

## **complaint**

Mrs G complains that Santander UK plc will not refund to her the money that she paid for a holiday. Her complaint is made against Santander under section 75 of the Consumer Credit Act 1974. Mrs G is being helped with her complaint by her husband.

## **background**

Mrs G paid a holiday company for a holiday using her debit card. She then agreed to pay for an upgraded room but the credit card payment for the upgrade was made directly to the hotel. She was not satisfied with the holiday so complained to the holiday company, and then to Santander under section 75, that there had been breaches of contract and misrepresentations by the holiday company. She was not satisfied with Santander's response so complained to this service.

The adjudicator recommended that this complaint should not be upheld. He concluded that Mrs G paid for the holiday using her debit card and that section 75 therefore did not apply. He also concluded that Mrs G paid for the room upgrade directly to the hotel – and not to the holiday company – so the debtor-creditor-supplier relationship required for a claim under section 75 was not present and this did not form part of Mrs G's original complaint to the holiday company. In any event, the adjudicator also concluded that Mrs G's complaint about breaches of contract and misrepresentations by the holiday company should not be upheld.

Mrs G has asked for her complaint to be considered by an ombudsman. Her husband says, in summary, that the money paid to the hotel using the credit card should be recovered because the hotel was not of an acceptable standard.

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

In certain circumstances, section 75 gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there has been a breach of contract or misrepresentation by the supplier. One of those circumstances is that there must be a direct relationship between the debtor, the creditor and the supplier.

Mrs G paid the holiday company for the holiday using her debit card. Section 75 only applies to payments made using credit. As the payment to the holiday company was not made by Mrs G using credit provided by Santander, she is unable to claim a refund from Santander under section 75.

Mrs G did use her credit card to make the payment for the room upgrade. However, that payment was not made to the holiday company but was paid directly to the hotel. Under section 75, there must be a direct relationship between the debtor (which is Mrs G because she has been provided with a credit card by Santander), the creditor (which is Santander because it has provided credit to Mrs G) and the supplier (which is the holiday company). However, there is no direct relationship between Santander and the holiday company in these circumstances because Mrs G has not made a payment using credit directly to the holiday company.

Mrs G has complained to the holiday company about the holiday and then to Santander and this service. I can therefore only consider her complaint about the holiday company. If Mrs G wants to complain about a breach of contract or misrepresentation by the hotel relating to the room upgrade, she would need to complain about that to Santander and, if she was not satisfied with its response, she could then complain to this service.

I have not considered whether the circumstances that Mrs G has described would amount to breaches of contract or misrepresentations by the holiday company or the hotel. For the reasons set out above, I do not consider that it would be fair or reasonable for me to require Santander to refund to Mrs G under section 75 either the money that she paid to the holiday company for the holiday or the money that she paid to the hotel for the room upgrade.

### **my final decision**

For these reasons, my decision is that I do not uphold Mrs G's complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs G to accept or reject my decision before 7 April 2015.

Jarrold Hastings  
**ombudsman**