

The complaint

Mr H complains that Santander UK Plc will not refund a payment he made using his credit card, even though he did not receive the services he had paid for.

What happened

Mr H booked a rental car from 28 August to 27 September 2023. He paid €656.70 (equivalent to £564.48) to a booking agent, which I'll call "D", using his Santander credit card. The car was to be provided by a rental company, which I'll call "O". Mr G was due to fly to Palma, Mallorca and would collect the car on arrival.

Unfortunately, European flights were severely disrupted on and around 28 August 2023. Mr H's flight was cancelled. He was booked on an alternative flight which was due to land in Mallorca on 30 August, two days later than planned. He contacted D to explain the position.

When Mr H arrived in Spain, however, no car was available from O. Over the course of his stay there, he contacted both D and O on several occasions, but no car was provided. He made alternative car rental arrangements through a different provider, on a weekly basis.

When he returned from Mallorca, Mr H continued his correspondence with both D and O. He also contacted Santander seeking a refund of the payment he had made on his credit card. It declined to make a refund under section 75 of the Consumer Credit Act 1974 ("section 75") on the grounds that the payment had been made to D, whereas Mr H's contract for the car hire was with O. Santander asked Mr H to provide further information to support a chargeback claim; when it did not receive what it had requested, it closed the claim.

Santander reconsidered the chargeback claim in February and June 2024, but did not pursue it. It said that, by that time, the 120 day time limit which applied to such claims had expired.

Mr H referred the matter to this service, where one of our investigators considered what had happened and issued an initial assessment of the complaint. He concluded that Santander had not communicated as well as it should have done with Mr H but that its conclusions about the underlying claims had been fair. He recommended that Santander pay Mr H £50 to resolve the complaint – which it accepted.

Mr H did not accept the investigator's recommendation and asked that an ombudsman review the case.

I did that and issued a provisional decision, in which I said:

Section 75

One effect of section 75 is that, where a customer pays for goods or services with a credit card and has a claim for breach of contract against the supplier of those goods or services, he has a like claim against the credit card provider. Mr H says he has a claim against O, because he was not provided with a hire car.

However, section 75 only applies if the card payment is made to the person who has agreed to supply the goods or services (or someone closely linked to them). The card payment in this case was made to D, but the car was to be provided by O. I therefore agree that section 75 does not apply here and that Santander acted fairly when declining Mr H's claim.

Chargeback

Where goods or services are paid for with a debit or credit card and a dispute arises, it is sometimes possible to resolve that dispute through the chargeback process. Chargeback is a scheme run by the card schemes (in this case, Mastercard). A card issuer (here, Santander) raises a claim through the scheme against the merchant's provider of card facilities. That provider will then consider whether the claim meets the relevant criteria for chargeback (if necessary, seeking evidence from the merchant) before responding to the claim. Where necessary, the scheme provides for arbitration between the financial businesses.

Chargeback is not intended to be a means of resolving disputes between merchants and their customers, although it can have that effect in some cases – including, for example, where goods or services have been paid for but not delivered. That is what Mr H says happened in this case.

There is no legal or regulatory obligation on a card issuer to pursue a chargeback claim, but this service takes the view that they should do so where there is a reasonable prospect of success. Unlike a claim under section 75, a chargeback can be raised even where the card payment is made to an agent of the provider of goods or services.

Santander took the view that Mr H had not provided all the evidence it needed to submit a chargeback claim. I note however that, when it sought further information, Mr H had already provided: evidence of his flight booking, its cancellation and rescheduling; evidence of the car hire agreement; and copies of correspondence with D and with O. Some of that correspondence was in Spanish, but enough of it was in English that it was apparent what had happened. In my view, therefore, a chargeback request on the basis that a service had been paid for but had not been supplied had a reasonable prospect of success. Santander should therefore have submitted a chargeback request, relying on the evidence which Mr H had submitted by the middle of November 2023.

