

complaint

Miss G complains about Santander UK Plc's refusal to give her the refund she has asked it for.

background

Miss G was overseas and needed urgent dental treatment. She paid two deposits on account for two different sets of dental treatment. She had one lot of treatment, which she said wasn't done to a professional standard and she had to have it redone. The other treatment she didn't have at all, she told us. She explained she had not wanted to pay the deposits but after some to and fro she had been obliged to, as otherwise the supplier wasn't going to do the work and she was in pain.

Miss G asked the supplier for a refund, but she found out that the supplier was now saying the deposit was non-refundable. Since Miss G had got nowhere with the supplier, she wanted Santander to refund the money for both the treatment she suggested was substandard, and the treatment she didn't get.

Miss G had paid the deposits using her credit card issued by Santander. She sought to rely on the protection provided under Section 75 of the Consumer Credit Act 1974.

Santander's stance was it wasn't responsible for the refund. But it did agree it should have dealt with her complaint better than it had done. It credited £50 to her account to make up for this.

Dissatisfied, Miss G came to our service.

Our investigator looked into Miss G's complaint. She didn't recommend upholding it. Our investigator was satisfied that in order to investigate whether Santander had treated Miss G fairly she could look at Section 75. However, Section 75 only applies in certain circumstances. Our investigator took on board that Miss G said that there had been a breach of contract. Section 75 does apply to some breaches of contract. But here our investigator wasn't persuaded the contract had been breached. It followed she did not think she had any proper basis to tell Santander it had to do anything more.

Santander accepted our investigator's recommendation, Miss G did not. In summary, she responded to say she was disappointed. Further, she suggested we'd overlooked crucial information, such as she'd asked the supplier for a refund. She wasn't satisfied with the supplier's standard of work so naturally she'd not asked it to complete the full contract.

Also, she pointed out again, she had not wanted to make the payments in the first place but the supplier had insisted on them.

Moreover, she indicated she had a verbal contract with the supplier. Under the verbal contract, she'd agreed with the supplier that it would refund her if she was unhappy with the work/if she didn't go ahead with the work.

Miss G underlined that she had not just made a casual purchase. She had gone ahead with this contract only because she was in pain and needed the service.

Miss G also let us know she was looking for compensation for distress and inconvenience as well as the refund. Also she wanted compensation for all the chasing she'd had to do for over a year.

Miss G asked that an ombudsman review her complaint.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've finished my review of Miss G's complaint. I'm not going to uphold it. I realise this may well disappoint Miss G. From her perspective she is out of pocket, she has had to do all the running here, she made a contract when she needed urgent dental treatment and now she finds she isn't going to get her money back. Please let me explain why I've reached this decision.

I'm very aware that I've summarised this complaint in far less detail than the parties and in my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.

Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

Further, where there is a dispute about what happened, (as is the case in part, here) I have based my decision on the balance of probabilities. In other words, on what I consider is most likely to have happened in the light of the evidence.

I think it's important to set out my role here. In considering a complaint about a financial services provider, I'm not determining the outcome of a claim that a party might have under Section 75. Rather, when I think about what is a fair way to resolve Miss G's complaint, I have to take account of relevant law, amongst other things. Section 75 is relevant law, therefore I've taken it into account. But that doesn't mean I'm obliged to reach the same outcome as, for example, a court might reach if Miss G pursued a claim for breach of contract or misrepresentation. This is because, as I have already mentioned our service is an informal alternative to the courts and operates under a different set of rules.

The general effect of Section 75 is that if Miss G has a claim for misrepresentation or breach of contract against the supplier she can also bring that claim against Santander.

I'll look at misrepresentation first. Then breach of contract.

misrepresentation

In this context, misrepresentation is a false statement of fact that induced a party to enter into a contract and make a loss.

