

The complaint

Mrs W complains that Santander UK Plc won't refund a payment she made using her credit card.

What happened

In June 2022, Mrs W bought flights for her and her husband from a company I'll call "J". She paid £589 using her Santander credit card. The outbound flight was scheduled for late August 2022.

Mrs W contacted J to discuss options for assisted travel for her husband. J advised Mrs W that it needed her husband's GP to fill in a medical form to demonstrate he was fit to fly. The GP completed the form, and it was returned to J. However, J wanted further assurances from the GP before allowing Mrs W's husband fly.

Mrs W asked J for a refund of what she paid because J's request for further information was made on a Friday afternoon and the flight was due to take place the following Monday. She said it was impossible to obtain what J had asked for from the GP in that time. She considered J had effectively cancelled the contract. J said it could offer Mrs W the option to move the flights to a later date without having to pay an administration fee, but Mrs W wasn't satisfied with this offer.

She approached Santander for help in getting a refund. Santander considered her claim and complaint under section 75 of the Consumer Credit Act 1974 ("section 75"). It didn't think there had been any breach of contract or misrepresentation by J which it could be held jointly responsible for.

Our investigator didn't recommend the complaint be upheld. He wasn't persuaded that there had been a breach of contract by J and therefore Santander hadn't acted unfairly in declining her claim.

Mrs W didn't agree, so the complaint has been passed to me for a 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.

The general effect of section 75 is that if Mrs W has a claim for breach of contract or misrepresentation against J, she can bring a like claim against Santander (as the provider of credit), provided certain conditions are met. I'm satisfied those conditions are met here.

Mrs W says there's been a breach of contract by J because it has placed unreasonable barriers in the way preventing her and her husband from travelling. She says that as it was J's decision not to let them fly and didn't give them sufficient time provide what was asked of them, a refund should be provided.

I've considered J's terms and conditions which Mrs W would have needed to accept when

booking the flights. These state that: *“It is your responsibility to ensure you are medically fit to travel and fly.”* It also confirms that J may at its discretion request a fitness to fly certificate or a medical information form.

J requested that a medical information form be completed, which included a section for the GP to complete. In this section the GP noted that Mrs W’s husband’s prognosis for flight was *“good”* and that he did not require in-flight oxygen. Further, the GP noted that his blood pressure was fine in July.

Despite this information being received, J contacted Mrs W four days before the outbound flight (on a Friday afternoon and the flight was scheduled for Monday) asking for further information from the GP. J said the GP would need to provide:

- A complete set of vital data (blood pressure, heart rate, blood glucose level and blood oxygen level); and
- An evaluation by the GP for supplemental oxygen for the flight via a portable oxygen concentrator.

Mrs W informed J that it would be unable to obtain this from the GP at such short notice. J said it wouldn’t allow Mrs W’s husband to fly without this information. Mrs W then asked for a refund as J had effectively prevented them from flying. J said it would be prepared to allow Mrs W to reschedule the flights for a later time without having to pay an administration fee, provided she could give the necessary medical assurances from the GP.

It seems clear to me that the medical form the GP had already completed stated that Mrs W’s husband did not require in-flight oxygen and had also confirmed that some of his vital data was fine. Like Mrs W, I also don’t understand why J was requesting this further information when it appeared it had already had all of this confirmed. Therefore, on the face of it, J’s refusal to grant Mrs W’s husband passage on the flight might appear to have been unreasonable. However, in order for me to say that Santander ought to be liable for a refund, I need to be satisfied there was a breach of contract.

I’m mindful that J’s terms and conditions also state that:

“we may refuse to carry you...in the following circumstances:

1. *Such action is necessary for reasons of safety...*
2. *Your...physical condition...involve any hazard or risk to yourself...”*

Further, the terms and conditions refer to J’s webpages on assisted travel. As Mrs W selected assisted travel as part of the booking, I’m satisfied the additional information relating to assisted travel therefore formed part of the contract between Mrs W and J. On the relevant webpage under the section headed *“Fit to fly”*, J states *“we do reserve the right to refuse travel if we think you’re not fit to fly.”*

Therefore, while I can understand Mrs W’s strength of feeling that J’s request for further assurances from the GP at such short notice was unreasonable, I can’t fairly conclude that there has been a breach of contract. The contract stipulated that J could refuse travel if it wasn’t satisfied a passenger was fit to fly or thought their physical condition might pose a risk or safety issue. Its requests for further medical information, while it might have appeared trivial or unnecessary, I can’t say were unreasonable when taken in the context of the entire contract and the nature of the services that were due to be provided (passage on a commercial flight that included many other passengers).

However, I've also considered that even if my analysis above is incorrect and the circumstances could be said to amount to a breach of contract, I don't think this means that Mrs W would be entitled to any refund. In saying this, I've considered what the Consumer Rights Act 2015 ("CRA") says in relation to contracts for services.

The CRA implies terms into all contracts for services (such as the one between Mrs W and J) that services should be completed with reasonable care and skill. It could be argued that in requesting the further information at such short notice in these specific circumstances J did not provide the services with reasonable care and skill – as it ought to have asked for them much sooner, or made these requirements clearer at an earlier stage.

However, even if that's right, the remedy for a breach of this nature would generally be to require J to repeat the performance of the contract. In this case, that would be to provide the flights to Mrs W and her husband at a later date. J already offered this as an option to Mrs W as soon as it became clear that Mrs W couldn't provide the information J had requested. So, J had already provided an appropriate remedy for any breach of contract that might have occurred.

As J had already provided an appropriate remedy for any breach of contract that might have occurred, there would be nothing further for Santander to do to put things right. Mrs W would generally only be entitled to a refund in circumstances where the services could not be provided. J was still willing to provide them, just at a later date and on condition that the appropriate medical information was provided. For these reasons, I don't think Santander acted unfairly or unreasonably by declining Mrs W's claim and complaint.

My final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 8 April 2024.

Tero Hiltunen
Ombudsman