

The complaint

Mr S complains Santander UK Plc (“Santander”) has failed to treat him fairly when he approached it for help getting a refund for medicated creams purchased using his Santander credit card from a supplier I will call “M”.

What happened

I issued a provisional decision on Mr S’s complaint on 26 April 2024, in which I outlined the background to the complaint and my provisional findings on it. A copy of the provisional decision is appended to, and forms a part of, this final decision.

The complaint was split into two parts – one was about the decisions Santander made in Mr S’s dispute over the creams, and the other was about the customer service the bank provided when handling Mr S’s claims and follow up correspondence.

Regarding the decisions made by the bank about the claim itself, I could summarise my provisional decision as follows:

- It was unclear if Santander had considered attempting a chargeback, but that this would have been unlikely to be successful as the card schemes would have considered M’s replacement of the unsealed pot of cream to be a reasonable resolution to the dispute.
- Section 75 of the Consumer Credit Act 1974 (“CCA”) applied to the purchase of the pots of cream. This covered breaches of contract and misrepresentations by M.
- Mr S had not been induced to buy the creams as a result of misrepresentations made by M. Some of the statements Mr S complained of had been made *after* he’d already purchased the creams, and the other statements were either not false, were very difficult to prove were false, or were in fact contractual warranties or conditions.
- Under the Consumer Rights Act 2015 (“CRA”), it was implied in Mr S’s contract with M that the creams would be “satisfactory quality”. It wasn’t in dispute that, in being unsealed, one of the pots of cream Mr S received was not satisfactory quality.
- Mr S had not exercised his short-term right to reject the cream(s) under the CRA when he initially contacted M with his concerns. He had accepted a replacement pot at that time, and it hadn’t been suggested that this pot was not satisfactory quality. I was unconvinced that Mr S would have insisted on rejecting the creams at this point, had he been informed by M that the lack of a seal was a problem. I thought it more likely M would have offered a replacement and this would have been accepted by Mr S.
- Mr S had alleged he’d been caused personal injury by the unsatisfactory quality pot of cream, but the evidence offered of this, including a doctor’s note, wasn’t enough to show that Mr S’s skin complaints had been caused by him using the unsealed pot of cream, less still that the skin complaints were caused by a *problem* with the cream,

as opposed to this potentially having been a normal reaction to a strongly medicated product.

- M had not been in breach of contract by refusing to accept a return of the creams outside of the period outlined in their returns policy.

Concluding, I said that I considered Santander's decision not to honour Mr S's section 75 claim was a fair one.

On the second part of the complaint I could summarise my provisional findings as follows:

- I was specifically not making any findings regarding alleged breaches of the Equality Act 2010, as this was the subject of litigation between Mr S and Santander.
- The customer service provided by the bank had been inconsistent. At times it had been trying to accommodate Mr S's needs, but it had given him incorrect information and answers, had resisted his attempts to reopen his section 75 claim when new information came to light, and had told him it would consider further evidence from him and then changed its mind after he'd taken the trouble to gather it. This had been particularly impactful on him due to his disabilities.
- Taking a holistic view of the service provided by Santander, I thought £150 on top of the £100 already paid by the bank, was fair compensation for the impact of its service failings.

I invited both parties to let me have any further evidence or submissions they wanted me to consider, by 10 May 2024. Santander said it didn't have anything to add. Mr S was unhappy with the decision. I've summarised his comments as follows:

- He considered I was making unfair assumptions about what he would or wouldn't have done in a particular situation. He'd told us what he would have done, and to conclude otherwise was the same as saying he was lying.
- I had been wrong to say that M was a manufacturer of its own products. It was just a reseller, and Companies House records proved this. M should have returned the cream to the actual manufacturer for analysis – its failure to do so was a failure to exercise reasonable skill and care.
- M had clearly misrepresented to him the purpose of the seal on the pots of cream, by saying they were there to prevent leakage when they were not.
- As a person without knowledge of medical matters, I couldn't reject or refuse the submissions of an expert medical professional in dermatology. Even a judge wouldn't disregard such evidence. He thought the doctor's letter was clear and that the doctor had felt the cream was the cause of his skin complaints. It could potentially take a few months for the negative effects of using the cream to be seen.

