

The complaint

Mrs I complains about the way Santander UK Plc handled a claim she made to it.

What happened

The background facts are well known to the parties – so I will only cover these briefly and instead focus on giving reasons for my decision.

Mrs I bought travel tickets for flights using her Santander credit card through a travel agent ('the supplier'). She says that she was unable to travel due to government restrictions coming about as a result of the Covid-19 pandemic and would like a refund of the tickets.

Mrs I was unable to get a refund from the supplier or the airline so approached Santander for help. It looked into her claim under Section 75 of the Consumer Credit Act 1974 ('Section 75') but did not uphold it. It was also unable to recover Mrs I's money through the chargeback scheme.

Our service did not uphold this complaint so it 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 considered the evidence submitted by the parties – but I will not comment on everything, only what I consider central to this dispute. This is not intended as a discourtesy but reflects the informal nature of our service.

For completeness I note that Santander issued a initial final response letter to Mrs I's complaint (and a follow up) but Mrs I had referred her complaint to this service what appears to be more than 6 months from the date of this letter (and apparently too late for us to consider it). I note neither party appears to have raised this however, I am satisfied that in a latter final response dated 31 October 2022 (and within 6 months of Mrs I's referral to this service) Santander re-investigated both the outcome of the claim and the customer service issues experienced by Mrs I and provided fresh referral rights – so I am looking into said issues in my decision here.

I am very sorry to hear about the impact of the situation on Mrs I. It is however important to note that Santander is not the supplier of flights nor does it have general liability when it comes to unforeseen events around the pandemic. So when considering if it acted fairly I am doing so in the context of its responsibility as a provider of financial services. This is not unlimited responsibility, but subject to the requirements of Section 75 or the chargeback dispute rules.

Section 75

Under Section 75 Santander can in certain circumstances be responsible for a 'like claim' in respect of breach of contract or misrepresentation by a supplier of goods or services paid for

using Mrs I's credit card.

There are certain criteria for a Section 75 claim to be valid. I have considered these and after doing so I note that in this case, although Mrs I bought flights that were ultimately provided by an airline her credit card payments for the booking were made to the supplier in respect of an agreement she had with it. So I conclude that any Section 75 claim here is only in respect of the agreement Mrs I has with the supplier.

I am sorry to hear that Mrs I and her booking party were unable to take the flight booked through the supplier. However, I have not been provided with persuasive evidence that the flight was cancelled or didn't go ahead. It appears that Mrs I was unable to take the flight because of government restrictions that had been introduced in respect of Covid-19.

My starting point is that looking at its terms and conditions the supplier outlines it has limited responsibility outside its role as a booking agent. I know Mrs I says she later contacted the airline and found they didn't have a record of the flight booking – but in this case there is no persuasive evidence that the flight was not arranged as agreed. I have seen the booking confirmation, and it appears Mrs I wasn't able to fly because of restrictions around the pandemic – not because the flight was unavailable. On balance, the supplier appears to have fulfilled its contract with Mrs I in arranging the booking and there is no breach of contract on its part leading to a financial loss for Mrs I.

Even if I accepted that the supplier's responsibility went further than a booking agent I note that its terms attempt to limit its liability in respect of unforeseen circumstances beyond its control including a pandemic.

The legal position where a service can legally go ahead, but a consumer can't take up the service because of government guidance/restrictions on travel is complicated. It's arguable the contract between Mrs I and the airline was frustrated here. However, as I have said above, I don't think the supplier is responsible for this. Furthermore, even if it could be said the contract with the supplier had been frustrated in some way, I am looking here at the liability of the bank under Section 75. And this is limited to when a contract has been breached or misrepresented. If the contract was frustrated this wouldn't be a breach of contract and wouldn't assist Mrs I in any claim against Santander.

I know that as part of her dispute Mrs I has mentioned the supplier offering a flight credit for another ticket which she did not get. However, because the contract with the supplier doesn't entitle her to a credit note or similar this is more akin to a goodwill gesture than a contractual term – so it follows that a failure to provide it wouldn't be a breach of contract.

For completeness I have considered if the supplier misrepresented the contract in some way – however, I don't think there is persuasive evidence of that. It appears on balance (from the evidence presented here) that Mrs I was not given false information about the booking and her difficulties travelling arose as a result of the government restrictions rather than a misrepresentation by the supplier.

Overall, because I don't think there is persuasive evidence the supplier has breached or misrepresented its contract with Mrs I, I don't consider that Santander acted unfairly in declining her Section 75 claim.

Chargeback

Chargeback is another way that Santander might have been able to recover Mrs I's money. However, it is based on the chargeback card scheme rules and is not guaranteed to succeed.

It appears Santander initially looked at this as a fraud chargeback based on what Mrs I told it - but then it decided this wasn't appropriate. I agree with this - Mrs I presented no persuasive evidence to support a fraud/scam or an unauthorised transaction. Santander then looked at other reasons for raising a chargeback but did not appear to successfully take the dispute further due to the limitations of the scheme including its time limits.

Looking at when the transactions for the booking were made, the flight dates and when Mrs I got in touch with Santander it looks like Mrs I was out of time to raise a chargeback here for the transactions she made on the credit card. This is because for a chargeback for something like a service not provided (which is the most appropriate reason code based on Mrs I's allegations here) there is 120 days to raise a chargeback from the date when the service was due to take place. In this case it appears Mrs I got in touch with Santander in or around May 2022 but the flight was due to depart in August 2021. So it seems she was out of time to raise a chargeback.

However, even if I were mistaken about the chargeback time limits I don't think a chargeback had a reasonable prospect of success in any event. I say this because there isn't persuasive evidence the service was not provided, either that the booking wasn't made or that the flight didn't go ahead. It appears more likely here that the reason for Mrs I not flying was due to government restrictions – which isn't something that I can fairly say is likely to have succeeded under the chargeback scheme.

I am very sorry to hear about Mrs I's frustration about not being able to travel to see family. I can see how upsetting this would be. But unfortunately the situation arose as a result of the pandemic and not the actions of Santander – furthermore, I can't reasonably conclude that Santander has acted unfairly in declining to refund Mrs I in respect of her claim to it.

Customer service

I have looked at the customer service concerns Mrs I had with Santander. I agree that Santander wasn't entirely clear with its communication at times. It also appears to have closed her initial chargeback claim (in respect of fraud) without automatically proceeding with other aspects of the claim.

Overall, I think that the main distress to Mrs I has been as a result of having her claim declined – but I also think that Santander's handling of matters has aggravated this and caused her additional distress along with inconvenience (for example in having to query why her dispute was closed). However, in deciding what is fair compensation I have noted that Santander has apologised to Mrs I for aspects of its customer service - which goes toward remedying matters.

Putting things right

I think the £75 Santander says it has paid Mrs I is fair and reasonable in the circumstances. Mrs I recently questioned if she has been paid this by Santander. In its initial response to Mrs I Santander says it credited to a specific account (and gave the last 4 digits). However, it transpires that Santander has not paid this then it should do so. However, it doesn't need to do anything more for the reasons given above.

My final decision

To the extent that it has not done so already Santander UK Plc should pay Mrs I the £75 compensation in respect of its customer service failings.

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

Mark Lancod
Ombudsman