

The complaint

Mr S is unhappy that Santander UK Plc declined a Section 75 claim that he made.

What happened

In January 2023, Mr S booked a holiday via a well-known holiday provider for his family and himself and paid the holiday cost of approximately £1,800 using his Santander credit card. The holiday began on 31 March 2023 and included a stay in a hotel which Mr S understood would include adjustable air conditioning for the room he had booked. However, when Mr S and his family arrived at the hotel, they found that their room had centrally controlled air conditioning which was set to a temperature his family and himself found uncomfortable and which they couldn't change.

Mr S complained to both the hotel and the holiday provider about the lack of adjustable air conditioning. But an acceptable replacement room wasn't provided to him, and instead he was offered a payment of £90 or a credit voucher of £135 as a goodwill gesture. Mr S wasn't satisfied with how the hotel and holiday provider were resolving his complaint, so he sought to obtain a full refund for the holiday from Santander via a claim under section 75 of the Consumer Credit Act 1974 ("CCA") on the basis that the fact his room didn't have adjustable air conditioning had been misrepresented to him.

Santander considered Mr S's Section 75 claim and considered whether Mr S might have a valid chargeback claim. But in both instances, Santander didn't feel that an act of misrepresentation had occurred. This was because Santander noted that the hotel room that Mr S booked was advertised as having 'air conditioning', which technically, it did. Mr S wasn't happy that Santander had declined his Section 75 claim on the basis that an act of misrepresentation hadn't occurred, so he raised a complaint.

Santander responded to Mr S but reiterated their position. Mr S wasn't satisfied with Santander's response, so he referred his complaint to this service. One of our investigators looked at this complaint. But they didn't feel that Santander had acted unfairly towards Mr S by not considering an act of misrepresentation to have taken place. Mr S didn't agree, and so the matter was escalated to an ombudsman for a final 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.

I'm sorry to hear that Mr S was unhappy with the holiday and specifically with the fact that the room he booked didn't have adjustable air conditioning. However, it's important to note that Santander didn't supply the holiday and as such, in deciding what I feel is fair regarding this complaint against Santander, I'm only looking at Santander's role as a provider of financial services. Specifically, I've considered the protections offered by section 75 and chargeback claims, as these are ways by which Santander could potentially have sought to recover the money that Mr S paid for the holiday for him.

Section 75 of the CCA gives a legal right for an account holder to claim against their credit card issuer in respect of breaches of contract or misrepresentations by a supplier of goods or services, so long as certain conditions have been met. These conditions include that the transaction value has to be within certain limits and that a relevant debtor-creditor-supplier agreement exists.

Chargeback allows for a refund to be made of money paid with a credit or debit card in certain scenarios, such as when goods have been paid for and not received or when services that are paid for are defective. A consumer cannot insist that their bank attempts a chargeback, but I would expect a bank to attempt one, as a matter of good practice, if there was a reasonable prospect of the claim succeeding and if to do so would be compliant with the rules of the card scheme to which the card belongs.

It seems to me that one of the key issues here is whether a misrepresentation should fairly be considered to have occurred. To that end, I note that the hotel room was advertised as benefitting from 'air conditioning'.

Mr S's argument is that this term – air conditioning – should fairly and reasonably be considered as referring to adjustable air conditioning. That is to say that it should be reasonable to assume that a room advertised as benefitting from air conditioning would benefit from a type of air conditioning that is controllable by the room occupants, so that the room occupants can cool or heat the room as they wish.

Santander felt differently. They felt that the term 'air conditioning' didn't reasonably include the tacit implications about adjustable air conditioning that Mr S maintained that it does. And Santander noted that the hotel room that Mr S booked did benefit from air conditioning, but that the air conditioning was provided by a central system controlled by the hotel such that hotel could maintain the temperature of all its rooms simultaneously, to a temperature of the hotel's choosing.

Upon consideration, I find Santander's position to be the more persuasive here. And this is because I find myself in agreement with the important point that Mr S's hotel room did benefit from 'air conditioning'. It just wasn't the type of adjustable air conditioning that Mr S unfortunately incorrectly assumed that the term 'air conditioning' would refer to.

This means that, when I ask the question, did a misrepresentation occur? I find the answer to be 'no'. Because the room was advertised as benefiting from air conditioning, which it did.

Following this, I've also thought about whether Santander could have upheld Mr S's Section 75 claim on the basis that a breach of contract occurred here. But again, for similar reasons to that which I've already explained above, I don't feel it can reasonably be said that a Mr S's claim should have been upheld by Santander on that basis.

Because of this, I don't feel that Santander have acted unfairly by declining Mr S's Section 75 claim or by not raising a chargeback claim for him – given that I'm satisfied that such a chargeback claim would have little chance of success.

I agree it would have been preferable if the hotel advert had been more specific in the type of air conditioning available. But as explained, when considering this complaint against Santander I'm only looking at whether Santander acted fairly in their role as a provider of financial services. And, for the reasons explained above, I feel that they did.

I realise this won't be the outcome that Mr S was wanting. But it follows that I won't be upholding this complaint or instructing Santander to take any further or alternative action here. I hope that Mr S will understand, given what I've explained, why I've made the final

decision that I have.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 28 March 2025.

Paul Cooper
Ombudsman