The case has now been returned to me to consider again.

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.

Neither party has objected to, or commented on, my provisional findings in relation to the

customer service provided by Santander. On this area of the complaint I will say only that, having reviewed the evidence again, I see no reason to depart from those provisional findings – which were that Santander should pay an additional £150 compensation.

Mr S has strongly disagreed with my provisional findings regarding the section 75 claim. I will address the specific points he's made, as summarised earlier in this decision.

In my provisional decision I said I was of the view that, had M informed Mr S that the lack of seal on the cream was a problem when he first raised his concerns, I thought it likely that M would have offered a replacement pot and that Mr S would have accepted this. Mr S is sure he would have rejected the cream(s) had he been told this.

I appreciate that the situation here is a hypothetical one and it's not possible to know with certainty what a person would have done in a given situation. I came to my conclusions on this point on the balance of probabilities – in other words what I thought was more likely to have happened.

I considered that Mr S's communications with M at the time indicated he was worried about the lack of a seal on one of the pots he'd received. He was looking for M to comment. He didn't say or suggest that he was looking to reject the pots. When he advised that the cream in the unsealed pot didn't seem to be working, M offered a replacement with a reassurance that it would check the pot was sealed, which he accepted.

I think M's solution to dissatisfaction with an unsealed product was – based on its response to Mr S – to be to offer a replacement of the product in question. I think it's likely, had M accepted in its initial communication with Mr S that the lack of a seal was a potential *problem*, that it would have made the same offer. I was unable to see a compelling reason why Mr S would not also have accepted this offer, had it been made in those circumstances. I think his actions and words at the time suggest that he probably would have.

I'm not suggesting that Mr S is being untruthful. I think he genuinely believes that he would have rejected the creams outright had M told him that the lack of a seal might be a problem. But I don't think that's the most likely thing which would have happened at the time, based on my own analysis as outlined above. As I mentioned in my provisional decision, I *do* however think the reassurances given by M about the lack of the seal contributed to Mr S continuing to use the unsealed pot.

On Mr S's second point, I note he has referred to Companies House records which indicate M is a reseller of products, not a manufacturer. Having examined this point in detail, I accept that the UK company which Mr S bought the creams from is not the legal entity which manufactures the products. However, having looked back at the statement it made on its website, on reflection I do not think M in fact claimed to manufacture its own products.

At this point it's worth mentioning that there are many "M" companies globally. It is a multinational producer of pharmaceutical and medical products. The company which manufactures the products is "M Group", and then each country or region has a distributor which is a separate legal entity but which bears M's name. The "M" Mr S bought his products from is the UK and Ireland distributor.

I've carefully considered the wording on the M website Mr S bought the creams from. It says the following:

"At M Group, we manufacture all our own products. This is very important to us and allows us to guarantee their efficacy, quality and safety"

The statement on M's website was that M Group manufactured the products. It did not claim to manufacture the products itself. Unless it could be shown that the products were not manufactured by M Group, I remain of the view that this was not a misrepresentation. Mr S has argued that M's failure to take the cream back for testing or analysis after he reported a reaction, was a failure to exercise reasonable care and skill. Mr S's contract with M was a contract for the sale of goods (the creams). It was not a contract for the supply of services, to which the requirement to exercise reasonable care and skill would apply, so I don't think this point assists Mr S.

I have however re-examined M's terms and conditions to see if it had any *contractual* responsibility to him to take products back for analysis if he reported a reaction. What I found was rather non-committal. M said that it "might" send goods back to the manufacturer for testing, and that it "may" require Mr S to fill out a form. It appears M had a degree of discretion – under the contract – when assessing reports of reactions to products. I don't think it had a contractual obligation to take the creams back for testing, following Mr S's report.

Regarding the statement M made to Mr S about the purpose of the seal on the pots, there's not much I can usefully add to what I said in my provisional decision. I explained why this statement was not a misrepresentation:

"The concept [of misrepresentation] doesn't cover false statements M may have made to Mr S after he had already bought the creams – for example the untrue statements Mr S says M's staff made to him when he raised concerns about the creams."

