

The complaint

Mr E complains that Santander UK Plc will not meet his claim for a refund after he fell into dispute with a timeshare relinquishment business.

Mr E has been professionally represented in bringing this complaint, so any reference to his arguments and submissions includes those made on his behalf.

What happened

Mr E had a points-based timeshare membership with a business which I'll call "D". He wanted to relinquish his membership, or make a claim that the timeshare product had been mis-sold, or both.

On 31 May 2022 Mr E entered into an agreement with F, a company registered in Spain and which offered legal services in connection with the relinquishment of timeshares and bringing claims against timeshare providers. The agreement included:

3. FEES

Timeshare Termination Case(s)

The fee payable to the Service Provider by the Client for the services carried out by the Service Provider shall be £11,189.00 (including TAX) for the client's termination case.

Payment Terms

Instruction Fee: £2,797.00 due on 01/06/2022

Final Payment: £8,391.00 due on 07/06/2022

Clause 3 also provided for a fee based on a percentage of any amount recovered from the timeshare business as a result of a direct claim. That is not relevant to this complaint, however.

Clause 5 said:

5. CONTRACTUAL GUARANTIES

5.1 The Service Provider will provide a full money back guarantee in regard to all monies paid by the client in relation to their Timeshare relinquishment case(s) should the client not receive written legal confirmation of successful legal relinquishment within the contractually agreed timeframe of twelve months from their agreement start date.

5.2 The Service Provider will provide a full money back guarantee in regard to all monies paid by the client in relation to their Timeshare relinquishment case(s) should the client's direct claim case(s) not be successful within the contractually agreed timeframe of thirty-six months from their agreement start date.

The agreement also provided that Mr E would pay fees due under the agreement to S, a company registered in Singapore. He paid S the instruction fee of £2,797 using his Santander credit card.

In July 2023 Mr E contacted Santander. He said that F had not secured his release from his timeshare contract with D as it had agreed, and that he therefore had a claim against Santander under section 75 of the Consumer Credit Act 1974 ("section 75").

Santander said that, as Mr E's contract was with F but that the card payment had been made to S, the conditions necessary for section 75 were not met. It declined his claim.

Mr E referred the case to this service. Our investigator agreed with Santander that section 75 did not apply. He thought however that Santander should have sought to recover funds under the chargeback scheme and that, had it done so, it would have been successful in obtaining a refund of the amount paid for with the credit card. He therefore recommended that Santander pay Mr E that sum, together with interest.

Neither party accepted the investigator's recommendation, so the case has been passed to me for further consideration.

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.

Mr E's claim was made under section 75. It says:

75 Liability of creditor for breaches by supplier.

(1) If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor.

...

Section 12(b), referred to in section 75, says:

12 Debtor-creditor supplier agreements.

A debtor-creditor-supplier agreement is a regulated consumer credit agreement being —

...

(b) a restricted-use credit agreement which falls within section 11(1)(b) and is made by the creditor under pre-existing arrangements, or in contemplation of future arrangements, between himself and the supplier, or ...

And section 11(1)(b) in turn provides:

11 Restricted-use credit and unrestricted-use credit.

(1) A restricted-use credit agreement is a regulated consumer credit agreement —

...

(b) to finance a transaction between the debtor and a person (the "supplier") other than the creditor, ...

and "restricted-use credit" shall be construed accordingly.

For section 75 to apply, therefore, the debtor (that is, Mr E) must show that he has a claim against the party which took the credit card payment. That party was S. Mr E does not however suggest he has any claim against S; his claim is that F did not secure relinquishment of his timeshare as it had said it would and that, having failed to do so, it did not refund the fees he had paid.

Mr E says that he paid the fees in accordance with the contract, which specifically refers to S, and that S was acting as agent for F. That may well be the case as far as the payment is concerned, but an agency relationship is not sufficient for section 75 to apply.

Section 75 can apply where a credit card payment is made to an “associate” of the party against which the debtor has a claim, but I have not identified any link between F and S which would make them associates within the meaning of section 184 of the Consumer Credit Act.

It follows that it was reasonable of Santander to decline Mr E’s claim for a full refund under section 75.

Chargeback

Where goods or services are paid for with a debit or credit card and a dispute arises, it is often possible to resolve that dispute through the chargeback process. Chargeback is a scheme run by the card schemes (in this case, Mastercard). A card issuer (here, Santander) raises a claim through the scheme against the merchant’s provider of card facilities. That provider will then consider whether the claim meets the relevant criteria for chargeback (if necessary, seeking evidence from the merchant) before responding to the claim. Where necessary, the scheme provides for arbitration between the financial businesses.

There is no legal or regulatory obligation on a card issuer to pursue a chargeback claim, but this service takes the view that they should do so where there is a reasonable prospect of success.

Santander says that it did not make a chargeback claim in this case because there was evidence from D that a claim had been made on behalf of Mr E. However, as the investigator noted:

- That claim had not been made by F, but by a different, UK-based, claims business.
- It was made at the end of July 2023. That was two months after the date by which F had agreed to secure relinquishment or to provide a full refund.
- D had confirmed that it had not received any contact from F and that Mr E remained a member.

If Santander had made a chargeback claim, I think it unlikely in the circumstances that it would have been successfully defended. I have seen no evidence that F did anything to seek relinquishment of Mr E’s timeshare. And it is in my view very clear that he remained a member after 31 May 2023 – the date by which relinquishment had to be confirmed and the date after which a full refund would otherwise be due.

I therefore agree with the investigator that Santander should put Mr E in the position he would have been in if it had made a chargeback claim. That is, it should refund the amount paid with the credit card. It should also pay interest on that amount, from the date on which it declined Mr E’s claim.

My final decision

For these reasons, my final decision is that, to resolve Mr E’s complaint in full, Santander UK Plc should pay him £2,797 together with interest at 8% a year simple on that sum from 24 August 2023 to the date of payment.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr E to accept or reject my decision before 18 March 2025.

Mike Ingram
Ombudsman