

The complaint

Mr O complains Santander UK plc (Santander) unfairly declined his section 75 claim for flights that were cancelled. He bought these flights through an online travel agent.

What happened

On around 22 April 2023, Mr O used his Santander credit card to pay £3,400 towards return flights for himself and his family. He booked these flights through a travel agent (which I'll call "T"), with the flights operated by an airline (which I'll call "B"). The planned departure date was 11 December 2023, with a return date of 5 January 2024.

Before the trip, B cancelled the return flight and replaced it with a flight that departed around 3 hours and 45 minutes earlier. Mr O says he wouldn't have been able to make the earlier flight unless he cut his itinerary short.

Because Mr O felt the flight was unsuitable, he asked T to refund the entire booking. In early November 2023, T confirmed by text that it had asked B for a refund. But after a few months, Mr O still hadn't received a refund.

As Mr O couldn't obtain a refund from either T or B (who also insisted he speak to T), he asked Santander on around 14 February 2024 to help him get his money back. Santander asked Mr O for further information on several occasions so that it could successfully raise a chargeback claim on his behalf.

By the time Mr O gave Santander everything it needed (on 16 April 2024), Santander said it was too late to raise a chargeback. Instead, it considered the claim under section 75 Consumer Credit Act ("section 75"), with a focus on identifying if there was any breach of contract by T for which it was liable. Santander said T had not breached its contract, because T only had to initially request a refund from B – and T did that.

Our investigator agreed with Santander for broadly the same reasons and didn't uphold Mr O's complaint. As Mr O disagreed, the complaint has come to me for a 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.

While I might not comment on everything (only what I consider key) this is not meant as a discourtesy to either party – it reflects my role resolving disputes with minimum formality. I'd like to assure both parties I've considered everything they've sent, including the submissions sent to me after the investigator's assessment.

It's important to note that Santander didn't supply the flights. So to decide if it acted fairly, I need to consider its role as a financial services provider only. As Mr O used his credit card to pay T, I need to consider how Santander could have reasonably assisted him through the protections offered by the chargeback process and section 75 CCA.

Chargeback

When someone buys something with their credit card, and something goes wrong, the card issuer can sometimes help them obtain a refund by raising a chargeback on their behalf. There's no obligation for a card issuer to raise a chargeback for a customer – but I'd expect it to do so if a chargeback has reasonable prospects of succeeding.

The rules governing the chargeback process are set by the relevant card scheme – in this case, that would be Mastercard. These rules set out strict conditions that must be satisfied for a chargeback claim to be successful. I'd expect a card issuer like Santander to apply the scheme rules correctly and conduct the chargeback process fairly.

Mastercard will only consider certain types of disputes under its chargeback scheme – specifically, those that align with one of Mastercard's "reason codes". The scheme rules that apply depend on what "reason code" the chargeback is raised under.

Mr O filled out Santander's claim form and selected the dispute category "My goods or services weren't as described or were damaged or defective". So I think it was reasonable that Santander considered raising a chargeback under the reason code "Goods or Services Were Either Not as Described or Defective", as it aligns closely with Mr O's claim.

Under this code, and in these circumstances, the chargeback had to be raised within 120 days of either the transaction date (around 22 April 2023) or the flight cancellation date. The exact cancellation date isn't known, but it's clear the return flight had been cancelled by 28 October 2023, as noted in a text message on this date.

That means the latest date Santander could have raised a chargeback by was around the end of February 2024. But Santander only received what it needed from Mr O by 16 April 2024, which was past the 120-day deadline. So I don't think Santander acted unfairly by stopping the chargeback process and turning to section 75 instead.

Even if Santander had managed to raise a chargeback in time, I don't believe it would have likely succeeded. Mastercard typically requires (1) that the consumer tried to resolve the issue with the merchant first, and (2) that the merchant had refused to give a remedy, like a refund or price reduction.

Mr O did try to resolve the issue with T, but the evidence suggests T also tried to get Mr O a refund from B. T confirmed by text on 3 November 2023 that it asked B to refund Mr O, and there's no sign T ever received that refund. I think that alone would have likely been enough for T to defend the chargeback claim.

In summary, I think it was too late to raise the chargeback within the required time limits. And even if it had been, I don't think it had reasonable prospects of succeeding. I think Santander handled the chargeback process fairly.

Section 75 Consumer Credit Act 1974

If a consumer buys goods or services on credit, section 75 can sometimes make the credit provider equally responsible for a breach of contract or misrepresentation by the supplier. Certain technical criteria must be met for section 75 to apply, and I'm satisfied these are met.

However, because Mr O's payment went to T, T is the "supplier" for section 75 purposes, not B. That means Mr O can only hold Santander responsible under section 75 if T breached its contract or made a misrepresentation.

