

The complaint

Miss B complains that Santander UK Plc failed to properly pursue a chargeback and rejected her claim under section 75 Consumer Credit Act 1974 ("s.75").

What happened

Miss B attended a free online seminar on investing and she signed up for an online course with the merchant. This cost £14,995 and she paid a deposit of £7,500. She paid £5,200 with her Santander credit card and the balance with a card from another bank.

The merchant supplied log in details and after logging on Miss B decided she did not want to pursue the course and contacted the merchant within 14 days to cancel her purchase. The merchant said she had waived her right to make use of the 14-day cooling off period when she accessed the online content for which she had paid the deposit.

She contacted Santander and the other bank to ask that they obtain a refund. The other bank refunded £2,300. Santander raised a chargeback and this was challenged by the merchant. It also considered s.75, but concluded that there had been no breach of contract or misrepresentation and so it did not provide her with a refund.

Miss B complained but this was rejected by Santander. She then brought a complaint to this service where it was considered by one of our investigators who didn't recommend it be upheld. He set out in some detail the relevant law and explained why he considered Santander had not done anything materially wrong in its handling of Miss B's claims.

Miss B didn't agree and asked that the complaint be considered by an ombudsman.

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 have every sympathy with Miss B, but I do not consider I can uphold her complaint. I will explain why.

Our investigator has set out the legal framework in some detail and so I will give a brief summary here. The purchase falls under the distance selling rules. The relevant regulations are the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 ("CCRs"). Miss B made her purchase on the phone and the alternative means of purchase offered by the merchant appears to be online. Overall, I consider this means the merchant offered an organised online distance sales scheme.

The CCRs give consumers various rights including the right to cancel within 14 days, subject to certain conditions. It is accepted that Miss B made her request to cancel with the 14-day cooling off period. However, there are specific rules which apply to digital products such as online courses. For purchases such as that made by Miss B the right to cancel ceases once the online course is accessed. Miss B did access the course and having done so concluded

she didn't want to make use of it. The rules say that taking positive action such as ticking a box on the merchant's website is sufficient to show the consumer has given express consent to access the content and in so doing surrenders their cancellation rights.

The merchant sent Miss B an email with a link to the content. It stated above the link to the course *"Once you click the button below, you will have full access to the content. Please note as per our updated terms and conditions, you acknowledge that you will no longer have the right to withdraw from this contract."* I believe that makes it clear that when she clicked on the link Miss B was surrendering her right to cancel.

Turning to Santander's actions I note that it raised a chargeback which was rejected by the merchant. As our investigator noted, chargebacks are subject to the rules set out by the relevant card scheme whose logo appears on the card. The card schemes are not within the jurisdiction of the Financial Ombudsman Service and we are unable to require them to run their chargeback schemes in a particular way. However, we can consider whether a card issuer has applied the rules correctly and conducted the chargeback process in a competent manner.

Santander collated all the evidence supplied by Miss B and put it to the merchant. It, in turn gave a detailed response setting out why it did not accept the chargeback. In the circumstances I do not see that Santander had any basis for taking the chargeback any further. The merchant had put forward a robust defence and Santander had done all it reasonably could to pursue Miss B's claim. Santander does not decide the outcome of a chargeback, it merely pursues it on behalf of the customer.

The other avenue available to Miss B was a claim under s.75. When someone makes a payment on their credit card, in order to make a valid s. 75 claim against their credit card issuer they need to have used the credit card to pay a company they have a claim against for breach of contract or misrepresentation. S. 75 gives the debtor (the credit card account holder) the same claim against their credit card issuer as they would have against the supplier of goods or services, so long as that claim is for breach of contract or misrepresentation.

This is because section 75 itself is worded in the following way:

"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."

The debtor in this case is Miss B, because she paid the deposit for the course using her credit card account. The transaction financed by the credit card account was the deposit for the course and the supplier was the merchant. S. 75 says that it is the debtor who needs to have a claim against the supplier in respect of a misrepresentation or breach of contract.

Miss B has not demonstrated that there was a breach of contract by the merchant. I appreciate she feels the merchant has been guilty of pressure selling, but the contract she signed has been honoured even if she doesn't like it. Having reviewed events and the contract I cannot see how it can be said that there was breach.

As for misrepresentation I have noted Miss B thought there would be greater mentor support than was actually offered and the amount of money needed to be successful was significant, but I have seen no evidence of actual misrepresentation. I gather she had use of a free two day online course prior to making the purchase which will have given her an opportunity to

have at the very least some understanding of the type of material used by the merchant.

I have looked at the merchant's current website and I can see nothing in the description of the course that indicates there was any misrepresentation made having taken into account what Miss B has told Santander and us. So I cannot say that Santander was wrong to reject her s.75 claim.

I am aware the other bank refunded her money, but I do not know on what basis it did so and in any event Santander is not bound by the actions of another bank. In conclusion, while I have every sympathy with Miss B I do not consider I can uphold her complaint.

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 Miss B to accept or reject my decision before 26 May 2025.

Ivor Graham
Ombudsman