

The complaint

Mrs K complains Santander UK Plc have acted unfairly by not refunding the amount she paid to a company to release her from her timeshare.

What happened

Over several years, Mrs K and her husband have made a number of attempts to be released from a timeshare Mrs K held with a company I'll refer to as Company D. In doing so, she says they've previously entered into agreements with companies who she said didn't do as they said they would, and release her from the timeshare held with Company D.

As such, Mrs K contacted Company D directly and requested she be released from the timeshare. Company D agreed and confirmed in writing in February 2021, that Mrs K had been released from her timeshare. Mrs K has confirmed she received this letter and provided a copy to this service.

Following this, in September 2021 Mrs K says she was contacted by a company I'll refer to as Company A. She says they told her she'd not correctly relinquished her timeshare, so says she entered an agreement with Company A to release her from the timeshare held with Company D. She made a part payment of £200 in September 2021 using her Santander credit card. She said the outstanding amount of £5,200 was paid by her husband, using a debit card in his name, not held with Santander.

Following this Mrs K says she heard nothing further from Company A. As a result, she contacted Santander in September 2023 to make a claim under Section 75 of The Consumer Credit Act 1974 (CCA).

Santander reviewed matters but declined Mrs K's claim. They said under section 75, she could only claim for the loss she'd suffered and not the amount her husband had paid. And while they said there hadn't been a breach of contract or misrepresentation, they did offer to refund the £200 Mrs K paid on her credit card, as a gesture of goodwill.

Unhappy, Mrs K referred her complaint to our service. An Investigator here reviewed matters and while they didn't agree with Santander's comments, that they were only responsible for Mrs K's losses, they concluded Santander hadn't acted unfairly. That's because they said there hadn't been a breach of contract or misrepresentation in this case. They pointed out that Mrs K had already relinquished her timeshare when she entered the contract with Company A. And that both Mr and Mrs K had experience of companies not relinquishing the timeshare when they said they would – before and after Mrs K entered the contract with Company A.

Mrs K didn't agree, saying Santander had agreed there had been a misrepresentation by making their offer of £200, so felt the whole amount she and Mr K paid was due. Saying had she not relied on the misrepresentation by Company A she wouldn't have entered the contract with them. She also said the fact her husband had entered contracts with other companies for this relinquishment wasn't relevant.

Our Investigator reaffirmed the offer from Santander was a gesture of goodwill, and not acceptance there had been a misrepresentation. But with no resolution, the complaint was passed to me to decide.

I issued a provisional decision, explaining that I didn't intend to uphold Mrs K's complaint. In this provisional decision I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I think it would be helpful to explain, in this decision I'm only able to consider how Santander handled the dispute Mrs K raised with them. I'm not able to consider the actions of Company A or D, as that isn't within the jurisdiction of this service for these types of complaints.

It's also important to say this decision will focus only on the payment Mrs K made for the contract with Company A. As I've explained, Mr and Mrs K have entered other contracts for timeshare relinquishment with other third-party companies and subsequently raised section 75 claims with Santander. While our service has reviewed complaints about those – the merits of them won't form part of my decision here.

In this case, the payment of £200 was made using Mrs K's Santander credit card. Mr K also made a further part payment using a separate debit card.

When a consumer approaches their credit card issuer with a problem with a purchase made using their credit card, there are two avenues via which the business can help.

The card issuer can try to reclaim the amount (or part of the amount) the consumer paid on their card, via the dispute resolution mechanism operated by the card scheme (Mastercard in this case), and which is often known as "chargeback". They can also consider honouring a claim under section 75 of the CCA. I will consider each of these mechanisms in turn below.

Chargeback

Chargeback allows for a refund to be made of money paid with a credit card in certain scenarios, such as when goods or services have been paid for and not received.

Chargebacks are governed by rules set by the card scheme to which the consumer's card belongs.

Chargebacks are not guaranteed to succeed, the recipient of the funds (Company A in this case) can choose to challenge or defend a chargeback if they don't think it is valid. A consumer also cannot require their card issuer to attempt a chargeback, as it isn't a right. Our service does consider it good practice to do so, if it is within the time limits and there is a reasonable prospect of success.

However, there are certain rules that apply to chargebacks which are set by the card scheme (Mastercard in this case). Included in these rules are certain time limits in which to raise a dispute.