I realise that Miss G suggests she was more or less forced into entering into this contract because she was in pain and needed treatment. I should think anyone who has ever had to have urgent dental treatment can sympathise with her situation. But I don't think this is

misrepresentation, as it does not mean being in a weak bargaining position or being in pain. Nor does it mean having to choose between two or more unattractive options.

That said, she also tells us she was told specifically that she could get her money back either if she was unhappy with the work or if she did not go ahead with all of the work. She's got nothing that says this in writing. But then again, I'd not necessarily expect there to be anything in writing. By their very nature such alleged verbal misrepresentations are hard to substantiate and I therefore have to assess this aspect on the basis of the balance of probabilities.

Santander contacted the supplier but its records show it didn't reply, so we don't have its first-hand account of what happened here. However, whilst this is not ideal, we do have Miss G's version of events. I've also looked at the wider circumstances.

I think it is significant that Miss G talked about language difficulties at the time that she went to see the supplier. I think something crucial could have been lost in translation.

Also, I can see why a supplier relying on repeat business and word of mouth might say the sort of thing that Miss G tells us about. But that does not seem to be the case here.

I do take on board Miss G's behaviour. She went back to the dentist and tried to get her money back. But that by itself, does not persuade me that was what she was promised.

Miss G suggests that the supplier wasn't keen to do anything without money up front. I'm not persuaded that a supplier who takes such a hard-nosed approach, is at the same time going to agree to refund money simply on the basis of its customer deciding either they are not happy or that they just don't want to go ahead with the work.

Also Miss G was overseas, needing urgent dental care I think she may well have been very anxious to get treated. But she tells us she nonetheless in the midst of all of this, she took the time to negotiate these terms with the seemingly inflexible, supplier and it agreed.

When I think about all of this, I don't find this sequence of events persuasive in the circumstances.

In addition, I have thought about what Miss G would have done differently if she had known she was not going to be able to get a refund. Would she have walked away? In all the circumstances I don't find it likely either. She was in pain, it does not seem she was in a state to shop around for the best deal.

For all of these reasons I don't uphold this part of Miss G's complaint.

breach of contract

Miss G outlines what she says were the terms of her verbal contract with the supplier. It is perfectly possible in principle to have a verbal contract. But as I have said above I don't on balance, find it likely that was what was agreed. So if these were not terms of the contract they cannot have been breached. That being so, it follows that she can't fairly rely on a remedy that depends on there having been a breach of contract.

She also suggests that the work wasn't done properly and she had to have it done again. This could be a breach of contract. But I just don't have enough to go on here. All I have got by way of contractual documentation for example is receipts, no dental plan or anything like that. I can't tell which tooth for example was worked on by the dentist overseas and if that same tooth was then worked on by the dentist when she got home. And if that is so, did both dentists do essentially the same thing or not.

I accept it is possible she didn't go ahead with all the work she intended for the overseas dentist to do, but that could have been because she just changed her mind or it was no longer convenient for her as she was no longer based overseas.

It follows, for the reasons I have gone through above that I don't uphold this part of Miss G's complaint.

distress and inconvenience

Miss G talks about the distress and inconvenience she has experienced, for the most part this seems to be related to customer service provided by the supplier. I can't fairly and reasonably hold Santander responsible for this behaviour of this third party.

I can see how frustrating Miss G found it to deal with Santander about her complaint. It took a while to tell her its position on her complaint.

However, I can see it investigated her complaint and that included trying to get information from overseas and trying to understand documents in a foreign language.

That said, it acknowledges it could have done better, it has made a payment to her in recognition of this. And the main thrust of her complaint is not about Santander's complaint handling. Rather it is about misrepresentation and breach of contract.

Bearing all this in mind, I think the payment Santander has made for this part of her complaint goes far enough.

As I said earlier on, I realise Miss G will be disappointed with my decision, especially since she has had to wait so long for it. But it brings to an end what we, in trying to resolve her dispute with Santander informally, can do for her. I'm sorry we can't help Miss G any further.

my final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 20 April 2020.

Joyce Gordon
ombudsman