Put simply, because the statements were made *after* Mr S had bought the creams, they were not misrepresentations.

Mr S's final key point was around the personal injury he says he suffered as a result of using the unsealed pot of cream. He has questioned my dismissal of the evidence from his doctor, given I am not a medical expert.

As Mr S points out, I am not a medical expert, nor do I claim to be one. But one of the key difficulties I had with the evidence from Mr S's doctor, is that it makes no finding that the unsealed pot of cream from M was the cause of his skin complaints. I have not questioned any medical conclusions made by Mr S's doctor – it wasn't necessary for me to do so as the doctor did not draw any such conclusions that I could see. Mr S has said the doctor felt the cream was likely to be the cause of his skin complaints, but that is not what the letter says.

I observed in my provisional decision that, had there been evidence to show that it was the cream causing Mr S's skin complaints, I would still not necessarily be able to find that it was because there was a problem with the cream:

"...even if [the evidence] was sufficient, I would need to be satisfied that the skin complaints were caused by a problem with the cream itself, and not a potentially normal side effect of using a strongly medicated product. I also note that after having used the cream for 21 days Mr S specifically told M that he had not noticed any side effects. He reported side effects more than two months after this. I think it's more likely, had the unsealed cream been the cause of his skin complaints, that these would have manifested much sooner than they did."

While I accept Mr S's point that a reaction to a product might not start happening immediately, and could take a while to manifest, I think my general point still stands, which is that there's no evidence that Mr S's skin complaints were caused by a problem of some kind with the cream itself.

Overall, I've not seen a reason to depart from the conclusion I reached in my appended provisional decision, which was that Santander's decision not to honour Mr S's section 75 claim, was not an unfair one in the end.

My final decision

For the reasons explained above, and in my appended provisional decision, I uphold Mr S's complaint in part and direct Santander UK Plc to take the following action:

- Pay Mr S £150 on top of the £100 it has already paid, to reflect the impact on Mr S of its customer service failings.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 27 June 2024.

Will Culley
Ombudsman

COPY OF PROVISIONAL DECISION

I've considered the relevant information about this complaint.

Having done so, I'm minded to reach the same conclusions as our investigator, but in some places I have gone into more detail and I would like to give all parties a further opportunity to comment before I make my decision final.

I'll look at any more comments and evidence that I get by 10 May 2024. But unless the information changes my mind, my final decision is likely to be along the following lines.

The complaint

Mr S complains Santander UK Plc ("Santander") has failed to treat him fairly when he approached it for help getting a refund for medicated creams purchased using his Santander credit card.

What happened

Before going into the background of Mr S's complaint, I should note that our case file now comes to over 1,500 pages. Given the volume of information submitted over the course of the complaint, it has been necessary for me to summarise matters, bearing in mind the purpose of the Financial Ombudsman Service as an informal dispute resolution service.

This means I may not comment on absolutely everything that's been written or said – although I will have considered it. I have focused on the matters which are most important, in my opinion, to reaching a fair outcome. I will also say that my decision is not intended to cover any matters concerning discrimination in breach of the Equality Act 2010, which I'm aware Mr S has raised as part of separate legal proceedings he has brought against the bank.

I've summarised the background to the complaint I am deciding briefly as follows:

- Mr S received treatment from a clinic, relating to his skin. Following his treatment he was using a specific strongly-medicated cream from a manufacturer, "M". On 5 March 2023 he used his Santander credit card to purchase two pots of this cream from M's UK website. Each pot cost £162.66. Payment was made via PayPal Guest Checkout.
- Mr S says one of the pots arrived without the seal located between the pot and the plastic lid. He was concerned about this and contacted M about it on 7 March 2023. A representative of M assured him that they'd contacted the manufacturing team and been advised the lack of a seal wasn't an issue and it was just there to stop leakage or wastage of the product.
- After continuing to use the unsealed cream for a few weeks, Mr S says it seemed to be having no effect on his skin. He contacted M again on 29 March 2023. He said he had used their product for 6 years and not had this happen before, but that he was not having any side effects either. M said all their products were genuine and straight from the factory, and that they would send him another pot for free, checking that the seal was in place.
- At around the same time, Mr S first contacted Santander to make a claim in respect of the cream. It appears the bank told him that because he had paid using PayPal

Guest checkout, he wasn't covered by section 75 of the Consumer Credit Act 1974 ("CCA") and they couldn't help him as a result.

