

## The complaint

Mr A complains that Santander UK Plc hasn't refunded a payment he made for a package holiday using his credit card.

## What happened

In January 2022, Mr A bought a package holiday through a travel agent (who I'll refer to as "H") for him and his family. The package holiday was organised by a different travel provider (who I'll refer to as "T"). The package included flights and accommodation and was due to take place in July 2022. The total cost of the package holiday was £6,426.97. Mr A paid £1,700 using his Santander credit card.

After returning home from the holiday Mr A complained to both H and T about what he had received. He said he had paid more in order to get an activity based holiday. The hotel he had booked as part of the package was advertised as having multiple tennis courts, both indoor and outdoor, as well as fitness classes and daytime activities. However, Mr A said that the indoor tennis courts were unavailable for use and the classes and activities were not conducted in English. He said had this been made clear to him, he would not have booked this hotel. Mr A also highlighted a number of other issues he had experienced with the hotel, including limited English being spoken or catered for.

Both H and T didn't agree that they had done anything wrong in the way the package holiday had been advertised or provided to Mr A and his family. Mr A then contacted Santander for assistance in getting a refund in May 2023.

Santander said that Mr A was out of time for a chargeback to be raised through the relevant card scheme. It said this was because it only had 120 days from the date of the transaction to process one. However, it said that it would consider Mr A's claim for a refund under section 75 of the Consumer Credit Act 1974 ("section 75") instead.

In September 2023, Santander wrote to Mr A to tell him it had declined his section 75 claim. It said this was because it didn't believe the required debtor-creditor-supplier ("DCS") agreement was in place for him to be able to make a successful claim. It said this was because Mr A had paid H, but T were the ones that had supplied the package holiday.

I sent Mr A and Santander my provisional decision on 24 September 2024. I explained why I didn't think the complaint should be upheld. I said:

*Santander initially considered Mr A's claim for a refund under the chargeback scheme. A chargeback is a way for payment settlement disputes to be resolved between the merchant and card issuer. Each card scheme has its own rules about what types of disputes can be raised by chargeback and under what conditions.*

*Santander told Mr A that he had approached them too late for a chargeback to be processed. It said this was because it had been more than 120 days from the date of the original transaction. Mr A contested this on the basis that he believed he had up to 540 days from the transaction. However, Santander maintained that its*

*understanding of the chargeback timeframes was accurate.*

*Santander did provide Mr A with wrong information. However, Mr A's understanding of the timeframe was also not quite right.*

*It seems the relevant chargeback reason code within the scheme rules was for transactions where goods or services were either not as described or defective. It appears that the timeframes for a chargeback for these situations was 120 days from the delivery of the services. In this case it could be argued that timeframe would therefore run from either the beginning or end of the holiday. But even using the later timeframe of the end of the holiday, it's clear Mr A contacted Santander substantially later than 120 days from that point, so would be too late.*

*The scheme rules also reference a maximum timeframe of 540 days from the original transaction date. However, this is in relation to 'ongoing services' and is further limited to also having to be 120 days from when any ongoing services ceased. I'm not persuaded that Mr A's holiday would be considered an ongoing service, but even if it was, he would nevertheless have still referred it outside of the 120 day window from when the services ceased.*

*As there was no reasonable prospect of success through a chargeback (as it would clearly have been made too late), I'm satisfied that Santander didn't act unfairly or unreasonably in not processing a chargeback for Mr A. I note Santander did give Mr A an incorrect reason as to why a chargeback wouldn't have been successful. However, this incorrect reasoning didn't place Mr A at any material disadvantage as it ultimately correctly told him that a chargeback would not succeed and agreed to consider a refund under section 75.*

*The general effect of section 75 is that if Mr A has a claim for breach of contract or misrepresentation against H (as the supplier who he paid), he can bring a like claim against Santander (as the provider of credit). There are additional requirements that also need to be met for Mr A to be able to make a claim against Santander. One of those is that there needs to be a DCS agreement.*

*Santander rejected Mr A's section 75 claim and complaint on the basis that there was no DCS agreement. However, this wasn't quite right.*

*A DCS agreement refers to the arrangements that need to exist between the relevant parties in order to be able to make a S75 claim. The formal wording is set out in section 12 of the Consumer Credit Act 1974. In summary, it says there needs to be 'pre-existing' arrangements between Santander and the supplier.*

*Santander said that because the holiday was supplied by T, there was no DCS agreement as it had no pre-existing arrangement with T. It says it paid H and this is who it had a pre-existing arrangement with. While I don't disagree with Santander that H was the one it paid and who Santander had pre-existing arrangements with, that doesn't mean there was no DCA agreement at all. Clearly, there was a DCA agreement involving Santander (as the creditor), Mr A (as the debtor) and H (as a supplier). H did still supply Mr A with some services as it was H that sold him the package holiday.*