Mr O does have a separate contract with B for the flights. But because the debtor-creditor-supplier (DCS) agreement required by section 75 isn't in place for this separate contract with B, section 75 doesn't cover it. If Mr O had bought the flights directly from B using his credit card, the situation might have been different – but that's not what happened here.

There are some limited circumstances where a payment can be made to one party and the goods or services are supplied by another party, and section 75 will still apply. For example, section 75 could apply if there's a specific type of relationship between the party which took the payment (T) and the relevant party who supplied the goods or services (B) – making the parties 'associates', as defined in section 184 of the Consumer Credit Act. The DCS agreement might also be preserved for certain types of arrangement between Santander and B. But in this case, I've not seen evidence that satisfies me any of these exceptions apply – and so I'm not satisfied there is a DCS agreement for the contract with B.

Given that, the main questions for me to consider are whether T misrepresented what Mr O was buying, or alternatively whether T breached its contract with Mr O.

Misrepresentation

Mr O says T should have made it clearer from the start that if a flight is cancelled, T cannot guarantee it would get his money back for him. If this was made clearer, he says he wouldn't have proceeded with the purchase.

But for a misrepresentation to exist under UK law, Mr O needs to show that T made a false statement of fact that induced him to enter into the contract. In other words, T must have said something untrue about refunds before Mr O agreed to buy the tickets.

Mr O hasn't provided evidence of any untrue statement by T. His point is that T omitted to mention the risk of not receiving a refund. However, under UK law, silence or omission by itself usually doesn't amount to a misrepresentation.

I've looked at the booking process, and I cannot see any misleading statements about refunds, or anything that suggests T guarantees a refund in the event a flight is cancelled. Instead, it requires the purchaser to tick a box confirming they've read T's terms and conditions. Those terms – readily available via a hyperlink – make clear that refunds depend on the airline's policy, and T only acts to help its customer get a refund if the airline agrees.

In these circumstances, I'm not satisfied Mr O has established there to be any misrepresentation on T's part.

Breach of contract

Mr O also says T breached its contract by failing to supply the flights he paid for and failing to give a refund. So I checked T's terms and conditions to see what obligations T had.

Those terms say T is an agent for B. When a customer buys flights, T simply accepts the customer's offer on behalf of B. That's important because it means Santander's potential liability under section 75 applies to a breach of contract by T in its role as a travel agent. It doesn't extend to a breach by B.

Mr O says he booked flights leaving at 10:55pm but received flights leaving at 7:10pm with an extra stop, so he didn't get what he paid for. But the evidence shows the original tickets T gave him had a 7:10pm return flight, which was what Mr O ordered. And T's contract says

the flights are subject to B's terms, which allow for cancellations or changes. So there's no guarantee flights will depart exactly on the date or time shown on the ticket.

T's terms additionally say airlines may reschedule or cancel flights. I haven't seen anything suggesting T promised those flights couldn't change. So just because B cancelled the flight doesn't mean T breached its contract.

The key question here is what T needed to do if a flight was cancelled, and whether T did it. T's contractual obligations are different from B's. Under the relevant clause, T isn't liable for flight changes or cancellations, but it is responsible for helping Mr O get a refund. T says (in a text on 3 November 2023) that it asked B for a refund. I haven't seen solid evidence contradicting that. So on balance, I think T did what it was supposed to do under its terms.

If T had received a refund from B, it would have had to pass it on to Mr O (minus any applicable fees). Failing to do so could be a breach of contract by T. But there's nothing showing that B ever gave T a refund to pass on. Mr O asked B for a refund, but B told him to speak to T. Overall, I don't think it's likely T received a refund from B.

I haven't seen anything else to suggest T breached its contract with Mr O. So I'm not satisfied Santander is liable under section 75 for either a breach of contract or misrepresentation by T.

Other considerations

Mr O says his wife paid about £1,300 on her credit card for the same flights. He provided a statement showing she got about £1,300 back after she made a claim through her bank. He thinks he should also get a refund from Santander.

I understand why he'd think that, given the similarities. But I don't know the details of his wife's claim – whether it was a chargeback or section 75 claim, or if that refund was later reversed. And ultimately, my role here is to decide if Mr O should get a refund from his card provider based on his claim, not hers. The fact his wife received a credit from her bank doesn't necessarily mean he's entitled to the same.

I'm sympathetic to Mr O's situation. He even supplied a screenshot from B's app suggesting B might owe him a refund. And under B's terms, that might be possible. But if B's refusal to refund Mr O amounts to a breach of its contract, that's not something Santander is liable for under section 75. Mr O may need to pursue B directly if B is refusing a refund.

In summary, I don't think Santander handled Mr O's chargeback or section 75 claims unfairly. So I won't be directing Santander to do anything further.

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 O to accept or reject my decision before 12 May 2025.

Alex Watts
Ombudsman