

## The complaint

Miss J complains Santander UK plc has failed to assist her with a dispute over a payment she made on her credit card for return flights for her mother.

## What happened

I issued a provisional decision on Miss J's case on 10 November 2023 in which I outlined the background to the complaint and my provisional findings on it in detail. However, the origins of Miss J's complaint could be summarised as follows:

- Miss J bought a return ticket to London from Trinidad for her mother with an airline, "B". The outbound flight was on 5 September 2022 and the return flight on 3 March 2023. The ticket cost £915.49 and was paid for on Miss J's Santander credit card.
- Miss J's mother needed special assistance with mobility and hearing, which had been booked through B. On the outbound flight, assistance was only provided at the departure airport after a delay and on the insistence of a relative. At the arrival airport Miss J's mother was left sitting on the plane and was unable to leave the airport for two hours, again because assistance was not provided.
- A complaint was made to B, and Miss J's mother did not want to use the return flight after her experience. B never responded to the complaint, prompting Miss J to contact Santander to obtain a refund in order to enable her mother to fly with a different airline.
- Santander looked into the matter but said it couldn't help, giving various different reasons why it was unable to obtain a refund via the chargeback process or a claim under section 75 of the Consumer Credit Act 1974 ("CCA"). The bank paid Miss J £75 for poor customer service connected to the claim. Miss J referred her complaint to the Financial Ombudsman Service.
- Miss J's mother did use the return flight with B in the end, and received a better level of service than on the outbound flight.

In my provisional decision I said firstly that what had happened to Miss J's mother wasn't disputed and it was obviously unacceptable, but that I was considering a complaint about Santander, not B, and was restricted to looking at whether the bank could have helped more via the chargeback process, or should have honoured a section 75 claim.

I went on to consider, firstly, whether Miss J might have had a valid section 75 claim. I think it is worth reproducing this part of my provisional decision in full:

*"Section 75 of the CCA Section 75 of the CCA gives consumers a degree of protection when they pay for goods or services using a credit card, so long as certain conditions are met. If those conditions are met then the consumer can claim against their credit card provider in respect of any breach of contract or misrepresentation by the supplier of the goods or*

services. Section 75 only covers breaches of contract and misrepresentations, it does not cover other kinds of wrong, such as breaches of statutory duty.

*One of the conditions which needs to be met, and which has been a much focused-on point in this case, is the need for there to be a DCS agreement. It can be a very complex concept but – in practical terms – it means that the person whose credit card account was used to make the payment, is the person that needs to have a claim against the supplier for breach of contract or misrepresentation.*

*This effectively limits the scope of any claim Miss J has against Santander under section 75, to any breach of contract which happened to her or misrepresentation which was made to her. It's not been alleged that a misrepresentation occurred in this case, so I've not examined this point further. Rather, the problem is that special assistance was meant to have been provided to Miss J's mother as part of her flight arrangements, but it was not. If the provision of this assistance was part of the contract with B, then this could potentially be a breach of contract.*

*When Miss J purchased her mother's tickets, her mother entered into a contract of carriage with B. Her mother was the person who was to be carried on B's aircraft, to and from London. Any breach of that contract would therefore be something her mother has a claim in respect of, and not Miss J herself. I don't doubt that having her mother visit was of some benefit to Miss J, but that doesn't automatically make her a party to the contract or mean she is able to make a claim in respect of it having been breached.*

*But having read B's conditions of carriage (which would apply to the contract of carriage here), I think they give Miss J some contractual rights. In particular, the conditions define "you" as:*

*"any person holding a ticket who is to be carried or is carried on an aircraft, except members of the crew, or, in relation to ticket refunds, the person who paid for the ticket."*

*And in the section on ticket refunds (section 10), the conditions say that if a refund becomes due under this section, the person who paid for the ticket is the person entitled to receive the refund. This means that there could be some limited scope for Miss J to have a claim in respect of a breach of contract by B, and therefore be able to make a claim under section 75 of the CCA against Santander.*

*However, in order to have such a claim then a refund would need to have become payable under section 10 of the conditions of carriage and B would have needed to have failed to pay this refund to Miss J. I've considered the conditions of carriage closely to determine whether a refund would have been payable to Miss J.*

*The conditions of carriage differentiate between two types of refund: involuntary and voluntary. On the topic of involuntary refunds, the conditions say the following:*

*"10b1) We will pay fare refunds as set out below if we:*

- cancel a flight*
- make a significant change to a flight time which is not acceptable to you*
- delay a flight by five hours or more*

- fail to stop at your place of destination or stopover
- cause you to miss a connecting flight on which you held a confirmed reservation or
- refuse to carry you because a banning notice is in force against you or for some other reason pursuant to these conditions where reference is made to this clause.”

