

The complaint

Mr E complains about how Santander UK Plc dealt with his chargeback dispute and his claim under section 75 of the Consumer Credit Act 1974 concerning his booking of a hotel which he said was of poor quality.

What happened

In February 2023 Mr E booked a holiday in Egypt and paid over £800 for it with his Santander credit card. About half of that covered the cost of his hotel, which was booked for seven days. The hotel was advertised as a five-star hotel, but during his stay Mr E found it to be run down and dirty, and there were stains on the bedsheets and pillow cases. When he complained to reception he found the staff to be unhelpful, and sometimes they were rude or gave conflicting information. When room service came to clean his room, he thought they were intimidating. (He has also described some other customer service issues, such as not greeting him with a glass of champagne at reception.) On the final night of his holiday, Mr E moved to another five-star hotel and found it to be much better, even though (when his discounted rate is taken into account) both hotels cost about the same per night. So he concluded that the hotel he had originally stayed in was not really a five-star hotel.

Mr E asked the tour operator for a refund. When that didn't work, he asked Santander. Santander first raised a chargeback dispute, but this was declined. It then considered his claim under section 75, but it decided not to refund him. It gave two reasons for that decision. Firstly, it said that there was no evidence of misrepresentation or a breach of contract. And secondly, it said that Mr E had to go through the tour operator's own complaints procedure and alternative dispute resolution (ADR) service before bringing a claim under section 75.

Mr E brought this complaint to our service. He provided numerous photos showing the condition of the hotel, and links to various websites about Egypt's hotel rating system.

One of our investigators considered this complaint, but he did not uphold it. He said that Egypt had a hotel rating system that was only based on the range of facilities a hotel offers, and not on the condition of the hotel. He also said that Mr E had paid about £58 a night for the hotel he was complaining about, whereas the second hotel had cost more than twice as much.

Mr E did not accept that decision. He explained that the hotels really cost about the same when compared properly, due to his discounted rate. He asked for an ombudsman to look at his case again.

I wrote a provisional decision which read as follows.

What I've provisionally 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.

Chargeback dispute

Under the chargeback rules, a refund of a credit card purchase can only be claimed for services that were not used. So a claim could only be brought under the chargeback scheme for the days that Mr E did not stay at the hotel. It wasn't possible to claim a refund for the time he did spend there. In a letter to Mr E dated 5 April 2023, the bank wrote: *"As you used part of the services, please specify the value of any services that were not received. Please confirm amount that you wish to dispute."* Mr E replied to say he wished to claim the cost of the entire holiday, which included the flights. It wasn't possible for the bank to raise a dispute for all of that, and so it was unable to take his chargeback claim any further. So I don't think that bank did anything wrong in relation to his chargeback dispute.

Section 75 claim

Section 75 makes Santander liable to Mr E for any misrepresentation or breach of contract by the tour operator.

Mr E was under no obligation to complain to the tour operator, or to use its ADR procedure, before bringing a section 75 claim to Santander. So Santander was wrong to reject his claim on that ground.

However, Santander also rejected Mr E's claim under a second ground, which was that there had been no misrepresentation or breach of contract by the tour operator. So I have considered that too, since if that decision was justified, then Santander's error about the first ground will be irrelevant.

I will start with misrepresentation. Mr E says the hotel was not a five-star hotel because it was dirty, it looked run down and tired, and the service was poor. He says it was obviously inferior to the other five-star hotel in which he stayed on his last night.

Santander wrote to Mr E: *"The actual rating of the hotel is subjective, and we are unable to agree that the rating of this hotel is not a 5 star."* It went on to tell him that if he disagreed with the tour operator's rating of the hotel, then he should complain to them.

