

The complaint

Ms H complains about the outcome of a claim she made to Santander UK Plc under Section 75 of the Consumer Credit Act 1974

What happened

Ms H booked a package tour with a company I'll call 'L' in 2020 and paid a deposit to them using her credit card with Santander UK Plc ("Santander").

In 2022, Ms H went on the tour having paid the balance of the booking with her debit card. She complained to Santander when she returned asking for a full refund of the booking as she felt the tour was substandard. Ms H said:

- The coach she travelled on was not the same as the one she'd been promised and was uncomfortable throughout.
- The coach had tinted windows so she couldn't see the scenery.
- The drivers were replaced with someone who was rude and couldn't speak much English, so they weren't given information during the tour.
- All the hotels were given her name incorrectly which caused her problems boarding ferries.
- Some of the hotels were substandard in that the bedrooms were dirty and had no facilities that would normally be expected such as a TV, phone, hairdryer, and kettle.
- One of the hotels was several kilometres away from the town she was meant to stay in and there was nothing to do in that area. She also wasn't given information about how she been picked up from that hotel to continue the tour.
- She was left waiting for several hours to be taken home because of delays to other coaches.

Santander declined Ms H's claim made under Section 75 of the Consumer Credit Act 1974 ("Section 75") and didn't uphold her subsequent complaint. They said she should have exhausted all other avenues with L, such as raising this with ATOL and/or ABTA.

Our investigator didn't uphold the complaint. She said Ms H hadn't provided enough evidence about certain aspects of her claim such as the standard of the hotels or the coach. And it was difficult for her to show other aspects such as the allegation of the driver being rude and the bookings showing her name incorrectly. Our investigator felt Santander hadn't handled Ms H's complaint correctly by saying she needed to explore other options. But she felt it wouldn't have made a difference if they had dealt with this correctly.

Ms H didn't agree. She said L had told her about the coach being downgraded but they didn't keep to this as they provided a coach used by a football team. Ms H also said no-one had told her there would be no tour guide or an English-speaking driver for certain parts of the tour. And she referenced a programme on TV where a member of the tour party had made the same allegations as she had about the tour.

Ms H's complaint has been referred to me for a 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.

In deciding what I think is fair and reasonable I need to have regard to, amongst other things, any relevant law. In this case, the relevant law is Section 75 which essentially sets out that, in certain circumstances, if Ms H paid for goods and services, in part or whole, on her Santander credit card, and there was a breach of contract or misrepresentation by the supplier (in the case "L"), Santander can be held responsible. I'm satisfied the necessary criteria for a Section 75 claim to be made by Ms H was met.

I'll firstly comment on Santander's response to Ms H's complaint about her claim. They said, incorrectly, that Ms H couldn't make a claim because she hadn't exhausted other avenues available to her. This isn't correct. Ms H was entitled to make a claim and there's nothing within the requirements of Section 75 that she had to do what Santander suggested. As I've set out above, Santander can be held responsible for any breach of contract or misrepresentation by the supplier. So, they should have looked at the substance of the claim she had made. I hope that Santander takes my comments on board for any future claims that are brought to them.

However, although I find that Santander didn't deal with Ms H's complaint about the outcome of the Section 75 claim correctly, I'm not persuaded that this would have made a difference if they had dealt with this as they should have. I'll explain why.

I've considered the points that Ms H has raised about the tour. She clearly didn't enjoy the tour and her overall experience. But for me to say that Santander should take action to put things right, I'd need to be satisfied that there was a reasonable claim for either a breach of contract or misrepresentation on the part of L.

Ms H has said the coach was uncomfortable throughout the tour. It's very difficult though for her to show that this was because the quality of the coach was substandard, and I've not been provided with enough evidence of this. I appreciate Ms H would have wanted to look at the scenery from the window and accept her comments that she wasn't able to. However, I think that is a loss of expectation of something Ms H would have preferred to have happened, rather than that being a breach of contract.

Ms H has said that L called her before the tour to get her agreement to the coach being downgraded, but this particular coach wasn't then provided. I've not though seen enough evidence to support this, in that I haven't seen what type of coach was used and that this wasn't what was agreed. If Ms H can provide Santander with this evidence, then they may wish to re-consider this aspect of her case. I say this noting L's 'Things You Need To Know' guide, which is available on their website, which sets out that customers are entitled to a 5% refund of their holiday cost if two particular types of coaches aren't used for tours.

I've considered what Ms H has said about the coach driver/tour guide being replaced for part of the tour. She said he was arrogant and rude. That doesn't equate though to a breach of contract or a misrepresentation and, even if it was, is all but impossible to prove. And, while Ms H says he didn't speak much English, this isn't the same as saying he didn't speak English at all. Again, it's very difficult for Ms H to show that this reasonably shows her position that L breached their contract to provide someone on the tour who would communicate in English.

I've seen the evidence Ms H has sent about her name being incorrect, which is for a ferry booking. I agree this shows her name incorrectly although I haven't seen any other evidence that this happened on more than one occasion. If that did though happen more than once, I note that Ms H says she was still able to board the ferries although she needed to explain why her name was shown incorrectly. While this undoubtedly would have been an inconvenience to her, she was still able to board. It would be different in my view if she wasn't able to board as she would have missed parts of the tour. That didn't though happen.

I've also considered Ms H's claim about the hotels being substandard. However, I have no supporting evidence to show this for example that Ms H complained to the hotels in question at the time, or to L, and/or took photographs showing this. And, while I note Ms H says one of the hotels was quite a way away from where they were intended to be, L's terms do state that they reserved the right to substitute another hotel of a similar or higher standard, from a named hotel on the tour. I haven't seen sufficient evidence that what was provided didn't fit that criterion and I don't find that Ms H's written testimony satisfies that.

Ms H says she had to wait several hours to get home because of delays to other coaches. However, that was outside of the control of L. So, I wouldn't find they had breached their contract in respect of the tour because of that.

As our investigator said in her view, it's for Ms H to provide enough evidence to support her claim for breach of contract and misrepresentation. I don't find that Ms H's testimony fulfils that without supporting evidence. And I'm not persuaded that the programme Ms H has referred to does that either. I've watched the episode in question but there's nothing to show that the participant Ms H has mentioned was on the same tour as her.

Overall, I'm not satisfied that Ms H has been able to show that L breached their contract with her or that they misrepresented the tour. That, in my view, is primarily down to the lack of supporting evidence to Ms H's testimony. So, it follows that I won't be upholding her complaint against Santander. If Ms H can provide further evidence, as Santander requested when she raised her claim, I would expect Santander to see if that makes a difference to her claim and complaint.

My final decision

For the reasons I've set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 24 November 2023.

Daniel Picken

Ombudsman