There is of course no way of knowing for certain what the outcome would have been. A chargeback request might have been defended. I note however that the booking conditions allowed for cancellation before the start of the rental period, and that Mr H did contact D when he found out that his flight had been cancelled. He explained that he would not be able to collect the car at the start of the rental period, but that he would still need a car when he arrived in Mallorca.

Chargeback is, as I say, not directly a means of resolving disputes between merchants and their customers, and it is not for me to speculate how a dispute between Mr H on the one hand and D or O on the other hand would have been adjudicated. It does however seem to me that this is a clear case of services not being provided. There was therefore a very real chance that a chargeback request would have resulted in the payment being refunded.

For that reason, I am currently minded to uphold Mr H's complaint. In addition to refunding the card payment, I believe it would be fair to require Santander to pay interest on that sum and make a further payment of £100 in recognition of the inconvenience to which Mr H has been put.

I am currently minded to require the bank to make a payment to Mr H, but if he would prefer to have his credit card account credited with a backdated payment, he should tell me.

My provisional decision

My provisional decision is that, to resolve Mr H's complaint in full, Santander UK Plc should pay Mr H £564.58, together with interest at 8% a year from 11 November 2023 (when Santander had sufficient information to make a chargeback request) until payment, and £100 in recognition of the inconvenience to which Mr H has been put.

Mr H responded to my provisional decision to say that O had refused to deal with him, saying that responsibility lay with D.

Santander did not accept my provisional decision. It said that payment had been made to D, but responsibility for providing a hire car lay with O. D's terms made it clear that it acted as a price comparator and that it managed bookings. Mr H's contract for the hire of the car was with O. It also referred to O's cancellation policy.

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 noted carefully both sides' responses to my provisional decision. I think however that the additional submissions they made, whilst relevant to my consideration of the complaint, were points which had already been made and which both the investigator and I had considered. I will nevertheless add some further comments on them.

Santander says that D's obligation was to arrange the car rental and make payment to O. But, as part of its justification for not providing a car, O said that it had not received any payment. I do not know if that is true, but it is at the very least an allegation that D did not do what it had agreed to do.

The rental terms also included a provision allowing O to cancel the contract in the event of a delay in collecting the car. But they also said that, to obtain a refund of a prepaid booking, the customer must cancel it before the start of the hire period. Mr H did tell D in advance that his flight had been cancelled and that he would not be able to collect the car as arranged.

D's obligation to Mr H was in any event not limited to booking the car. Its terms said too that it would manage the rental. But, given that it knew about Mr H's difficulties but did not manage his booking to address them, I am not persuaded that it did provide all the services it had agreed to provide.

Finally, I shall deal with Santander's argument that chargeback would not have been successful because the payment was made to D, but O was responsible for providing a hire car. As I explained in my provisional decision, I believe that arrangement would defeat any claim under section 75. But the position is not the same when dealing with a chargeback claim. UK Finance, the body which represents the banking industry in the UK, includes on its website some guidance on section 75 and chargeback claims. It includes:

For chargeback rights, it does not matter if you book via a travel agent or directly with the service provider. If you fail to get what you paid for, it is likely you will be able to claim against the party who you paid, using chargeback.

That note is in relation to claims where payment has been made to a travel agent, but it does not seem to me that the position of D in this case was materially different. Accordingly, I believe there was a reasonable prospect of a chargeback claim being successful and that Santander should have pursued it. Had it done so, I believe Mr H would have received a refund.

Putting things right

I indicated in my provisional decision that Santander should pay Mr H the sum he paid with his card, together with interest at 8% a year. He may however prefer to receive a refund by way of a reversal of the credit card payment. If he accepts this decision, he should indicate which he would prefer.

My final decision

For these reasons, my final decision is that, to resolve Mr H's complaint in full, Santander UK Plc should:

- pay Mr H £564.58, together with interest at 8% a year from 11 November 2023 (when Santander had sufficient information to make a chargeback request) until payment; *or*
- reverse the card payment of £564.58, so that Mr H receives a refund of any interest and charges resulting from it; *and*
- pay Mr H a further £100 in recognition of the inconvenience to which he has been put.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 15 July 2025.

Mike Ingram
Ombudsman