

The complaint

Miss S, who is represented by a professional representative (“PR”) complains that Santander UK PLC rejected her claim under s.75 Consumer Credit Act 1974 (“CCA”).

What happened

On 25 January 2016 Miss S, along with another, purchased a timeshare relinquishment product which also provided various holiday club services. She and another entered into three agreements as follows:

1. Slonce Marketing & Merchandising Coordination Centre SL (‘Slonce’) – a timeshare relinquishment contract to get them out of an existing timeshare, promising a full refund less 20% fee within 60 days at a cost of £7,510. This claimed that Miss S would receive £23,336 after deduction of a 20% commission within 60 days.

2. Travel, Home Adventure SL (‘THA’) – Subscription to a platform, in which ‘sovereigns’ could be exchanged for holidays and other lifestyle products. 800 of these sovereigns were included.

3. Luxury Leisure Group SL (‘LLG’) – an accommodation contract for future reservations.

In addition she also was given a free gift of 5 worldwide holidays subject to her taking the holiday with LLG.

The names for each of the above companies were later changed, but for simplicity I will refer to the original names in this decision.

On 2 March 2018, Miss S paid £3,590.36 to Slonce and the balance was paid by the third party on 31 March 2018. Miss S says she also paid £7,500 by bank transfer but this service has been given no evidence to support this and it does not tie in with the other documentation I have seen.

The original contracts were signed on 25 January 2016 and an initial payment of £439.75 was made to LLG by the third party. Miss S has explained that the later payments were made when she and the third party could afford to pay.

On 25 January 2022 PR submitted a claim under s.75 to Santander and treated the three companies as if they were one. It said all were in liquidation and could no longer provide the services they had contracted to provide.

A complaint was brought to this service in November 2023. There had been some confusion regarding the claims made by PR and Santander issued a final response letter which said that on the basis of the limited information it had been given the claim had been made out of time.

Our investigator took the view that the complaint should be upheld in part. PR accepted this on behalf of Miss S and Santander asked for clarification but has not added further comment.

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.

When doing that, I'm required by DISP 3.6.4R of the FCA's Handbook to take into account the:

“(1) relevant:

(a) law and regulations;

(b) regulators' rules, guidance and standards;

(c) codes of practice; and

(2) ([when] appropriate) what [I consider] to have been good industry practice at the relevant time.”

And when evidence is incomplete, inconclusive, incongruent or contradictory, I've made my decision on the balance of probabilities – which, in other words, means I've based it on what I think is more likely than not to have happened given the available evidence and the wider circumstances.

Having read and considered all the available evidence and arguments, I think this complaint should be upheld. I will explain why.

S. 75 CCA

The effect of s. 75(1) CCA is that a customer who has a claim for breach of contract or misrepresentation against a supplier can, subject to certain conditions, bring that claim against a lender. Those conditions include:

- that the lending financed the contract giving rise to the claim; and
- that the lending was provided under pre-existing arrangements or in contemplation of future arrangements between the lender and the supplier.

In order for s. 75 to apply, there are certain criteria that need to be satisfied – one of which is establishing a debtor-creditor-supplier agreement ('DCS') between the parties.

As our investigator has explained the agreement was with Slonce and it only offered to provide the timeshare relinquishment service. The other products were also sold by Slonce, but not provided by it. However, it is clear that the products sold were inextricably linked. For example the five worldwide holidays could only be taken after the holiday provided by THA was taken. I agree with our investigator that it is reasonable to conclude that Slonce was acting as agent for the other two companies.

That said, this service has explored the three companies and could not find that they were associates as defined by the CCA. However, as Slonce was acting as agent it is open to Miss S to make a claim under s.75 for either or both of misrepresentation or breach of contract. In any event the misrepresentation which I will address below was made by Slonce and so I consider the claim to be valid.

Misrepresentation

I consider it is clear that the agreement with Slonce was for it to arrange for the relinquishment of an existing timeshare contract and the refund of monies paid by Miss M and the third party.

The agreement claimed that she would receive a sum of £23,336 within 60 days. From our knowledge of such matters this claim is wholly unfeasible and I consider it can be regarded as a misrepresentation. I gather Slonce said it would claim back more than she paid and I can see nothing in the paperwork I have been given to show how such a sum could be obtained for Miss S. I do not consider there was any basis for the claim made by Slonce that it would get Miss S' money back and as such I believe it misrepresented what it could provide.

Breach Of Contract

As I understand it Miss S as not received her money back and certainly not within the 60 days promised and so I believe Slonce breached its contract.

Was the claim made in time?

Miss S signed the original contract on 25 January 2016 and I note that PR submitted the s.75 claim on 25 January 2022 which is six years later. When assessing the six year period the clock starts running on the day after the cause of action occurs. I consider the claim was made in time. In any event Miss S and the third party did not pay the full amount due until 2018 and that would normally mean that the contract was not in place until full payment was made.

Conclusion

I consider Miss S's complaint should be upheld.

Putting things right

I consider the fair outcome to this complaint is for Santander to:

- Review the credit card account from the day the payment (£3,590.36) was made and work out what the balance would've been today, or at the date the card was closed if applicable, without the amount and without any interest and charges Miss S paid as a result of the amount being included on the account;
- Pay the difference between Miss S' credit card balance and what her credit card balance would've been as calculated above; and
- In addition to this, if there were any periods when without these payments, the account would've been in credit, then pay 8% simple interest per year on the amount it would've been in credit during those periods.

My final decision

My final decision is that I uphold this complaint and I direct Santander UK Plc to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 23 July 2024.

Ivor Graham
Ombudsman