I can't agree that the hotel rating is subjective, and it was not the tour operator's own rating. In Egypt, hotels are rated not by individual tour operators but under a system run by international companies under the supervision of the Egyptian Hotel Association and the Ministry of Tourism. Only one part of that evaluation is based on the range of facilities available at the hotel; the other part is about the quality of service, in which reviewers investigate hotels by visiting them undercover as members of the public. That second part is evaluated by reference to a total of 226 criteria in seven categories. The shortcomings Mr E was complaining about fall into four of those categories (reception, rooms, room service, and public areas), which comprise 134 criteria.¹

I don't think it is likely that out of those 134 criteria, none of them are about cleanliness. Indeed, an article entitled *Re-counting stars: Egypt revisits hotel rating criteria* states that evaluations take into account *"customers' experience, quality of services, [and] hygiene standards"*.² So I'm satisfied that the issues Mr E complained about were matters which were relevant to the hotel's star rating.

¹ See <https://www.touregypt.net/featurestories/hotelranking.htm>

² See <https://www.lexology.com/library/detail.aspx?g=9d5acf4c-00a1-4030-a74b-5214585888e4> (registration required).

Nevertheless, if the hotel did not deserve its 5-star rating, the tour operator is not responsible for that, because it doesn't rate the hotels. When it describes a particular hotel as a five-star hotel, it is only saying that somebody else has given that hotel a five-star rating. The tour operator is not guaranteeing that the assigned rating is deserved, or is up to date, or that it has inspected the hotel to verify the quality of its premises or staff. For that reason, I do not think the tour operator misrepresented the hotel to Mr E. It said it would book him a five-star hotel, and that – according to the national hotel evaluators – is what he got.

Section 75 also covers breaches of contract, and so I have considered that separately.

As this was a package holiday, the tour operator is liable for any breach of contract by the hotel (and so under section 75, Santander will be liable too).

The Consumer Rights Act 2015 doesn't apply to Mr E's contract with the hotel, since that contract was governed by Egyptian law. However, the Package Travel and Linked Travel Arrangements Regulations 2018 make the tour operator liable for "*the improper performance*" of services provided under a package holiday, including accommodation. The regulations make that an implied term of Mr E's contract with the tour operator.³ I think that would cover failing to keep clean a guest's room and the public areas, but not everything that Mr E has complained about. I don't think improper performance includes not greeting Mr E with a complimentary glass of champagne at check-in.

The regulations allow a reasonable time to put things right. So when Mr E reported that the sauna was dangerous because there were some nails sticking out of the walls, the hotel staff hammered them in. That solved that problem, and so the regulations do not provide for any additional remedy against the tour organiser.

Mr E says that after he told the hotel that his room was dirty, three members of staff knocked on the door of his room and offered to clean the room. Mr E says he found their presence intimidating, so he sent them away. He says the reason they were intimidating is because there were three of them; he does not say it is because of anything they did or said. I don't think the staff can be held responsible for that. They had attended Mr E's room in order to clean it, and were not permitted to. Regulation 16(2) says:

"The organiser [the tour operator] must offer the traveller an appropriate price reduction for any period during which there is a lack of conformity [that means improper performance], unless the organiser proves that the lack of conformity is attributable to the traveller."

So I think the tour operator, and by extension Santander, would only be liable for the period when Mr E's room was dirty up until that time, and for the dirty condition of the public areas during his stay. I am minded to uphold Mr E's complaint to that extent.

Turning to what would be fair compensation, I have to take into account that approximately half of the cost of the holiday was not for the hotel, but for the flights. I take into account the fact that Mr E stayed at the hotel for all but one night of his booking, and so he was provided with accommodation. During his stay, he made use of the free sauna and spa treatments. He does not get all of that for free. Having regard to all of the circumstances, I think that £75 would be fair compensation.

³ I have considered regulations 2, 15, 16, and 36.

Responses to my provisional decision

Santander accepted my provisional decision. Mr E did not. He said that he should receive more compensation because the tour operator should have resolved his complaint at the beginning, instead of letting the matter drag on for months, causing him unnecessary stress and worry.

I understand his point, but I still think that a £75 refund is a fair proportion of the cost of the holiday.

My final decision

So my decision is that I uphold this complaint. I order Santander UK Plc to pay Mr E £75.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 29 February 2024.

Richard Wood
Ombudsman