

The complaint

Miss M complains that Santander UK Plc did not handle her claim properly in respect of the supply of unacceptable accommodation.

What happened

Miss M booked accommodation with a booking agency I will call B. It was described in the agreement as a Studio with Terrace. She paid the cost of £512.61 using her Santander credit card. The accommodation was supplied by a company I will call V. When Miss M arrived she found that there was no wardrobe or closet and no carpet. She also saw that a mirror situated beside a hob was damaged. She called V and a representative came to look at the mirror. She says that he told her it had been like that for a while. V also said that she had received the category of apartment she had booked and if she wanted a wardrobe she could upgrade. Miss M found alternative accommodation.

Shortly afterwards Miss M contacted Santander and it considered making a chargeback but decided there was insufficient evidence to allow it to do so. There was some confusion within Santander and Miss M was not kept up to date with progress and eventually she was told her request had been declined. Santander paid her £50 in compensation.

Miss M brought a complaint to this service where it was considered by one of our investigators who didn't recommend it be upheld. He said that it was reasonable to expect the room to have a wardrobe or closet but they were not specifically advertised in the agreement and so the chances of success of a chargeback was limited. Nor did he think the damaged mirror would have made a difference.

He also explained that a claim under s. 75 Consumer Credit Act 1974 ("CCA") was not possible because there was no debtor-creditor-supplier (D-C-S) agreement in place as V was the supplier but the payment had been made to B.

Miss M didn't agree and said a broken mirror was enough for anyone to refuse to use the accommodation. She said it was mandatory for a wardrobe or closet to be provided. She also said the matter was covered under s. 75.

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.

I have every sympathy with Miss M but I do not consider I can uphold her complaint. I will explain why.

In a situation like this there are two potential routes by which a claim can be made by a consumer. The first is a chargeback and the second is a s.75 claim.

Looking firstly at chargeback it may help if I explain the chargeback system. Chargeback doesn't mean there is joint liability on the card company. It is a voluntary scheme

administered by the card provider, not Santander. The consumer makes a claim to their bank and it puts a request to the merchant's bank. But there are no guarantees the consumer's bank will be able to recover the money through chargeback, or that the merchant will accept that the claim is justified.

Chargeback is a voluntary process and Santander was not obliged to make one. It evaluates the evidence and decides if one is merited. In this case it concluded that B would have a defence against it. While this service would expect a bank to submit a chargeback in most cases I cannot say that it was wrong to have decided otherwise. It was clear from the correspondence between V and Miss H that it was not open to accepting her claim. I would add that B was acting as an intermediary and it supplied the service it agreed to do.

Even if it was accepted that B had some responsibility for the state of the accommodation I have noted that there was nothing in the agreement that specified that a carpet or a wardrobe would be provided. I cannot see what chargeback category would lead to a successful claim. Nor do I think a broken mirror would be sufficient to persuade the merchant to accept a chargeback. If one had been done I think it reasonable to have expected the merchant to have rejected it and Santander has no control over the outcome of a chargeback. It can submit one and it can appeal, but ultimately the decision lies with the card scheme. As such I do not consider I can conclude Santander did anything wrong in not submitting a chargeback.

Turning to s.75 I can see that Miss M's claim falls foul of the D-C-S rule. S. 75 offers protection to customers who use certain types of credit to make purchases of goods or services. Under s. 75 the consumer has an equal right to claim against the provider of the credit or the retailer providing the goods or services, if there has been a misrepresentation or breach of contract on the supplier's part.

For s. 75 to apply, the law effectively says that there has to be a:

- Debtor-creditor-supplier agreement *and*
- A clear breach of contract or misrepresentation by the supplier in the chain.

The required three parties to the agreement are as follows:

- a debtor – the person who has an obligation to make repayments to the creditor under the credit agreement.
- a creditor – the credit provider, who pays the supplier for the goods or services on behalf of the debtor.
- a supplier – the party who provides the goods or services and receives payment from the credit provider.

B explains in its terms and conditions that it operates as a platform to enable consumers to book accommodation with service providers, in this case V. Miss H's complaint is about the quality of the accommodation supplied by V. However, V is not part of the D-C-S agreement. Miss H is the debtor and Santander is the creditor. But V which supplied the accommodation did not receive payment directly from Miss H or Santander. B acted as an intermediary and was a fourth party in the agreement. If Miss H had booked directly with V and paid it directly and it had either breached the contract or misrepresented the property then Miss H may have a claim, but I do not consider Santander was wrong to reject her claim.

I appreciate this may seem to be a finely drawn technical distinction, but that is what the

legislations says and I cannot require Santander to ignore it.

I have noted there were some delays in dealing with Miss H's claim and I consider the sum of £50 offered by Santander is fair and reasonable.

I appreciate Miss H will be disappointed by my decision, but I do not consider I can uphold her complaint.

My final decision

Santander UK Plc has already made an offer to pay £50 to settle the complaint. Miss H should contact Santander UK Plc directly if she now wishes to accept this, if it has not already been paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 30 December 2024.

Ivor Graham
Ombudsman