*Mr A says that the package holiday was misrepresented to him and/or there was a breach of contract as he did not receive the services he was expecting and says he was led to believe he would receive. He says both H and T are at fault. However, I'm satisfied that Santander are unlikely to be responsible under section 75 for any*

*breach of contract or misrepresentation by T as there is no pre-existing arrangements between it and Santander.*

*This leaves me to consider whether there was any breach of contract or misrepresentation by H and what if anything it would be fair for Santander to do to put things right.*

*I'm satisfied that what Mr A purchased was a package holiday as set out in The Package Travel and Linked Travel Arrangements Regulations 2018 ('PTRs'). I've therefore taken these into consideration when deciding what is fair and reasonable.*

*The PTRs give Mr A as a 'traveller' particular rights and remedies as implied into the contract between him and the 'organiser' of a package holiday. The PTRs also set out additional obligations on the 'organiser' and 'retailer' of a package holiday.*

*Mr A's issues concerning the performance of the package holiday (in other words what he received), are the responsibility of the package holiday 'organiser'. Having reviewed the arrangements concerning Mr A's package holiday, I'm satisfied that the 'organiser' as defined under the PTRs is T – and not H. It's clear that H (who Mr A paid using his Santander credit card) is the 'retailer' under the PTRs. This is because the package holiday was combined and arranged by T and H simply acted as a seller of the package that had been put together by T.*

*This means that any breach of contract that there might have been in relation to the performance of the package holiday is T's responsibility, not H's. As a result, I don't think Santander could reasonably be held jointly liable under section 75 for any breach of contract concerning the performance of the package holiday.*

*The PTRs also place some obligations on the 'retailer' (as well as the 'organiser') on providing certain information prior to the sale of a package holiday. However, unlike the provisions relating to the performance of the contract, these specific information requirements are not terms that are implied into the contract so I can't reasonably say that any failure to do these things constitutes a breach of contract. It might be a breach of the PTRs (although that would be for the Court to decide) and that isn't something Santander could reasonably be held jointly liable for under section 75.*

*I've also considered whether there was a misrepresentation by H for which Santander might be jointly liable. However, I don't think I've seen enough to persuade me that was the case. I've considered the information Mr A was provided with prior to entering into the contract. I've not seen anything which suggest that H gave Mr A with incorrect or inaccurate information. It made no promises or statements about what languages would be used at the resort or what language the various activities would be conducted in.*

*I can understand Mr A's strength of feeling about how H (or T) ought to have made it clear English would not be spoken given it was a holiday sold through a UK retailer. However, I don't agree it was obligated to make this clear or a failure to do so constitutes a misrepresentation (by omission or otherwise). I say this because the holiday was in a foreign country where English was not natively spoken. I think any reasonable expectation ought to be that English might not be spoken, even if booked through a retailer in the UK. While the resort did cater for the German language as well as its native language, I don't think that means that a failure to provide services in English was either a breach of contract or that there was a misrepresentation.*

*I've seen that the number of tennis courts, both indoor and outdoor appear to have*

*been correct. Mr A says that in practice he could not use the indoor courts unless he paid for specific lessons. While I appreciate this will have been both frustrating and disappointing, I can't reasonably say that H misrepresented what services and facilities were available at the resort. After all, it seems the indoor courts did exist and were available for use by guests.*

*However, Mr A's concern here is about his ability to access the courts whilst at the resort. I consider this to relate to the performance of the contract rather than any misrepresentation having been made about the actual facilities available at the hotel. As I've stated above, the performance of the contract is the responsibility of the 'organiser' which is T. And, I don't think Santander can reasonably be held jointly liable for any breach of contract by T under section 75.*

*I'm sorry that Mr A and his family found the holiday disappointing and was not up to the standard they were hoping for. I must stress that my decision here is limited to whether I can fairly and reasonably hold Santander responsible for providing a refund. I'm not suggesting that Mr A has no recourse at all against H or T through other avenues, just that I don't think Santander has acted unfairly or unreasonably in not refunding what he paid.*

Both Santander and Mr A accepted my provisional decision. Mr A said he didn't agree with my comments concerning the lack of disclosure about the language spoken at the resort but did nevertheless accept my overall conclusion that Santander were not responsible for providing him with a refund.

### **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.

As both parties have accepted my provisional decision and have not sought to provide any further evidence or representations, I've seen no reason to reach any different outcome to the one I reached in my provisional decision. Therefore, for the same reasons, I'm satisfied that Santander didn't act unfairly or unreasonably in not providing Mr A with a refund for the purchase he made.

### **My final decision**

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 8 November 2024.

Tero Hiltunen  
**Ombudsman**