- On 6 July 2023 Mr S contacted M again, saying that he was having a reaction to the cream and had severe marks on his neck. There were emails back and forth between him and representatives of M, but ultimately M said it would provide no further assistance.
- Mr S renewed his section 75 claim with Santander on 11 August 2023, after discovering from an unrelated case that Santander had been wrong to tell him that he couldn't make a claim due to the involvement of PayPal Guest Checkout. Later that month, Santander paid Mr S £100 compensation in relation to customer service issues around their initial decision to decline his claim and the process of appealing it.
- Santander declined Mr S's claim for a second time on 29 August 2023. The bank gave the following reasons:
 - M had confirmed the seals were to stop leakages and didn't affect the performance of the cream.
 - M had sent Mr S a replacement pot of cream in any event.
 - Mr S had not evidenced there was a manufacturing defect or fault with the product, or that any skin reaction he'd had was linked to the product.
- During a phone call discussing Santander's decision to decline the claim again, Mr S was informed he could submit more information to be considered. He submitted further information but was very disappointed to find Santander didn't consider it and simply reiterated that his claim was declined. This led to a further complaint from Mr S. The bank reiterated in response to the complaint that the claim was still declined for the same reasons, but that they would update their "care notes" so his disabilities were properly explained to staff.

Mr S remained dissatisfied with Santander and he referred his complaint to us where it was looked into by one of our investigators.

I could summarise the key initial findings of our investigator as follows:

- The bank hadn't attempted to obtain a refund from M for the creams via the "chargeback" process, but this was fair because a chargeback couldn't have been successfully raised under the Mastercard rules.
- Section 75 of the CCA covered breaches of contract and misrepresentations by M.
- M had been in breach of contract by supplying one of the pots of cream without a seal. While M hadn't rectified this breach immediately, they had sent a sealed pot as a replacement, free of charge. This had rectified the breach.
- Mr S may have had a reaction to the cream, but there was no factual evidence to confirm that the reaction was because there was something wrong with the cream.
- While Mr S had later asked to return the unopened pots to M for a refund, M's refusal to accept these was not a breach of contract because it was acting in line with its returns policy.

- M hadn't misrepresented the cream to Mr S before he bought it.
- Santander's customer service had been poor, and while it had given Mr S £100 compensation this didn't fully address the impact of its customer service failings, especially those which had occurred after the initial compensation was agreed. The bank should pay a further £100 in respect of the impact of these failings.

Neither party agreed with our investigator's initial assessment, and so he went back and carried out further investigation and considered more submissions provided by both parties. In a revised assessment, he made the following key findings:

- He didn't agree with Mr S that M had misrepresented the cream to him. He didn't think statements on M's website, such as their products being "highest quality" and that they guaranteed to comply with certain standards, were false statements of fact.
- It may have been the case that M, in providing an unsealed pot of cream, breached its guarantee and was therefore in breach of contract, but this had been rectified by sending Mr S a sealed pot as a replacement.
- M's representative may not have advised Mr S correctly when he raised concerns about the missing seal, but this wasn't a misrepresentation as it had happened after the sale had taken place. Mr S hadn't been denied the opportunity to return the unsealed pot and his acceptance of the replacement pot suggested he wasn't looking to return the pots at that point.
- Overall, he remained of the view that Mr S didn't have a valid section 75 claim. He also remained of the same view regarding the bank's failure to attempt a chargeback – it would not have been successful in getting his money back.
- Having looked at the service Santander had provided again, he still thought that the level of service provided had been poor in places. In particular, telling Mr S he could submit more information, and then not even considering or acknowledging that information, had caused him distress which had been aggravated due to his disabilities, which the bank had been aware of. He increased his recommendation to £150 additional compensation in view of this.

Our investigator also covered a couple of new issues Mr S had mentioned. These had included a delay in Mr S receiving a written communication from the bank, and that the bank had gone back on an offer to raise the initial compensation to £200. Our investigator didn't think these issues should be upheld.

