

## **The complaint**

Miss S complains that Santander UK Plc treated her unfairly when it declined her claims for a refund under section 75 ('section 75') of the Consumer Credit Act 1974 ('CCA') and the relevant chargeback scheme.

## **What happened**

Miss S complaint is related to airline tickets booked for herself, and two other parties. On 26 October 2023, using her Santander credit card, Miss S paid £1,607.01 to a travel agent, who I'll refer to as 'T'. This was for several tickets for three passengers (including Miss S) related to outbound and return flights to and from, the UK. Upon booking Miss S was bound by both T's terms and those of the airline. On 25 November 2023, Miss S and the other people she was travelling with, were all denied boarding on the first leg of the return trip back to the UK which the airline said was due to her, and the other passengers, not having the correct documentation. Miss S complained to T which responded by saying she'd need to log a complaint with the airline as it was responsible for denying her boarding. But she received no response from the airline, so she asked Santander for help in claiming a refund from T.

Santander declined to initiate a chargeback on Miss S's behalf, as it said she hadn't provided sufficient evidence to support her dispute. It also said the relevant debtor-creditor-supplier ('DCS') criteria hadn't been met in respect of the section 75 claim. Miss S complained but Santander maintained its position. So, she asked our service to review her complaint.

Our investigator noted, contrary to what Santander had said, it did appear that Miss S provided the evidence it requested. However, the investigator didn't think it was likely there was a reasonable chance of any chargeback succeeding even if Santander had agreed to initiate it. Further, the investigator agreed with Santander's position that the conditions for a section 75 claim hadn't been met. For these reasons, our investigator didn't recommend upholding Miss S's complaint. Miss S disagreed with the investigator's view. In summary, she said: caselaw supports that the DCS link isn't broken; T was contractually obliged to provide the flights; Santander failed to initiate a chargeback when it had sufficient evidence to do so; Santander should've been more proactive in resolving this issue; and T breached a number of legal and regulatory provisions.

Our investigator reconsidered Miss S's complaint, but remained of the view it shouldn't be upheld. So, Miss S asked for an ombudsman's decision on this matter. I issued a provisional decision. Santander said it accepted my findings. Miss S didn't respond. So, I'm issuing my final 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.

As I noted in my provisional decision, I can see that Miss S has very strong feelings about what happened here. I think this is understandable given the very stressful situation she found herself in whilst trying to board her flight. I want to assure Miss S that I've thought carefully about everything she's said and sent to us. But I won't be commenting on everything she's provided. I

will focus on what I think are the key matters. This reflects our informal remit. I can see that Santander has accepted my findings and Miss S didn't respond. So, my final decision remains the same as my provisional decision, which is set out below in full.

### *Chargeback*

Chargeback is a scheme used to dispute payments and is run by the card providers. In this instance, the relevant scheme is Mastercard – so it's the Mastercard rules I've considered when deciding what is fair. While chargeback isn't mandatory it would be expected that Santander raise and, potentially, pursue one where there is a reasonable prospect of success.

I should note that, at most, Miss S would only have been able to claim a refund for the actual cost of the return flights made from the payment of £1,607.01 she made on 26 October 2023. But her chargeback request was for a refund for new tickets she purchased after she and the other passengers she was travelling with, were all denied boarding, which isn't something that would've been covered under the Mastercard chargeback scheme. This explains why Santander requested Miss S to provide a breakdown of how much from the payment of £1,607.01 was paid towards the cost of the return flights. My understanding is that Miss S wasn't able to provide this to Santander because she didn't receive a breakdown as part of the booking information she received from T.