*Based on the available evidence, none of these scenarios applied in this case.*

*The conditions are less prescriptive about voluntary refunds, saying only:*

*“10c1) If you are entitled to a refund of the fare for your ticket for reasons other than those set out in clause 10b, the refund will be as follows.”*

*The conditions then go on to explain that a voluntary refund would only be for any unused part of the ticket.*

*Based on the conditions of carriage, even if a refund had been due for a reason other than the ones listed under “involuntary refunds”, in reality no refund would have been payable to Miss J as her mother ended up using both her outbound and return tickets. So it’s difficult to see how Miss J could make a claim now that B had, in breach of contract, failed to pay her a refund which had become due.*

*I’ve also thought about the situation at the time Miss J contacted Santander to make a claim. At that time, her mother hadn’t yet used the return ticket. It appears that if she had cancelled the return flight then a refund (either of the fare and taxes, or just taxes, depending on the type of ticket) would have become payable, and if B had failed to pay this to Miss J it would have been in breach of contract. This is all hypothetical however, as the ticket was not cancelled.*

*I realise that this will all seem rather unsatisfactory from Miss J’s perspective, but she is limited in my view to making a claim against Santander under section 75 only if a refund had become due under B’s conditions of carriage and, in breach of contract, B had failed to pay this to her as the person who had originally paid. I cannot see that she was entitled to such a refund and therefore there has been no breach of contract for which she could claim against Santander under section 75 of the CCA.*

*This doesn’t mean to say that she or her mother might not have a claim directly against B for, for example, breaches of regulations applicable to the provision of assistance on flights to people with disabilities. I note that any such claim may be limited by the operation of international conventions relating to air travel. In any event, such a claim is not something which would be in the scope of section 75 of the CCA.”*

I then went on to consider whether Santander ought to have pursued a chargeback in an attempt to obtain a refund. I noted that chargeback was a mechanism for claiming a full or partial refund of an amount paid on a card, and that the process was governed by rules set by the relevant card scheme (Mastercard). There was no guarantee that a chargeback would be successful, and it could be contested by the other side to the dispute.

I observed that a chargeback could normally be pursued when goods or services had been purchased and had not been provided, or were not as described, or where services had been cancelled and a refund was due (but hadn’t been provided). Santander had argued that because Miss J’s mother had ended up using both flights, it wasn’t possible for a chargeback to be pursued. I accepted that this would certainly have been the case under the Visa card

scheme rules, but Miss J's transaction fell under the Mastercard scheme rules, in which I could not see an equivalent restriction.

However, I noted that no monetary value had been attached to the special assistance which had not been provided to Miss J's mother. The tickets would have cost the same with or without this assistance. For the same reasons I had outlined when considering the facts of Miss J's section 75 claim, I didn't think she was due a refund under the conditions of carriage either, so it was difficult to see how a chargeback could have been successful. I concluded therefore that Santander had not acted unfairly or unreasonably in deciding not to pursue a chargeback.

Finally, I considered the matter of Santander's claims handling. I noted the bank had not acted very quickly in dealing with matters, nor had it considered whether Miss J had a claim under section 75 of the CCA until later on, choosing instead to focus on the question of the chargeback first rather than dealing with things together. It had also given Miss J some inconsistent information about why she didn't have a valid claim. Ultimately however, I thought the £75 Santander had already paid Miss J was a fair amount of compensation to reflect the impact of its poor claims handling.

I invited both parties to respond to my provisional decision. Santander said it had nothing to add and Miss J did not reply, so the case has been returned to me to review once more.

### **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.

Because I have received no new evidence, comments or arguments from either party, I see no reason to depart from the findings I made in my provisional decision as quoted and summarised above.

It follows that I do not think Santander treated Miss J unfairly or unreasonably by failing to honour her section 75 claim or pursuing a chargeback for her. The bank did make mistakes in its claims handling, but the compensation it has already paid is sufficient to reflect the impact of its errors.

### **My final decision**

For the reasons explained above, I do not uphold Miss J's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or reject my decision before 29 December 2023.

Will Culley  
**Ombudsman**