was based outside of the UK and the European Union and I can understand his frustration and annoyance that the holiday company hasn't responded to the contact that he made with it concerning his wife's wheelchair use and hasn't made adequate provision to enable Mr B and his wife to continue their use of the product – but I'm not persuaded that enough evidence has been provided to show that there's been a

breach of contract by the holiday company for which Santander would be liable under section 75;

- Santander responded to the claims that had been made to it and said that it was unable to proceed with Mr B's claim as it was statute barred under the Limitation Act – but Mr B's claims were that there had been misrepresentations and a breach of contract and it didn't properly respond to his claim about the misrepresentations and I consider that it was wrong for it to say that Mr B's breach of contract claim was statute barred;
- I can't say that Santander's response to Mr B's claims was fair or reasonable – but if it had properly responded to his claims I consider that it would have been fair and reasonable for it to have said that his misrepresentation claim was time barred and that there wasn't enough evidence to show that there had been a breach of contract by the holiday company; and
- I sympathise with Mr B and his wife for the medical issues that they're having to deal with and for the difficulties that they've had with the holiday company and the holiday product, but I find that it wouldn't be fair or reasonable in these circumstances for me to require Santander to refund to Mr B any of the money that he paid for the holiday product, to pay him any compensation or to take any other action in response to his complaint.

My final decision

My decision is that I don't uphold Mr B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 9 November 2023.

Jarrold Hastings
Ombudsman