

The complaint

Mrs C complains about the way Santander UK Plc handled her request for a refund of money she paid towards a holiday that went wrong.

What happened

In September 2019 Mrs C used her Santander credit card to pay £1,700 towards a holiday booked with a travel agent I'll call 'L'. The holiday was a package made up of flights and accommodation for a party of 12 people over two separate bookings. The total cost of the holiday was around £7,500. The holiday took place within a few days of the booking for around a fortnight. The booking information shows Mrs C was not the party that made the booking with it but was a part of the travelling party.

Mrs C said she called L to make her payment and the rest of the holiday was paid for by other parties to the booking.

Mrs C said that when she arrived at her destination the taxi driver could not locate her hotel (I'll call this hotel A). She said after driving around for a while she was eventually dropped at another hotel (which I'll call hotel B). Mrs C said the reception staff at hotel B told her she was booked to stay there.

Mrs C said she could tell straight away that hotel B was not the hotel that had been booked with L. She said the facilities were of a much lower standard than those promised, and many services promised at hotel A were not available. She said most of the party also became very sick from the food. Mrs C said she eventually located the site of hotel A but it was a building site and clearly not finished. A few days later a member of Mrs C's party contacted L to express their dissatisfaction. L said it would get back to the party, but it appears this did not happen.

When she returned from the holiday Mrs C asked L for a refund of the sum she'd paid, plus compensation for loss of enjoyment and the additional expenses she incurred on taxis and having to eat out at local restaurants. L paid around £70 to Mrs C but it's not clear what this was for.

In July 2020 Mrs C asked Santander to help get her money back. Santander said it had considered a claim under Section 75 Consumer Credit Act 1974 ("Section 75") but it couldn't help Mrs C. It said the necessary criteria for a claim had not been met because Mrs C's transaction with L was not financed by a debtor-creditor-supplier ("DCS") agreement.

I issued a provisional decision in February 2023 explaining why I thought the complaint should be upheld in part. I explained, in summary:

- There were two main ways Santander could have recovered funds Mrs C paid using her credit card – via the chargeback process and by considering a claim under Section 75.
- A chargeback was unlikely to have succeeded because it didn't meet the necessary conditions under the relevant card scheme rules and would likely have been

defended as a result. The scheme rules set out that one had to be raised within 120 days of the end of Mrs C's holiday. By the time Mrs C made Santander aware of her dispute she was already outside of this time.

- Santander had treated Mrs C unfairly by declining to meet her claim at all under Section 75.
- A DCS agreement – necessary for a valid claim under Section 75 – was made out in this case. Even though Mrs L wasn't the principal booking party, L's terms and conditions were worded in such a way that they appeared to make Mrs C a party to the contract with it. This was because they appeared to include Mrs C within the definition of 'user' and the contract included a number of obligations to this category of person – such as what it would do if things went wrong.
- L's terms and conditions said that in the event it was unable to provide an essential part of the holiday package it had to provide alternative services to Mrs C. If those alternative services were of a lower value than those originally purchased, it had to refund the difference. Or if Mrs C rejected the alternative services, L had to fly her home and pay her a refund for the part of the package she didn't receive.
- The Package Travel and Linked Travel Arrangements Regulations 2018 ("PTR") also made L liable to Mrs C for the performance of the different travel services in the package and implied similar obligations to L's terms and conditions when a significant part of the package could not be performed.
- I was persuaded hotel A did not appear to have been built when Mrs C arrived at it.
- It was unlikely L had arranged to put Mrs C in hotel B. It seemed more likely on the facts that the owners of hotel A and hotel B (who appeared to be the same company or group of companies) had arranged this between them before Mrs C departed and without telling her.
- I was persuaded that hotel B was most likely of a lower quality and therefore a lower value than hotel A. Mrs C had provided photographs of dirty and poorly maintained facilities along with plausible and consistent testimony that the facilities that should have been available in hotel A were not available in hotel B.
- When Mrs C's party contacted L to explain they were unhappy that they had been placed in hotel B, L didn't do anything to help them.
- It appeared therefore that L had breached its contract with Mrs C because it had failed to provide an essential part of the package and then failed to provide an alternative. And even if it could be argued that it did provide an alternative, it failed to refund the likely difference in value between the two hotels.
- In assessing Mrs C's losses, I took account of the fact that Mrs C was not the booking party and therefore it appeared unlikely she'd have been able to claim sums paid to L in excess of the value of her share of the holiday.
- Mrs C's share in this case was the cost of her accommodation, (she'd used the flights). In the absence of an itemised breakdown of each service on the booking invoice the investigator worked out the likely cost of Mrs C's share of the accommodation by pricing up similar flights, deducting that from the overall cost of the package and dividing the remainder into three (the total number of rooms booked under Mrs C's booking). I found that to be a reasonable way of calculating things in this case.
- As Mrs C had received some benefit from the hotel she stayed in (albeit limited given its quality) I thought it was reasonable to attribute some value to this.
- I acknowledged there was no exact science to the calculation but found 50% of the cost of Mrs C's accommodation to represent a fair reflection of this benefit.
- I therefore found that it would be fair and reasonable for Santander to pay Mrs C £416.67 in respect of her accommodation costs.
- Mrs C had claimed for loss of enjoyment. I explained that courts have been known to make awards for things like this in cases involving holiday contracts – albeit modest ones. Given everything Mrs C had told us about her and her direct family's

experience at hotel B I thought she had suffered a loss of enjoyment. So, I thought it was fair that Santander pay Mrs C £200 to reflect this.

- Although Mrs C had claimed the cost of taxis and meals she incurred while she was away, I hadn't seen enough evidence that these had been paid personally by Mrs C.
- I therefore planned to tell Santander to pay Mrs C a total of £616.67 plus interest of 8% simple per annum from the date it turned down her claim until the date of settlement.

Mrs C said she didn't agree with my provisional decision. But she didn't provide any new comments or evidence for me to consider.

Santander said it had nothing further to add.

The complaint has therefore been returned 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.

As neither Mrs C nor Santander made any new comments or provided any additional evidence in response to my provisional decision, I see no reason to change the conclusion I reached therein.

So, for the reasons I gave in my provisional decision, as summarised above, I find Santander treated Mrs C unfairly by declining to meet her claim for a refund. I find it would be fair and reasonable for Santander to treat Mrs C as if it had met her claim to the extent I have set out in the summary of my provisional decision above and pay her £616.67 plus interest.

My final decision

My final decision is that I uphold Mrs C's complaint in part. To put things right Santander UK Plc must pay Mrs C £616.67 plus 8% simple interest per year from 10 September 2020 until the date of settlement*.

*If Santander UK Plc considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs C how much it's taken off. It should also give Mrs C a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 12 April 2023.

Michael Ball
Ombudsman