Santander accepted our investigator's revised assessment. Mr S said he would accept the assessment as far as it related to the bank's customer service, but that he disagreed with our investigator's analysis regarding the section 75 claim. He made the following points:

- Neither Santander nor M had been honest about the seal and it being a legal requirement. M's lack of honesty around the purpose of the seal had led him to use it and denied him a fair choice.
- The cream had caused him personal injury. He had experienced side effects, pain and suffering. He had a doctor's note showing this. Section 75 covered this impact on him also.
- It was irrelevant that M had sent him a replacement pot of cream. He had a fundamental right to return the item and M's concealment and dishonesty had

prevented him from doing so. M had also not taken the cream back for investigation when it should have done.

- One of the functions of the seal was to prevent oxidation of the product. If the product had oxidised it would cause side effects, like the cream had on him.

Mr S asked that his case be decided by an ombudsman, and so the complaint has now been passed to me to decide.

What I've provisionally 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 going to cover Mr S's complaint in two general parts. The first part will consider whether Santander's decisions not to pursue a chargeback and not to honour a section 75 claim, were fair and reasonable in the circumstances. The second part will consider Mr S's concerns about the way in which Santander handled his claims from a customer service perspective. Because Mr S says he accepts our investigator's assessment of Santander's customer service, I won't go into as much detail in that part, not because it isn't important, but because it isn't necessary to set out the finer details of things which are no longer in dispute.

Part One – the claim decisions

When a consumer approaches their credit card issuer with a problem with something they've bought using their card, there are two avenues via which the business can help.

The card issuer can try to reclaim the amount (or part of the amount) the consumer paid on their card, via the dispute resolution mechanism operated by the card scheme (Mastercard in this case), and which is often known as "chargeback". They can also consider honouring a claim under section 75 of the CCA. I will take each of these avenues in turn.

Chargeback

Chargebacks are governed by rules set by the card scheme to which the consumer's card belongs. These rules make provision for things such as the types of dispute or problem which can be raised via the chargeback process, the kind of evidence which is required to support a chargeback, and the amount of time allowed for submitting claims and evidence and so on.

While a consumer cannot demand that their card issuer attempt a chargeback as of right, I would expect the issuer to attempt one if their customer's dispute is something they can validly pursue via the chargeback process, and which would have a reasonable prospect of succeeding.

I don't think Mr S's problem with the creams was something which would have given rise to a successful chargeback. Based on my experience, I think the card scheme would most likely have viewed M's free replacement of the unsealed pot to be a reasonable resolution to the dispute.

Santander doesn't appear to have given much thought to whether or not it should have attempted a chargeback. I am not sure if this was simply an oversight, whether it was considered but its decision not recorded, or if the bank decided to focus on section 75 because that was how Mr S had framed his problem. Either way, it doesn't make a

difference as I'm unconvinced that a chargeback would have had much chance of succeeding.

Section 75 of the CCA

Section 75 of the CCA allows consumers who have purchased goods or services using a credit card, to claim against their credit card issuer in respect of any breach of contract or misrepresentation by the supplier of those goods or services, so long as certain conditions are met.

The two main conditions which need to be met for section 75 to apply to a purchase, are that the claim must relate to an item with a cash price of over £100 and no more than £30,000, and there needs to be what is known as a debtor-creditor-supplier ("DCS") agreement in place. In this case, the pots of cream each cost more than £100. Santander initially told Mr S that there was not a valid DCS agreement in place, due to the fact of his credit card payment being made via PayPal. I understand the bank no longer maintains this argument, so the point doesn't appear to be in dispute. There's no need for me to go into detail on it as a result – I will say only that I agree that Mr S's use of PayPal's Guest Checkout service does not mean that there is no valid DCS agreement which would allow Mr S to hold Santander liable under section 75 for M's breach of contract or misrepresentation.

Section 75 *only* covers these two specific things. There are other things which could go wrong or which a consumer might be unhappy with a supplier about, which are not covered by section 75. This includes things like general bad customer service from a supplier, or breaches of statutory duty.