In any event, even if Miss S had been able to provide the requested information to Santander, I don't think this would have changed the outcome. This is because her dispute doesn't really fit under the chargeback rules available to Santander. For example, a common chargeback reason such as 'service not provided' is unlikely to have succeeded because Miss S was provided with the tickets and the flights were available. The issue is more about her being denied boarding due to (in the airline's view) not meeting the correct Visa/UK entry requirements. And that situation isn't really covered by a chargeback reason code. Further, Miss S confirmed to Santander that she wasn't entitled to a refund under T's terms and conditions. Under all these circumstances, I don't consider a chargeback had a reasonable chance of succeeding here. So, I can't fairly or reasonably conclude Santander acted incorrectly for not initiating a chargeback in this case.

### *Section 75*

In respect of a section 75 claim, a consumer has an equal right to claim against the lender or the provider of goods or services if there's been a misrepresentation or breach of contract. I should also note at this point that given Miss S only booked flights, her particular case does not fall under the package holiday rules as she said in her submissions. A package holiday is generally taken to be the combination of two or more different types of travel services (such as flights and accommodation), which are combined for the purpose of the same trip. Those circumstances don't apply here.

Amongst other things, for section 75 to apply a DCS (debtor-creditor-supplier) agreement must exist between the relevant parties. A DCS agreement is defined under section 12(b) of the CCA as *"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"*. And section 11(1)(b) of the CCA provides that a restricted-use credit agreement is a regulated consumer credit agreement *"to finance a transaction between the debtor and a person (the 'supplier') other than the creditor"*.

In this case, Miss S's main dispute is essentially with the airline. It's the airline which she had an agreement with regarding the terms and conditions of carriage. And it is the airline she is saying should've let her board – but didn't. So, in terms of this issue, under the CCA, Miss S is the debtor, Santander is the creditor, and the airline is the supplier. Because Miss S booked through

T rather than direct with the supplier-airline, I don't think the DCS applies in relation to anything done by the latter party. As such I don't think Santander was acting unfairly when it gave these reasons to Miss S for not accepting liability for any alleged breach of contract in this regard.

Miss S says a fourth party arrangement won't always impact on the DCS agreement and points to the case of the *Office of Fair Trading v Lloyds TSB Bank plc [2007] QB 1* in support of her complaint. In this case the Court of Appeal held that there were the necessary 'arrangements' between creditors and suppliers who belonged to the same credit card network, even if there were no direct arrangements between them (due to the interposition of merchant acquirers). But these circumstances don't apply here. Given T had various contractual obligations in its own right to Miss S acting as an intermediary in booking flights for her, I don't think it could be said Santander entered into arrangements with both T, who was part of the same card network, and third parties T chose to do business with such as the airline (see *Steiner v National Westminster Bank plc [2022] EWHC 2519*).

Miss S says T is responsible for the acts of the airline because it was its agent. But as she acknowledged in her submissions to us: "[T] is not a mere search engine; it actively engaged in the contractual process by accepting payment, issuing booking confirmations, and setting terms and conditions applicable to the transaction." So, because T had its own contractual obligations toward Miss S, and wasn't (for example) just a payment facilitator for the airline, I don't agree the DCS criteria has been met in this case.

That said, whilst I don't think the DCS criteria has been met in terms of the issues related to the airline, I do think it's in place in respect of the contract Miss S had with T. I've noted what Miss S says about T misrepresenting its services, but from what she described, it was events which took place after her booking that gave her cause for complaint. So, I think her allegations concern a breach of contract. Given this, I'll consider this issue taking into account relevant law including the Consumer Rights Act 2015 such as the implied term that services should be performed with reasonable care and skill.

In respect of any breach of contract which Santander might be liable for under section 75, it doesn't appear that either party has provided T's terms from the date of Miss S's booking. Rather Miss S provided a link to T's current webpage and Santander provided a screenshot of one section of T's terms. So, in the absence of anything to the contrary, I think I can reasonably rely on T's current terms particularly as those relating to flights are dated September 2020.

