

## **The complaint**

Mr H complains that Santander UK Place has declined his claim for compensation in relation to flight tickets he bought with his credit card.

## **What happened**

Mr H booked tickets for a series of connecting flights through an airline “K”. He used his Santander credit card to pay for the tickets. Mr H arranged the flight timings to minimise his overall travelling time. However, a week or so before Mr H was due to depart K notified him that it had changed the flight booking. This meant Mr H would be leaving on an earlier flight and therefore would have a longer wait between connecting flights. Unfortunately, no other flights were available so Mr H says he reluctantly accepted the revised arrangements.

He complained to K, who told him that the changes were notified sufficiently far in advance that it was not obliged to compensate him. Mr H turned to Santander to see if it could assist. But the bank didn’t share Mr H’s view that K was in breach of contract. Santander said it wasn’t liable to Mr H, who referred matters to us.

Our investigator noted that Santander hadn’t attempted to chargeback the transaction. But he felt that was ultimately unlikely to be successful given that Mr H had made use of the rescheduled flights. The investigator also concluded that Santander hadn’t treated Mr H unfairly in its consideration of his claim under the connected lender liability provisions of section 75 of the Consumer Credit Act 1974 (“section 75”). He found that the terms of Mr H’s agreement with K hadn’t been breached by its actions. As a result he was unable to conclude that Santander was liable to compensate Mr H.

Mr H remains dissatisfied and has asked for this review.

## **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.

Let me say at the outset that there’s no question here over whether K amended the flight arrangements under which Mr H had originally made his booking. From what I can see, this wasn’t a case of flight cancellation. Rather, the departure time of the second leg of Mr H’s connecting flights – from Paris to Johannesburg – was brought forward by around two and a half hours. That would have left significantly less time for Mr H to make the connection in Paris based on the original arrival time from Birmingham. Although I’m speculating on this point, it seems to me that this might offer a possible explanation for the change from the original booking to a flight that departed the UK earlier.

That undoubtedly led to Mr H spending rather longer travelling, and in particular waiting at the respective airports, than he’d anticipated or planned for. I can entirely understand why he found that unsatisfactory. But the key issue for me to consider is the extent to which, by virtue of the fact Mr H used his Santander credit card to buy the tickets, the bank has a responsibility to assist in a dispute with K or to compensate him itself.

Commercial entities (particularly those in travel, entertainment and hospitality sectors) do from time to time offer vouchers or discounts as a gesture of goodwill to disappointed patrons, in order to preserve the customer relationship and secure repeat business. It was open to K to offer Mr H something in recognition of the disruption to his plans. But the fact that it did not doesn't place Santander under any obligation to do so.

Mr H's use of his credit card gives him two potential avenues to seek assistance from Santander. One of these is the card scheme rules, which in certain specific circumstances allow a card issuer to challenge a transaction with a merchant; a process commonly referred to as chargeback. Although chargeback wasn't the basis of Mr H's claim against Santander, the investigator thought it appropriate to consider whether this might have resulted in a favourable outcome for Mr H.

The investigator concluded that Santander had acted reasonably in deciding not to pursue the chargeback route in light of the likely outcome. As the card scheme rules will generally exclude a claim where the cardholder has made use of the services paid for, I share that opinion. I don't think chargeback was a viable route for Mr H to pursue a compensation claim against K.

The other avenue open to Mr H – and under which Santander did consider his claim – is section 75. One effect of section 75 is that, where an individual buys goods from a supplier using credit provided under pre-existing arrangements between the lender and the supplier, that individual can in certain specific circumstances bring a claim for breach of contract or misrepresentation against the credit provider in the same way he could against the supplier. In the context of Mr H's claim, the supplier was K and Santander was the credit provider.

Demonstrating a breach of contract is a higher bar than simply expressing dissatisfaction with the way in which the contract was carried out. In order for Mr H's claim in breach of contract against Santander to be successful, as I understand it he would need to be able to satisfy a court on a number of aspects, including (but not limited to) the following:

- a) That the booked flight times constitute a contractual obligation on K to provide flights at the stated times
- b) that his contract with K made no provision for K to amend the flight times without being required to compensate Mr H; and/or
- c) that K is obliged for any other contractual reason to compensate Mr H for his time and has failed to do so

Santander's position as stated in its final response is that what happened in Mr H's case doesn't amount to a breach of contract. I think that's a reasonable response in the individual circumstances of this case. The bank is entitled to defend itself when it receives a claim, and at present, the evidence isn't compelling that a breach of contract has occurred. Mr H hasn't, for example, offered evidence that his contract made these provisions.

The Civil Aviation Authority ("CAA") has some information about amendments that airlines can make to flights, which it refers to as a schedule change. This includes changes to flight times, such as happened with the Paris to Johannesburg leg of Mr H's booking.

The CAA guidance indicates that subject to appropriate notice, an airline can make changes to the time or date of a flight. If those changes are significant (what amounts to a significant change isn't defined, but might include where a change causes a passenger to miss a connecting flight) the airline might need to offer a refund or a more suitable alternative flight.

Importantly, the CAA guidance doesn't suggest that a schedule change will be treated as a breach of contract. If the flight were cancelled or subject to a material delay, that might have triggered obligations (whether contractual or under relevant legislation) that K held to compensate Mr H. But the flight to Johannesburg wasn't cancelled or delayed. It went ahead with an earlier departure time. While I understand that this meant Mr H spent more time in transfer, that isn't the same as saying *the flight* was delayed. I find there's no basis for me to say that K (or by extension, Santander) was in breach of contract in this respect.

The flight from Birmingham to Paris wasn't a case of a schedule change. Rather, Mr H was placed on a different flight, departing much earlier and meaning he would spend additional time waiting at Paris for his onward connection. An earlier flight can't properly be said to have been delayed or cancelled by any reasonable definition of those terms. Nor could Mr H rightly be said to have been denied boarding of the later flight, given that he accepted (however reluctantly) the change. As such, none of the obligations to pay compensation – such as those set out in Regulation (EC) 261/2004, for example – would be triggered.

If the earlier flight K booked was in order to ensure that Mr H was still able to make it to Paris in good time for his connection, now departing rather earlier, then that doesn't strike me as unreasonable in the circumstances, presenting as it did a remedy to any potential breach of contract. From airline records I can see that K operated two flights from Birmingham to Paris on the day in question. I appreciate that moving Mr H to the earlier flight meant he had longer to wait in Paris. But the alternative was that he might miss the connecting flight to Johannesburg, which I doubt Mr H would have considered preferable.

I do understand Mr H's frustration and displeasure at the change to the plans he'd clearly made quite carefully. There's little joy to be had in waiting at airports for lengthy periods, and I can see Mr H originally did what he could to avoid this prospect. However based on what I've seen, I'm afraid I can't properly require Santander to compensate him.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 20 June 2024.

Niall Taylor  
**Ombudsman**