Misrepresentation

In the context of Mr S's case, a misrepresentation would be a false statement of fact made by M to Mr S, and which he relied on when deciding to go ahead and buy the creams. The concept doesn't cover false statements M may have made to Mr S *after* he had already bought the creams – for example the untrue statements Mr S says M's staff made to him when he raised concerns about the creams.

Mr S has indicated that M made statements on its website which he relied on when deciding to buy the creams from them specifically. There were other, cheaper, websites which he could have bought the creams from, but he bought from M at least partially on the strength of certain statements it had made. These included that the company provided products of the "highest quality", that it guaranteed to be compliant with various standards and regulations, and that because it manufactured its own products it could guarantee their efficacy, quality and safety.

I don't think Mr S has been able to show that any of these statements were misrepresentations. As our investigator suggested, describing products as being of the highest quality is somewhat vague, and it appears to be a statement of M's opinion of the quality of its products. Such statements are common in marketing, and it may well be M's opinion that its products *are* of the highest quality. This would only amount to a misrepresentation if it could be shown that M did not in fact hold the opinion that its products were of the highest quality. I think this would be very difficult to prove.

There is a similar problem with M's statement that it manufactures its own products and can therefore guarantee their efficacy, quality and safety. If M did not manufacture its own products then this would clearly be a false statement, but it has not been shown that M does not in fact manufacture its own products, or that by manufacturing one's own products it is not possible to guarantee certain standards of efficacy, quality, or safety.

M's guarantee that it complies with various (named) standards and regulations would not, in my view, amount to a false statement of fact unless it could be shown that M routinely did not meet these standards. I think this guarantee is more likely to be a contractual warranty or condition – and M would be in breach of this warranty or condition (a type of breach of contract) if it had failed to meet them in an individual case.

Breach of contract

This brings me to the question of whether there has been a breach of contract by M which Santander would be liable for under section 75 of the CCA. A breach of contract occurs where one party to the contract fails to honour its contractual obligations to the other. Such obligations may be written into the contract or they may be what are commonly known as “implied” terms which are treated as included, for example due to the effect of certain laws.

Mr S was purchasing the creams as a consumer, and the Consumer Rights Act 2015 (“CRA”) would have applied to his purchase. The CRA causes certain terms to be implied into contracts for the sale of goods, including that any goods will be “satisfactory quality”.

It isn't in dispute that one of the pots of cream M sent to Mr S was not satisfactory quality because it was unsealed. M appeared to think that, apart from not having a seal, the cream was fine, but it agreed to send a replacement pot in any event after Mr S reported that the cream didn't seem to be working. Mr S then continued to use the unsealed pot and several months later reported an adverse reaction.

Under the CRA, a person who receives unsatisfactory goods has certain rights which are treated as included as terms within their contract with the supplier. Within the first 30 days of receiving the goods they can exercise a right to return them for a refund (although they can accept other remedies from the supplier instead, if offered). This is known as the “short term right to reject”.

After this point, the supplier of the goods is entitled to one attempt to replace or repair the goods. If the goods are still not satisfactory quality after this attempt, then the consumer can return the goods for a refund or claim a price reduction of an appropriate amount. I think it worth mentioning at this point that the CRA does not prevent a consumer from claiming other remedies, such as damages. I'll take a closer look at that later in the context of the skin reaction Mr S reported after using the cream.

When Mr S first contacted M to tell them about the lack of a seal on the pot, and when he later reported that the cream in the unsealed pot didn't seem to be working, he was within the 30 day period in which he could have rejected the unsatisfactory pot of cream. It doesn't appear to me that Mr S was looking to return the cream(s) for a refund at this point, based on his emails. It seems he was worried about the unsealed pot, reporting his concerns, and looking to M to comment. I don't think Mr S exercised his short term right to reject during the relevant period. After M said it would send him a replacement pot he responded as follows:

“Thats so kind of you [name], please could you be kind and check its sealed and genuine.”

So it appears to me that Mr S accepted a replacement pot as a remedy at that point. There's been no suggestion that the replacement pot was not of satisfactory quality. I appreciate Mr S has said he would have done something different (such as ask to return the product) had he been told by M that the lack of a seal was a problem. However, I'm not convinced he would have insisted on returning the creams had M told him this. I think it's likely that a replacement pot would have been offered and accepted, just as it was when Mr S reported his concerns about the cream not working, although I think it's less likely he would have continued to use the unsealed pot.

