

The complaint

Ms O is unhappy that Santander UK Plc won't refund money she lost from a payment she'd sent to pay for a medical procedure.

What happened

Ms O paid a company (I'll refer to as 'M') £400 for a medical procedure. She sent the payment as a bank transfer from her Santander account.

However before the date of the procedure Ms O was contacted by M. The company said that the consultant who was scheduled to carry out the procedure had left the company. She was told M could no longer carry out what she had paid for. Ms O decided not to go ahead and asked M to refund her.

But Ms O received half the money she'd paid. This was credited into her bank account. She was unable to get M to refund more than this.

Ms O reported the matter to Santander. It looked into the payment but didn't refund her for the missing £200. Because Ms O had paid by bank transfer rather than a card payment the bank could only recover her payment if it had been a criminal scam or a fraud. Santander said that the payment had been made to what looked to be a legitimate company and while Ms O might have a claim against M, this would be a civil dispute not a scam.

Ms O referred the matter to our service, but one of our Investigators didn't uphold her complaint. They agreed with Santander that the matter was a civil dispute, so the bank had no obligation to provide a refund to her.

Ms O disagreed. She'd seen a number of other people reporting similar problems with M online, so thought this would qualify as a scam and she should be reimbursed. She'd looked up the company on the Companies House register and visited the registered address for M. But the address wasn't a clinic, again suggesting this wasn't genuine.

As no agreement could be reached, the case was passed to me for a 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.

I'm sorry that Ms O has paid money for a procedure and not received what she paid for. She was put in a position where M said it couldn't deliver the procedure she'd specifically asked for. That meant she had little choice but to cancel and look for a different company to use.

Receiving half the money back is something M's terms say it will do if their customer cancels, but here M couldn't fulfil what Ms had paid for - so this does seem an unfair application of the terms and conditions at the very least. I can see she's tried to get her money back and I understand this has been a very stressful experience for her.

So arguably M has breached its contract with Ms O, or at the very least treated her badly. But I'm not deciding a dispute between Ms O and M – I don't have the power to look into a complaint about M. My role is limited to deciding the dispute between Ms O and Santander.

Of course, Santander didn't sell Ms O the procedure, and I can't hold it responsible for any breach of contract or other failings on M's part. As a starting point in law Ms O is responsible for payments she's instructed Santander to make for her. Unfortunately, there's little protection available for payments, like this one, made by bank transfer.

In many circumstances a card payment can make it possible to claim against a breach of contract (amongst other things). But that a claim like that can't be made against the bank when the payment was sent by bank transfer. Then it will only be possible to bring a claim against the business itself (in other words against M). Here Ms O sent the payment by bank transfer.

The Lending Standards Board Contingent Reimbursement Model ("CRM") does provide some protection to victims of authorised push payment (APP) scams. But it excludes civil disputes. So, the question I need to decide is whether M was acting fraudulently and deceived Ms O into giving her money. Or, whether this is simply a matter of M breaching its contract with Ms O. Specifically, that means deciding whether the evidence shows it is most likely that M set out to defraud Ms O with criminal intent. That is a high bar to meet.

It's important to note that it isn't for Santander to investigate M, neither does it need to prove that M wasn't operating fraudulently. It is for Ms O to provide evidence to support those allegations.

Ms O points out that M's registered address is not that of a clinic for example. It appears to be the company's accountant's address. But in my experience it isn't unusual for companies to use an accountant's address for their business correspondence or registered address. So I don't think this necessarily points to the business being fraudulent.

Ms O has pointed to a number of other people who have related similar stories to her own. But, that doesn't prove M was acting fraudulently. It's unfortunately common that when something goes wrong at a business (such as a consultant leaving) the business may be unable to fulfil outstanding customer orders and have unpaid debts.

My online research, including on a major review site, suggest M has fulfilled orders in the past. On one site in particular, there appear to be over 200 positive reviews of M. I don't doubt that is part of why Ms O decided to go ahead with M in the first place. These reviews doesn't suggest that M hasn't been operating legitimately – at least in the past.

On balance I think there is enough evidence to show M was operating legitimately at least at some point. That means I need to decide whether there is enough evidence that, prior to Ms O making her payment, it stopped being a legitimate business and began to take customer money without having any intention of providing the procedures that were paid for. But I haven't seen compelling evidence to show that. What happened to Ms O was wrong, but it could simply have been a very badly run business and with poor customer service. The evidence just doesn't show that the business intended to take her money from the outset with no intent of fulfilling the arrangement – so I can't safely draw that conclusion.

Overall, the evidence doesn't support a finding that M was operating fraudulently. And that means that Santander aren't responsible for Ms O's loss and the bank had no obligation or ability to try and recover her money. Neither can I fairly require it to apply the CRM Code.

In saying all of this, I don't underestimate the impact this whole matter has had on Ms O – I am sorry she has lost out seemingly through no fault of her own. But it's simply the case that I don't think Santander was at fault here and I can't fairly tell it to pay her for the money she's lost.

My final decision

For the reasons I've explained, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms O to accept or reject my decision before 28 July 2023.

Stephen Dickie
Ombudsman