Under T's terms its main role was to book and reserve tickets on behalf of the customer, which in Miss S's case, it did. T's terms also say that if a customer experiences a problem which negatively impacts on their ability to travel using their ticket(s), they must contact T in the first instance for assistance, and according to its terms, T says it will make every effort to find a solution to the issue in hand. I also don't think it seems unreasonable to expect that T, as the agent Miss S paid in its role arranging travel, would facilitate any post booking requests. From what Miss S says, this didn't happen because the promised "24/7" chat service had technical difficulties at T's end.

However, even if T not being available when Miss S needed its assistance amounted to a breach of contract either under the specific contract terms, or the implied term of to act with reasonable care and skill, I can't say there's been any loss suffered. I say this because according to the airline, Miss S failed to meet the (travel) Visa requirements for the country she was due to fly to for her connecting flights. The timing of the connecting flights meant she, and those she was travelling with, would need to be in that country for longer than the 24-hour period permitted under its Visa rules. There was also the issue with her UK status. Whilst I know Miss S strongly disagrees with the airline's position on this, I don't think T could've reasonably done more than she was able to do herself, which was to re-book new tickets for her return trip home. And as the tickets she purchased from T were non-refundable, she still

would've been in a position of having to pay for the new tickets. So, I don't think its likely compensation would be due for breach of contract under these circumstances.

Miss S says T had some responsibility for the issue with the Visa requirements not being met by allowing her to book tickets which meant she would stay in the relevant country for more than 24 hours. But as T's terms say, it's the customer's responsibility to ensure they meet with all the relevant Visa requirements for the country they are visiting. I note Miss S used a Visa checking service which she was directed to via T's website, but from what she said, this was a third-party service and not one operated by T.

Miss S says Santander is misrepresenting the protection section 75 offers by not refunding her. However, whilst paying for things on a credit card entitles a consumer to make a claim under section 75, it isn't guaranteed that such a claim will succeed – the outcome very much depends on the nature of each individual claim. And for all the reasons set out above, I don't think Santander acted unfairly or unreasonably for declining Miss S's section 75 claim.

### *Customer service issues*

Miss S complains about Santander's customer service particularly around its communications. She says Santander wrote to her home address when she specifically asked for it to email her and a promised call wasn't made until a week later. Santander says in its submissions that whilst it understood Miss S preference to communicate was via email, it was unable to facilitate this because email isn't a secure method of communication. My understanding is that Santander could send emails, but these would've been sent via Miss S's online banking. Either way, I don't think Santander made it clear that it wouldn't be able to email Miss S or that if it did, it would be via her online banking account (whichever one applied).

Further, in respect of Santander's letter dated 27 February 2024, which told Miss S her chargeback request had been declined due to insufficient evidence, whilst I can see she didn't provide the requested costs of the return flights, it does appear she provided other requested information such as a link to T's terms and conditions. Santander could've reasonably accessed this information – and seems to have done so – but it told Miss S it hadn't received T's terms and conditions. It also told her she hadn't provided a detailed account of the reason for her chargeback, which in my view, she did. So, I consider this caused Miss S upset and confusion as she didn't think Santander had taken into account the further information she supplied upon its request.

I consider Santander failed to meet with its regulatory obligation to provide Miss S with communications which were clear, fair and not misleading. Further, under the Consumer Duty regulatory framework, one of the expected outcomes is that firms help with a customer's understanding by, for example, providing them with the information they need, at the right time, so they can make informed decisions. Whilst I think what happened runs against the higher standard set by the Consumer Duty framework, even with that aside, I don't think Santander communicated and/or supported Miss S as I would've expected it to do. That said, for the reasons set out above, I don't think Santander's communication failings impacted on the outcome of Miss S's section 75 claim or chargeback. But I do consider it caused her some level of distress and inconvenience and as a result, I will be asking Santander to pay Miss S £100 in compensation.

### **My final decision**

My final decision is that I'm partially upholding this complaint and require Santander UK Plc to pay Miss S £100 for the distress and inconvenience it caused her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 27 June 2025.

Yolande Mcleod  
**Ombudsman**