I think, by the time Mr S renewed his section 75 claim with Santander in August 2023, M had remedied its initial breach of contract, in line with the CRA, by sending a replacement pot of cream.

Alleged personal injury caused by the cream

There is also the question of the personal injury Mr S says he suffered as a result of using the unsealed cream. Mr S could potentially claim damages in respect of this, in addition to receiving a replacement pot.

The problem with this aspect of Mr S's claim however, is the lack of persuasive evidence. For Mr S to be able to make a successful claim of this nature, he would need to be able to prove, on the balance of probabilities, that if it hadn't been for M's breach of contract, he would not have suffered the injury.

I've seen a note Mr S has provided from a doctor abroad. The note is undated and, in places, difficult to read. It appears to say that Mr S has "irritant dermatitis" on his face and that he was complaining of various symptoms such as itching, burning and dryness. The notes say Mr S has a history of using M's cream, but it is not clearly stated as the cause of the dermatitis. The doctor advises Mr S to moisturise his skin frequently.

The rest of Mr S's evidence has tended to be from his own research, for example into the risks of using skin products which have oxidised.

I don't think any of this evidence is sufficient to show that the skin complaints Mr S reported were caused by him using the unsealed pot of cream. And even if it was sufficient, I would need to be satisfied that the skin complaints were caused by a *problem* with the cream itself, and not a potentially normal side effect of using a strongly medicated product. I also note that after having used the cream for 21 days Mr S specifically told M that he had not noticed any side effects. He reported side effects more than two months after this. I think it's more likely, had the unsealed cream been the cause of his skin complaints, that these would have manifested much sooner than they did.

It follows that I don't think Mr S has shown that he has been caused injury by the unsealed pot of cream.

M's refusal to accept a return of the creams

M's returns policy would have been included in Mr S's contract with it. By the time Mr S was seeking to return the creams for a refund, he was outside the time limit allowed in M's returns policy. M's refusal to accept a return was therefore not a breach of contract for which Santander could be found liable under section 75 of the CCA.

Overall, my conclusion regarding the decision Santander made not to honour Mr S's section 75 claim, is that this was a fair decision.

Part Two - Santander's customer service when handling the section 75 claim and follow-up correspondence

As I mentioned earlier in this decision, I don't intend to go into lots of detail about the service provided by the bank as all parties have accepted our investigator's most recent position on this. I will instead take a more holistic view, focusing in on key points which I think are important. And, to reiterate another point I made earlier, I'm not intending to make any finding on whether the bank has acted in breach of the Equality Act 2010. I understand that is what Mr S's court claim against the bank is about.

I would say that Santander's customer service has been quite inconsistent from Mr S's initial contact about his problem with his purchase from M. It has been better at some times than others – for example I can see that it was trying at points to accommodate Mr S's communication preferences and was occasionally making exceptions to its policies and procedures to do so. However, it gave Mr S the wrong answer initially regarding the involvement of PayPal Guest Checkout, and it accepts that it resisted attempts by Mr S to appeal against that outcome. It offered £100 in respect of service failings around this. This appears fair to me.

Our investigator noted that Mr S was told verbally that he would be able to submit further information to support his claim following the decline of his appeal in late August 2023. I agree Mr S would have been given the strong impression the bank would have considered further information from him. He set about gathering that information and presented it to Santander, only to find out that it wouldn't be considered. While this would be frustrating and disappointing for anyone, our investigator's view, which I accept, is that this broken promise had an especially strong impact on Mr S due to his disabilities. Our investigator considered a further £150 was fair compensation for this. Again, this appears to be a fair amount of compensation to me to reflect the impact of this service failing.

My provisional decision

I'm currently minded to uphold Mr S's complaint in part – and direct Santander UK Plc to pay him £150 compensation in addition to the £100 it has already paid, to reflect the impact of its customer service failings while handling his section 75 claim.

I now invite both parties to let me have any new arguments or submissions they would like me to consider, by 10 May 2024. I will review the case again after this date.

Will Culley
Ombudsman