

The complaint

Mr B complains that Santander UK plc won't refund to him the money that he paid for some holiday services. He's being represented in his complaint by a claims management company.

What happened

Mr B and his wife entered into an arrangement with a holiday company in May 2019 and they signed an application agreement (in which they agreed to pay the holiday company £7,000) and the holiday company's terms and conditions. Mr B used his Santander credit card to make payments of £249.66, £249.67 and £249.69 in May 2019 under the agreement and he's provided evidence of thirteen other payments for between €215.99 and €337.01 that he made in June 2019.

Mr B's representative made a claim to Santander in September 2021 for €4,490.80 under section 75 of the Consumer Credit Act 1974. It said that Mr B and his wife had purchased a timeshare and relinquishment product and it was represented to them that payment of the fee would guarantee them being relinquished from their existing timeshare - but that work wasn't carried out resulting in a clear breach of contract. It also said that Mr B and his wife attempted to contact the holiday company two months later to use the timeshare that they'd purchased but they were unable to get in contact with it and it has gone into liquidation. A statement from Mr B and his wife describing these events has also been provided.

Santander responded to Mr B's representative in December 2021 and said that it had failed to evidence that the relinquishment wasn't achieved. It said that it had asked for a number of documents so it could investigate the claim, but only one page of the holiday company's terms was provided and it doesn't mention a timeshare relinquishment and only mentions a one year agreement that appears to relate to a timeshare style agreement for accommodation. It noted that the agreement was with the holiday company but the payments were made to a different entity which would break the debtor-supplier chain required for a claim under section 75. It also wrote to Mr B's representative in May and August 2022 and confirmed that it couldn't conclude that a breach of contract had occurred.

Mr B wasn't satisfied with its response so a complaint was made to this service. Mr B's complaint form says that the product was bought as a timeshare relinquishment service and it was sold to Mr B and his wife under significant pressure as they were pressured under time and commercially aggressive sales practices. It says that the timeshare relinquishment product was mis-sold to them and, but for the misrepresentations, they wouldn't have purchased it. It also says that the holiday company failed to take such steps as would be reasonable to expect it to do in the interests of fairness.

Our investigator didn't recommend that Mr B's complaint should be upheld as she didn't think that Santander's decision to turn down his claim was unfair or unreasonable. She wasn't persuaded that there was a misrepresentation at the time of sale and she didn't think that the holiday company had breached the contract.

Mr B rejected our investigator's recommendation and his representative said that it would like this matter to be referred to an ombudsman for a 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.

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

- Mr B's claim was made under section 75 which 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 timeshare and relinquishment product was misrepresented to him and his wife and that they wouldn't have bought it if it hadn't been misrepresented to them and that there's been a breach of contract by the holiday company;
- I'm not determining the outcome of that claim in this decision as only a court would be able to do that but I'm considering whether or not Santander's response to Mr B's claim was fair and reasonable in the circumstances;
- Mr B and his wife entered into an arrangement with the holiday company in May 2019 and they signed an application agreement (in which they agreed to pay the holiday company £7,000) and the holiday company's terms and conditions;
- the application agreement refers to the payment of £7,000 but doesn't describe the services that were to be provided by the holiday company – the terms and conditions say that, upon completion of the payment, Mr B and his wife will be entitled to full usage of the holiday company's travel agency for 364 days (and that after that period has elapsed they can continue reserving holidays at no additional cost);
- the terms and conditions also say: "*The week of accommodation in [specified area] is to be used before the Exclusive use of the Travel Agency*" but there's no reference in either the agreement or the terms and conditions to any relinquishment services;
- Mr B used his Santander credit card to make payments under the agreement of £249.66, £249.67 and £249.69 in May 2019 and he's provided evidence of thirteen other payments for between €215.99 and €337.01 that he made in June 2019 – and his representative's September 2021 claim letter makes a claim for €4,490.80;
- Santander said that Mr B's representative had failed to evidence that the relinquishment wasn't achieved and that it had asked for a number of documents so it could investigate the claim, but only one page of the holiday company's terms was provided and it doesn't mention a timeshare relinquishment and only mentions a one year agreement that appears to relate to a timeshare style agreement for accommodation;
- Mr B and his wife have provided a statement in which they describe what happened but I'm not persuaded that there's enough evidence to show that the holiday company had agreed to provide any relinquishment services to them or that the holiday company misrepresented the agreement to them;
- even if the holiday company had agreed to provide relinquishment services to Mr B and his wife, I'm not persuaded that there's enough evidence to show that those services weren't provided to them;

- Mr B and his wife say in their statement that they were told that they needed to be members of a holiday club which would offer them two free holidays and then they would have discounted holidays, flights and affordable high standard accommodation at a choice of worldwide destination with cars to pick them up and take them to their destinations;
- the terms and conditions refer to a week of accommodation and use of the travel agency but don't refer to membership of a holiday club or the other services that Mr B and his wife have referred to in their statement and I'm not persuaded that there's enough evidence to show that there's been a breach of contract by the holiday company;
- I consider that it was fair and reasonable in these circumstances for Santander to say that it couldn't conclude that a breach of contract had occurred – and it asked for a number of documents so it could investigate the claim but wasn't provided with documents to show that there had been a breach of contract;
- Santander also said that the agreement was with the holiday company but the payments were made to a different entity - one of the criteria for a claim under section 75 is that there must be a debtor-creditor-supplier agreement but, as Mr B's credit card statement shows that the three payments were made to a different entity and not to the holiday company (even though part of the name is the same), it's now possible that there was no such agreement in place following the High Court's judgment in the case of *Steiner v National Westminster Bank plc*;
- but as I'm not persuaded that there's been a misrepresentation or breach of contract for which Santander would be liable under section 75, I consider that there's no need for me to make any finding as to whether or not there was a debtor-creditor-supplier agreement in these arrangements; and
- I sympathise with Mr B and his wife for the issues that they've experienced, 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 under the agreement, 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 6 February 2024.

Jarrold Hastings
Ombudsman