

The complaint

Mr J complains about the way Santander UK Plc handled a claim which he made to it in relation to a transaction on his Santander credit card.

What happened

Mr J purchased flights priced at £1,386 for family members using his Santander credit card through a travel agent ('the supplier'). However, the flights were cancelled due to the global Covid-19 pandemic.

Mr J requested a refund, but the supplier would only offer him a voucher. So he got in touch with Santander to help him get his money back. It looked into things under Section 75 of the Consumer Credit Act 1974 ('Section 75') but declined to refund the money. In summary, it considered the technical requirements were not met for a valid Section 75 claim.

Mr J was not happy and complained to Santander, but it didn't change the outcome. So he referred his complaint to this service.

Our investigator initially upheld the complaint. She pointed out that Santander should have considered and raised a chargeback for 'goods or services not received' and had it done so Mr J would likely have got his money back.

Santander agreed with the investigator and offered a full refund including out of pocket interest as long as it was confirmed that Mr J did not have a voucher he could use.

Mr J confirmed he didn't have a voucher but said he had received some money back directly from the supplier. He confirmed he had received £1,281 back on 01/06/21. He said a friend had helped him get it and he had paid them £600 of it.

Our investigator said Mr J had received more than he would have got via chargeback because the terms and conditions of the booking with the supplier mean any refund is subject to cancellation charges. So she didn't think Santander needed to do anything more.

Mr J did not agree. In summary, he says:

- He didn't get the full amount back he is entitled to because of the negligence of Santander.
- The supplier didn't even issue a ticket which was fraudulent.
- Santander did not consider any options to help him.
- The amount of time he was out of pocket due to Santander's decision should be taken into account.

I issued a provisional decision on this case. In this I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I am sorry to hear about the cancellation of the flights Mr J booked due to the global pandemic. Santander is not the supplier of flights here, so I have to consider what it should fairly do in light of its role as a provider of financial services. Here the relevant protections are chargeback and Section 75.

I note that Mr J has made allegations of fraud because he says his ticket was not issued. I don't consider I need to make a determination in relation to this in order to make a fair and reasonable decision here and will be focusing on the matters I consider key to the complaint.

Section 75

Section 75 can in some circumstances mean Mr J can hold Santander liable for a breach of contract or misrepresentation by a supplier of goods or services paid using his Santander credit card. There are technical requirements for Section 75 for apply.

I don't consider it necessary to go into Section 75 in any detail because of my conclusions in respect of chargeback here. But on the face of it I am not persuaded that Santander is right in saying Section 75 does not apply to this transaction. It looks to me that Mr J does have a contractual agreement with the supplier whom he appears to have made the booking with, even if that booking were intended to benefit others. However, it is worth noting that even if Section 75 did apply here I don't consider my outcome would be any different to that I am proposing below.

Chargeback

Chargeback is a way Santander can try and recover the money Mr J has spent on his card. The rules relating to chargeback are set out by the relevant card scheme (Mastercard here). I have considered the relevant card scheme rules and had regard to any additional scheme guidance published in light of the Covid-19 pandemic.

I don't consider it necessary to cover chargeback in detail as Santander has helpfully agreed that it should have considered and raised a chargeback and that it had a good chance of succeeding.

In brief, I agree the following:

- That the reason code relating to services not being received is relevant here.*
- Mr J contacted Santander in good time in order that it could gather the relevant information and raise a chargeback within the relevant time scale.*
- That the chargeback is more likely to have succeeded than not had it been raised at the time.*

I note that although Mr J was offered a voucher, it is clear from the relevant card scheme Covid-19 supplementary guidance that a consumer can refuse a reasonable alternative like a voucher, but still retain their chargeback rights. Here I am satisfied that the evidence shows Mr J told the supplier he did not wish to accept a voucher and wanted a refund. So I am satisfied he retained his chargeback rights. As an aside, I know Santander is concerned around Mr J benefiting from a voucher and a refund but from what he has said and done I am satisfied that he has likely not received a voucher – and even if one were auto generated I think it unlikely Mr J would attempt or be able to use it now.

Mr J has already received most of the cost of the flights back. So I consider my role is to decide now what else is fairly due back to him. In summary, I agree with most of what Mr J has said and will be making an award.

I don't agree with the investigator's conclusion that Mr J would have been liable for cancellation or administration fees had he won the chargeback. From what I can see from the contractual information I have these fees are intended for situations where the consumer cancels or decides not to travel. But even if I were mistaken on that, there is nothing persuasive to show that any such limitations of liability would be effective as a defence to the reason code relating to services which have not been provided.

So I am persuaded that Mr J would likely have received a full refund had the chargeback succeeded. I have already said I think the chargeback was more likely to succeed than not. Therefore, considering what is fair and reasonable Santander should pay him the difference in what he says he has already received (£1,281) and what he would have likely got had it processed the chargeback (£1,386). This is a total of £105.

I also note that Mr J has referred to out of pocket interest. I think it fair and reasonable that he gets this paid to him on what he spent from the date Santander first declined his claim (which I understand to be 10/12/20) to:

- the date of settlement in respect of the £105 he is yet to receive,*
- 01/06/21 in respect of the £1,281 part refund he has received from the supplier.*

I also note Mr J says he has paid his friend £600 to help him get a refund as Santander did not help him. I don't think this is something that it is fair and reasonable to refund Mr J for here. It is unclear what capacity his friend was acting in or the exact arrangements here – and even if it were clear I think Mr J was likely able to progress the matter without incurring such expense.

However, I do note Mr J has expressed his frustration that Santander didn't help him as it should have. And I think that clearly this has caused him a level of distress and inconvenience which (had Santander considered chargeback in the first place) would likely have been minimised. I have considered our awards scale here, and the impact on Mr J - after doing so I think that £150 is a reasonable amount of compensation in the particular circumstances here.

Santander had initially agreed to refund the whole cost of the purchase before recent developments - so I am hopeful it will also agree with my provisional findings here. I also hope Mr J will consider my provisional decision to be a fair way of resolving matters and allowing him to move forward.

My provisional decision

I uphold this complaint and direct Santander UK Plc to:

- refund Mr J £105 plus 8% simple yearly interest calculated from 10/12/20 to the date of settlement;*
- pay Mr J 8% simple yearly interest on the sum of £1,281 calculated from 10/12/20 to the 01/06/2021; and*
- pay Mr J £150 compensation for the distress and inconvenience caused.*

I asked the parties for their comments.

Both parties agreed with my provisional findings.

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.

Both parties have agreed with my provisional findings – so I do not consider there to be any compelling reason for my final determination to differ from these.

Putting things right

For the reasons given in my provisional findings (as copied above) I consider it fair and reasonable for Santander UK Plc to put things right as set out below.

My final decision

I uphold this complaint and direct Santander UK Plc to:

- refund Mr J £105 plus 8% simple yearly interest calculated from 10/12/20 to the date of settlement;
- pay Mr J 8% simple yearly interest on the sum of £1,281 calculated from 10/12/20 to the 01/06/2021; and
- pay Mr J £150 compensation for the distress and inconvenience caused.

If Santander considers it is required to deduct tax from my interest award it should provide Mr J with a certificate of tax deduction so he may claim a refund from HMRC if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 15 March 2023.

Mark Lancod
Ombudsman