Mrs K wanted to dispute a payment made in September 2021 because she says she heard nothing further from the company, after making the payment.

Here, Santander don't appear to have attempted a chargeback, but I don't think that's unreasonable as I don't think there was a reasonable prospect of success. I say that because Mrs K first raised her dispute with Santander in September 2023, but Mastercard

scheme rules include provisions relating to how long after a transaction takes place, you're allowed to raise a chargeback. Where a payment has been made for goods or services, and those services have not been provided, as is the case here, the rules say that in these circumstances a chargeback must be attempted within 120 days of the last date the cardholder expected to receive the service.

In this case the contract with Company A makes it clear when Mrs K could have reasonably expected to receive the service, as it says:

"Our trusted third-party legal partners will endeavour to negotiate the termination of the above contract as quickly as possible however the client acknowledges it could take up to but no longer than 12 months from the agreement start date or up to but no longer than 12 months from the end date of your last usage or benefit of above contract."

Mrs K made the payment to Company A on 18 September 2021. So had the contract performed as it should, Mrs K could reasonably have expected a response from Company A at the latest by 18 September 2022. Under the card scheme rules Santander would have then needed to raise the chargeback within 120 days from that date.

Mrs K first contacted Santander, by email, on 13 September 2023 to raise a claim, which means it was already too late for Santander to raise a chargeback at that point, so I don't think they acted unfairly in not doing so and nor do I consider Mrs K lost out as a result of Santander not attempting a chargeback when she first contacted them.

Section 75 of the CCA

Section 75 of the CCA allows consumers who have purchased goods or services using a credit card, to make a like claim against their credit card issuer in respect of any misrepresentation or breach of contract by the supplier of those goods or services, so long as certain conditions are met.

One condition which needs to be met for section 75 to apply to a purchase, is the claim must relate to an item with a cash price of over £100 and no more than £30,000. The cash price here met this condition.

A further condition is that there needs to be what is known as a debtor-creditor-supplier ("DCS") agreement in place. Our Investigator considered this had also been met, and as such went on to consider whether there had been a breach of contract or misrepresentation. However, I don't quite agree with our Investigator and don't consider it's necessary for me to decide whether there has been a breach of contract or misrepresentation here.

I say this because while Mrs K made a payment of £200 using her credit card, for the agreement she had with Company A, and as such the necessary DCS agreement was in place - the remainder was paid by her husband. It's also important to make clear that under section 75, a consumer can only make a 'like claim' against the credit card company.

What this means is Mrs K could only make a claim against Santander for the amount she could have claimed against Company A. Having reviewed the contract with Company A, it doesn't include any right for Mrs K to make a claim for any third-party loss. So it follows, that any claim Mrs K made against Santander could only cover the loss she incurred, namely £200.

While I understand Mrs K's husband paid the remainder of the contract on his debit card, this cannot be considered as Mrs K's loss (or a consequential loss that she suffered), and as I've explained, she has no right under the contract to make a claim on his behalf. It's also

important to say here that Mr K couldn't make a 'like claim' to Santander on this matter either, as he wasn't a party to the contract with Company A. As such he can't recoup his loss from Santander and nor can Mrs K.

Given Santander has already refunded Mrs K £200, and there's no consequential losses that she's claimed or that I've seen, there's no need for me to go on to consider whether there has been a breach of contract or misrepresentation in this case, as even if there were – Santander wouldn't be required to refund her any more than it has done so already.

I do appreciate this will come as a disappointment to Mrs K, but as explained Santander has already refunded Mrs K the total amount she lost, and she raised any chargeback claim too late. So I won't be asking Santander to do anything further here."

I invited both parties to respond with any further points or evidence they wanted me to take into account before I made a final decision.

Santander acknowledged what I'd said but didn't have anything further to add. Mrs K didn't respond before the deadline I set.

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 Santander didn't have anything further to add and Mrs K hasn't responded, I see no reason to depart from the conclusions I reached in my provisional decision.

As such, because Mrs K raised any chargeback claim too late and Santander has already refunded the total amount she lost, I won't be asking Santander to do anything further here.

My final decision

For the reasons explained above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 17 April 2025.

Victoria Cheyne
Ombudsman